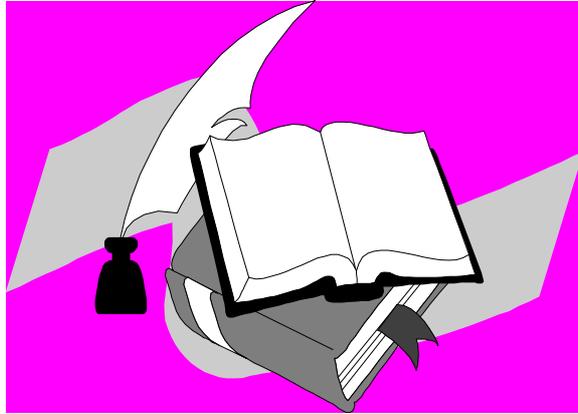


LAW COMMISSION



STATUTE LAW REVISION Goals Repeal Proposals



April 2006

BACKGROUND NOTES ON STATUTE LAW REVISION

What is it?

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

Who does it?

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

Statute Law (Repeals) Bill

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

Consultation

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

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

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

Selection of repeal candidates

6. Candidates for repeal are selected on the basis that they are no longer of practical utility. Usually this is because they no longer have any legal effect on technical grounds - because they are spent, unnecessary or obsolete. But sometimes they are selected because, although they strictly speaking do continue to have legal effect, the purposes for which they were enacted either no longer exist or are nowadays being met by some other means.

7. Provisions commonly repealed by Statute Law (Repeals) Acts include the following-
- (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
 - (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
 - (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
 - (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
 - (e) repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";
 - (f) commencement provisions once the whole of an Act is in force;
 - (g) transitional or savings provisions that are spent;
 - (h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;
 - (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

General savings

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

- “(a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

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

Gradual obsolescence

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

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

Help from consultees

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

GAOLS REPEAL PROPOSALS

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GAOLS REPEAL PROPOSALS

COUNTY GAOLS - BUCKINGHAMSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
10 Geo.2 c.10 (1736) (Aylesbury Gaol and Shire Hall: Rate in Buckinghamshire Act 1736)	The whole Act.

10 Geo.2 c.10 (1736) (Aylesbury Gaol and Shire Hall: Rate in Buckinghamshire Act 1736)

Background and purpose

1. Until the very end of the 17th century, and into the early 18th, the power to build and manage county gaols was vested in the local sheriffs. It was only in 1698 that the local justices started to secure limited control of the county gaols¹, a control which extended to building new facilities and repairing existing stock, but which fell short of the power to manage gaols and their inmates. Many gaols at this time had fallen into disrepair and their condition produced a significant health hazard.

2. In Buckinghamshire, prior to 1734, the local justices had started work on building a new county gaol at Aylesbury following a finding and recommendation from the grand jury at the county assizes. On the basis that the present gaol (a rented house in the town) had become “insufficient for the safe keeping of prisoners”, it was decided that, given its convenient location, the house should be purchased and “a Gaol and Court-Rooms or Shire Hall for the publick Service of the said County should be thereon erected”.² The land was conveyed, several assessments were made by the justices sitting in quarter sessions (to precept moneys from the county for the purchase and subsequent construction), and work commenced on the project. Notwithstanding the “very considerable progress” that had been made, but before completion could be achieved, the funding ran out. The result was buildings which

¹ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) (“the 1698 Act”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719). (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p. 181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784). Rebuilding of gaols was also provided for in the 1784 Act.

² Preamble to 10 Geo.2 c.10 (1736) (“the 1736 Act”), being “An Act to empower the Justices of the Peace for the County of Bucks, to raise Money to discharge the Debts incurred on account of building a Gaol and Court-Rooms, and for finishing the same for the Use of the County”.

had not “been perfected and finished”; a structure which was being damaged by the weather; a project of which “the greatest part thereof remains unserviceable”; and a labour force and suppliers left unpaid, so that “they and their families are much impoverished”.³

3. Recognising that more moneys had to be raised (to pay off the lawful creditors, and “to finish and compleat the said buildings for the use and accommodation of the said County”), and that this unsatisfactory state of affairs could not be rectified without “the assistance of Parliament”, the county justices sought and obtained the 1736 Act.⁴

4. The 1736 Act, in order to fulfil its purpose, authorised (in broad terms) the following steps:

- (a) the county justices at quarter sessions (held after 24 June 1737) to assess the amounts of money “justly due” to the various workmen, labourers and others for work, services and materials already supplied; to assess (based on an examination of “able and experienced workmen”) the sums reasonably needed to complete the Aylesbury gaol, court rooms and related buildings; and to assess the sums needed to defray the costs of obtaining an Act of Parliament;⁵
- (b) to assess the amount of county rate which would need to be levied in order to raise the total moneys required, so long as the annual rate on each hereditament did not exceed 4d. in the £, and to apportion the total to be levied evenly across each town, liberty, parish, hamlet and the like within the county;⁶
- (c) to effect collection, enforcement and accounting of the revenues in accordance with the mechanisms prescribed in the 1736 Act and in

³ The 1736 Act, preamble.

⁴ *Ibid.*

⁵ The 1736 Act, s.1. (The sections in the Act are not numbered but, for ease of reference, we have adopted a numbering arrangement based on the sequence of section side headings).

⁶ The 1736 Act, ss.2, 3. The town of Buckingham was specifically exempted from contributing to the costs relating to the new county gaol because it already supported alone a common gaol in the town: *ibid.*, s.13.

earlier legislation⁷, which legislation was specifically applied to the Buckinghamshire justices;⁸

- (d) the county justices to hold the ground to be acquired and the new buildings “for ever hereafter” in trust for “the publick use and benefit” of the county;⁹
- (e) to enable the justices to contract with builders and others to complete the gaol, court rooms and ancillary buildings, to pay for all such works, and then to transfer any surplus moneys into the County Stock (to be applied for appropriate uses);¹⁰
- (f) to require the justices to keep the gaol (once built and commissioned) secure for the imprisonment of “felons, debtors, and offenders”, and to permit the raising by local rate of such further moneys as became necessary to keep the gaol, court rooms and buildings “in good and sufficient repair” (and for strengthening the gaol);¹¹ and
- (g) to provide for a right of appeal by persons “aggrieved” (through assessment or overcharge) to the county justices sitting at quarter sessions for such order as “shall seem meet” to the justices, and for a time limit on any legal proceedings under the Act.¹²

Status of the 1736 Act

5. The 1736 Act was designed to supplement existing statutory powers enabling justices to build and repair gaols in their counties. Although the preamble to the Act does not mention the 1698 Act, it was probably under this national legislation that the justices had purported originally to acquire land and to start work. The 1736 Act appears to have been needed for two principal purposes: to pay out moneys retrospectively for debts incurred, and to raise moneys by rating precept on (for example) towns, parishes and liberties.¹³

⁷ Namely the 1698 Act (as made perpetual by the 1719 Act): see para 1 above.

⁸ The 1736 Act, ss.4-7, 9.

⁹ The 1736 Act, s.8.

¹⁰ The 1736 Act, ss.10, 11.

¹¹ The 1736 Act, s.12.

¹² The 1736 Act, ss.14, 16.

¹³ The 1698 Act, s.1 provides for the charging of sums “upon the severall Hundreds Laths Wapentakes Rape Ward or other Divisions of the said County” but, by section 5, exempted from assessment for county gaols “any person inhabiting in any Liberty City Towne or Borough-Corporate which have

6. The 1736 Act did, in the body of the Act, refer to and extend to the county justices the powers contained in the 1698 Act in order to facilitate implementation of its purposes.¹⁴

7. For the reasons explained below, because the Aylesbury gaol was decommissioned and demolished by 1849, the whole of the 1736 Act has become spent and may now be repealed.

Archive-based history

8. In the period from 1720 to 1723 the county quarter sessions resolved to build a new county gaol in Aylesbury, and authorised a series of three county rates for the purpose. The site of the existing gaol was purchased for construction of the new gaol. By 1726 the building works had gone into abeyance because of escalating debts (accrued since 1724 and amounting to almost £2,000) and lack of moneys to complete the project. The county justices also had doubts as to the legality of raising further sums by rate, and decided to petition Parliament for authorising legislation. The legislative process appears to have spanned the years 1731 to 1736, at which juncture the enabling Act was passed. During 1737, using their new powers, the justices ordered £3,916 to be raised by rate, and the accrued debts to be paid off. Contracts for continuation of the works were let, and the project was completed by about 1740.¹⁵

9. The county gaol at Aylesbury (in Buckinghamshire) is recorded as existing in 1837.¹⁶ It was inspected in 1841 and found seriously wanting.¹⁷ As a consequence, it was replaced by the county justices, and the gaol buildings were demolished by February 1849. The adjoining court buildings (fronting Market Square) were retained,

common gaols for felons taken in the same". It is not clear how, prior to the 1736 Act, the county justices purported to acquire land; the 1698 Act appears silent on that point.

¹⁴ The 1736 Act, s.6.

¹⁵ See Col. G.R. Crouch's supplemental paper published in *Records of Bucks*, vol. XII, pt. 1 (1927) (the journal of the Bucks Archaeological Society). Col. Crouch was sometime clerk of the peace for the county, and his work appears to have been based on the quarter sessions records. We are grateful to Mr. Roger Bettridge, Buckinghamshire County Archivist, for this reference and for other historic details.

¹⁶ *Second Report of the Inspectors appointed under the provisions of the [1835] Act 5&6 Will.4 c.38, To visit the Different Prisons of Great Britain* (1837), pp. 286 - 299 (Buckinghamshire Aylesbury County Gaol).

¹⁷ The 1841 inspection was carried out by Mr Whitworth Russell (a Home Inspector of Prisons) and The Hon. and The Revd. Sidney Godolphin Osborne (a county justice).

and part of the cleared site was then used for the construction of judges' lodgings. Today the court operates as Aylesbury Crown Court.¹⁸

10. The present prison in Aylesbury, operated by HM Prison Service, was opened at the Bierton Road site as a county gaol in 1847, and served as such until 1890 when it became a women's prison. From then until 1989 it held, at different times, various different categories of offender. In 1989 (and continuing) the prison was designated as a long-term young offender institution.¹⁹

Extent

11. The 1736 Act applies locally only within the county of Buckinghamshire, in England.

Consultation

12. The Home Office, HM Prison Service, the Department for Constitutional Affairs, HM Courts Service and Buckinghamshire County Council have been consulted about this repeal proposal.

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¹⁸ The obligation to maintain and repair Aylesbury Crown Court is held by HM Courts Service (within the aegis of the Department for Constitutional Affairs): see Courts Act 2003, s.3 (effective 1 April 2005: SI 2005 No. 910) for current provision and maintenance obligations.

¹⁹ See www.hmprisonservice.gov.uk/prisoninformation/locateaprison.

COUNTY GAOLS - CAMBRIDGESHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
1 Geo.4 c.lxxvii (1820) (Ely Sessions House and House of Correction Act 1820)	The whole Act.
7 & 8 Geo.4 c.cxi (1827) (Cambridge Gaol Act 1827)	The whole Act.
2 & 3 Vict. c.ix (1839) (Cambridge Gaol Act 1839)	The whole Act.

1 Geo.4 c.lxxvii (1820) (Ely Sessions House and House of Correction Act 1820)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.²⁰ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.²¹ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. At Ely (in Cambridgeshire) in the early 19th century there existed two penal institutions: a house of correction (managed by the local justices) and a common gaol (belonging to the bishop of Ely).

²⁰ 11 Will.3 c.19 (1698) ("An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties") which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth's *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

²¹ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

3. The justices for the county of Cambridge (acting through general quarter sessions and the local assizes)²² in, or just prior to, 1820 formed the view that the existing house of correction in Ely was "very decayed, insecure, and unfit for the safe custody of prisoners committed thereto" and needed replacing.²³ At the same time the justices thought that the local sessions house (courthouse) was "very small, incommodious, and unfit for the due administration of justice", and that it too should be rebuilt "for the service of the said Isle".²⁴

4. In order to secure the necessary authority to raise and expend moneys on the building project, the justices promoted the Act of 1820.²⁵ The broad purposes of the Act were:

- (a) to authorise the carrying out of the Act's requirements by a minimum of two justices for the isle, under the direction of the general quarter or special sessions;²⁶
- (b) to authorise the demolition of the existing sessions house and house of correction (both in Ely), and to rebuild them within or close to the city;²⁷

²² The assizes were held for the Isle of Ely. The area was treated as a separate administrative division within the county of Cambridge.

²³ Preamble to 1 Geo.4 c.lxxvii (1820) ("the 1820 Act"), being "An Act for erecting a new Sessions House and House of Correction at Ely in the Isle of Ely, and for reimbursing to the Inhabitants of a Part of the said Isle the Charges of a Sessions House and House of Correction lately erected at Wisbech in the said Isle".

²⁴ The 1820 Act, preamble.

²⁵ This 1820 Act also had a secondary purpose. A new sessions house and a house of correction had previously been built at Wisbech "for the service of the isle" but "unadvisedly" (ie. inadvertently) the costs of that project, which should have been borne by all the inhabitants of the isle, had been levied only on those living within the hundred of Wisbech and part of the hundred of Witchford. The Act sought to rectify this mistake by authorising reimbursement of the affected residents by payment "out of the public stock or rates of the said Isle". The rebate was to be designed to cover a backdated period of 20 years (maximum) and would be set-off against future liability to rates: the 1820 Act, preamble and ss.23, 24.

²⁶ The 1820 Act, s.1. The justices were also permitted to appoint such committees as were necessary to supervise the various contracts and works (see below), and to limit their terms of reference and delegated authority: *ibid.*, s.30.

²⁷ The 1820 Act, s.2. The house of correction was to be provided for accommodating in safe custody "felons, vagrants, and other offenders, who shall be lawfully committed thereto": *ibid.* The justices were authorised to erect ancillary offices, apartments, chapels, yards, wells and so on for both the gaol and the sessions house, and to fit out each complex with furniture and utensils. The Act provided a continuing maintenance obligation in respect of all the structures and fittings, to be activated "when and as occasion shall require": *ibid.*, ss.2, 18.

- (c) to authorise the sale or re-use of materials salvaged from the former buildings, and the sale of their sites (privately or by public auction);²⁸
- (d) to empower the justices to purchase such land and buildings as they “deemed necessary” for the purposes of the 1820 Act, to pay landowners for the value of the land taken and to provide compensation “for any loss or injury” which might be caused by the acquisitions (and to provide that all the costs and charges be borne from “the monies to be charged and levied under the authority of [the] Act”);²⁹
- (e) to provide mechanisms for determining land purchase values in default of agreement or where land title was defective, and for facilitating sales by persons and bodies with legal incapacity;³⁰
- (f) to provide that all land purchases should vest in the clerk of the peace for the isle of Ely (and his successors, each acting as trustee), together with the sessions house and house of correction at Wisbech and the new sessions house and house of correction at Ely once built;³¹
- (g) to provide that each of the houses of correction and each of the sessions houses should be insured, maintained and furnished with moneys “out of the public stock or rates of the said isle”;³²
- (h) to authorise the justices to appoint (and, where necessary, dismiss) officers to deliver the Act’s purposes and to manage the sessions

²⁸ The 1820 Act, ss.3, 4. The purchase moneys were to be paid over to the treasurers for the isle of Ely, and were to be used to facilitate the purposes of the Act.

²⁹ The 1820 Act, s.5. This power to acquire did not extend to any lands or buildings owned by the palace of the see of Ely, or to premises belonging to the common gaol at Ely (except, in either case, with the diocesan bishop’s consent): *ibid.*, s.39.

³⁰ The 1820 Act, ss.6-15. The provisions included a mechanism for determining the quantum of purchase money or compensation payable by special jury, and mechanisms for making payment of such moneys into a special account at the Bank of England (to be distributed by order of the Court of Chancery) or to trustees for the benefit of those with legal incapacity. There was to be a rebuttable presumption that where lands were being purchased under the 1820 Act, the person or body in possession had lawful title: *ibid.*, s.14.

³¹ The 1820 Act, ss.15, 16.

³² The 1820 Act, s.18. All furnishings and utensils were to vest in the justices for the isle: *ibid.*, s.19. It was made an offence to cause damage to the sessions houses and the houses of correction (with a maximum penalty of transportation), or to “secrete, buy, receive, or take into pawn” without authorisation any of the furniture or effects from the buildings (maximum penalty £20 fine): *ibid.*, ss.17, 20.

houses and the houses of correction (and the prisoners in the latter), and to make regulations governing the admission, classification and employment of prisoners in the houses of correction, the fees payable to the keepers, and the forfeitures for which the keepers would be liable in the event of neglect of duty;³³

- (i) to empower the justices to draw moneys for the fulfilment of the project (including promotion of the 1820 Act) “out of the public stock or rates of the said isle” as had accrued at the time of the Act’s passing; then to supplement that fund by levying a “special yearly rate” on the local inhabitants of the isle; and, finally, once those sources were exhausted, to draw moneys from “the general public stock or rates of the said isle” ordinarily levied;³⁴
- (j) to empower the justices to raise additional funds by mortgage secured on the special yearly rate;³⁵ and
- (k) to provide for the recovery of penalties imposed under the 1820 Act by forfeiture or gaol; to provide a limitation period and ancillary requirements in relation to legal proceedings; and to provide an appeal mechanism for those persons who were “aggrieved by any thing done or omitted to be done in the execution of [the] Act”.³⁶

Status of the 1820 Act

5. The principal purpose of the 1820 Act was to authorise the construction of a new house of correction and a new sessions house in Ely.

³³ The 1820 Act, ss.21, 22. The rules were also to govern the provision of “aid and relief” to prisoners whilst in confinement and on discharge from custody: *ibid.*, s.22.

³⁴ The 1820 Act, s.24. The justices were authorised to levy “a special yearly rate or assessment in the nature of an isle or county rate, not exceeding one penny in the pound” based on the annual value of the various hereditaments, and the product of that rate was to be held as “a separate and distinct account”. The special yearly rate could be charged until “the said several purposes of [the] Act shall be fully answered and satisfied: *ibid.*, s.25.

³⁵ The 1820 Act, s.26. Each mortgage, in prescribed form, was to be registered by the clerk of the peace for the isle. Mortgages so raised could be transferred or assigned by the lender, subject to additional registration: *ibid.*, ss.26, 27. No lender was to be treated as preferential, although the justices had discretion to decide the sequence of discharge: *ibid.*, s.28. Interest was to be paid to each lender “from time to time” in each year: *ibid.*, s.29.

³⁶ The 1820 Act, ss.32-38. Appeals were to lie to the general quarter sessions of the peace for the isle, the determinations of which were to “be final, binding, and conclusive to all intents and purposes whatsoever”: *ibid.*, s.35.

6. As indicated below, it appears that the house of correction built pursuant to the Act was complete by 1821 and closed in 1878. Thereafter, the building was temporarily let for use as an armoury, extending an earlier part-letting. Abolition of the city's common gaol in 1836 was expressed to be without prejudice to the continuing existence of the houses of correction at Ely and Wisbech.³⁷

7. The Ely sessions house (also known as the shire hall) was built at the same time as the house of correction, and was sited close by. It presently houses Ely Magistrates Court, which falls under the aegis of HM Courts Service.

8. Accordingly, the 1820 Act is now spent, and may be repealed in whole.

7 & 8 Geo.4 c.cxi (1827) (Cambridge Gaol Act 1827)

Background and purpose

9. In July 1823 the grand jury for the town of Cambridge reported to the town's quarter sessions that the common gaol (situated in the parish of St. Andrew the Great) was "too small, insecure, and unfit for the proper accommodation of the prisoners usually confined therein", that its limited space was "injurious to the health of the prisoners" and that "its present site was improper".³⁸ In October of that year the jury recommended that a new gaol be erected on a larger scale "so as to admit of the proper classification of the various prisoners".³⁹ The justices accepted that recommendation and promoted the 1827 Act to facilitate the building of the gaol with minimum delay.

10. The principal purposes of the 1827 Act (in broad terms) were these:

- (a) to authorise the town justices to build and fit out "a proper and sufficient new common gaol and house of correction" for the town of Cambridge which would provide rooms for the reception of "debtors, criminals, and others", yards, out-offices, an infirmary and a gaoler's residence;⁴⁰

³⁷ Liberties Act 1836 (6 & 7 Will.4 c.87), ss.13, 14 (now repealed). The amending Liberty of Ely Act 1837 (7 Will. 4 & 1 Vict. c. 53), ss.2, 7 (also repealed) confirmed the functioning of the Ely and Wisbech houses of correction as repositories for convicted prisoners, and the administrative status of the isle of Ely as a division of the county.

³⁸ Preamble to 7 & 8 Geo.4 c.cxi (1827) ("the 1827 Act"), being "An Act for building a new Gaol for the Town of Cambridge, and for other Purposes connected therewith".

³⁹ The 1827 Act, preamble.

⁴⁰ The 1827 Act, s.1. The layout and operational arrangements were to be designed to enhance "the separation, employment, and regulation of the prisoners confined therein": *ibid.*, preamble. The Act gave

- (b) to authorise the purchase of sufficient lands (to a maximum of two acres) for the gaol project, comprising either the parcel of allotment land described in the schedule to the Act or such other parcels of land situated in the town, or within one mile of the town's boundaries, as appeared "proper or convenient" for the gaol;⁴¹
- (c) to provide mechanisms to facilitate sales by persons or bodies with legal incapacity, to determine property valuations by special jury where landowners were absent or failed or refused to negotiate, and to place purchase moneys in a Bank of England account (to the order of the Court of Exchequer) or with trustees so that good title to the affected land could pass to the clerk of the peace;⁴²
- (d) to authorise the collection of building materials and the use of those materials (which were to be vested in the justices) in the construction of the gaol and house of correction⁴³, and to make the justices responsible for the future repair and upkeep of the two institutions;⁴⁴

the justices power and discretion to do anything "requisite and necessary" to fulfil the Act's purposes: *ibid.*, s.1. Once constructed and operational, the new gaol was to be designated the common gaol and house of correction for (and within) the town of Cambridge for "so long as the same shall be so used and no longer", and the town's mayor, justices, coroners and other officials were to have full jurisdiction within it: *ibid.*, ss.3, 21. Nothing in the 1827 Act was to affect or diminish the "rights, liberties, immunities, exemptions, franchises, and privileges" of the university or its constituent colleges or halls, or those of the Cambridge town corporation: *ibid.*, s.56.

⁴¹ The 1827 Act, s.2. In the event that the justices could not secure acquisition by agreement, by "making or tendering satisfaction", they were given powers of compulsory purchase: *ibid.* Land acquired was to be conveyed to and held in trust by the town's clerk of the peace. Nothing in the 1827 Act was deemed to authorise the compulsory taking of any lands or walks owned by the university of Cambridge or its constituent colleges (or halls), or the erecting of any gaol structure within 200 yards of any public buildings or grounds owned by the university or colleges without those bodies' prior consent, or the demolition of any dwellinghouse or building or the taking of any grounds adjoining any such house without the owner's prior consent, or the taking of the then existing county gaol and house of correction and adjoining premises: *ibid.*, s.2.

⁴² The 1827 Act, ss.4-18. The form of conveyance on sale was prescribed by the Act: *ibid.*, s.18. There was to be a rebuttable presumption that the person in possession of affected land had lawful title to it and was entitled to receive the purchase moneys: *ibid.*, s.13. On payment or legal tender of the agreed or determined purchase price, and in the event of non-conveyance of title, the justices were authorised to vest title in the clerk of the peace and to effect lawful entry: *ibid.*, s.15. Special provision was made for the acquisition of interests owned by mortgagees and by leaseholders, tenants and other occupiers: *ibid.*, ss.16, 17.

⁴³ The 1827 Act, ss.1, 19. Unlawful interference with the materials, and causing malicious damage to the completed gaol complex, were both made actionable (the latter as a punishable "misdemeanor"): *ibid.*, ss.19, 20. The gaol was to be constructed so that the outside walls would be surrounded by a strip of undeveloped land at least 30 feet wide (extended to 60 feet where the boundary walls abutted a public street), designed "to preserve a free circulation of air" around the gaol "at all times". The intervening undeveloped space was to be used only for "garden, yard, or area" for the gaol: *ibid.*, s.36.

⁴⁴ The 1827 Act, s.21. The costs of furnishing the new gaol and house of correction (when completed), of future repairs and maintenance (and of maintaining the prisoners), and of paying for salaries and insurance, were to be borne from "such rates, stock, or funds of the said town of Cambridge as are now legally applicable to the like purposes in respect to the present [*ie.* the former] gaol": *ibid.* The town mayor, with the gaoler and the keeper, was to be responsible for the prisoners in the town's custody:

- (e) to raise moneys for the new gaol project by three methods:⁴⁵
- (i) by the justices selling off (and by reinvesting the proceeds from) the redundant materials from the old gaol building and its furnishings;⁴⁶
 - (ii) by the justices assessing and levying an annual rate to yield up to £4,000 *per annum* (with the total rate capped at £15,000) on the town's land owners and occupiers, to be apportioned fairly between "each parish, ward, or precinct within the said town";⁴⁷ and
 - (iii) by empowering the justices to borrow moneys secured by mortgage on the additional rate (and providing for the method of discharge);⁴⁸
- (f) to provide mechanisms for the recovery of rates;⁴⁹
- (g) to permit the justices to employ gaolers, keepers, a governor, chaplain, surgeon and other appropriate officers (together with a treasurer or treasurers and collectors of rates); to take security for good behaviour in office from such appointees; and to pay from the

ibid. Furniture and utensils in the new gaol were to vest in the town justices: *ibid.*, s.42. Theft of these items, or receiving them as stolen goods, was made an offence: *ibid.*, ss.42, 43.

⁴⁵ All the moneys raised were to be used in the following order: for defraying the costs of obtaining the 1827 Act; for making the interest payments on the borrowed sums; for paying the land acquisition costs and the costs of building and fitting-out; and, finally, for the "gradual discharge" of the principal moneys borrowed and accrued interest: the 1827 Act, s.34.

⁴⁶ The 1827 Act, s.22. Any materials which could be reused in the new building were to be so deployed. The site of the old gaol could not be realised because it remained vested in the trustees of the Hobson's Charity (based in Cambridge), "the said site having been originally gratuitously allowed to be built upon for the convenience of the said town": *ibid.*

⁴⁷ The 1827 Act, ss.23, 25. The upper limit of £15,000 was designed to cover not only the land acquisition and building costs, but also the costs entailed in securing the 1827 Act. The liability of the university, colleges and halls to pay the additional rates on the various buildings and lands in their "actual occupation and manurance" was specifically limited to the extent and level of their previous liability to contribute to the old gaol and house of correction: *ibid.*, s.24.

⁴⁸ The 1827 Act, ss.30-35. Mortgages were to be repaid with "legal or lower interest" (on a half-yearly basis), were to be in prescribed form, were to be assignable, were not to give priority to individual creditors, and were to be registered by the clerk of the peace: *ibid.*, ss.30-32. All the mortgage borrowings were to be paid off within 10 years of completion of the new gaol and house of correction: *ibid.*, s.35.

⁴⁹ The 1827 Act, ss.26-29. In the event of default in payment of rates due, the appointed collector was empowered to apply for a warrant authorising the levying of distress on, and sale of, the liable person's goods: *ibid.*, s.26. Specific arrangements were set down for the payment of rates by tenants: *ibid.*, ss.27, 28, and for apportioning liability for rates where a previous occupier moved away from the parish without making payment: *ibid.*, s.29.

additional rate reasonable “allowances and compensations” for the appointees’ services;⁵⁰

- (h) to require the justices (acting through general or quarter sessions) to make and display “rules, orders, and regulations” for the governance of the gaol and house of correction, and their prisoners⁵¹, and to ensure that quarterly returns were made by the gaolers and keepers of the persons in their charge, their offences and their “age, bodily state, and behaviour”;⁵² and
- (i) to provide for the recovery of penalties imposed under the 1827 Act by distress on goods or committal to gaol, to provide for legal proceedings a time limit and ancillary arrangements, and to provide for appeal to county quarter sessions by persons “aggrieved” by steps taken under the Act.⁵³

Status of the 1827 Act

11. The main purpose underpinning the 1827 Act was to authorise the construction of a new common gaol and a house of correction for the use of the town of Cambridge.

12. As indicated below, the old gaol was closed in or about 1829, the new gaol opened in that year, and was itself closed in 1878.

13. The 1827 Act made clear that the powers contained within it relating to operation of a gaol and of a house of correction were to expire once the ‘new’ facilities ceased to operate as such.⁵⁴

⁵⁰ The 1827 Act, ss.37, 38. The justices were also able to remunerate the overseers, churchwardens and constables who were involved in helping to deliver the Act’s purposes.

⁵¹ The 1827 Act, s.39. The rules were to cover, amongst other things: classification and management of prisoners, diet, clothing, monitoring, the enforcement of “cleanliness, temperance, and a decent and orderly behaviour”, so as to secure “a just and humane treatment” of the prisoners; the prevention of supply of commodities or liquor deemed improper by the authorities; restricting visitors who might seek to contravene the rules; and to lay down penalties for breach of the rules. The rules were not to “be contrary or repugnant to the laws of that part of Great Britain and Ireland called England” or to the 1827 Act: *ibid.* s.39. Prisoners under sentence of transportation were to be held separately: *ibid.*, s.41.

⁵² The 1827 Act, s.40.

⁵³ The 1827 Act, ss.44-55. The ancillary arrangements included those relating to witness attendance, service of notices, adequacy of form and the like.

⁵⁴ The 1827 Act, s.3 (see above).

14. Accordingly, the 1827 Act is now spent, and may be repealed in whole.

2 & 3 Vict. c.ix (1839) (Cambridge Gaol Act 1839)

Background and purpose

15. By 1839, the town gaol in Cambridge, built pursuant to the 1827 Act powers, was complete. However, two issues had arisen which called for further enabling legislation.

16. First, in 1835 the town council had, by statute, acquired incorporated borough status. **[Is this correct, please?]** The borough justices had taken over responsibility for maintaining the town gaol from the county justices. This required some administrative adjustment.

17. Secondly, three secured loans remained outstanding. The municipal corporation was concerned that these should be re-secured, by bond, on the borough fund.

18. To this end, in 1839 the borough council obtained an Act⁵⁵ designed to clarify certain aspects of the 1827 Act (relating to governance of the new gaol) which were “in many respects uncertain and undefined” and other aspects which had become “in other respects defective and insufficient for the purposes thereby intended”. This clarification was to be achieved by three routes: by repealing parts of the earlier Act, by reviving other provisions within it (by re-enactment), and by making amendments to the 1827 Act.⁵⁶

⁵⁵ 2&3 Vict. c.ix (1839) (“the 1839 Act”), being “An Act to amend an Act of the Seventh and Eighth of King George the Fourth, for building a new Gaol for the Town of Cambridge, and for making further Provision for Payment of Creditors under the said Act.” The Act referred to here, is the 1827 Act. In its preamble the 1839 Act recited that the justices had fixed the assessment for the project at nearly £16,617. Almost £14,515 had been levied and received by way of rate. The total actually expended on the project was £14,187. Additionally, the justices had borrowed £8,000 (secured by mortgage on the rates), of which £4,500 had been repaid. The balance of £3,500 (plus interest accrued) was still owed to three named individuals. The gaol itself had been “long since completed” by the justices “according to the provisions of the said [1827] Act”: *ibid.*, preamble.

⁵⁶ The 1839 Act, preamble and s.1. All the provisions of the 1827 Act were expressed to be “in full force and effect, in such and the like manner in all respects, and to all intents and purposes, as if the same were repeated and re-enacted by this [1839] Act”, excepting those parts as were specifically “varied, altered, taken away, or repealed” by it: *ibid.*, s.1. The Act was deemed not to detract from the “rights, liberties, immunities, exemptions, franchises, and privileges” of the university of Cambridge or any of its constituent colleges or halls: *ibid.*, s.11.

19. The provisions of the (relatively short) 1839 Act were designed to achieve the following:

- (a) to repeal the provisions in the 1827 Act which empowered the justices to assess and then levy rates, but to preserve the justices' powers for enforcing payment of rates already made, for responding to actions challenging validity of a rate, and for remitting rates on the grounds of "poverty or distress";⁵⁷
- (b) to provide for transfer of all moneys obtained under the 1827 Act powers from the justices' treasurer to the borough treasurer "in aid of the borough fund";⁵⁸
- (c) to recite, for the avoidance of doubt, the vesting in the borough justices of the statutory "powers of regulation" relating to the gaol (which was now designated the "gaol of the said borough of Cambridge" rather than simply the town gaol)⁵⁹, and to require the justices of "assize, oyer and terminer, and gaol delivery" for the county to commit convicted offenders from the borough to the borough gaol to serve out their sentences of imprisonment or to await transportation or death,⁶⁰

⁵⁷ The 1839 Act, s.2. This section was not specific about parts or sections of the 1827 Act which were to be treated as repealed. In all probability, and in broad terms, the sections directly affected were sections 23 to 29 of that Act.

⁵⁸ The 1839 Act, s.3.

⁵⁹ The 1839 Act, s.4. The section was designed to eradicate doubts which had arisen in Cambridge as to whether the borough justices had properly acquired the same powers relating to gaol governance as were vested in the general or quarter sessions for the county. Hitherto it had been assumed that the powers vested in county quarter sessions extended also, as a result of the Municipal Corporations (England) Acts 1835 and 1837 [5 & 6 Will.4 c.76 (1835) and 1 & 2 Vict. c.78 (1837), both later repealed] to borough justices. The 1837 Act, ss.37, 38 had sought to provide that every borough council named in the schedules to the 1835 Act (which included Cambridge) should have the same powers relating to gaol building and regulation as justices in quarter sessions. These 1837 Act provisions had the effect of amending provisions in the 1835 Act, s.116. The 1839 Act, s.4 empowered the borough justices to hold their own quarter sessions for the purpose of regulating the gaol, subject to the proviso that any order involving expenditure had first to be confirmed and validated by the borough council.

⁶⁰ The 1839 Act, s.10. Under the 1835 Act, s.114, in boroughs where borough quarter sessions were held, the relevant borough council was obliged to reimburse the county treasurer the costs of prosecution, punishment and conveyance of all offenders committed from the borough for trial at assize. Cambridge held its own quarter sessions and it "tend[ed] very much to the advantage and relief of the inhabitants of the said borough" that borough offenders be committed on conviction instead to the borough gaol: the 1839 Act, s.10.

- (d) to convert the security for the three debts and outstanding interest (incurred to facilitate building of the gaol) from mortgage on the gaol rates to bond under seal of the borough council;⁶¹ and
- (e) to make certain mechanistic changes relating to costs and to rating.⁶²

Status of the 1839 Act

20. The 1839 Act was simply an ancillary piece of legislation, designed to effect (and complete) transfer of powers relating to the town gaol from the county justices to the borough justices for Cambridge.

21. The whole structure of the short 1839 Act was linked to the powers and obligations laid down in the earlier 1827 Act.

22. Although the 1839 Act did not on its face contain any provision limiting its life, its purpose would have expired when the purpose behind the 1827 Act expired. As indicated above, the 1827 Act provided for the newly-constructed gaol to be designated a gaol for the town only whilst it was in use for that purpose. Once that use ceased, the designation and the on-going obligations would also have ceased.

23. As shown below, the Cambridge town (and later borough) gaol was constructed in 1829 and ceased to operate in 1878.

24. Accordingly, the 1839 Act is now spent, and may be repealed in whole.

Archive-based history

25. A new sessions house and a house of correction had been built on Lynn Road, in Ely, by 1821. The house of correction replaced a much older building where prison conditions were very poor. It was separate from the common gaol managed by the bishop of Ely (and now used as the Ely museum).

⁶¹ The 1839 Act, s.6. Although the secured debts were for £1,000, £1,500 and £1,000 respectively (in favour of three named creditors), each new bond was only to provide security for up to £500 plus interest "and no more": *ibid.* The bonds were to be repaid from the borough fund, with interest, at the rate of one per year (the sequence of discharge to be determined from the outset by lot): *ibid.*, s.7.

⁶² The 1839 Act, s.5 repealed provisions in the 1827 Act (part of section 55) which allowed for the award of treble costs in certain legal actions under the 1827 Act. The 1839 Act, s.8 provided that the costs of obtaining the 1839 Act, and those flowing from carrying-out the purposes of the 1827 Act, should be paid from the borough fund. The 1839 Act, s.9 made changes to the apportionment of rates to be borne by tenants and "occupiers at rack rent" when the borough council, from time to time, levied a "specific rate" to finance discharge of the issued bonds and to cover costs arising from operation of the 1827 and 1839 Acts: *ibid.*

26. The sessions house comprised the main building, fronted with a columned portico, and two wings (one an infirmary, the other a chapel). The house of correction was sited behind the sessions house and comprised a governor's house; two separate cell blocks - one for men and the other for women and small debtors; two work rooms, four day rooms and four airing yards.⁶³

27. The house of correction closed in 1878 following enactment of the Prisons Act 1877. The building was then used as an armoury for the local volunteers (consolidating an earlier part-use) until 1908. It has since been demolished.

28. The sessions house building is currently operating as Ely Magistrates Court under the auspices of HM Courts Service.⁶⁴

29. In Cambridge, the old gaol was sited in St. Andrew's Street, behind Hobson's spinning house (which was a house of correction). The building was vacated around 1829 and replaced by a new gaol complex erected on the south side of Parker's Piece.⁶⁵ The debt for this new building was not paid off until 1847.

30. The new town gaol was closed in 1878 by the Home Secretary, and the site was sold to the borough council. The council demolished the building (disposing of the salvaged building materials) and let the land for a housing development (Queen Anne Terrace), which was completed around 1881. Today, the site is occupied by a multi-storey carpark and the YMCA.⁶⁶

Extent

31. The 1820 Act applies locally only within the city of Ely in Cambridgeshire, in England.

32. The 1827 Act and the 1839 Act apply locally only within the city of Cambridge in Cambridgeshire, in England.

⁶³ See <http://www.cambridgeshirehistory.com/cambridgeshire/TownsandVillages/Ely> citing S.Lewis *Topographical Gazetteer* (1831).

⁶⁴ The obligation for maintenance and repair resides with HM Courts Service under the aegis of the Department for Constitutional Affairs: see Courts Act 2003, s.3 (effective 1 April 2005: SI 2005 No. 910).

⁶⁵ In the previous year (1828) a drain had to be constructed across Parker's Piece and Butt Green to relieve flooding in the foundations of the gaol.

⁶⁶ See <http://www.cambridgeshire.gov.uk/leisure/archives/holdings/m-p/prisons.htm>

Consultation

33. The Home Office, HM Prison Service, the Department for Constitutional Affairs, HM Courts Service, Cambridgeshire County Council and Cambridge City Council have been consulted about this repeal proposal.

(32-195-452)
LAW/005/002/06
25 April 2006

COUNTY GAOLS - CHESHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
28 Geo.3 c.82 (1788) (Chester: Improvement Act 1788)	The whole Act.
47 Geo.3 Sess.2 c.vi (1807) (Chester Castle Gaol and other Buildings Act 1807)	The whole Act.

28 Geo.3 c.82 (1788) (Chester: Improvement Act 1788)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁶⁷ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁶⁸ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Cheshire (then known as the County Palatine of Chester), in 1784, the grand jury reported to the court of session and general gaol delivery for the county that the common gaol (located at Chester castle) was “insufficient, inconvenient, and in want of repair” and that, being a county gaol, responsibility for addressing the situation lay with the county’s inhabitants.⁶⁹ The county justices, having considered the matter in general quarter sessions, decided that the existing gaol should be demolished and rebuilt (with enlarged yards and accesses) either on its present site

⁶⁷ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁶⁸ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁶⁹ Preamble to 28 Geo.3 c.82 (1788) (“the 1788 Act”), being “An Act for taking down and rebuilding the Gaol of the Castle of Chester, the Prothonotary’s Office, the Exchequer Record Rooms, and other Offices and Buildings adjoining or near to the said Gaol, and for making proper Yards and Conveniences thereto”. The short title of the Act, assigned by the *Chronological Table of the Statutes*, is the Chester: Improvement Act 1788.

and land nearby land occupied by other buildings, or at “some other convenient situation”.⁷⁰ This, and allied rebuilding, could not be effected without parliamentary authority.

3. To this end, the county justices promoted what was to become the 1788 Act. That Act authorised (in broad terms) the following steps:

- (a) the constituting of the county justices as commissioners charged with fulfilling the purposes of the 1788 Act;⁷¹
- (b) the appointment (and dismissal) by the commissioners of officers, including a clerk and treasurer and a surveyor or surveyors, who were to be accountable for all books and papers in their possession;⁷²
- (c) the conduct by the commissioners of legal proceedings through their clerk;⁷³
- (d) the taking down by the commissioners and rebuilding of the old gaol (in whole or in part, including providing or extending, as appropriate, the “yards, outlets, and avenues thereof”), such work to be determined by the commissioners and carried out “at the publick expence of the inhabitants of the said county of Chester”;⁷⁴

⁷⁰ The 1788 Act, preamble. In addition to rebuilding the gaol with a cell complement designed to house prisoners adequately (including separating categories of prisoners), the justices decided that it might be necessary to demolish and rebuild the prothonotary’s office (which housed the court of session’s records), the shire hall, the exchequer court and record rooms, and other adjoining buildings.

⁷¹ The 1788 Act, s.1. Sections 2-4 of the Act provided for the regulation of commissioners’ meetings (adjournments, public notice, election of chairman, casting vote, keeping of minutes, and so forth), disqualification through personal pecuniary interest, and for appointment of sub-committees with executive power to supervise the works.

⁷² The 1788 Act, ss.5, 6. Although the officers were to be remunerated, they were also required to provide security for good conduct in office (and to forfeit moneys in the event of default, such as having a personal interest in any works contract let). Orders for removal had to be confirmed by a separate meeting of commissioners. The county justices were required to appoint an audit committee of commissioners to examine and certify the officers’ accounts.

⁷³ The 1788 Act, s.7.

⁷⁴ The 1788 Act, ss.8, 9. The commissioners were required to determine in a special meeting whether it was more appropriate to rebuild the gaol on the existing or on an alternative site. The alternative site (if chosen) was to be located within the county, or within the city of Chester, either near to the existing gaol in the castle yard (or within “the precincts or liberties of the castle of Chester”) or within the nearby “township or hamlet of Gloverstone” or on land called “The Nuns Gardens” within the city in the parish of St. Mary on the Hill, but nowhere else within the city: *ibid.* If the gaol were to be built on The Nuns Gardens, no part of it was to be constructed within 40 feet of the city walls: *ibid.*, s.8. In order to secure “a free circulation of pure and wholesome air” and to prevent “the gaol fever, and other malignant diseases”, the Act stipulated that there was to be a development-free zone around the entire gaol extending for 15 yards from the boundary wall. Within that zone there was to be no building or piling of materials or keeping of swine or generation of “offensive smells”, or other nuisances, or the growing of

- (e) at public expense, the demolition and rebuilding elsewhere by the commissioners (if thought appropriate to facilitate the gaol-building project) of the prothonotary's office, the shire hall, the exchequer court and record rooms, and other buildings adjoining the existing gaol;⁷⁵
- (f) the appropriation of part of the castle yard and grounds for the gaol project (on condition that the commissioners provided and maintained an alternative carriage road, to be laid from the existing castle gateway to a new gate accessing the inner ward; that the appropriation occur within two years; and that the new gaol be built within ten years);⁷⁶
- (g) in the event that further land be required for replacing the gaol, prothonotary's office, shire hall, exchequer court and record rooms (and other buildings), the purchase by the commissioners of such land and payment for it (such land also to be transferred to, and held in trust by, the county's *custos rotulorum*);⁷⁷
- (h) providing mechanisms for acquisition and transfer of land where the owners were either legally incapacitated, or were unwilling or unable

trees (breach of which prohibition could lead to enforcement action by the county justices and imposition of a penalty). Demolition or removal by the commissioners of pre-existing buildings or structures would give rise to a liability to compensate: *ibid.*, s.26. The gaol itself was to be configured internally so that prisoners were segregated by gender, by misdemeanour and by remand or conviction status, and so that there was provided a chapel, an infirmary and a reception and cleansing unit ("a lazarette") (the latter two in accordance with the statute 14 Geo.3 c.59 (1774)), and accommodation for bathing, working and for housing the gaoler, his family and his assistants: *ibid.*, s.29.

⁷⁵ The 1788 Act, s.10. The various civic buildings (if demolished) were to be repositioned near to their original location or "in some other convenient situation or situations in or near to the said castle of Chester". Prior public notice had to be given of the special meeting to consider this step: *ibid.*

⁷⁶ The 1788 Act, ss.11, 12. The Act recited the dimensions of the parcel of land so affected (using, as a reference point, the portico affixed to the county hall). A development-free zone was designated between the new carriageway and the gaol buildings. The affected castle land was in the ownership of the king who had signified his assent to the prospective appropriation (and which assent was recited in the Act): *ibid.*, s.11. Once appropriated, the land parcel was to be vested absolutely in the *custos rotulorum* of the county, to be held in trust by him (acting as a corporation sole) and his successors for the 1788 Act's purposes. The stipulated time limits for appropriation and completion of building ran from 1st August 1788. Failure to comply meant that the authority to appropriate would become "void and of no effect": *ibid.*, s.12. Presumably, if the gaol were not built to time, the appropriated land (and anything on it) would have reverted to the king. If other lands (in or near the The Nuns Gardens) belonging to the king were subsequently required for the building project, the Lords Commissioners of His Majesty's Treasury were empowered to agree, after survey, a valuation and a sale of such lands to the gaol commissioners (the purchase moneys to be applied in accordance with the Crown Land revenues, etc. Act 1786 (26 Geo.3 c.87)): *ibid.*, s.23.

⁷⁷ The 1788 Act, s.13. Any lands so acquired and situated within the city or liberties of Chester were deemed to be part of the county of Chester: *ibid.*

to negotiate on compensation, or were unable for some reason to complete the sale to the commissioners;⁷⁸

- (i) the demolition by the commissioners of the constable's "house or apartments", and the extinguishment of his occupational right, but providing him with alternative accommodation or "reasonable satisfaction or compensation in lieu thereof", so that he could continue his job as gaoler or keeper for the replacement gaol, and exercise the rights in his office "to the custody of the prisoners, in the gaol of the castle of Chester, and to the salary, fees, and perquisites appertaining to the said office";⁷⁹
- (j) the regulation by the county justices of the gaoler's and keeper's fees (and the supplementing of those fees by "such salaries and allowances" as "shall appear reasonable", subject to proper compliance by the recipients with "the bye-laws, rules and orders" of the gaol);⁸⁰
- (k) the extracting, without charge, of "soil, clay, sand, or gravel" from "any common or waste land, river, or brook" for the purposes of the 1788 Act, and the sale of any such materials found surplus to requirements;⁸¹

⁷⁸ The 1788 Act, ss.14-20. These provisions covered: legal incapacity, arrangements for juries to ascertain and determine land valuations, payment and investment of purchase moneys, and taking of possession and title by the *custos rotulorum*.

⁷⁹ The 1788 Act, s.21. The commissioners were also required to provide for the constable's deputy. Disagreements over compensation for the constable were to be settled by a county jury in the same way that other non-agreed land compensation was to be determined: *ibid*.

⁸⁰ The 1788 Act, s.22. Historically the constable and his deputy had received fees from debtors and other prisoners, and "incidental charges" from the county rate. The fees were regulated by a national 1758 Act (32 Geo.2 c.28) - cited in section 22 - which sought to provide relief for imprisoned debtors. However, the levying of such sums had the potential to "become oppressive and burthensome to poor prisoners" and to give rise to "frequent abuse" of the county rate: *ibid*. The solution was to set and exhibit a table of fees (to be reviewed by the justices in quarter sessions) and to award a supplemental salary as "recompence for any diminution of emolument in the office of gaoler or keeper of the said intended new gaol": *ibid*.

⁸¹ The 1788 Act, s.24. The commissioners were also entitled to authorise their workmen to enter privately-owned land and to take away stone and other building materials, subject to their paying compensation, and to use any wharf or access to the River Dee "for the benefit of water carriage". Where works were undertaken on publicly accessible lands, the commissioners were required to fence or backfill any pits dug for public and animal safety: *ibid*. All building materials assembled for the project were to be vested in the commissioners, and the commissioners were empowered to bring legal proceedings for theft or interference, and for wilful obstruction in their work or for malicious damage to buildings: *ibid*, ss.30, 31.

- (l) the extraction of water from private lands by entering, surveying, cutting watercourses and constructing reservoirs, pumps and the like, for the purpose of supplying fresh water to the gaol “constantly and uninterruptedly”,⁸²
- (m) the fitting-out of the new gaol, and of the rebuilt prothonotary’s office, shire hall, exchequer court and record rooms, and other buildings, so that they would be available for operational use,⁸³
- (n) the provision of temporary accommodation within the city or the county for the gaol, and for other courts and offices, whilst demolition and rebuilding was in progress;⁸⁴
- (o) the designation of the new gaol as the common gaol for the county (and the replacement shire hall and exchequer court as facilities for the “county palatine of Chester”);⁸⁵
- (p) the raising of moneys by the commissioners for the building project both by precepting on the county rate (in accordance with 12 Geo.2 c.29 (1738) relating to county rates) levied on towns, parishes and the

⁸² The 1788 Act, s.25. The authority extended to the commissioners’ workmen entering lands subsequently, in order to clean and repair the installations (which, by then, would have vested in, and be held in trust by, the county’s *custos rotulorum*). Any unauthorised interference by others with the water installations was made an offence. The Act contained a specific proviso in section 25 that none of its provisions was to detract from any contractual liability on the part of the city of Chester waterworks company to supply water to the gaol (whether at the castle or at its new location) and to other publicly-maintained buildings, although the cost of all new piping would be borne by the inhabitants of the county.

⁸³ The 1788 Act, s.27. The commissioners were authorised to employ workmen and contractors for both this task and in order “to pull down the houses or buildings so to be purchased, taken down, or removed as aforesaid, and to sell or dispose of the materials thereof”: *ibid.* The commissioners were also authorised to include, in any contract, provision for forfeiture of penalties and payment of damages in the event of contractor-default: *ibid.*, s.28.

⁸⁴ The 1788 Act, s.32. The temporary gaol facility would be deemed to be the common gaol for the county, pending relocation. The commissioners were empowered to fit-out for temporary use, at the expense of the county’s inhabitants, the various buildings occupied for county purposes.

⁸⁵ The 1788 Act, s.33. All existing national laws which related to gaols were to apply to the new gaol as if they had been applied specifically to it: *ibid.*, s.51. Once the gaol was complete, prisoners were to be transferred there from their temporary accommodation “with all convenient speed”: *ibid.* The gaol, together with the other municipal buildings (prothonotary’s office, shire hall, exchequer court and record rooms, and ancillary offices) were all to be kept in repair, and insured, “at the publick expense of the inhabitants of the said county”, but the various buildings were to be exempt from house and window tax, and the local rates on the lands were to be capped to the level applying as at their date of acquisition by the commissioners: *ibid.*, s.35. As an alternative to the year-on-year payment of rates, land tax and lamp duty, the commissioners were authorised to pay a single lump sum to the relevant churchwardens, overseers of the poor, constables and tax collectors, equivalent to a maximum of 35 years purchase, subject to the arrangement being sanctioned by general quarter sessions (which lump sum would then be utilised “for the greatest and most equal benefit of the inhabitants” and the land owners and occupiers within the relevant parish or township): *ibid.*, s.36.

like within the county,⁸⁶ and by borrowing sums (to a maximum of £100 per loan advance) mortgaged on the county rate.⁸⁷ The moneys so raised were to be used, first, for discharging the costs incurred in obtaining the 1788 Act, then for paying interest on the sums borrowed, and finally for the purposes of the legislation;⁸⁸

- (q) the regulation of the gaol and its occupants through the making of, and adherence to, byelaws which would govern the segregation of prisoners by type, the enforcement of “cleanliness, temperance, and a decent and orderly behaviour” amongst prisoners, and the securing for the prisoners “a just and humane treatment of them by the gaoler and his servants”,⁸⁹
- (r) the provision of facilities for prisoners of all categories to undertake work (to prevent idleness and debauchery), including supplying materials and supervision, the cost of which was to be borne by the county rates;⁹⁰
- (s) the appointment of two or more justices as gaol visitors to inspect the gaol at regular intervals so as to prevent “abuses” and, more particularly, to “examine into the state of the buildings, the behaviour and conduct of the respective officers, and the treatment and condition of the prisoners, the amount of their earnings, and the expences attending the said gaol”;⁹¹

⁸⁶ The 1788 Act, s.37.

⁸⁷ The 1788 Act, s.38. Each mortgage, which was repayable with interest on the principal sum, was capable of being assigned by its owner (without incurring additional stamp duty liability). Mortgages and assignments were to be registered with the treasurer to the commissioners. The form of mortgage was prescribed in the schedule to the 1788 Act: *ibid.* Yearly interest was to be paid to lenders out of the county rate fund by the county treasurer; and, on completion of the various new-build operations, the county justices were to repay to the lenders the principal sums borrowed, following a sequence to be established by lot, so that within 14 years the entirety of the loan would be discharged: *ibid.*, ss.39, 40.

⁸⁸ The 1788 Act, s.41. In the event that any balance remained, that amount should be applied and used “as part of the publick stock of the said county”: *ibid.*

⁸⁹ The 1788 Act, s.42. The byelaws were to be made in accordance with the rubric set down by 32 Geo.2 c. 28 (1758).

⁹⁰ The 1788 Act, ss.43, 44. A basic power was already provided in 18&19 Cha.2 c.9 (1666) relating to the relief of poor prisoners, but that legislation ring-fenced the rating of each parish (at 6d. per week) and the category of prisoner. The 1788 Act sought and obtained power to extend both the rating sum (without limit) and the categories (in essence, to all prisoners held in the new gaol). The county justices were authorised to employ a salaried taskmaster and ancillary officers in the gaol, whose remuneration would be incentive-based. They would be required to give security for their good conduct in office, and would be subject to dismissal or financial penalty for misbehaviour: *ibid.*, s.44.

⁹¹ The 1788 Act, s.45. The visiting justices were required to report their findings to the general quarter sessions, which sessions were then under an obligation to rectify any abuses found. The powers vested

- (t) the making of provision for the conduct of legal proceedings (including for the improper execution of warrants) where there was overlapping jurisdiction between city and county;⁹² and
- (u) the providing for appeals to general quarter sessions by persons “aggrieved by any thing done in pursuance” of the 1788 Act, and for ancillary legal matters (such as the levying of distress to recoup fines and penalties, and the setting of time limits for proceedings).⁹³

Status of the 1788 Act

4. The main purpose behind promoting the 1788 Act was to obtain authority to rebuild the existing county gaol. The 1788 Act also allowed for demolition and rebuilding of other civic facilities, such as the exchequer court, the shire hall and the office of the prothonotary. However, the operational detail in the Act focussed principally on the gaol.

5. The Act appears to have stood on its own. Although it imported, and drew upon, other provisions in national legislation (for example, as to the making of gaol byelaws and the regulation of gaol fees), the Act did not refer to, or rely on, earlier local legislation.

6. A very small portion of the 1788 Act has already been repealed (by the 1807 Act, s. 2: see below).

7. As indicated later in this note, the historic data shows that the old gaol in the castle was decommissioned around 1792 when its function was transferred to the new gaol sited in another part of the castle precinct. That later gaol eventually closed in 1884.

in the appointed visiting justices were without prejudice to the general power of justices in their own right to visit and report on sub-standard conditions: *ibid.*

⁹² The 1788 Act, ss.46-50. For the avoidance of future doubt, the county justices were specifically empowered for a period of 7 years to act in their official capacity within the bounds of the city of Chester, notwithstanding that the city was also a county in its own right: *ibid.*, s.46. The clerk of the peace to the county and the county treasurer were each permitted to maintain offices within the city, and to act officially, “in like manner as they or any of them could or might do in case they respectively resided within the said county of Chester”, notwithstanding any other legal provision to the contrary: *ibid.*, s.50.

⁹³ The 1788 Act, ss.52-57. All legal proceedings were to be initiated in the county of Chester within 6 months of accrual of the cause of action: *ibid.*, s.57.

8. The exchequer court was abolished in 1830, when its functions were transferred to the mainstream courts.⁹⁴ The office of prothonotary was abolished in 1837.⁹⁵ The shire hall building ceased to function in a civic governance capacity by the late 1950s and it was then used to house the law courts (which use continues today).

9. The powers contained in the 1788 Act have become spent, and the Act may now be repealed.

47 Geo.3 Sess.2 c.vi (1807) (Chester Castle Gaol and other Buildings Act 1807)

Background and purpose

10. The 1788 Act had imposed on the county gaol commissioners time limits for the completion of two phases: (a) the appropriation of certain lands (before 1st August 1790), and (b) the finalising of the building project (by 1st August 1798).⁹⁶

11. Although the necessary lands were acquired within time, and the gaol and other named buildings demolished, by 1807 the rebuilding works were not complete, and the commissioners required additional powers both to protect, and to finish, the project. To this end, an Act was promoted - and passed in July 1807 - to amend the 1788 Act and to provide various supplemental powers.⁹⁷

12. The commissioners had commenced the rebuilding works within the castle precincts on the site of the old gaol, and had acquired various parcels of land.⁹⁸ However, various matters remained outstanding:

- (a) the building works were not yet completed; and
- (b) the castle yard needed extending, and other buildings and walls needed to be constructed, so that “a free circulation of air to the said gaol” could be secured, and “proper avenues and outlets” provided.

⁹⁴ The county palatine court of exchequer was abolished and replaced by the Law Terms Act 1830 (11 Geo.4 & 1 Will.4 c.70), ss.8, 9 and 39. (The 1830 Act was itself later repealed by the Statute Law (Repeals) Act 1986, s.1 and sch 1).

⁹⁵ Abolished by the Superior Courts (Officers) Act 1837 (7 Will. 4 & 1 Vict. c.30).

⁹⁶ The 1788 Act, ss.10, 12 (see discussion above).

⁹⁷ The Act was 47 Geo.3 Sess.2 c.vi (1807) (“the 1807 Act”), being “An Act for amending and enlarging the Powers of an Act, passed in the Twenty-eighth Year of His present Majesty, for taking down and rebuilding the Gaol of the Castle of Chester, the Prothonotary’s Office, the Exchequer Record Rooms, and other Offices and Buildings adjoining or near to the said Gaol”.

⁹⁸ Preamble to the 1807 Act.

13. In order to proceed further, the appointed commissioners needed specific parliamentary authorisation to undertake the following:

- (a) to demolish and re-site within the castle the garrison's existing "prevost, barracks, and guard room", which facilities were no longer fit for purpose;
- (b) to sell (for which there was no explicit power) some "small angles and parcels of land" which had previously been acquired - as part of larger acquisitions - but which had proved surplus to requirements; and
- (c) to make early repayment of moneys borrowed on mortgage (using the surplus on the county rate), and to increase the rate of interest payable on certain existing loans.⁹⁹

14. The 1807 Act sought to rectify these deficiencies by providing additional powers to the commissioners and to the *custos rotulorum*. The Act's purpose was (in broad terms):

- (a) to confirm retrospectively the appropriation by the commissioners of parts of the castle grounds (to be held in trust by the *custos rotulorum*), notwithstanding the fact that "the building of the said new gaol and other offices by the said [1788] Act authorized to be erected, hath not been completed within the time prescribed by the said Act for that purpose";¹⁰⁰
- (b) to repeal provisions within the 1788 Act which precluded the charging of additional stamp duty on the transfer or assignment of mortgages or securities;¹⁰¹

⁹⁹ The 1807 Act, preamble. Under the 1788 Act, mortgages could only be discharged once the buildings had been completed and the procedure for phased redemption had been followed; and interest had been fixed at a rate of 4.5% p.a., whereas by 1807 the prevailing rate was 5% p.a.

¹⁰⁰ The 1807 Act, s.1.

¹⁰¹ The 1807 Act, s.2. The provisions in the 1788 Act providing freedom from stamp duty appear to be those in section 38 of that Act. That section was not, however, repealed in whole by the 1807 Act because it dealt with other aspects of raising moneys on mortgage.

- (c) to ensure a free circulation of air to the gaol by prohibiting construction of any building (excepting a boundary wall or gateway) within the north-west part of the castle yard;¹⁰²
- (d) to empower the *custos rotulorum* to sell lands acquired and held in trust when adjudged surplus to requirements;¹⁰³
- (e) to authorise the commissioners (i) to discharge all mortgages at any time they thought fit so that they would be paid off within 14 years of completion of the various works, notwithstanding the fact that construction of the project buildings was incomplete or that repayment did not adhere to the 1788 Act rubric (detailing the drawing of lots to determine the sequence of repayment),¹⁰⁴ and (ii) on undischarged mortgages to increase the rate of interest payable from 4.5% p.a. to 5% p.a.;¹⁰⁵
- (f) to make provision for the adjourning or reviving of commissioners' meetings by their clerk where the meetings started or became inquorate;¹⁰⁶ and
- (g) to make provision, on the acquisition of land by the commissioners (using the powers in the 1788 Act), for the transferring to the commissioners of good title where the vendor is either unable (for example, through legal disability or absence) or unwilling to execute the conveyance, and for the payment of the purchase moneys into the Bank of England.¹⁰⁷

¹⁰² The 1807 Act, s.3.

¹⁰³ The 1807 Act, s.4. Sale was only to take place after resolution of the commissioners, and was to achieve "the best price or value in money" as could be obtained. The proceeds of sale were to be applied towards the 1788 Act's purposes: *ibid.* Once issued, a treasurer's receipt for moneys paid was to act as a "valid and effectual" discharge to the purchaser who would not be accountable for future handling of those moneys: *ibid.*, s.5.

¹⁰⁴ The 1807 Act, s.6.

¹⁰⁵ The 1807 Act, s.7. The mortgages were to remain charged against the county rates and against any other funds available to the county justices for public purposes (including those relating to repair of public bridges and maintenance of the county highways): *ibid.*, s.8.

¹⁰⁶ The 1807 Act, s.9. This provision has the effect of amending or supplementing (but not repealing) section 2 of the 1788 Act which laid down the rubric for commissioners' meetings.

¹⁰⁷ The 1807 Act, ss.10-15. There was a rebuttable presumption that the person in possession of the land at the time of purchase was the lawful owner who could make out good title: *ibid.*, s.14. The Act set out a mechanism (akin to that in other county gaol Acts of the period) whereby purchase moneys would be paid into the Bank of England (into the account of the Accountant General of the High Court of Chancery) to be invested or applied by order of the court or - in the case of lesser sums - by order of

Status of the 1807 Act

15. The 1807 Act was directly linked in its purpose and operation to its predecessor Act of 1788. It was designed to plug gaps in the earlier legislation and to extend the life of the 1788 Act's appropriation powers, which had expired by August 1798. Without this additional legislation the gaol project would have foundered.

16. The rebuilt castle gaol closed in 1884, and was subsequently demolished.

17. The powers contained in the 1807 Act have become spent, and the Act may now be repealed.

Archive-based history

18. In 1783 the prison reformer John Howard visited Chester and reported on the condition of the county gaol housed in the medieval city castle (which he found severely wanting, especially as to the holding of prisoners in an enclosed and airless yard).

19. Following a competition to design a new gaol (won by Thomas Harrison) work started in or shortly after 1785. Although the inner bailey of the former castle was retained, the outer bailey and medieval shire hall were demolished and the stones were used in rebuilding the gaol, shire hall, courts, armoury blocks and barracks. Building of the gaol was completed by around 1792, although construction of the whole complex (including a new doric-columned gateway) was not completed until 1822.¹⁰⁸ The new gaol was designed on the basis of delivering security, separation and ventilation, and debtors were housed apart from felons.

20. Contemporaneous evidence shows that the rebuilt gaol was functioning in 1843 and in 1861.¹⁰⁹ It appears to have continued in operation until it was

appropriate trustees. By section 15 the court was given power to award the reimbursement of reasonable expenses where alternative lands had to be purchased for holding in trust.

¹⁰⁸ See *A Virtual Stroll Around the Walls of Chester: 11. Chester Castle* at:

www.bwpics.co.uk/castle.html, and www.bwpics.co.uk/castle2.html

¹⁰⁹ See www.bopcris.ac.uk/cgi-bin/displayrec.pl?searchtext=chester&record=/bopall/ref6603.html (and [ref6604.html](http://www.bopcris.ac.uk/cgi-bin/displayrec.pl?searchtext=chester&record=/bopall/ref6604.html)) for *Report of the Inspector of Prisons for the Northern District, on an inquiry into the Treatment of Prisoners in the Knutsford House of Correction* (1843) Sessional paper 126, vol. xliii, which includes a quarterly report from the visiting justices of the county gaol at Chester castle; and the 1861 Census, referring to the district county gaol at Chester castle, at <http://content.ancestry.co.uk/Browse/list.aspx?dbid=8767&path=Cheshire.Chester+Castle>

decommissioned for the holding of civil prisoners in or about 1884¹¹⁰, and the main part was then demolished by 1902.¹¹¹

21. The bulk of the gaol site was eventually redeveloped for the new County Hall, built between 1938 and 1957. Only the gaoler's house, chapel and one row of cells presently survive. They are used by the county council for document storage. None of the buildings are used for prison purposes. The old shire hall (designed by Harrison) is used today as a courtroom within the Chester Crown Court complex.¹¹² Its municipal function has ceased.

22. No prison within the remit of HM Prison Service operates today within the city of Chester.

Extent

23. Both the 1788 Act and the 1807 Act apply locally only within the county of Cheshire, in England.

Consultation

24. The Home Office, HM Prison Service, HM Courts Service, the Department for Constitutional Affairs and Cheshire County Council have been consulted about this proposal.

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¹¹⁰ See www.cheshirepast.net/georgevic_files/vicframes1_files/vic.htm, which cites 1872 on the authority of Hemingway *History of Chester*, i.244 and *Rep. Com. Mun. Corp.* p.2622, but compare www.angelfire.com/ok3/chester/imagedir/onecstle.htm, which refers to the county gaol within the castle closing in 1884. The county archivist (Ms Liz Green) suggests to us that 1884 is the proper date. A small military prison continued operating within the castle until 1893.

¹¹¹ See www.angelfire.com/ok3/chester/imagedir/milldee.htm on the Dee Mills and the old Dee bridge. The gaol buildings had been purchased by Cheshire County Council in 1894.

¹¹² The current obligation of maintenance and repair resides with HM Courts Service under the auspices of the Department for Constitutional Affairs: see Courts Act 2003, s.3 (effective 1 April 2005: SI 2005 No. 910).

COUNTY GAOLS - CUMBRIA

<i>Reference</i>	<i>Extent of repeal or revocation</i>
17 Geo.3 c.54 (1776) (Westmorland Gaol Act 1776)	The whole Act.

17 Geo.3 c.54 (1776) (Westmorland Gaol Act 1776)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout the country) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.¹¹³ That power, however, fell short of outright control. In the latter half of the 18th century the power also of gaol management started to be ceded.¹¹⁴ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Westmorland, having found the county gaol and shire hall “too small, and in many other respects inconvenient”, the county justices had purchased a site on long lease “in a more advantageous situation” and had built a new gaol on part of it (and had commenced building a replacement shire hall on the remainder).¹¹⁵ The cost was offset in part by selling the site of the old gaol and salvaged building materials, but there remained a shortfall.

3. In order to remedy this position the justices sought, and obtained, a local Act in 1776 which was designed retrospectively to authorise both the land sale and the purchase of an alternative site, and to sanction the expenditure associated with the new gaol.

¹¹³ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

¹¹⁴ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

¹¹⁵ Preamble to 17 Geo.3 c.54 (1776) (“the 1776 Act”), being “An Act for defraying the Expence of building a new Gaol and Shire-hall for the County of Westmorland”. The former county of Westmorland

4. In order to fulfil its purpose, the 1776 Act authorised a limited number of steps:

- (a) ratification of the purchase of the site for the new gaol and shire hall (at a location unspecified, but presumably within the administrative county);¹¹⁶
- (b) sale of the site and materials relating to the old gaol;¹¹⁷
- (c) sale (to a prospective, but unnamed, purchaser) of the site and materials relating to the old shire hall;¹¹⁸
- (d) finishing the construction of the new shire hall by 1 June 1778;¹¹⁹ and
- (e) defraying from the general county rate the costs of land acquisition, completing the building works (for gaol and shire hall), and securing the passing of the 1776 Act.¹²⁰

Status of the 1776 Act

5. The 1776 Act is relatively short. When enacted it seemed to stand alone, and it does not purport to rely on, or supplement, other statutory provisions. None are recited in it.

6. The purpose of the Act was, in part, to secure retrospective parliamentary sanction, and in part to secure prospective authority to complete the building task (which had to be undertaken within a defined timeframe).

was, in the 1974 local government reorganisation, subsumed into the newly constituted county of Cumbria.

¹¹⁶ The 1776 Act, s.1. (The printed version of the 1776 Act carries only side headings and not section numbers. The section numbers used in this note have simply been assigned informally to aid navigation through the Act's text).

¹¹⁷ The 1776 Act, s.1. The Act spoke, seemingly erroneously, of "also the purchase of the scite and materials of the said old gaol", rather than of its sale.

¹¹⁸ The 1776 Act, s.1. Should the specified sale (which was to take place on or after 1 June 1778) fall through, the justices were then "authorised to sell or otherwise dispose of the same for the benefit of the county, in such manner as they shall think fit": *ibid*.

¹¹⁹ The 1776 Act, s.2. The justices were not simply authorised to complete the building but were "hereby required to cause the said new Shire-hall to be finished" by the given date: *ibid*. Whilst building was in train, the old shire hall was to continue in operation. The new gaol had already been completed and, presumably, was capable of being commissioned.

¹²⁰ The 1776 Act, s.3.

7. For the reasons explained below, the gaol had become available for occupation by 1771, and eventually was decommissioned in 1879. By the passing of the 1776 Act, the new gaol already existed. By 1778, the whole of the 1776 Act had become spent, and it may now be repealed.

Archive-based history

8. The Westmorland county gaol was erected in Appleby (alongside the courthouse) in 1770/71. At that time Appleby (now called Appleby-in-Westmorland) was the administrative centre for the former county. The adjoining shire hall was completed between 1776 and 1778. The new gaol replaced the old gaol facilities, then located on two sites - in the town's castle and in an old chapel located at the western end of the river bridge.

9. The 1771 gaol was built in an area of the town known as The Sands (situated on the east side of the River Eden).¹²¹ It was extended in the 1820s and the 1870s. It ceased to function (and became redundant) by late 1878. Most of the buildings were demolished in 1893 (with the remainder disappearing in 1971). The site is presently occupied by the town's police station.¹²²

10. In 1837 it was recorded that the Appleby county gaol and house of correction in Westmorland were then operational institutions.¹²³ The house of correction was a separate building erected around 1820 and demolished in or about 1893, quite possibly at the time of demolition of the main gaol.

11. No operational prison, under the aegis of HM Prison Service, exists today in Appleby. Cumbria is served by HMP Haverigg.

Extent

12. The 1776 Act applies locally only within the former county of Westmorland (now Cumbria) in England.

¹²¹ See Mannix & Co., *History, Topography and Directory of Westmorland* (1851). The gaol buildings were described (at pp. 1-2) as "commodious buildings encompassed by a strong wall", and incorporated a chapel and governor's residence.

¹²² We are grateful to the County Archivist at the Cumbria Record Office for providing us with this information.

¹²³ *Second Report of the Inspectors appointed under the provisions of the [1835] Act 5&6 Will.4 c.38, To visit the Different Prisons of Great Britain* (1837), Part II, pp.91-96.

Consultation

13. The Home Office, HM Prison Service and Cumbria County Council have been consulted about this repeal proposal.

(32-195-452)
LAW/005/002/06
25 April 2006

COUNTY GAOLS - DEVON

<i>Reference</i>	<i>Extent of repeal or revocation</i>
26 Geo.2 c.57 (1753) (Debtors Prison Devonshire Act 1753)	The whole Act.
27 Geo.3 c.59 (1787) (Devon Gaol Act 1787)	The whole Act.
50 Geo.3 c.lxxxv (1810) (Devon County Gaol Act 1810)	The whole Act.
58 Geo.3 c.li (1818) (Exeter Gaol Act 1818)	The whole Act.
26&27 Vict. c.lxxiii (1863) (Exeter Gaol Act 1863)	The whole Act.

26 Geo.2 c.57 (1753) (Debtors Prison Devonshire Act 1753)

Background and purpose

1. Until the very end of the 17th century, and into the early 18th, the power to build and manage county gaols was vested in the local sheriffs. It was only in 1698 that the local justices started to secure limited control of the county gaols¹²⁴, a control which extended to building new facilities and repairing existing stock, but which fell short of the power to manage gaols and their inmates.

2. Many gaols at this time had fallen into disrepair (or were otherwise inadequate for their purpose) and their condition produced a significant health hazard.

3. In Devon the local justices sought, and in 1753 obtained, an Act of Parliament¹²⁵ which was designed to supplement the public general Act powers contained in the 1698 Act. The justices petitioned on the basis that the present “gaol for the confinement of debtors” in the county (some of whom had “debts to a great amount”) was unsuitable: it was no more than a leased house, situated in the parish

¹²⁴ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) (“the 1698 Act”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719). (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), and repealed by 4 Geo.4 c.63 (in 1823). Rebuilding of gaols was also provided for in the 1784 Act.

¹²⁵ 26 Geo.2 c.57 (1753) (“the 1753 Act”), being “An Act for raising a Sum of Money by a County Rate, for purchasing a proper Prison for Debtors in the County of Devon”.

of St. Thomas the Apostle on the outskirts of Exeter, which the county sheriff “hath for many years last past been obliged to hire”; it was “attended with constant and considerable expense”; it was “a great hazard” to the sheriff; and it was “inconvenient to the said county in general”.¹²⁶ If the property were to be vested entirely in the sheriff (and was made subject “to his management, governance, and direction”), it “might be made fit and rendered commodious” for its purpose.¹²⁷

4. The house and adjoining land was owned by the Custos and College of Vicars Choral attached to Exeter Cathedral, and had been let on an annual rental to the then keeper of the gaol for his lifetime (and on his death the property would revert to the Vicars Choral). The Vicars Choral and the gaol keeper were each prepared to sell their respective interests in the premises for capital sums, and the dispositions were approved by the Dean, Cathedral Chapter and Lord Bishop of Exeter. However, as the Act recited, without specific authority “neither such alienation can be effectually made, nor the consideration so stipulated or proposed to be given for the same, can be properly raised and secured”.¹²⁸

5. The 1753 Act, in order to fulfil its purpose, authorised (in broad terms) the following steps:

- (a) the transfer, from the occupying gaol keeper, of the “messuage or tenement” used as “a gaol, ward, or prison, for debtors in the County of Devon” (and its adjoining grounds), and freed from all rights pertaining to the Vicars Choral, to various named trustees.¹²⁹ The transfer would be effected subject to payment of stipulated sums of money;¹³⁰
- (b) the continuing use of the St. Thomas premises as a “common gaol, prison, or place of confinement for debtors”;¹³¹

¹²⁶ Preamble to the 1753 Act.

¹²⁷ The 1753 Act, preamble.

¹²⁸ The 1753 Act, preamble.

¹²⁹ The 1753 Act, ss.1, 2. The 1753 Act also provided a mechanism for the appointment of replacement trustees on the death of the original members: *ibid.*, s.15. (The printed version of the 1753 Act carries only side headings and not section numbers. The section numbers used in this note have simply been assigned informally to aid navigation through the Act’s text).

¹³⁰ The 1753 Act, ss.2, 3.

¹³¹ The 1753 Act, s.4.

- (c) insofar as the 1753 Act failed to provide specific powers, the gaol to be repaired and maintained in accordance with “such ways, means, and methods” relating to the raising and use of “monies for building and repairing county gaols” as had previously been prescribed by the 1698 Act;¹³²
- (d) the “gaolers, keepers and officers employed” to be placed under the management and direction of the sheriff for the county (and to operate in accordance with same regime as applied to officials employed in “other common gaols and prisons in other counties, within this Kingdom”);¹³³
- (e) the county justices, meeting in quarter sessions, to be empowered to assess and raise moneys by rate to cover the purchase price of the premises, the annuity to the Vicars Choral and the promotion of the 1753 Act (which rate would be made in the manner which usually applied for repairs to the county “bridewell”, and which should not exceed 6d. in the £ based on annual property values within the county);¹³⁴
- (f) the mechanism for recovery by the Vicars Choral of any default in payment of the stipulated annuity (by court action against the county treasurer);¹³⁵
- (g) the mechanism by which the county justices should assess and levy (for the Act’s purposes) the rating precept on the various “hundreds, divisions, parishes, towns, hamlets, liberties, precincts, or places within the said county”, and the mechanisms for collection, enforcement and accounting of the revenues in accordance with the rubric of the 1753 Act and earlier legislation;¹³⁶

¹³² The 1753 Act, s.5. The 1698 Act is referred to above.

¹³³ The 1753 Act, s.6.

¹³⁴ The 1753 Act, ss.7-9.

¹³⁵ The 1753 Act, s.10.

¹³⁶ The 1753 Act, ss.11-13. The earlier legislation was identified as the 1698 Act, as made perpetual by the 1719 Act (see above) and “by any other Act whatsoever”.

- (h) the raising of moneys to ensure that the buildings be kept “in good and sufficient repair” so that the gaol be rendered strengthened and “secure for the safe custody of all such debtors as shall be thereto committed” (which moneys would be raised in the same manner as the principal moneys);¹³⁷ and
- (i) provision of a right of appeal by persons “aggrieved” (through assessment or overcharge) to the county justices sitting at quarter sessions for such order as “shall seem meet” to the justices, and for a time limit for any legal proceedings under the Act.¹³⁸

Status of the 1753 Act

6. As is clear on the face of the 1753 Act, it was designed to supplement the general powers contained in the 1698 legislation. Its principal purpose was to authorise the raising and expenditure of moneys but, unlike other gaol Acts of this era, it was needed mainly to acquire and enhance an existing property rather than to undertake wholesale relocation or reconstruction.

7. The Act’s purpose was confined to facilitating provision of a gaol for civil debtors, rather than for those pending trial or serving sentences for criminal offences.

8. For the reasons explained below at paragraph 46, because the debtors gaol located at Exeter St. Thomas was decommissioned in 1853, and the buildings later demolished, the whole of the 1753 Act became spent and may now be repealed.

27 Geo.3 c.59 (1787) (Devon Gaol Act 1787)

Background and purpose

9. By the latter half of the 18th century the impetus for gaol reform across the country was being felt in many separate counties, although still with varying degrees of success. The 1698 Act (see above) had been followed by Acts in 1758¹³⁹ (which provided for the making of rules and orders for the improved management of gaols in

¹³⁷ The 1753 Act, s.14.

¹³⁸ The 1753 Act, ss.16, 18.

¹³⁹ 32 Geo.2 c.28 (1758), being “An Act for Relief of Debtors with respect to the Imprisonment of their Persons; [etc]” and, more particularly, s.6 (which authorised the making of rules for the gaols belonging to the courts in Westminster Hall, and for those in the City of London, and in Middlesex and “Surry”, and for those in counties, cities and boroughs generally).

counties and towns across England), in 1774¹⁴⁰ (relating to the health of prisoners, and the need to provide washing facilities and proper ventilation and cleaning), and in 1784¹⁴¹ (enabling county justices to build, rebuild or enlarge gaols).

10. In Devon, the county justices sought, and in 1787 obtained, an Act¹⁴² which enabled them to take charge of the “High Gaol” in Exeter (sited “near” the castle, probably within its grounds), and to undertake significant repairs to the building so that it could be brought up to a standard befitting “a publick and common gaol” for the housing of criminals.¹⁴³ Those repairs (or any rebuilding) would be “in the same manner and upon the same footing as other gaols in this Kingdom are by law directed to be supported, maintained, and repaired, removed, or rebuilt”.¹⁴⁴ The need, in particular, to enlarge the gaol stemmed from the “malignant fevers, and other disorders”, of which there were frequent outbreaks, caused by the number of prisoners confined in an inadequate space.¹⁴⁵ This gaol was separate from the debtors gaol and was designed for holding “felons, and other offenders”.¹⁴⁶

11. The 1787 Act, in order to fulfil its purpose, authorised (in broad terms) the steps set out below. The Act was needed, notwithstanding the existence of the recently passed 1784 Act¹⁴⁷, because the proposal to sell and acquire land could not “be carried into execution without the aid and authority of an Act of Parliament”.¹⁴⁸

The steps were:

¹⁴⁰ 14 Geo.3 c.59 (1774), being “An Act for preserving the Health of Prisoners in Gaol, and preventing the Gaol Distemper”.

¹⁴¹ 24 Geo.3 Sess.2 c.54 (1784) (“the 1784 Act”) - see above - being “An Act to explain and amend an Act, made in the eleventh and twelfth Years of the Reign of King William the Third, intituled, *An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties* [1698]; and for other Purposes therein mentioned”. These Acts were to be followed by enactments in 1789 and 1791 which sought to reinforce the gaol monitoring regime.

¹⁴² 27 Geo.3 c.59 (1787) (“the 1787 Act”), being “An Act for making and declaring the Gaol for the County of Devon, called the High Gaol, a Publick and Common Gaol; and for discharging Denys Rolle and John Rolle, Esquires, and their respective Heirs and Assigns, from the Office of Keeper of the said Gaol; and for improving and enlarging the same, or building a New one; and also for taking down the Chapel in the Castle of Exeter; and for other Purposes therein mentioned”.

¹⁴³ The 1787 Act, preamble and s.1. The 1787 Act was designed to transfer ownership of the Exeter gaol from its private owners (the Lord of the Manor of Bicton and his son), who had kept the gaol in repair, to the county justices who would hand the responsibility of keeper to the High Sheriff for the county: preamble to the 1787 Act.

¹⁴⁴ The 1787 Act, preamble.

¹⁴⁵ The 1787 Act, s.4.

¹⁴⁶ The 1787 Act, s.4.

¹⁴⁷ 24 Geo.3 Sess.2 c.54 (1784): see above.

¹⁴⁸ The 1787 Act, preamble and s.6. The 1787 Act nonetheless specifically applied the provisions contained in the 1784 Act “for the better effectuating and carrying into execution this present Act to all intents and purposes, except in such cases as are herein-before specially provided for”: *ibid.*, s.6.

- (a) the vesting in the county justices of the freehold of the gaol and appurtenant buildings, together with the keeper's house (the previous owner also paying a form of dowry of £1,000, and defraying the cost of obtaining the Act);¹⁴⁹
- (b) the holding of the gaol and buildings as "a publick common gaol for the said County" (to be kept by the county sheriff), and the maintaining of the buildings;¹⁵⁰
- (c) the appointment by the county justices of a salaried gaoler;¹⁵¹
- (d) indemnification of the transferees of the gaol premises (the Rolle family) against liability for future repairs and the like;¹⁵²
- (e) the acquisition of adjoining garden land and other small parcels of land (from the Duchy of Cornwall and others) for the purpose of improving the entrance to the gaol, and linking the gaol and acquired land by partial removal of the castle wall. Failing this acquisition, "it may become necessary to build a new gaol in some other part of the county of Devon" (for which separate land acquisition powers were provided);¹⁵³
- (f) the construction of "all necessary drains or sewers through any parts of the said city and county", and the construction of watercourses (which was made an obligation) so as to provide a fresh water supply to the gaol;¹⁵⁴

¹⁴⁹ The 1787 Act, preamble and s.1. The purpose of the £1,000 payment, made to the county treasurer, was to help provide towards "the repairing, rebuilding, or removing" of the gaol, in return for which the transferor, his heirs and assigns were "for ever freed and discharged from" holding the office of gaol keeper, expending moneys on the office, and contributing (except by way of rating liability) to any future repairs bill.

¹⁵⁰ The 1787 Act, s.1.

¹⁵¹ The 1787 Act, s.2. The salary would be paid out of the county rate and the appointee would hold office "under such conditions and regulations" as the justices thought fit: *ibid.*

¹⁵² The 1787 Act, s.3.

¹⁵³ The 1787 Act, s.4. Enlargement would be driven by the necessity to create more gaol space and to prevent the occurrence of "malignant fevers, and other disorders". The land, once transferred, would be held for the justices by trustees nominated at the county quarter sessions. The need to build on an alternative site came to fruition as quickly as 1788, although realisation of the need for ratification did not occur until 1810: see the 1810 Act, discussed below.

¹⁵⁴ The 1787 Act, ss.4, 5. The Act gave, in effect, compulsory purchase and construction powers to the justices to create a watercourse over private lands, and a continuing right to use surveyors and workmen to enter the relevant lands "for the purpose of cleaning, scouring, repairing, or amending" the watercourse and associated works: *ibid.*, s.5.

- (g) the demolition of a chapel in the grounds of the castle, in order to facilitate the creation of a “proper approach” from the gaol to the law courts sited within the castle precinct;¹⁵⁵ and
- (h) the provision of a right of appeal by persons “aggrieved by anything done under or by virtue of this Act” to the county justices sitting in general or quarter sessions for such order as “shall seem meet” to the justices, and for a time limit on any legal proceedings under the Act.¹⁵⁶

Status of the 1787 Act

12. The 1787 Act (as a local Act) was designed to supplement the powers contained in the 1784 national Act. Its principal purpose was to acquire the freehold of the gaol, and some privately-owned adjoining land, so that the county gaol could be extended and enhanced on its existing site.

13. This Act (unlike the 1753 Act: see above) related to the gaol used for housing criminals rather than debtors or vagrants.

14. For the reasons explained below at paragraph 44, when the old castle gaol was decommissioned and replaced in 1796, the whole of the 1787 Act became spent and may now be repealed.

50 Geo.3 c.lxxxv (1810) (Devon County Gaol Act 1810)

Background and purpose

15. The 1787 Act had indicated that, as an alternative to extending the gaol sited at Exeter castle (and assuming “a proper grant” of the adjoining garden land could not be obtained), the county justices might need “to build a new gaol in some other part of the county of Devon”.¹⁵⁷ The Act did not, however, specifically empower the justices to acquire an alternative site, or to build on it.

¹⁵⁵ The 1787 Act, s.7. Not only was the chapel inconveniently sited, but the building was “very much out of repair, and incapable of being completely repaired without a very considerable expence, ... so as greatly to deface the said area”: *ibid.*, s.7. Divine service for the quarter sessions would henceforward be celebrated in the Nisi Prius Court (or some other suitable appointed place in the castle), and the prebendaries would be eligible to read the liturgy in such place: *ibid.*, ss.7, 8.

¹⁵⁶ The 1787 Act, ss.9, 10.

¹⁵⁷ The 1787 Act, s.4.

16. In fact, after the passing of the 1787 Act, the justices decided that it would be more appropriate to acquire a separate piece of land in order to construct a new county gaol. In 1788 they purchased about eight acres of farm land in the parish of St. David's in Exeter and in due course, on part of the land, they erected a new gaol and related buildings. Subsequently, and on the remainder of the land, they erected "a new bridewell or house of correction for the use of the said county".¹⁵⁸ Both these actions they purported to undertake through the 1787 Act (reinforced by the powers in the 1784 Act).¹⁵⁹

17. By 1810 the justices (or others) had entertained doubts as to whether they were lawfully empowered to purchase the eight acres site and to build the gaol and house of correction, and to treat them as situated within the county of Devon rather than in the city of Exeter. In order to resolve this doubt and, more particularly, to ensure both that the actions were "sanctioned, settled, and confirmed by the Authority of Parliament" and that the land could also be used "for such other public county purposes as by the justices at the general quarter sessions of the peace for the said county of Devon shall from time to time be thought necessary or convenient", the justices sought and obtained a confirmatory Act in 1810.¹⁶⁰

18. The 1810 Act was a relatively short piece of legislation. In order to fulfil its purpose it authorised (in broad terms) the following steps:

- (a) that the land which had been purchased should be deemed to be within the county of Devon, and the gaol (declared to be "a public common gaol") and house of correction buildings should be deemed to be vested in the Devon county justices;¹⁶¹
- (b) that the various buildings were to be maintained and repaired by the justices in accordance with the law relating to other public and common gaols and houses of correction;¹⁶²

¹⁵⁸ Preamble to 50 Geo.3 c.lxxxv (1810) ("the 1810 Act"), being "An Act to explain and amend an Act of the Twenty-seventh Year of His present Majesty [1787], for making and declaring the Gaol for the County of Devon a Public and Common Gaol, and for other Purposes in the said Act mentioned".

¹⁵⁹ The 1810 Act, preamble.

¹⁶⁰ The 1810 Act, preamble.

¹⁶¹ The 1810 Act, s.1.

¹⁶² The 1810 Act, s.1.

- (c) that the land should be used for its present purposes and for “such other public county purposes” as the justices (acting in quarter sessions) “shall think proper and direct”;¹⁶³
- (d) that any legal proceedings against the justices, or the sheriff or other office-holders, on the ground of want of jurisdiction to commit to the new gaol or house of correction, would be rendered void (and the office-holders indemnified accordingly);¹⁶⁴ and
- (e) that the costs of obtaining the 1810 Act and “of carrying the several purposes thereof into execution” should be raised by county rate.¹⁶⁵

Status of the 1810 Act

19. The 1810 Act had one primary purpose: to validate, retrospectively and legally, the steps relating to land acquisition and building which had occurred between 1787 and 1810.

20. In so doing, the 1810 Act extended the powers of the following Acts to the events then in hand: the 1787 Act, a 1782 Act¹⁶⁶ relating to houses of correction, the 1784 Act relating to gaols, a second 1784 Act¹⁶⁷ relating to houses of correction, a 1789 Act¹⁶⁸ relating to gaols, and a 1791 Act¹⁶⁹ relating to gaols. Each of these Acts was to be applied “for the better effectuating and carrying into execution this present Act” except insofar as the 1810 Act made specific provision.¹⁷⁰

21. For the reasons explained below at paragraph 45, although the gaol continued to function, the house of correction sited at Exeter St. David’s was later decommissioned.

22. The purpose underpinning the 1810 Act was superseded once the county gaol was built and the whole Act, having become spent, may now be repealed.

¹⁶³ The 1810 Act, s.1.

¹⁶⁴ The 1810 Act, s.2. The Act also made provision for the award of costs for actions brought “before the passing of this Act”: *ibid.*, s.3.

¹⁶⁵ The 1810 Act, s.5.

¹⁶⁶ 22 Geo.3 c.64 (1782).

¹⁶⁷ 24 Geo.3 Sess.2 c.55 (1784), which Act amended the 1782 legislation.

¹⁶⁸ 29 Geo.3 c.67 (1789).

¹⁶⁹ 31 Geo.3 c.46 (1791).

¹⁷⁰ The 1810 Act, s.4.

58 Geo.3 c.li (1818) (Exeter Gaol Act 1818)

Background and purpose

23. By the early 19th century the city of Exeter had long-acquired the status of both city and county in its own right, and was administratively separate from the county of Devon. At South Gate in Exeter (in the parish of The Holy Trinity) the city council owned and ran a gaol for the city. This gaol housed prisoners who had committed offences within the city limits.

24. The South Gate gaol (or Southgate gaol as it was known) had become “too small, and unfit for the proper accommodation of the prisoners usually confined therein, and [was] moreover extremely unwholesome, and inconveniently situated”.¹⁷¹ The city council therefore sought, and in 1818 obtained, an Act¹⁷² which enabled them to sell the existing gaol, to acquire a new site and to rebuild the gaol (as “the common gaol and house of correction” for the city¹⁷³) on that site.

25. The 1818 Act recites in its preamble that the new gaol should be designed “for the separation, employment, and regulation of the prisoners therein”, but that this aim, and the overall project, could not be achieved “without the aid and authority of Parliament”. By this time, various public Acts for gaol rebuilding across the country were in place but, in the main, those tranches of legislation were directed to gaols managed by local justices (usually for the benefit of counties rather than individual towns or cities).

26. In order to fulfil its purpose, the 1818 Act authorised (in broad terms) the following steps:

- (a) the constituting of the mayor, recorder, aldermen and sheriff of the city (together with nine nominees) as commissioners who would oversee the design, building and allied operations;¹⁷⁴

¹⁷¹ Preamble to 58 Geo.3 c.li (1818) (“the 1818 Act”).

¹⁷² The 1818 Act, being “An Act for building a new Gaol and House of Correction for the City and County of the City of Exeter”.

¹⁷³ The 1818 Act, s.18.

¹⁷⁴ The 1818 Act, s.1. In particular, the commissioners would select the most appropriate site and ensure a proper water supply. The commissioners’ authority would expire as soon as the new gaol had been built and any mortgage moneys repaid (and the various powers under the Act would then vest in the city council): *ibid.*, s.27.

- (b) providing mechanisms for the appointment of replacement commissioners and of executive officers, and the conducting of business meetings;¹⁷⁵
- (c) the keeping of accounts for moneys received and expended in connection with the gaol and house of correction, and the keeping separate of the offices of treasurer and clerk;¹⁷⁶
- (d) vesting of power in the commissioners to purchase the necessary land (to a limit of two acres), the land to be held by the city council for the purposes of the Act;¹⁷⁷
- (e) enabling persons or bodies with legal incapacity to sell and convey land and buildings (and creating a rebuttable presumption as to lawfulness of possession);¹⁷⁸
- (f) authorising the commissioners to build on the newly-acquired land “a convenient new common gaol and house of correction” with adequate facilities (including an infirmary) “for the confinement of criminals, debtors, and others”, together with residential accommodation for the gaoler and other gaol officers;¹⁷⁹
- (g) authorising the sale and disposal of the existing common gaol located at Southgate, and the effecting of legal transfer, and the application of the proceeds towards the land acquisition and construction project;¹⁸⁰
- (h) requiring the city council to be responsible for all running expenses for, and all ordinary repair costs for the fabric of, the new building (but

¹⁷⁵ The 1818 Act, ss.2-5.

¹⁷⁶ The 1818 Act, ss.6, 8.

¹⁷⁷ The 1818 Act, s.9.

¹⁷⁸ The 1818 Act, ss.10, 14 and 15. Sections 11-13 of the Act made provision for the handling of different levels of compensation moneys payable to persons or bodies who were subject to legal incapacity (being a form of payment into trust sanctioned by the High Court).

¹⁷⁹ The 1818 Act, s.16. The gaol and house of correction buildings were also to be fitted out “in a complete and effectual manner for the reception, security and health” of the prisoners. The commissioners were specifically authorised to contract with “such artificers, workmen, labourers, and others” as were needed to effect the job: *ibid.*

¹⁸⁰ The 1818 Act, s.19.

not the cost of any rebuilding or extension which might later be required);¹⁸¹

- (i) the raising of the necessary moneys (as assessed, but capped in total at £10,000) by requiring the local justices to levy an annual rate on the city, in accordance with the usual procedure for levying county rates (which annual rate was not to exceed £2,500);¹⁸²
- (j) permitting the borrowing of moneys for the project (to a maximum of £5,000), to be secured by mortgage on the county rates, the payment of interest on the sums borrowed on appointed days, and the annual repayment of capital (at no less than £1,000 per year);¹⁸³ and
- (k) the appointment (and dismissal) by the city council of a gaoler and such other gaol officers as were considered necessary.¹⁸⁴

27. Unlike under similar local Acts, no provision was made either for the handling of grievances by a judicial appeal mechanism, or for a limitation period for legal proceedings.

28. Once constructed and made operational, the gaol was to be designated “the common gaol and house of correction for the said city and county of the city of Exeter”, and responsibility for holding prisoners would rest with the sheriff of the city and county. The new facility was deemed to be within the city’s jurisdiction and would be used for the holding of prisoners committed there by “any court of record within the said city”.¹⁸⁵

Status of the 1818 Act

29. The 1818 Act was designed to authorise disposal of the Southgate gaol, and to build elsewhere a new city gaol and house of correction. The Southgate site was disposed of in 1819, the replacement gaol having been constructed and

¹⁸¹ The 1818 Act, s.20. The circumstances giving rise to the need to rebuild, and which were specifically excepted, were destruction “by the King’s enemies, popular commotions, fire, earthquake, tempest, inundation, or other similar inevitable accident”: *ibid.*

¹⁸² The 1818 Act, ss.21, 22.

¹⁸³ The 1818 Act, ss.23, 24 and 26 (and the schedule, which prescribed the forms of mortgage and transfer). The sequence of application of the various moneys raised (paying loan interest, paying for land acquisition, and so on) was set down in section 25.

¹⁸⁴ The 1818 Act, s.28.

¹⁸⁵ The 1818 Act, s.18.

commissioned under the same Act. This second gaol, in turn, was decommissioned in 1863.

30. The 1818 Act stood alone by not patently relying on, or extending, other legislation.

31. The Exeter Gaol Act 1863 (see below) purported to repeal the 1818 Act, subject to two provisos.¹⁸⁶ First, the 1818 Act would be treated as repealed only when “all the prisoners in the city gaol are removed therefrom to the county gaol”.¹⁸⁷ The 1863 Act did not give a specific date for repeal, and there can be no guarantee from this distance that all the prisoners were relocated solely to the county gaol or to other institutions. The 1863 Act was also silent, in this regard, as to the prisoners held in the separate house of correction. Houses of correction were not abolished throughout England and Wales until 1865.¹⁸⁸

32. Secondly, and more explicable, the repeal in the 1863 Act was stated not to have “any retroactive operation”.¹⁸⁹

33. The published Chronological Table of Local Legislation¹⁹⁰ shows the 1818 Act as being prospectively, but not actually, repealed by the 1863 Act.

34. The 1818 Act, having become spent and for the avoidance of future doubt, may now be repealed in whole.

26&27 Vict. c.lxxiii (1863) (Exeter Gaol Act 1863)

Background and purpose

35. The Exeter Gaol Act 1863 recited in its preamble that, pursuant to the 1818 Act, a new gaol and house of correction had been built in the city, and that prisoners (“as well criminals as debtors”) were still confined there.

¹⁸⁶ 26&27 Vict. c.lxxiii (1863) (“the 1863 Act”), s.24.

¹⁸⁷ The 1863 Act, s.24. On satisfying the condition precedent “the recited Act [of 1818] shall be by this Act [of 1863] repealed”.

¹⁸⁸ Prison Act 1865, ss.4, 56 (This 1865 Act was later repealed by the Prison Act 1952). The 1865 Act formally amalgamated gaols and houses of correction in a single institution, the “prison”.

¹⁸⁹ The 1863 Act, ss.24, 26. Section 25 contained a general saving (made subject to the provisions in the remainder of the 1863 Act) for actions undertaken pursuant to the 1818 Act.

¹⁹⁰ Vol. 1, Local and Personal Acts 1797-1860 (HMSO, 1996 and updated to Dec. 2003), p. 141. The Act’s short title is given in the text in bold type, denoting that it is still extant.

36. The city council had formed the view that the city gaol and the house of correction were “inadequate for the purposes of classification and separate confinement of prisoners required by law, and cannot be made available for those purposes without undue expense”.¹⁹¹ By the time of the passing of the 1863 Act, national legislation had imposed a series of obligations on gaol managers. For example, in 1823, a wide-ranging Act had been passed consolidating and amending the law relating to the building, repairing and regulating of various gaols and houses of correction, including those in Exeter.¹⁹²

37. The solution was to decommission (and sell) the present city gaol, and to transfer the prisoners to the county gaol under a custody and maintenance contract entered into with the county justices. This needed specific statutory authorisation, which was granted by the 1863 Act.¹⁹³

38. The purpose of the 1863 Act was to permit (in broad terms) the following steps:

- (a) the city corporation was empowered to enter into contracts with the county justices (when duly resolved by order) “for the maintenance, safe custody, and care in the gaol and house of correction for the county of Devon” of all prisoners so committed, and to meet the charges incurred;¹⁹⁴
- (b) the removal of all prisoners from the city gaol to the county gaol;¹⁹⁵
- (c) the future committal of prisoners (including those awaiting trial for criminal offences, those convicted, and “those committed on any civil

¹⁹¹ The 1863 Act, preamble.

¹⁹² 4 Geo.4 c. 64 (1823), Section 2 of, and Schedule A to, this Act placed a statutory obligation on the towns and cities as listed (which included Exeter) to maintain “one gaol and one house of correction”; and the various rules and regulations relating to management practice were specifically applied to these institutions. The 1823 Act was amended by an Act the following year (5 Geo.4 c.85 (1824)) which dealt with the raising of moneys (and loan repayments) for the purpose of building and rebuilding gaols. Further changes were made to the 1823 and 1824 Acts by Acts in 1839 (2&3 Vict. c.56 (1839)) dealing, *inter alia*, with classification of prisoners, prison rules and approval of plans for prison building or alterations; and in 1842 (5&6 Vict. c.98 (1842)), *inter alia*, raising the monetary limit on the power to borrow. These Acts were eventually consolidated and amended in 1865 (by the Prison Act of that year).

¹⁹³ The 1863 Act, preamble and s.1.

¹⁹⁴ The 1863 Act, ss.2, 23. The first contract was to be for a minimum duration of ten years: *ibid.*, s.3.

¹⁹⁵ The 1863 Act, s.4.

process”) to the county gaol rather than the city gaol, at least for the duration of the custody contract;¹⁹⁶

- (d) the deeming of all prisoners detained in the county gaol, under the provisions of the Act, to be held “in lawful custody”;¹⁹⁷
- (e) applying the same gaol regulations to city prisoners as applied to county prisoners;¹⁹⁸
- (f) providing (both as to arrangements and costs) for the transfer of prisoners to other prisons or to courts;¹⁹⁹
- (g) indemnifying the county sheriff and the keeper of the county gaol from any liability towards the city corporation for accidental (rather than “wilful”) acts or defaults in respect of prisoners;²⁰⁰
- (h) providing for the city authorities to inspect the county gaol and to make representations to the county justices on their findings;²⁰¹
- (i) compensating, by annuity payment, city gaol officers of longstanding (having not less than 15 years of service) for loss of employment arising by operation of the 1863 Act;²⁰²
- (j) entitling the city corporation to continue to hold the city gaol land (as part of “their general corporate estates”, and freed from its restrictions on use) and, in its discretion, to sell the land and the building materials in whole or in part;²⁰³ and
- (k) to apply the proceeds of sale towards the costs of the obtaining of the 1863 Act,²⁰⁴ and then principally towards “providing a new gaol and

¹⁹⁶ The 1863 Act, ss.6-10. The city authorities were not, however, permitted under the contract to “use the county gaol as a lock-up house for night charges”: *ibid.*, s.7.

¹⁹⁷ The 1863 Act, ss.12, 13.

¹⁹⁸ The 1863 Act, s.14.

¹⁹⁹ The 1863 Act, ss.15, 16.

²⁰⁰ The 1863 Act, ss.17-19.

²⁰¹ The 1863 Act, ss.21, 22.

²⁰² The 1863 Act, s.29.

²⁰³ The 1863 Act, ss.30-32.

²⁰⁴ The initial cost associated with the Bill would be payable out of the city rate or the city fund, but that expenditure would in due course be reimbursed from the proceeds of sale: the 1863 Act, s.39.

house of correction for the city” (and placing an obligation on the city corporation to have acquired, by 1865, up to four acres of land within the city as a replacement site).²⁰⁵

Status of the 1863 Act

39. The principal purpose of the 1863 Act was to decommission the then Exeter city gaol, which was sited at Rougemont. As indicated below at paragraph 47, this gaol did close in 1863.

40. The 1863 Act became spent, and may now be repealed.

Archive-based history

41. Because Exeter was both a city and (from 1537) a county in its own right, and a key administrative centre for the county of Devon, it was home during the 18th and 19th centuries to different court jurisdictions and different gaol regimes. The latter were divided into county and city-run gaols, and subdivided into gaols for the housing of prisoners convicted of crime or awaiting trial, and those who were debtors and vagrants.

42. Given Exeter’s county status, any gaol serving the separate county of Devon had to be sited outside the city boundary (although it needed to be within reasonable proximity of the principal courts for the county of Devon).

43. In 1837 the following three gaols were recorded as being operational: Exeter county gaol and bridewell; Exeter county debtors’ prison; and Exeter city gaol and bridewell.²⁰⁶

44. The old county gaol sited at Exeter castle had been in existence since 1518 when it had transferred from Bicton (a village to the south-east of Exeter), under the custody of the lord of the manor of Bicton. In 1787 (see above) the lord of the manor

²⁰⁵ The 1863 Act, ss.33-35. Any balance remaining was to be used “towards the discharge of incumbrances on the corporate estates of the corporation”: *ibid.*, s.33. Interestingly, the preamble to the 1863 Act was silent as to re-provision of the city gaol facility; indeed, it spoke specifically of the custody contract solution operating “instead of erecting a new gaol and house of correction”. Section 37 seems to have envisaged that the replacement gaol and house of correction would not actually be built until (“if and when”) the county justices “determine that prisoners from the city shall cease to be kept under this Act in the county gaol”. Once acquired, the site would simply be held in readiness for building a new gaol within the city confines should the need arise.

²⁰⁶ *Second Report of the Inspectors appointed under the provisions of the [1835] Act 5&6 Will. 4 c.38, To visit the Different Prisons of Great Britain (1837)*, Part III, pp. 21-31.

was relieved from responsibility by statute. The gaol was sited just to the south-east of the castle (although within the castle precincts). In 1788 the county quarter sessions received the “presentment” as to the condition of the High Gaol, and determined that it should be deconstructed and rebuilt on an appropriate site.²⁰⁷ The old gaol appears to have been decommissioned and demolished around 1796 to make way for a new independent chapel or meeting house on the site (the building for which still stands today).²⁰⁸

45. The new county gaol was built in the St. David’s parish on the New North Road around 1794-96 (opening in 1796).²⁰⁹ An adjoining house of correction (bridewell) was built between 1807 and 1810, and the appointed governor presided over both institutions. The Exeter St. David’s building was later remodelled and extended, in or around 1853, and was again the subject of additions before 1876. By 1878 this was the only functioning gaol in Exeter.²¹⁰ The prison today operates under the auspices of HM Prison Service as HMP Exeter. Now with over 500 cells, it accepts and accommodates all adult and young offenders committed from courts in Devon and Cornwall (and west Somerset).

46. A debtors gaol seems first to have been established at Exeter St. Thomas in 1675. That county gaol was closed and demolished in 1818, and a new one (the sheriff’s ward) built on an adjoining site in that same year.²¹¹ This replacement, and more extensive, county gaol for debtors operated until 1853 when it, too, was closed (the buildings being first converted into a storehouse for the local militia, and later - in 1909 - the bulk were demolished).²¹² On closure, the imprisoned debtors were transferred to the Devon county gaol.

47. At South Gate in Exeter stood a city gaol (also demolished in 1819) which housed debtors (in the east wing) and felons (in the west wing). This gaol had been constructed in the 16th century by the city council (for the city’s use) under a charter from Edward VI. It was replaced by a new common gaol and house of correction for

²⁰⁷ See County Quarter Sessions order book entries for 1788 (QS 1/21, pp.229, 234).

²⁰⁸ The site of the old gaol (with certain buildings and materials) was purchased at auction by Mr Shirley Woolmer, to make room for the new chapel, on 1 March 1796 for £420: see G. Oliver *The History of the City of Exeter* (1861), pp. 190-193. See also County Quarter Sessions order book entries for 1796 (QS 1/22, p.108). These and other references have kindly been supplied to us by the Devon County Archivist (Mr John Draisey).

²⁰⁹ See County Quarter Sessions order book entries for 1796 (QS 1/22, p.118 - regulations for new gaol, and p. 120 - appointment of gaoler and chaplain).

²¹⁰ See *White’s Directory 1878-79*, p. 333.

²¹¹ This gaol was constructed fronting on to Cowick Street in St. Thomas’, on the outskirts of Exeter.

²¹² See G. Calland *A History of the Devon County Prison for Debtors in St. Thomas, Exeter* (1999).

the city, to which prisoners were transferred in 1819. This city gaol was sited at Queen Street (in the Rougemont district of Exeter), where it survived until September 1863. It cost around £13,000 to construct. On closure, prisoners moved to the county gaol.²¹³ The Queen Street site was later occupied by a large hotel.²¹⁴

Extent

48. Each of the five Acts referred to in this Note (running from 1753 to 1863) apply locally only within the county of Devon in England.

Consultation

49. The Home Office, HM Prison Service, Devon County Council and Exeter City Council have been consulted about these repeal proposals.

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²¹³ See W.J. Forsyth *A System of Discipline: Exeter Borough Prison, 1819-1863* (1983).

²¹⁴ See *White's Directory 1878-79*, p. 333.

COUNTY GAOLS - ESSEX

<i>Reference</i>	<i>Extent of repeal or revocation</i>
13 Geo.3 c.35 (1772) (Essex Gaol Act 1772)	The whole Act.
1&2 Geo.4 c.cii (1821) (Essex Gaol Act 1821)	The whole Act.
7&8 Geo.4 c.x (1827) (Essex Gaol Act 1827)	The whole Act.

13 Geo.3 c.35 (1772) (Essex Gaol Act 1772)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout the country) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.²¹⁵ That power, however, fell short of outright control. In the latter half of the 18th century the power also of gaol management started to be ceded.²¹⁶ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Essex, the local justices had secured an Act in 1770²¹⁷ which permitted them to purchase land and then erect and furnish a new gaol for the county, so long as the net expenditure (giving allowance for reusable materials from the existing gaol) did not exceed £10,000. Two years into the project the justices, realising that the financial ceiling would “not be sufficient” to undertake land acquisition and to

²¹⁵ 11 Will.3 c.19 (1698) (“An Act to enable the Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784). Rebuilding of gaols was also provided for, after the Essex Gaol Act of 1772, in 24 Geo.3 Sess.2 c.54 (1784).

²¹⁶ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

²¹⁷ 10 Geo.3 c.28 (1770), entitled “An Act for rebuilding the Common Gaol of the County of Essex”. This Act related to Chelmsford Gaol, and gave the county justices power to raise by rate precept the necessary moneys. (The later 1772 Act (see below) said, in a side heading to its preamble, that the power was to “borrow” moneys, but that seems to be an error). The 1770 Act was repealed in whole by the Statute Law Revision Act 1948, s.1, sch 1.

defray construction costs, sought and secured by an Act of 1772 (“the 1772 Act”)²¹⁸ power to raise an additional £8,000 by levying a county rate.²¹⁹ The total sum raised would then be adequate to fulfil “the purposes of the said former and this present Act”.²²⁰

3. The 1772 Act did not spell out on its face where the new gaol was to be sited within the county of Essex, but given the purpose of the Act (operating as an adjunct to the 1770 Act) the inference is that it would be built in Chelmsford. That inference is reinforced by the report of the proceedings of the committee of the House of Commons (in May 1771) which received and considered petitions lodged against an amending Bill. The Bill was designed to address the decaying state of, amongst other places, the common gaol for the county of Essex which was situated in Chelmsford.²²¹ The report records that, following a finding of the Grand Inquest in 1767 to the effect that the then county gaol was “in very bad condition, in point of repair” and was “not sufficient, in its present state, either for securing the persons committed, or for the prevention of contagious distempers”²²², the county justices had established a committee to do two things. First, “to survey and examine” the gaol and, secondly, to make recommendations to quarter sessions as to whether the gaol was capable of being “effectually repaired”, or whether its condition was such that “it must be pulled down and rebuilt” (and, if the latter, “to procure a plan and estimate for that purpose”).²²³ The upshot was that it was decided that the existing gaol was past repair and that a replacement would have to be built. After much searching for a suitable site (and unsuccessful negotiation with owners), and having already secured the passing of the 1770 Act, the justices finally achieved the opportunity to purchase the White Horse Inn (and grounds) in Chelmsford. On this site would be built a new county gaol and a public courthouse (and related facilities).²²⁴

²¹⁸ 13 Geo.3 c.35 (1772), entitled “An Act for raising a further Sum of Money for the Purpose of rebuilding the Common Gaol of the County of Essex”.

²¹⁹ The 1772 Act, ss.1, 2. (The printed version of the 1772 Act carries only side headings and not section numbers. The section numbers used in this note have simply been assigned informally to aid navigation through the Act’s text). The additional county rate was to extend to all boroughs and towns within the county: *ibid.*, ss.4, 5.

²²⁰ The 1772 Act, s.1.

²²¹ *Journals of the House of Commons, 1770-71 Session, vol.33, pp.368-398* (1803 reprint), referred to below as “the 1771 Report”.

²²² The 1771 Report, pp. 370-371.

²²³ The 1771 Report, p. 371.

²²⁴ October 1770 sessions: the 1771 Report, pp. 376-7. The various petitioners sought to show Parliament that the White Horse Inn site was inappropriate, and that the gaol should be rebuilt on its existing site which was situated at the end of Moulsham (a hamlet), on the outskirts of Chelmsford, beside the River Can. The river separated the old gaol from the town (see 1771 Report, pp. 396-7).

4. The justices also decided that implementation of the 1770 Act should be postponed, and that an amending Act be sought in the next Parliamentary session which would provide, amongst other things, for the abatement of rates for occupiers of “lands and tenements”, purchase of the necessary site and non-interference with the town’s water supply. It would also “repeal the last Act”.²²⁵

5. In order to fulfil its purpose, the 1772 Act authorised (in broad terms) the following steps:

- (a) for the county justices in general or quarter sessions “to assess such further sum and sums of money (over and above the aforesaid sum of ten thousand pounds provided to be raised by the said former [1770] Act) as they shall, from time to time, find necessary for the purposes of the said former and this present Act”, which assessments were not cumulatively to exceed £8,000;²²⁶
- (b) for the justices to levy a rate (to collect the necessary sum or sums) by precepting proportionately on the boroughs, towns, parishes and other communities within their county (which sums, when collected, would be held by the county treasurer);²²⁷
- (c) for the balance of any moneys raised under the 1770 or 1772 Acts, which remained unspent on the statutory purposes, to be transferred into the “County Stock” for any use to which that fund could lawfully be applied²²⁸, and for all receipts and expenditure to be regularly accounted for;²²⁹ and
- (d) for any person who believed him or herself “overcharged” or otherwise “aggrieved” to appeal to the justices, sitting in session, for an order which to them “shall seem meet”.²³⁰

²²⁵ The 1771 Report, pp. 376-7. In the event, the 1772 Act did not repeal the 1770 Act.

²²⁶ The 1772 Act, ss.1, 2.

²²⁷ The 1772 Act, s.2-5. The Act expressly provided that nothing contained in it was intended to give the county justices “any power or authority” in the boroughs, towns and the like “which they had not before”: *ibid.*, s.5.

²²⁸ The 1772 Act, s.6.

²²⁹ The 1772 Act, s.7.

²³⁰ The 1772 Act, s.8.

Status of the 1772 Act

6. The 1772 Act made patent that it operated as a measure which supplemented (and was dependent upon) the extant 1770 Act.²³¹ The 1772 Act made no separate provision for the purchase of land or the erection of buildings.

7. For the reasons explained below at paragraphs 20 to 23, the whole of the 1772 Act may now be repealed on the basis that its original purpose (to raise moneys, to acquire a site and to erect a new gaol building) was fulfilled and it has become spent.

1 & 2 Geo.4 c.cii (1821) (Essex Gaol Act 1821)

Background and purpose

8. Gaol accommodation, by the early 19th century, needed to be expanded in Essex, both by extending the existing prisons in the county and by construction of an additional gaol. By an Act of 1821 (“the 1821 Act”)²³², the county justices, following “a Presentment by the Grand Jury” (at the county assizes held in 1819), were empowered to purchase “ground and buildings” and to raise money for this purpose by levying a county rate.²³³

9. The 1821 Act specifically acknowledged that its purpose was to supplement powers - inadequate for the present objects - contained in a public general Act of 1784²³⁴, which itself was designed to supplement and amend a public general Act passed in 1698 enabling “the Justices of the Peace to build and repair Gaols in their respective Counties” and to carry out allied purposes.²³⁵

10. The 1821 Act provided that the “additional gaol” to be erected, and the enlargement of, and improvements to, the “existing prisons”, should conform to “the directions” contained in the 1784 Act.²³⁶ The Act set a ceiling of £40,000 to be raised

²³¹ The 1772 Act, s.7 provided that “a fair and just account shall be made and wrote out of all monies received and paid by virtue and in pursuance of the said former and this present Act”.

²³² 1&2 Geo.4 c.cii (1821), being “An Act for building an additional Gaol for the County of Essex, and for enlarging, improving, and altering the existing Prisons for the same County”.

²³³ Preamble to the 1821 Act. The county rate would be imposed by the justices for the county sitting “at their General Quarter Sessions assembled”.

²³⁴ 24 Geo.3 Sess.2 c.54 (1784), entitled “An Act to explain and amend an Act, made in the eleventh and twelfth Years of the Reign of King William the Third, intituled, *An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties*; and for other Purposes therein mentioned”. See the 1821 Act, preamble and s.3.

²³⁵ 11 Will.3 c.19 (1698) (see reference above). The 1821 Act was designed also, by way of catch-all provision, to supplement “any other Act or Acts now in force”: preamble to the 1821 Act.

²³⁶ The 1821 Act, s.3.

in aggregate by the justices to secure its purposes²³⁷, but this figure did not include the costs of future repair of the “additional gaol”.²³⁸ The “additional gaol”, once built and operational, was to be treated as “an additional or subsidiary Public and Common Gaol for the said County of Essex”.²³⁹

11. In order to fulfil its purpose, the 1821 Act authorised (in broad terms) the following steps:

- (a) purchase of land by the county justices to be used as a site for “an additional gaol” for the county, clearing the land of existing buildings as required, and erecting the new gaol complex and its infrastructure,²⁴⁰
- (b) undertaking enlargements, improvements and alterations as necessary of existing prisons in the county;²⁴¹
- (c) enabling persons or bodies with legal incapacity to sell and convey land and buildings;²⁴²
- (d) enabling the justices, where an interest-owner failed to negotiate on the purchase price of land or buildings, or to accept the purchase moneys, or to make good title, to proceed by jury valuation, followed by payment into the Bank of England (to be applied by direction of the High Court of Chancery)²⁴³ and then vesting of title;²⁴⁴

²³⁷ The 1821 Act, ss.23, 26. No rate on a property in any one year was to exceed 3d. in the £: *ibid.*, s.26.

²³⁸ The 1821 Act, s.23. Repair costs were to be raised as provided for in the Act of 1784: *ibid.*, s.23.

²³⁹ The 1821 Act, s.20. The additional gaol would house criminals, debtors, vagrants and persons awaiting trial. For the avoidance of doubt, justices within boroughs and towns falling outside the county jurisdiction were specifically authorised to commit to the gaol prisoners who had been remanded in custody pending trial or convicted of offences: *ibid.*, s.28.

²⁴⁰ The 1821 Act, ss.1, 4. The power also extended to entering into any necessary contracts “for effecting the purposes of this Act”: *ibid.*, s.1.

²⁴¹ The 1821 Act, s.1.

²⁴² The 1821 Act, s.5.

²⁴³ Where the sum was £20 or less the justices were empowered to apply the moneys for the benefit of the non-compliant owner as they thought fit: the 1821 Act, s.11.

²⁴⁴ The 1821 Act, ss.6-15. On passing of title by this route the justices were then able lawfully to take possession of the relevant land, and the previous owners or occupiers were thereupon “divested of all right in and to the same and every part thereof”: *ibid.*, s.15.

- (e) permitting resale of acquired land which became surplus to requirements, subject to that land first being offered back to the original proprietor for purchase (and any refusal to repurchase being evidenced by affidavit);²⁴⁵
- (f) permitting sale and disposal (by public auction or otherwise) of existing gaol sites which, through implementation of the powers in the 1821 Act, had become redundant;²⁴⁶
- (g) empowering the county sheriff to transfer prisoners to the additional gaol, when complete, from other places of custody (and to remain liable for their continuing custody);²⁴⁷
- (h) empowering the justices “to visit and superintend” the additional gaol, and to order moneys to be spent on necessary repairs;²⁴⁸
- (i) enabling the county justices (acting in general or quarter sessions) to raise the money to implement the Act’s purposes through a rating assessment to be precepted proportionately on each town, parish, hamlet or place within the county of Essex;²⁴⁹ and
- (j) maintaining and authenticating a separate annual account of all moneys paid and received under the 1821 Act’s provisions.²⁵⁰

Status of the 1821 Act

12. For the reasons explained below at paragraphs 20 to 23, because the Springfield gaol was financed, built and fitted-out as provided for in the legislation, the whole of the 1821 Act may now be repealed.

²⁴⁵ The 1821 Act, ss.16, 17.

²⁴⁶ The 1821 Act, s.18.

²⁴⁷ The 1821 Act, s.20.

²⁴⁸ The 1821 Act, ss.22, 23. The repair bill was not to exceed £100 in any one year, which sum was to be treated as additional to the £40,000 authorised for the main purposes of the Act: *ibid.*, ss.22, 23.

²⁴⁹ The 1821 Act, s.26. The Act provided a right of appeal to quarter sessions (but not beyond) for persons “who shall apprehend themselves overcharged or otherwise aggrieved”: *ibid.*, s.33.

²⁵⁰ The 1821 Act, s.32.

7 & 8 Geo.4 c.x (1827) (*Essex Gaol Act 1827*)

Background and purpose

13. By 1827 the county justices had, under the powers in the 1821 Act, acquired approximately six acres of land and had erected thereon an “additional gaol” for the county. However, the sum of £40,000 (the statutory upper limit) had been found to be “insufficient” to fund both the new building and the “enlarging, improving, and altering” of certain other prisons in the county, which necessitated the seeking of further powers.²⁵¹

14. In 1827 an Act was passed (“the 1827 Act”)²⁵² which remedied the situation. It provided that, having acquired the necessary land and built the new gaol (at Springfield, on the outskirts of Chelmsford, in Essex), the justices could now acquire further land and build a new house of correction “in the Half Hundred of Becontree in the said County”.²⁵³ This house of correction would be built pursuant to powers in a public general Act passed in 1823²⁵⁴ and those powers already contained in the 1821 local Act.²⁵⁵

15. The 1827 Act further provided that the cost of purchasing a site in “Becontree” for the new house of correction, of building the institution, and of altering, enlarging and repairing other gaols within the county should be defrayed from a further sum (“not exceeding in the whole forty-five thousand pounds”)²⁵⁶ which would be raised by imposing a supplementary county rate.²⁵⁷ The justices were also authorised to create a cordon sanitaire around the Springfield gaol by purchasing up

²⁵¹ 7&8 Geo.4 c.x (1827), preamble.

²⁵² 7&8 Geo.4 c.x (1827), being “An Act for enabling the Justices of the Peace for the County of Essex to raise Money for defraying certain Expences incurred under an Act, passed in the First Year of the Reign of His present Majesty, intituled *An Act for building an additional Gaol for the County of Essex, and for enlarging, improving, and altering the existing Prisons for the same County*; and for amending the said Act, and for extending the Powers thereof, and for other Purposes relating thereto”.

²⁵³ The 1827 Act, preamble and s.1.

²⁵⁴ 4 Geo.4 c.64 (1823) (“the 1823 Act”), being “An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales”.

²⁵⁵ The 1827 Act, preamble.

²⁵⁶ This expression seems to suggest, in its context, that the justices were being authorised to raise a further £45,000 over and above the £40,000 previously sanctioned. The 1827 Act, s.11 (see below) speaks of the various purposes mentioned in this Act being assessed for rating “so as the whole of such assessments [for the purposes] shall not exceed the sum of forty-five thousand pounds”.

²⁵⁷ The 1827 Act, preamble and s.1. Each “purpose” was to be assessed in a specific sum, and the cumulative assessment would then be rated (by the justices sitting in general or quarter sessions) proportionately on towns, parishes and so on, and collected in accordance with the statutory law relating to county rating. No rate in any one year on any one property was to exceed 2d. in the £: the 1827 Act, s.11.

to three acres of land which would be used so as “to prevent the erecting of buildings which might be found inconvenient to the said new erected gaol”.²⁵⁸

16. The 1827 Act expressly applied to its present purposes (more specifically, the powers of acquisition and resale of land and buildings) all the powers contained in the 1821 Act which related to purchase and resale; those powers were to be construed “mutatis mutandis”.²⁵⁹

17. In order to fulfil its purpose, the 1827 Act authorised (in broad terms) the following steps:

- (a) the purchase (freehold or leasehold) of any land and buildings by the county justices which it seemed appropriate to acquire in order to erect the new house of correction (together with ancillary buildings and facilities), or to extend any other gaol or house of correction in the county pursuant to powers contained in the 1823 Act (see above);²⁶⁰
- (b) where persons or bodies had legal incapacity to sell or convey land, the payment into the Bank of England of the purchase moneys (to be applied by direction of the Court of Exchequer), and (by virtue of the 1821 Act) the power to effect transfer of title;²⁶¹
- (c) where a landowner refused to accept payment, or was not able to make good title, or was unable to be traced, the justices could lawfully effect transfer of title by paying the moneys due into the Bank of England (subject to control or disposition by the Court of Exchequer);²⁶²
- (d) the raising of sufficient moneys for the purposes of the 1827 Act by assessing the sum or sums required (by the justices sitting in general

²⁵⁸ The 1827 Act, s.2.

²⁵⁹ The 1827 Act, s.4.

²⁶⁰ The 1827 Act, ss.1, 4. Purchase of land or buildings under the 1827 Act was deemed to be a purchase under the 1823 Act: the 1827 Act, s.3.

²⁶¹ The 1827 Act, s.5 (and the 1821 Act, s.5). Section 5 of the 1827 Act relates to purchase moneys of £200 or above; similar arrangements (but with less court intervention) are set out for purchases valued at less than £200: *ibid.*, ss.6, 7.

²⁶² The 1827 Act, s.8. There is a statutory rebuttable presumption that the person in possession of the relevant land has lawful title: *ibid.*, s.9.

or quarter sessions), and levying a county rate by precepting proportionately on every town, parish and the like within the county;²⁶³

- (e) the maintaining and authentication of annual accounts showing income and expenditure under the Act's provisions;²⁶⁴ and
- (f) affording a right of appeal, to quarter sessions, to any person who believed they had been overcharged or was otherwise aggrieved by the operation of the legislation.²⁶⁵

Status of the 1827 Act

18. It was provided in the 1827 Act that nothing in that Act was to repeal or interfere with any powers contained in the Acts of 1823 or 1821, "except so far as may be necessary to give effect to the powers and provisions contained in this [the 1827] Act".²⁶⁶

19. The whole of the 1827 Act may now be repealed on the basis that its provisions (which related principally to the erection of a house of correction) have become redundant.

Archive-based history

20. The county gaol for Essex appears to have been rebuilt in Chelmsford in 1777 in Moulsham Street.²⁶⁷

21. It was superseded by a new gaol (opened by 1828, and extended in 1848), sited about a mile from Chelmsford town centre, at Springfield Hill. This gaol (at 200 Springfield Road) continues to be used by HM Prison Service as a prison for category B local offenders and as a young offender institution.²⁶⁸

²⁶³ The 1827 Act, s.11. No rates in any one year were to exceed 2d. in the £ on any single rated property: *ibid.*, s.11. If the aggregate sum raised (not to exceed £45,000) was spent on the various statutory purposes, but a surplus remained, that surplus would be transferable to the County Stock: *ibid.*, s.13.

²⁶⁴ The 1827 Act, s.15. Ancillary rating provisions are contained in sections 17-19.

²⁶⁵ The 1827 Act, s.16.

²⁶⁶ The 1827 Act, s.20.

²⁶⁷ www.oldtowns.co.uk/Essex/chelmsford.htm; www.bbc.co.uk/essex/360/prison.shtml; and information kindly provided (for both the Chelmsford and the Becontree sites) by archivists in the Essex County Record Office.

²⁶⁸ www.hmprisonservice.gov.uk/prisoninformation/locateaprison.

22. The former gaol, and adjoining house of correction, sited at Moulsham Street were used to accommodate female prisoners and debtors, for whom there was no accommodation in the 1828 Springfield Gaol. After the Springfield Gaol was extended in 1848 (and the female prisoners and debtors transferred to it), the Moulsham Street buildings were emptied and sold for demolition.²⁶⁹ Those vagrants and paupers who had been accommodated in the adjoining house of correction were transferred in 1838 to a new Union Workhouse in Wood Street, Chelmsford (leaving the former house of correction redundant).²⁷⁰ Between 1848 and 1859 the original gaol site was cleared, and an armoury, depot and parade ground were constructed on the land.²⁷¹

23. The position in Becontree²⁷² was similar. Local quarter sessions approved the purchase of land for construction of a new house of correction in 1828.²⁷³ It was built at Little Ilford between 1829 and 1831 (replacing the previous house of correction at North Street, Barking, built in 1791-92).²⁷⁴ The Little Ilford house of correction was reorganised in 1860 to take prisoners on remand and those serving short-term sentences. It closed in 1878 and was demolished soon afterwards.²⁷⁵

24. Houses of correction (as separate institutions) were abolished throughout England and Wales by the Prison Act 1865.²⁷⁶

Extent

25. The 1772, 1821 and 1827 Acts apply locally only within the county of Essex, in England.

²⁶⁹ The Chelmsford gaol and house of correction were still in existence in 1837: see *Second Report of the Inspectors appointed under the provisions of the Act 5&6 Will 4 c.38 [1835], To visit the Different Prisons of Great Britain* (1837), pp. 300-322 (Essex Springfield County Gaol), pp. 322-332 (Chelmsford County Gaol and House of Correction).

²⁷⁰ The new building housed 400 paupers, and replaced a workhouse originally sited in New Street, Chelmsford.

²⁷¹ *White's Essex Directory* (publ. 1848); Hilda Grieve *The Sleepers and the Shadows, Vol. 2: From Market Town to Chartered Borough 1608-1888*.

²⁷² The spelling of "Becontree" has since changed to "Becontree".

²⁷³ Sessions papers (Essex Record Office) Q/SBb 492 (1828) including orders for plan of new building and for purchase of land.

²⁷⁴ *Victoria County History of Essex*, Vol. 5, pp.243, 244.

²⁷⁵ *Victoria County History of Essex*, Vol. 6, p. 164.

²⁷⁶ Prison Act 1865, ss.4, 56 (which was later repealed by the Prison Act 1952, s.54(2), sch 4, pt I). The 1865 Act formally amalgamated gaols and houses of correction in a single institution, the "prison".

Consultation

26. The Home Office, HM Prison Service and Essex County Council have been consulted about this repeal proposal.

(32-195-452)
LAW/005/002/06
25 April 2006

COUNTY GAOLS - GLOUCESTERSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
21 Geo.3 c.74 (1781) (Gloucester Gaol and Improvement Act 1781)	Sections 1 to 40, 64 to 75, and the schedule.
25 Geo.3 c.10 (1785) (Gloucester Gaol Act 1785)	The whole Act.
53 Geo.3 c.clxxx (1813) (Tewkesbury Gaol Act 1813)	The whole Act.

21 Geo.3 c.74 (1781) (Gloucester Gaol and Improvement Act 1781)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout the country) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.²⁷⁷ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.²⁷⁸ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. This repeal note deals with the underpinning legislation for three separate penal institutions:

- (a) the city gaol for the city of Gloucester;

²⁷⁷ 11 Will.3 c.19 (1698) ("An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties") which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth's *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols. Both the 1698 Act and the 1784 Act were later repealed by the Gaols, etc. (England) Act 1823 (4 Geo.4 c.64), except insofar as they applied to the penitentiary at (amongst other places) Gloucester. The Gloucester penitentiary was not a designated gaol or house of correction (see the 1823 Act, ss.1, 2, 76).

²⁷⁸ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act 1758) and in 1791 by 31 Geo.3 c.46 (Gaols Act 1791).

- (b) the county gaols and houses of correction for the county of Gloucestershire; and
- (c) the town gaols and house of correction for the borough of Tewkesbury.

3. By the late 18th century, the mayor and common council of the city of Gloucester (which city also had county status) had become concerned to replace the common gaol of the city for several reasons. First, the gaol was sited so that it straddled “one of the principal streets”, thereby causing obstruction to the free passage of wagons, carriages and their passengers; and, secondly, given the age of the building, it was “otherwise very inconvenient and incommodious” and had “gone to decay”.²⁷⁹ The city council needed authority to build a new city gaol “in some convenient and healthy situation” within the city boundary, and at the same time to demolish three of the city’s gateways (and adjoining buildings) to facilitate the movement of traffic.²⁸⁰

4. In order to fulfil its purpose, and more particularly that relating to the new city gaol, the 1781 Act authorised (in broad terms) the following steps:

- (a) the appointment of a number of commissioners, who would be responsible for overseeing the building of the new gaol, demolishing the gateways, and acquiring the parcels of land necessary for the development;²⁸¹
- (b) the rubric for the conduct of commissioners’ meetings;²⁸²
- (c) the appointment of paid officers to facilitate execution of the Act’s purposes, and the mechanisms for holding officers to account;²⁸³

²⁷⁹ Preamble to 21 Geo.3 c.74 (1781) (“the 1781 Act”), being “An Act for erecting a new Gaol, and for removing certain Gateways, in the City of Gloucester; and for amending the several Acts passed for the Maintenance and Support of the Poor of the said City, and lighting, paving, and regulating the Streets there”.

²⁸⁰ The 1781 Act, preamble. The three gateways were sited at Upper Northgate, Lower Northgate and Southgate. They were each deemed too “low and inconvenient”: *ibid*.

²⁸¹ The 1781 Act, s.1. Sections 2-6, 10 and 11 set out the manner by which commissioners were initially to be nominated or elected (for example, by parish meeting), their qualifications for office, and the mechanism for the appointment of replacement commissioners.

²⁸² The 1781 Act, ss.7-9. This covered election of chairman, use of the casting vote, quorum for meetings, public notice of meetings, and so on.

²⁸³ The 1781 Act, ss.12, 13.

- (d) authorising the commissioners to negotiate for, and acquire, the parcels of land and buildings which they “adjudge necessary for the purpose of erecting the said intended gaol”, and to undertake the street-widening works;²⁸⁴
- (e) providing a mechanism for the transfer of land where the owner had legal incapacity or where the owner failed (or refused) to agree a purchase price or to transfer good title;²⁸⁵
- (f) empowering the commissioners to build on acquired land “a convenient gaol for the confinement of criminals, debtors, and others”, together with a gaoler’s residence and ancillary buildings;²⁸⁶
- (g) authorising (after relocation and re-housing of the prisoners) demolition of the existing gaol and salvage of the materials, either for re-use in construction of the new gaol or for sale (and application of the proceeds towards the project);²⁸⁷
- (h) empowering the commissioners to raise the necessary moneys by borrowing up to £2,100, with capital repayment within seven years secured on the local rates;²⁸⁸

²⁸⁴ The 1781 Act, s.14. The power to acquire land (as set out in this section) was limited initially to acquisition by agreement. The parcels of land to be acquired were described in the schedule to the Act. They included houses and gardens at the Southgate (and in Lower Southgate Street), together with the Northgate and existing city prison (in Upper Northgate Street). These parcels were to be supplemented by the acquisition of such other houses and lands “near or contiguous to” the scheduled properties as may be thought “necessary”: *ibid.*, s.14. However, none of “the money to arise by virtue of this Act” was to be applied towards purchasing Northgate, the city prison, Lower Northgate or Southgate: *ibid.*, s.75.

²⁸⁵ The 1781 Act, ss.15-18. Where the parties failed to agree a purchase price, the value was to be ascertained by “a jury of twelve indifferent men of the said city of Gloucester”: *ibid.*, s.16. On payment of the ascertained purchase money, freehold title was deemed to vest in the commissioners free of all encumbrances, and the commissioners were entitled to take possession. Separate provision was made for the taking of land subject to mortgage or tenancy by the giving of six months’ written notice (with power to take possession in default by issue of a “precept”, ie. a warrant): *ibid.*, ss.19, 20.

²⁸⁶ The 1781 Act, s.21. Once operational the new gaol was to be designated “a publick and common gaol for the said City of Gloucester, and County of the same City” (to be managed by the city sheriffs), and it was to be maintained in the same manner as the previous city gaol: *ibid.*

²⁸⁷ The 1781 Act, s.22.

²⁸⁸ The 1781 Act, s.24. Payment of interest on the loan was to be effected by levying an annual or quarterly rate on each of the parishes both within and without the city bounds, the amount to be determined by the annual rateable value of the constituent properties. (This power did not, however, extend beyond the county of the city of Gloucester: *ibid.*, s.25). The relevant churchwardens and overseers of the poor were to undertake collection: *ibid.*, s.24. The rate was also to cover certain poor relief costs which would fall on the county stock for the city: *ibid.*, s.30. Sections 28 and 29 of the Act purported to extend previous legislation (4 Geo.3 c.60 (1763) (Gloucester Poor Relief and Lighting Act 1763), now repealed) which had failed to provide that those places which lay outside the city, and fell within the county of Gloucester(shire), but which traditionally had contributed towards the city rate,

- (i) providing an appeal mechanism for those persons who believed themselves unfairly assessed or rated (and laying down limitation periods for proceedings);²⁸⁹ and
- (j) providing for the defraying of the costs of promoting the 1781 Act (and a previous Bill).²⁹⁰

5. In addition to the powers relating to the new gaol, the 1781 Act contained a miscellany of powers relating to other (but unconnected) municipal governance and town improvement matters, such as:

- (a) sanctions for non-attendance at meetings, or failure to act, by poor relief guardians;
- (b) street lighting arrangements (and rating collection);
- (c) cleaning and paving of streets (including extension of paving), together with removal of street nuisances (and rating collection);
- (d) parochial ownership of the soil in streets;
- (e) prohibiting the slaughtering or dressing of livestock in any building fronting the various principal streets of the city;
- (f) prohibiting the exposing for sale of livestock (except pigs) in any of the principal streets;
- (g) requiring provision of gutters and rainwater down-pipes for properties sited on the principal streets (and providing default powers);

should continue so to contribute (and for this purpose would fall within the jurisdiction of the city justices and guardians of the poor).

²⁸⁹ The 1781 Act, ss.31-33, 65, 66 and 73. The Act also laid down much mechanical detail relating to giving of evidence, non-attendance of witnesses, publication of the rates, parish provision for illegitimate children and the mentally incapable, levying distress, and the annual closing of accounts by the mayor and city aldermen (for the city's county stock) and by the guardians of the poor (for the workhouse): *ibid.*, ss.34-40, 69.

²⁹⁰ The 1781 Act, s.64. The costs were to be paid from the city's "vagrant money or poor's rates": *ibid.*

- (h) regulating the construction of party walls by prescribing minimum standards;
- (i) regulating the muzzling and freedom to roam of dogs;
- (j) retrospective levying of paving charges on empty properties fronting streets;
- (k) requiring employed scavengers to remove refuse and ashes from houses by cart, and to give warning by ringing a bell; and
- (l) requiring the appointment of properly qualified city surveyors.²⁹¹

Status of the 1781 Act

6. The 1781 Act had a dual purpose: to provide for the rebuilding of the city gaol, and to provide for a range of city governance and improvement matters.

7. As indicated below, the replacement city gaol seems to have been built in Southgate Street under the terms of the 1781 Act. Notwithstanding the building and later extension of a new (county) gaol, the city gaol did not close until 1858.

8. The separate county gaol (situated on the site of the castle) was built in 1791 and substantially rebuilt in 1840. Today it functions as HMP Gloucester.

9. The remaining town improvement provisions in the 1781 Act - although probably superseded by miscellaneous local government statutory provisions, culminating in modern public health and highways legislation - are omitted from the present repeal proposals.

10. Sections 1 to 40 and 64 to 75 of, and the schedule to, the 1781 Act have become spent, and may now be repealed.

²⁹¹ These various non-gaol related functions were set out in the 1781 Act at sections 41 to 63. In section 47 of the 1781 Act there is reference to part of 17 Geo.3 c.68 (1777) (Maismore Bridge, Severn Act 1777, referred to in the 1781 Act as the "Paving Act", which provided for the compulsory paving of four principal streets in the city) and, more particularly, to the failure by parish surveyors to make a rating contribution to the cost of obtaining the 1777 Act. The 1777 Act has been repealed in part (by the Maismore Severn Bridge Act 1813 (c.v), s.1), but those sections which refer to street paving are still extant.

25 Geo.3 c.10 (1785) (Gloucester Gaol Act 1785)

Background and purpose

11. Although authority to rebuild the gaol serving the city of Gloucester had been given to the city council by the 1781 Act, that authorisation did not extend to gaol provision for the surrounding county area.

12. The county justices were concerned that they had insufficient gaol accommodation in the county of Gloucestershire for prisoners convicted of “transportable crimes” which accommodation would be equipped to keep them to “hard labour”.²⁹² In 1779 national legislation had been passed authorising the construction by the state of two centralised “penitentiary houses” which were to serve the various “circuits and places” within England and Wales for this purpose.²⁹³ In the meantime it was anticipated that prisoners subject to transportation would be committed to houses of correction or “other proper places, within each county” which would be temporarily designated penitentiary houses.

13. By 1785 the two national penitentiary houses had not been built, and nor had a house of correction within the county been converted or fitted-out. It had now become a matter of “great publick utility” that a house of correction be built for use as a penitentiary house for “the small proportion of offenders which will be receivable therein from the circuit to which the county of Gloucester belongs”, together with “a new county gaol, and several houses of correction”.²⁹⁴

²⁹² Preamble to 25 Geo.3 c.10 (1785) (“the 1785 Act”), being “An Act for building a new Gaol, a Penitentiary House, and certain new Houses of Correction, for the County of Gloucester, and for regulating the same”.

²⁹³ 19 Geo.3 c.74 (1779) (Transportation, etc. Act 1779), referred to in the preamble to the 1785 Act. The 1779 Act was repealed by the Statute Law Revision Act 1871 (c.116), s.1 and sch. It appeared that the 1779 Act set a quota for referred prisoners for each county.

²⁹⁴ Preamble to the 1785 Act. The building of the new county gaol and houses of correction was seen as “absolutely necessary”: *ibid.* Although in 1823 Gloucestershire was designated a county where “one common gaol” and “at least one house of correction” were to be maintained (and the city of Gloucester a place where one gaol and one house of correction were to be maintained), the continuing operation of “the penitentiary at Gloucester” was also preserved: see the Gaols, etc. (England) Act 1823 (4 Geo.4 c.64), ss.2, 76 and sch A. The 1823 Act consolidated and amended earlier national legislation on gaols and houses of correction in England and Wales. However, its repeal provisions relating, amongst other things, to penitentiaries were specifically expressed not to extend to Gloucester’s penitentiary: *ibid.*, ss.1, 76.

14. The 1785 Act was designed (in broad terms) for the following purposes:
- (a) the designation of the county justices as commissioners charged with building, and empowering them to build, a new gaol, a penitentiary house and “certain new houses of correction” for the county;²⁹⁵
 - (b) providing the justices with power to appoint replacement commissioners and setting down eligibility criteria;²⁹⁶
 - (c) prescribing the rubric for commissioners’ meetings;²⁹⁷
 - (d) providing the commissioners with power to appoint appropriate officers (with remuneration) to facilitate execution of the 1785 Act, and setting out the terms of their service (and, more particularly, the role of their clerk);²⁹⁸
 - (e) requiring the commissioners “with all convenient speed, after the passing of this Act” to identify a suitable site within the city of Gloucester for co-locating and building the three new institutions, together with additional sites elsewhere in the county for the construction of four more houses of correction which would be “commodiously situate” (having particular “regard to the airiness, dryness, and healthiness of the situation, the accommodation of water, the avoiding all ill smells, and being over-looked”);²⁹⁹

²⁹⁵ The 1785 Act, s.1.

²⁹⁶ The 1785 Act, ss.2-4.

²⁹⁷ The 1785 Act, ss.5, 6. The commissioners were required to maintain minutes of their proceedings (which were to be available for public inspection), and were empowered to appoint sub-committees to “superintend, regulate, and controul”, and “see to the due performance” of, contracts for the construction work: *ibid.*, s.6.

²⁹⁸ The 1785 Act, ss.7, 8.

²⁹⁹ The 1785 Act, s.9. The various institutions were to be sited away from the centres of “populous” towns, but sufficiently close to a town for the purposes of “accommodation and security”: *ibid.* One of the five new houses of correction was to be located as near to the county hall in Gloucester as was compatible with the various requirements. The locations were only to be deemed approved when confirmed by a second meeting of the commissioners (and the rights and privileges of the borough of “Tewksbury” in this process were specifically reserved): *ibid.*, s.10.

- (f) authorising the commissioners to purchase the freeholds of the necessary sites so that the buildings could be erected with sufficient clear space on their perimeter;³⁰⁰
- (g) providing mechanisms for the transfer of land vested in persons or bodies with legal incapacity (including settling disputed valuation by jury)³⁰¹ and providing for the dealing with land owned by the King “in right of his Crown”;³⁰²
- (h) authorising the commissioners to empower their “agents or workmen” to remove building materials from “any common or waste land, river, or brook” near to the building sites (for free) or from other owned lands (on payment of compensation)³⁰³, and to enter lands and divert watercourses so as to supply the gaol complex with a constant and uninterrupted supply of fresh water;³⁰⁴
- (i) providing for the creation of a public footway and a development-free zone around the perimeter of the gaol complex;³⁰⁵
- (j) authorising (and requiring) the commissioners to erect without delay, and fit-out, a new gaol, penitentiary house and house of correction

³⁰⁰ The 1785 Act, s.11. The land was to be conveyed to the county’s *custos rotulorum* (keeper of the rolls), acting as a corporation sole, and to be held as part of the county of Gloucester. The *cordon sanitaire* was to extend for 15 yards from the institutions’ boundary walls.

³⁰¹ As provided for in 24 Geo.3 Sess.2 c.54 (1784).

³⁰² The 1785 Act, ss.13, 14. King George III owned the freehold of Gloucester castle which, in 1785, housed the county gaol. The castle land was partly in the possession of the then Constable of the castle (Benjamin Hyett) “in right of his office”, and partly in possession of trustees, held on lease. The Act permitted the King, on application by the commissioners, to make a grant of fee simple (freehold) to the county’s *custos rotulorum* (as trustee) of such part of the castle and its grounds as might be required for building the new gaol, penitentiary house and house of correction (and the commissioners would also then purchase the Constable’s interest): *ibid.*, s.14. Once transferred, the land and buildings were not to be liable for increased rates or rent or for any house or window tax, “any Act or Acts of Parliament to the contrary notwithstanding”: *ibid.*, s.15.

³⁰³ The 1785 Act, s.16. Any pits or quarries created were to be properly filled up or fenced off afterwards for reasons of public safety: *ibid.* Ownership of materials used in the building operation was to vest in the commissioners: *ibid.*, s.25.

³⁰⁴ The 1785 Act, s.17. New watercourses were to vest in the *custos rotulorum* as trustee. Workmen were also to be authorised, as need arose, to enter upon such lands “for the purpose of cleansing, scouring, repairing, or mending such cut, channel, drain, watercourse, reservoir, or other works”: *ibid.* The commissioners were required to pay compensation for any damage caused to landowners, which could be settled by the county justices in quarter sessions if the amount were disputed or the landowner refused to treat or was absent or had legal incapacity: *ibid.*, s.18.

³⁰⁵ The 1785 Act, ss.19, 20. The purpose of the prohibition on development (including depositing dung, hay, straw, and rubbish, or keeping swine, or allowing trees to grow) across a 15 yard zone was to create a *cordon sanitaire* around the gaol to secure “a free circulation of pure and wholesome air, and thereby preventing the gaol fever, and other malignant diseases”: *ibid.*, s.20.

“contiguous to each other” and surrounded by a detached outside wall, together with four houses of correction on other sites;³⁰⁶

- (k) providing for the temporary holding of prisoners in appointed “places of confinement” in the county, the designating of the new gaol (on completion) as the common gaol for the county (with responsibility for upkeep to be consistent with arrangements for other county gaols in England), and the transfer to the new gaol of all prisoners in the county sheriff’s custody when given notice of fitness to receive;³⁰⁷
- (l) providing for the county justices to supervise the operation of the five new houses of correction³⁰⁸, including making regulations governing employment and punishment of prisoners, transferring existing prisoners, decommissioning the former houses of correction, and repairing and maintaining the new institutions in accordance with “the laws and statutes of the realm”;³⁰⁹
- (m) providing for the county justices to manage the penitentiary house for the county as soon as completed and operational,³¹⁰ to appoint a salaried governor and other necessary staff,³¹¹ and to make byelaws

³⁰⁶ The 1785 Act, s.21. The commissioners were authorised to enter into contracts for the works of new-build and of demolishing existing houses or buildings: *ibid.* In ensuring that the different institutions were fit for their purpose, the commissioners were to have regard to requirements relating to the need for separation in gaol of prisoners by gender and by category (debtors, felons, remand prisoners), for the provision of solitary confinement, and the provision of a chapel, infirmary (two or more rooms, pursuant to statute 14 Geo.3 c.59 (1774)), baths, suitable workplaces, airing grounds, “sufficient offices and apartments” for the gaoler and his staff, and the provision of a “lazarette” for medical examination and washing of incoming prisoners and their clothing. Similar requirements pertained to the houses of correction (pursuant to statutes 22 Geo.3 c.64 (1782) and 24 Geo.3 Sess.2 c.55 (1784)) and the penitentiary (to be “adapted to promote the purposes of punishment by solitude and labour”): *ibid.*, ss.22-24.

³⁰⁷ The 1785 Act, ss.27, 28.

³⁰⁸ In accordance with 17 Geo.2 c.5 (1743).

³⁰⁹ The 1785 Act, s.29. The county justices were authorised to appoint “an experienced surgeon or apothecary”, on a salary, to attend the houses of correction and the new penitentiary, and to report back at each sessions on the “state of the health of the prisoners under his care”: *ibid.*, s.30.

³¹⁰ The 1785 Act, s.31. The clerk of the peace was required, on completion of the penitentiary, to issue a certificate from quarter sessions to the justices of assize as to its readiness for the reception of prisoners (being those convicted and sentenced to imprisonment with hard labour, or granted a royal pardon conditioned with imprisonment and hard labour): *ibid.* The penitentiary was also to be used as a holding gaol for prisoners convicted and sentenced to transportation, pending such transportation (although this did not preclude the sending of such prisoners to one of the national penitentiary houses which were to be created under the Act of 19 Geo.3 c.74 (1779), subject to not exceeding the county’s allocation): *ibid.*, ss.32, 33. Transfer of a hard labour prisoner by the sheriff to a penitentiary house was to be certified by the governor to the clerk of the peace (and the certificate would be held with the sessions records): *ibid.*, s.34.

³¹¹ The 1785 Act, s.43. In fixing a salary for the “governor or taskmaster” the justices were to have regard to the “quantity of work done and performed in such penitentiary house” as an incentive to the post-holder “to see that all persons under his custody be regularly and profitably employed”: *ibid.* The

for the classification, segregation, maintenance, employment and treatment of prisoners (subject to the provisions of existing legislation relating to transportable offenders, and also to their not depriving any existing convict of statutory allowances for maintenance or support to which he or she was previously entitled),³¹²

- (n) authorising the commissioners to defray the cost of building the new gaol complex and houses of correction (a) by borrowing (secured by mortgage on the county rates)³¹³, or (b) by sale of annuities, to raise such sums as appeared necessary “at legal or lower interest”,³¹⁴ and to cover the costs of maintenance, repair and general running from the county rate (as provided for by the county justices and the county treasurer) in line with the statutory arrangements for houses of correction in the county;³¹⁵
- (o) requiring the promulgation of byelaws for the classification and segregation of prisoners and regulation of prisoners’ behaviour within the county gaol;³¹⁶
- (p) empowering the county justices to provide “a stock of such materials as they find convenient for the setting poor prisoners on work” in order that their lack of employment did not lead to debauchery and their

appointee was to be liable (by forfeiture of deposited security or fine) for any negligence or misbehaviour in office (in the same manner as the governor of a house of correction under 7 Ja.1 c.4 (1609) and 17 Geo.2 c.5 (1743)): *ibid.* The governor and his assistants were to have the same powers over prisoners as a sheriff or as a gaoler (except as to more serious disciplinary offences which were to be referred to the visiting justices for determination): *ibid.*, s.55.

³¹² The 1785 Act, s.44. The legislation on transportation was 19 Geo.3 c.74 (1779). The byelaws had to be confirmed by the justices of assize for the county.

³¹³ The county rates were to provide up to £2,000 each year for the purpose of servicing the interest payments on the sums borrowed and payment of the annuities as described below: *ibid.*, s.37.

³¹⁴ The 1785 Act, s.35. The moneys were to be raised through loans by mortgage, to be taken in tranches (each not to exceed £100), or by sale on an annuity basis, spread over a maximum of 25 years (and minimum of 13) “or for the life of the purchaser”. The forms of loan mortgage and annuity charge were prescribed, and the mortgages and annuities could be assigned by their owners to any third party, so long as the assignment was registered: *ibid.*, ss.35, 36 and sch. Moneys were only to be raised by annuity sale after the commissioners had given public notice of their intention to seek bids: *ibid.*, s.36. Sections 37-39 of the Act set out the mechanics for paying interest on the loans and discharging the annuities, and prescribed how the annual sum of £2,000 was to be applied (*ie.* in defraying costs of obtaining the 1785 Act, paying interest and annuities, servicing the cost of gaol construction and, finally, in creating a sinking fund).

³¹⁵ The 1785 Act, s.47.

³¹⁶ The 1785 Act, s.40. The byelaws were designed to establish and enforce “a proper police” within the new gaol, and their manner of enactment had to mirror that laid down in 32 Geo.2 c.28 (1758), a national Act, which regulated the handling of prisoners arrested and held for indebtedness in county-based gaols.

being “instructed in the practice of thievery and lewdness”;³¹⁷ and enabling the justices to subsidise from the county rate those poor prisoners who lack the means to provide themselves with such food and clothing on their release from the county gaol as is necessary to provide “the support of health”;³¹⁸

- (q) requiring the county justices annually to appoint visiting justices for the gaol, penitentiary and houses of correction;³¹⁹ and
- (r) dealing with a range of miscellaneous matters,³²⁰ including providing an appeal mechanism (to quarter sessions) for any person who “shall think himself or herself aggrieved by any thing done in pursuance of this [1785] Act”.³²¹

Status of the 1785 Act

15. The 1785 Act focussed solely on provision of gaol, penitentiary and houses of correction for the county of Gloucestershire (as distinct from the city of Gloucester).

16. The purpose of this Act was to authorise the building and subsequent operation of the various penal institutions within the county. Apart from reference to a national Act passed in 1779 relating to the arrangements for transportation of felons (itself now repealed), the 1785 Act stood alone.

17. As indicated below, the county gaol in Gloucester - and probably the penitentiary - had been erected at the castle by 1791 (and the adjoining house of

³¹⁷ The 1785 Act, s.41. The profits arising from the poor prisoners’ labours were to be utilised for their “relief” (and, as a consequence, to mitigate the cost falling on the parish or parishes). This provision was designed to extend limited powers in this regard contained in the earlier, and now repealed, 18&19 Cha.2 c.9 (1666) (cited in the 1785 Act as 19 Cha.2 c.4 [Ruffhead’s edition]).

³¹⁸ The 1785 Act, s.42. This provision built on 14 Eliz.1 c.5 (1572) relating to vagabonds and relief of the poor, and on 32 Geo.2 c.28 (1758) dealing with debtors’ imprisonment, both now repealed.

³¹⁹ The 1785 Act, s.48. The appointed visitors were required to visit and inspect their relevant prison at least three times each quarter, and to report at each quarter sessions on their findings as to the state of the buildings, conduct of officers, and condition of the prisoners, and on any remedial steps they had taken. This did not preclude other justices from visiting and examining a particular institution if need arose, and reporting on any abuses found: *ibid.*

³²⁰ The 1785 Act, ss.49-60. These included prohibiting the sale of liquor in the new gaol or penitentiary house; regulating fees chargeable by gaolers; providing power to award an annuity (funded from the county rate) to any diligent gaoler who ceased through ill-health to be capable of performing his duties (but applying a complete prohibition on the appointment of women to the office of gaoler in the county gaol: *ibid.*, s.51); applying the provisions of 12 Geo.2 c.29 (1738) to the raising of moneys for the purposes of the 1785 Act from the county rates; and applying all other national provisions to the building and running of the new institutions and the transfer of prisoners.

³²¹ The 1785 Act, s.56. All legal proceedings were to be subject to a six months’ commencement limitation period: *ibid.*, s.59.

correction by 1816). That gaol now operates as a local prison under the aegis of HM Prison Service. The house of correction has since disappeared.

18. The whole of the 1785 Act has become spent, and may now be repealed.

53 Geo.3 c.clxxx (1813) (Tewkesbury Gaol Act 1813)

Background and purpose

19. By 1813, the Borough Council for the town of Tewkesbury had formed the opinion that the town gaol (designated the common gaol within, and serving, the borough and parish of Tewkesbury) was unfit for its continuing purpose of holding prisoners because:

- (a) it was “inconveniently situated, too small, and not properly constructed”;
- (b) through age it had become “very ruinous and gone to decay”;
- (c) it was liable to collapse and had become insecure; and
- (d) it was “prejudicial and dangerous to the health of the prisoners confined therein” through lack of “outlet or airing ground” and of “fit and proper conveniences”.³²²

20. In consequence, the local office-holders decided that the solution was to build a new town gaol, house of correction and penitentiary house “with proper buildings and accommodations, on some open, airy, and convenient spot or piece of ground” in the borough.³²³

21. In order to fulfil its purpose, the 1813 Act authorised (in broad terms) the following steps:

- (a) that various office-holders and named individuals be appointed as commissioners with responsibility to carry the Act into effect,³²⁴

³²² Preamble to 53 Geo.3 c.clxxx (1813) (“the 1813 Act”), being “An Act for erecting a new Gaol, House of Correction, and Penitentiary House, in the Borough of Tewkesbury, in the County of Gloucester”.

³²³ The 1813 Act, preamble.

³²⁴ The 1813 Act, s.1. The Act also made provision for the selection and appointment of replacement and of additional commissioners; and laid down the qualifications for holding a commission appointment: *ibid.*, ss.2-5.

- (b) that meetings of commissioners be held in accordance with the Act's rubric;³²⁵
- (c) that the commissioners should appoint appropriate officers to facilitate their business;³²⁶
- (d) that the commissioners should "with all convenient speed after the passing of this Act" identify a suitable site within the borough for building a new gaol, house of correction and penitentiary house;³²⁷
- (e) that the commissioners be authorised to contract for the purchase of such land (and all houses and buildings on it or within 15 feet of the intended boundary wall) so as to build the gaol, house of correction and penitentiary house, and to leave an undeveloped zone (for free circulation of air) around it;³²⁸
- (f) that where owners were bodies or individuals with legal incapacity, they should be enabled to sell and convey their interests to the borough; and where owners failed or refused to negotiate on the sale price, a jury should be called to hear evidence and to assess a value so that compensation could be paid (and land title transferred);³²⁹
- (g) that the commissioners should build on the site, once purchased, "a convenient new common gaol, with a penitentiary house and house of correction, and sufficient outcourts and outlets thereto respectively"

³²⁵ The 1813 Act, ss.6-12. The Act covered the mechanics of calling commissioner meetings, appointing the chairman (and handling of the casting vote), and the taking and keeping of signed minutes.

³²⁶ The 1813 Act, s.13. Officers were to be held to account for all moneys handled by them (and a default procedure was laid down): *ibid.*, s.14. The appointed clerk was to represent the commissioners in any legal proceedings (and to be indemnified against personal liability for costs or damages): *ibid.*, ss.15, 16.

³²⁷ The 1813 Act, s.17. The rather exacting criteria for selection were that the site should be commodious, have a situation which offered "airiness, dryness, and healthiness" and a proper water supply, and which avoided "all ill smells". It also had to be sited "at a proper distance" from the town centre, and yet within reasonable proximity to the town hall: *ibid.* Once identified, the site had to be confirmed at a second commissioners' meeting: *ibid.*, s.18.

³²⁸ The 1813 Act, ss.20, 56. The Act specifically prohibited the demolition of houses without the owners' consent: *ibid.*, s.19.

³²⁹ The 1813 Act, ss.21-23. Where compensation had been assessed it was then lawful for the commissioners to pay the assessed sum into the Bank of England (in the name of the Chancery Court) or - for sums below £200 - into the hands of trustees, and to take possession and effect transfer of title (to the borough's bailiffs). The same applied where the owner was missing, or failed to make good title

plus fittings and furnishings (to confine criminals, debtors and others), together with an integral gaoler's house; and that they should be empowered to employ such workmen as were necessary on the project;³³⁰

- (h) that the new gaol should be designated the common gaol for the borough and parish of Tewkesbury (and, on completion, it should be handed to the borough's bailiffs who would maintain and manage it);³³¹
- (i) that the existing gaol (vested in the Tewkesbury borough council) should, on transfer of its prisoners, be demolished by the commissioners, and the site and materials be used for street-widening or churchyard-enlargement;³³²
- (j) that the new house of correction should, on completion, be handed to the borough's justices, acting in general quarter sessions, to manage and regulate (although the borough's bailiffs would be responsible for appointment of the keeper);³³³
- (k) that the commissioners be authorised to raise the necessary moneys to cover the costs of building and running the gaol by assessing and levying an annual precept on the local rate (to a maximum of £3,000 for the purpose of the building project, the fitting-out of the buildings

or execute the conveyance or accept the purchase moneys: *ibid.*, ss.24-30. Likewise, mortgagees and tenants could be dispossessed on six months' notice: *ibid.*, ss.31, 32.

³³⁰ The 1813 Act, s.33. The component functions were all to be housed in a single building under one roof. The building materials were to be vested in the commissioners, who could bring criminal proceedings for any theft of, or damage to, such materials: *ibid.*, s.34. Likewise, any person causing the new gaol buildings to be damaged could be convicted of a felony: *ibid.*, s.35.

³³¹ The 1813 Act, s.36. The bailiffs were to be responsible for the appointment and removal of the keeper and other officers for the gaol, house of correction and the penitentiary house, and to take recognisances for good behaviour: *ibid.*, s.58. The powers and duties of the gaol keeper(s) and of the governors of the house of correction and the penitentiary house were to be coterminous: *ibid.*, s.60.

³³² The 1813 Act, s.37. The commissioners were specifically empowered by the Act to undertake either of these functions. If any part of the site (or of the salvaged building materials) were not to be used for one of these purposes, the commissioners were authorised to effect sale and to apply the proceeds towards the present project: *ibid.*

³³³ The 1813 Act, s.38. The justices were responsible for laying down the rubric relating to the conduct of prisoners, and for ensuring that future maintenance of the institution complied with national legislation (and, more particularly, 17 Geo.2 c.5 (1743) (Justices Commitment Act 1743)): *ibid.*, ss.38, 59. Under the latter provision the borough justices were required to make regulations for, amongst other things, "receiving, separating, classing, dieting, cloathing, maintaining, employing, reforming, governing, managing, treating, and watching all offenders and other prisoners of all descriptions" confined in the house of correction and penitentiary house (and, seemingly, in the gaol also).

and the promotion of the 1813 Act)³³⁴, and by borrowing moneys by mortgage secured on the rates (to a maximum of £2,500) “for the more speedy and effectual carrying into execution the purposes” of the Act;³³⁵

- (l) that all streets leading to the new gaol, house of correction and penitentiary house should be designated public highways and maintained accordingly;³³⁶
- (m) that at their quarter sessions the justices should appoint annually two of their number to be visitors of the gaol and other institutions for the purpose of inspecting the state of the buildings, the behaviour of the officers and the treatment of the prisoners, and reporting back to the general quarter sessions on their findings;³³⁷ and
- (n) that an appeal mechanism should be put in place whereby any person aggrieved by any conviction or order under the Act could seek from quarter sessions such award of “restitution, damages, and costs” as the justices deemed proper, and that time limits should apply for all legal proceedings.³³⁸

Status of the 1813 Act

22. The principal purpose of the 1813 Act was to authorise the construction and operation of a new gaol, house of correction and penitentiary for the borough of

³³⁴ The 1813 Act, ss.39, 40. The borough justices in quarter sessions would levy the actual rate on individual properties within the borough, and collection would be undertaken by the parochial churchwardens and overseers of the poor: *ibid.*, s.39. Sections 41-50 set down, amongst other things, the mechanisms for recovery of rates on non-payment, on default by the collecting officers, in respect of tenants, and where arrears had accrued.

³³⁵ The 1813 Act, s.51. Each mortgage (in prescribed form) was to be in a £100 unit, repayable with annual interest added to the principal sum, and discharged in a predetermined sequence: *ibid.*, ss.51-53. A minimum of £400 was to be paid off each year: *ibid.*, s.55. By section 54 of the 1813 Act, the moneys raised under the Act were to be applied to defraying the costs of promoting the Act, in servicing the interest payments on moneys borrowed, in paying for the lands to be acquired, in discharging the cost of building and fitting-out the various institutions (including the maintenance expenses), and in paying salaries and other charges. Any balance remaining was to be applied to repayment of the principal by stages. Once the project was complete, and all the debts discharged, the powers and responsibilities of the commissioners would cease and would transfer to the borough justices: the 1813 Act, s.68. Books of accounts would be maintained throughout: *ibid.*, ss.68, 79 and 80.

³³⁶ The 1813 Act, s.57.

³³⁷ The 1813 Act, s.61. Any abuses reported were to be considered immediately “at the sessions at which such report shall be made”, and remedial steps taken: *ibid.* Gaolers had to make, at each quarter sessions, a written return on all prisoners in his charge, which return would first be examined by the visitors: *ibid.*, ss.62, 63.

³³⁸ The 1813 Act, ss.73, 76.

Tewkesbury, and to decommission the old town gaol. Apart from one reference to national legislation relating to the management of houses of correction (see footnote 333 above citing the Justices Commitment Act 1743, now repealed), the 1813 Act appears to stand on its own.

23. As indicated below, the new town gaol was built around 1817 to the north of the Oldbury area of Tewkesbury. The gaol appears to have been closed in 1854.

24. The whole of the 1813 Act has become spent, and may now be repealed.

Archive-based history

25. Down the centuries Gloucester had at least two gaols: one, a city gaol, located at the east gate until its demolition in 1778,³³⁹ the other, a county gaol, situated at the castle, near to the waterfront. The county gaol appears to have been constructed between 1782 and 1791 (at a cost of almost £35,000) on the site of the old castle.³⁴⁰ A house of correction was built adjoining the county gaol in about 1816.³⁴¹

26. The new city gaol (a separate institution) was built in Gloucester in the 1780s pursuant to the 1781 Act. It was located in Southgate Street, south of St. Kyneburgh's hospital (on land at the corner of Southgate Street and Kimbrose Lane).

27. The county gaol in Gloucester, sited at Barrack Square, is now in use as HMP Gloucester (within the auspices of HM Prison Service). It functions as a category B adult local prison and young offender remand centre. The wing for young offenders was added in 1971.³⁴²

28. The Gloucester city gaol closed in 1858 because of its lack of suitability in terms of size, security and sanitation. Prisoners were then transferred to the more

³³⁹ See *Victoria County History, Gloucestershire* vol.11, p.244 at www.institutions.org.uk/prisons/England/GLS/gloucestershire_prisons.htm. From this same source it appears that a second city prison was located at the inner north gate during the 16th century.

³⁴⁰ See www.institutions.org.uk/prisons/England/GLS/gloucestershire_prisons.htm. According to this source, the county gaol was designed to house hardened criminals and juvenile offenders in separate accommodation. It was later (1845-55) enlarged to hold debtors separately, and to segregate male and female prisoners. The former castle was located at a site in North Hamlet in Gloucester.

³⁴¹ See www.institutions.org.uk/workhouses/england/gloucs/gloucester_workhouse.htm.

³⁴² See www.hmprisonservice.gov.uk/prisoninformation/locateaprison.

commodious county gaol. The city gaol buildings were demolished in the early 1860s, and the site was redeveloped in 1866.³⁴³

29. In Tewkesbury, a town gaol, house of correction and penitentiary were erected in 1816 pursuant to the 1813 Act, in Bredon Road on a site north of Oldbury. The corporation of the Borough of Tewkesbury had, since 1609 or 1610, been granted power under royal charter to provide (and had provided) a local gaol.³⁴⁴

30. Tewkesbury gaol appears to have been operating at its new location up until 1853.³⁴⁵ It was decommissioned in 1854 and seems then to have been demolished.³⁴⁶

Extent

31. The 1781, 1785 and 1813 Acts apply locally only within the county of Gloucestershire in England.

Consultation

32. The Home Office, HM Prison Service, Gloucestershire County Council, Gloucester City Council and Tewkesbury Borough Council and have been consulted about this repeal proposal.

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³⁴³ See www.institutions.org.uk/workhouses/england/gloucs/gloucester_workhouse.htm and *Victoria County History, Gloucestershire*, vol. 11 (cited above).

³⁴⁴ The charter was granted by King James I: see <http://archive.tewkesbury.gov.uk/about/history/index.asp>. The former gaol appears to have been located at the Abbey belltower for nearly two centuries.

³⁴⁵ See www.nra.nationalarchives.gov.uk/nra/searches/sidocs.asp?SIR=O93198 for details of accounts, vouchers, prisoners' work books in the period 1816 to 1853 (held in the Gloucestershire Records Office); and also www.institutions.org.uk/prisons/England/GLS/tewkesbury_gaol.htm for the 1847/48 *12th Report of Inspectors of Prisons – Southern & Western District*, vol. 35 referring to the Tewkesbury Borough Gaol and House of Correction.

³⁴⁶ See *Victoria County History of Gloucestershire*, vol. 8, p.148.

COUNTY GAOLS - GREATER LONDON (NORTH)

<i>Reference</i>	<i>Extent of repeal or revocation</i>
7 Geo.3 c.37 (1766) (Thames Embankment Act 1766)	Sections 4 to 10.
18 Geo.3 c.48 (1778) (Newgate Gaol and Sessions House Act 1778)	The whole Act.
25 Geo.3 c.97 (1785) (The City of London: Improvement Act 1785)	The whole Act.
26 Geo.3 c.55 (1786) (Middlesex Gaol Act 1786)	The whole Act.
44 Geo.3 c.lxxxiv (1804) (London Debtors' Prisons Act 1804)	The whole Act.
52 Geo.3 c.ccix (1812) (Debtors' Prison for London and Middlesex Act 1812)	The whole Act.
55 Geo.3 c.xcviii (1815) (Debtors Prison for London and Middlesex Act 1815)	The whole Act.

7 Geo.3 c.37 (1766) (Thames Embankment Act 1766)

Background and purpose

1. In the 18th century the Corporation of the City of London (“the corporation”) (acting through their Common Council) were responsible for the provision and operation of various gaols within the city, including the Newgate Gaol.
2. Throughout England county justices, who had become responsible for local gaol administration, took forward (with varying degrees of enthusiasm) a programme of gaol reform. In particular, they sought specific powers to expand and improve prison accommodation, especially where gaols had fallen into disrepair and had become a significant health hazard.

3. In a multi-purpose Act passed in 1766³⁴⁷ the corporation had been empowered, amongst other things, to rebuild the existing Newgate gaol which was “so ill-contrived as not to admit of a sufficient supply of fresh air and water, from which circumstances the same was in general unhealthy, and often visited with a malignant fever called The Gaol Distemper, the fatal effects of which had sometimes extended beyond the prison walls; and that the said gaol was so old and ruinous as to be incapable of any effectual alteration or repair”.³⁴⁸ The estimated cost of replacement on the same or an alternative, but nearby, site was put at £50,000.

4. The corporation sought powers, therefore, “with all convenient speed to pull down the said gaol of Newgate, and to remove, dispose of, or destroy, the materials thereof, as they should think fit (having regard to the health and safety of His Majesty’s subjects) and to build a spacious and commodious new gaol, upon or near the place where the [then] gaol [stood]”, utilising the moneys realised on sale of the materials where appropriate.³⁴⁹ The corporation also sought authority to improve the street access to both the new gaol (once constructed) and to the sessions house located in the Old Bailey.³⁵⁰

5. The new gaol was to be designated the “county gaol of and for the said City of London, and of and for the said County of Middlesex”.³⁵¹ The 1766 Act empowered the corporation to build the new gaol and to acquire “such houses, lands, tenements, or hereditaments, as they shall judge fit to be purchased, removed, or pulled down” for that purpose.³⁵² To that end, various powers were provided for the raising of the capital finance for the scheme through borrowing and levying of taxes.³⁵³

³⁴⁷ 7 Geo.3 c.37 (1766) (Thames Embankment Act 1766) (“the 1766 Act”), being “An Act for completing the Bridge cross the River Thames, from Black-Friars, in the City of London, to the opposite Side in the County of Surry, and the Avenues thereto on the London Side; for redeeming the Tolls on the said Bridge, and on London Bridge; for rebuilding the Gaol of Newgate in the said City; for repairing the Royal Exchange within the same; [and for various other purposes relating to river embanking, paving and levying of import duties].” This Act extended powers to raise moneys (by borrowing and by imposition of tariffs) contained in earlier legislation relating to the City of London.

³⁴⁸ Description taken from the preamble to the 1766 Act as repeated (with minor variation) in the lengthy preamble to 18 Geo.3 c.48 (1778) (“the 1778 Act”), for which see below.

³⁴⁹ The 1766 Act, s.4 and the 1778 Act, preamble, referring back to the 1766 Act. The 1778 Act was “An Act for empowering the Mayor, Aldermen, and Commons, of the City of London, in Common Council assembled, to raise, upon the Credit of the Surplusses to arise out of a certain Fund, commonly called The Orphans Fund, the Sum of Forty thousand Pounds, towards discharging the Debt incurred in rebuilding the Gaol of Newgate, and a Sessions-house adjoining, and for completing the said Gaol, and building an Infirmary thereto; and other the Purposes therein mentioned”.

³⁵⁰ The 1766 Act, s.5.

³⁵¹ The 1766 Act, s.7. The existing gaol served not only as the county gaol but also as “the general prison for smugglers and debtors to the Crown, from all parts of the Kingdom”: *ibid.*, preamble, and the 1778 Act, preamble.

³⁵² The 1766 Act, s.10 and the 1778 Act, preamble.

³⁵³ The 1766 Act, ss.35-44. These sections related to the raising and appropriation of moneys not only for the Newgate gaol scheme, but also for other schemes encompassed by the 1766 Act, such as

Status of the 1766 Act

6. The greater part of the 1766 Act is still in force.³⁵⁴ Only portions of the Act relate to Newgate gaol and the raising of moneys in connection with the rebuilding project.

7. Newgate gaol was closed in 1902 and subsequently demolished. The Central Criminal Court (known as the Old Bailey) was built on its site and opened in 1907.

8. That part of the 1766 Act which dealt exclusively with Newgate gaol (sections 4 to 10 inclusive) may now be repealed on the basis that its purpose (as illustrated by the historical note at paragraph 48 below) was overtaken by events, and the relevant sections have become spent.

18 Geo.3 c.48 (1778) (Newgate Gaol and Sessions House Act 1778)

Purpose and background

9. By 1778 the corporation had “given up to the publick the freehold of a very large and extensive tract of ground of considerable value” to facilitate the building of “a new, spacious, and commodious gaol” (Newgate gaol) and, in so doing, had expended the capped sum of £50,000 allocated under the 1766 Act (plus further moneys, drawn from the city’s reserves, purchasing several houses in the Old Bailey “in order to make the new gaol more healthy”).³⁵⁵ The corporation now believed that the creation of an infirmary for the gaol “would greatly contribute to the health of the prisoners, and thereby be of great publick utility”.³⁵⁶ The corporation already owned a suitable site adjoining the new gaol building, but required a further £40,000 to complete the gaol, build the infirmary and pay off indebtedness to the city’s cash reserves. This additional money had to be secured before the expiry of the time limit (laid down by successive tranches of previous legislation) for the special raising of moneys by import duty.³⁵⁷

completing the Blackfriars river bridge, building a Thames embankment and repairing the Royal Exchange. For this reason, these sections cannot safely be repealed now within the narrow confines of the present repeal task.

³⁵⁴ The 1766 Act was extended by the Temple Bar Improvement Act 1811, s.16; and section 51 of the 1766 Act was repealed in part by the Corporation of London (Rating of Reclaimed Lands) Act 1920, s.2.

³⁵⁵ The 1778 Act, preamble.

³⁵⁶ The 1778 Act, preamble.

³⁵⁷ The import duty was levied on coals and culm coming through the port.

10. As a consequence of this, the corporation secured the 1778 Act, which legislation had the following as its principal purposes:

- (a) the lawful completion, “with all convenient speed”, of the new gaol building, and erection of the infirmary on the adjoining appropriated land;³⁵⁸
- (b) the raising of an additional sum of £40,000 by borrowing “upon the credit of” a special fund (known as the Orphans Fund);³⁵⁹
- (c) establishing the mechanics for the handling of the fund, the annuities and the payments of interest;³⁶⁰
- (d) authorising the application of £20,000 of the additional sum towards completion of the new gaol and its infirmary, and application of the remaining £20,000 towards reimbursing the city’s cash reserves which had previously been drawn upon;³⁶¹ and
- (e) authorising the relevant sheriffs to move prisoners in their charge to the new Newgate gaol, even though it might not yet have been completed.³⁶²

Status of the 1778 Act

11. The whole of the 1778 Act is still in force.

³⁵⁸ The 1778 Act, s.1. (The printed version of the 1778 Act carries only side headings and not section numbers. The section numbers used in this note have simply been assigned informally and sequentially to aid navigation through the Act’s text).

³⁵⁹ The 1778 Act, s.2. “Upon the credit of” appears to mean “on the security of”. Lenders were to be entitled to receive redeemable annuities at a specified rate: *ibid.*, s.3, and were to be given written bonds evidencing their investment: *ibid.*, s.4.

³⁶⁰ The 1778 Act, ss.5-9. Any deficiencies which might occur in the payment of interest were to be made good by drawing on the city’s “Chamber” (ie its corporate fund).

³⁶¹ The 1778 Act, s.10. The total of £40,000 was to be utilised for these two purposes only. Any surplus which might result was to be paid into the Orphans Fund, and the City Chamberlain was to keep full accounts (for audit) of all borrowings and expenditure: the 1778 Act, ss.11, 12 and 19. The Act also laid down provisions relating to the appointment and remuneration of necessary clerks and officers to facilitate the construction process; provisions for the avoidance of misappropriation of moneys; an exemption on issued bonds from payment of duty; and a limitation period on any legal action resulting from the Act’s provisions.

³⁶² The 1778 Act, s.22.

12. Newgate gaol existed in various forms from 1188 onwards. Its final incarnation was completed around 1782. It was closed in 1902 and the building demolished shortly thereafter.

13. The whole of the 1778 Act is now spent, and may be repealed.

25 Geo.3 c. 97 (1785) (The City of London: Improvement Act 1785)

Background and purpose

14. The corporation held the two compters, at Poultry and at Wood Street, for the imprisonment of debtors and other prisoners committed by the sheriffs courts. Much of the Wood Street compter (and ancillary offices) was held on long lease from the Dean and Chapter of St. Paul's Cathedral.³⁶³ By 1785 the corporation had formed the view that each gaol was both "very small, close and confined" and, by virtue of the effluxion of time, "in a very ruinous condition, and much decayed", so that each had become unfit for their purpose.³⁶⁴ Against this backcloth the corporation decided that demolition and replacement was the only available course, the new gaols to be erected "in a more open, airy, and commodious situation, on a suitable spot of ground, in some more convenient place within the said City".³⁶⁵ However, that course, which would improve prisoner health and security, required "the aid and authority of Parliament", now sought through the 1785 Act.

15. In broad terms the 1785 Act had the following as its principal purposes:

- (a) the authorisation of the corporation (acting through its Common Council) to pull down the two existing compters and to build replacement gaols on a specific site off Giltspur Street (in St. Sepulchre's parish in the ward of Farringdon Without),³⁶⁶

³⁶³ The lease ran from Michaelmas day 1777, and imposed a repairing covenant on the tenant corporation: preamble to the 1785 Act (see below).

³⁶⁴ Preamble to 25 Geo.3 c.97 (1785) ("the 1785 Act"), being "An Act to enable the Mayor and Commonalty and Citizens of the City of London to pull down the Poultry and Wood-Street Compters, and to purchase certain Ground and Buildings within the said City for the Purpose of rebuilding the same".

³⁶⁵ The 1785 Act, preamble.

³⁶⁶ The 1785 Act, s.1. The site was more fully described in the Schedule to the Act as lying between Newgate Street and Giltspur Street in the City. Should the new site prove insufficient to accommodate two gaols, the corporation were authorised to build one of the replacement compters on the site of one of the existing gaols: *ibid.*, s.19.

- (b) authorising the acquisition of the necessary land, and the clearing of the site (including demolition of such houses or buildings as may be necessary);³⁶⁷
- (c) providing a mechanism for valuing and transferring individual interests for acquisition where an owner failed to negotiate or to make good title;³⁶⁸
- (d) providing compensation to the incumbent of the parish church for the loss of tithes which were charged on buildings liable to be demolished (by transferring the charge to the city's funds, and providing for quarterly payment);³⁶⁹
- (e) designating the two replacement gaols as the "Two Compters of the City of London", for use by the sheriffs of London for the custody of "debtors and prisoners" and for such as uses as were customary in the original compters;³⁷⁰
- (f) empowering the corporation to salvage and reuse materials from the existing gaols when demolished, or to sell the materials and apply the proceeds towards the cost of building the new facilities;³⁷¹
- (g) requiring the corporation, having demolished the Wood Street compter (and assuming that a new gaol did not have to be built in its place), at its own expense to build a dwelling house or houses on the site for letting and habitation;³⁷² and

³⁶⁷ The 1785 Act, s.1.

³⁶⁸ The 1785 Act, ss.2-16. The Act provided for (amongst other steps) conveyance by those under legal disability, valuation and award of compensation by an empanelled jury sitting as part of the Aldermanic Court, payment of purchase moneys into the Bank of England (where refusal by, or inability of, owner to make good title) with automatic vesting of title, the investing of proceeds "in trust to pay the interest and dividends arising therefrom", the reinvestment of funds derived from properties held in trust, and the handling of lesser interests.

³⁶⁹ The 1785 Act, s.17.

³⁷⁰ The 1785 Act, s.18. The sheriffs were also empowered to transfer prisoners to the new facilities when complete.

³⁷¹ The 1785 Act, s.20.

³⁷² The 1785 Act, s.21. The corporation was to retain its obligation to repair and "uphold" the buildings and to ensure that the Dean and Chapter received an equivalent annual rental.

- (h) laying down time limits for implementation of the 1785 Act³⁷³, and for the bringing of legal proceedings under the Act.³⁷⁴

Status of the 1785 Act

16. The 1785 Act appears to stand alone. Although it was designed to remedy a deficiency caused by the condition of two existing compters in the city, it did not refer to previous legislation relating to those two gaols (or to any legislation).

17. The Poultry compter may not have been rebuilt under the 1785 Act, but in all probability the Giltspur Street compter was built pursuant to it because it opened by 1791.

18. As can be seen from discussion of the 1804, 1812 and 1815 Acts below, and the available historic data, the Poultry compter seems to have ceased functioning by 1815, and the Giltspur Street compter by 1854. Given the need to seek enactment of the later Acts, it seems probable that the powers contained in the 1785 Act were only partially used. The powers on the face of the 1785 Act were, in any event, time-limited.

19. The whole of the 1785 Act is now spent, and it may be repealed.

26 Geo.3 c.55 (1786) (Middlesex Gaol Act 1786)

Background and purpose

20. In the late 18th century the county justices for Middlesex (which county, at that time, embraced a large part of modern London to the north of the Thames) had taken note that the county house of correction was “in a ruinous state, insecure, and not large enough, or sufficiently airy, for the number of prisoners usually confined therein, or capable of answering the general purposes of a house of correction”.³⁷⁵

21. The justices had identified a site for rebuilding and relocating “a proper and commodious house of correction”, but were concerned that the cost of land acquisition and rebuilding would be “very considerable” and, if raised by levying a

³⁷³ The 1785 Act, s.21 (two years from demolition of the compter for building houses at Wood Street), and s.24 (ten years from the passing of the Act to acquire the necessary lands, failing which the Act itself would become void).

³⁷⁴ The 1785 Act, s.28.

³⁷⁵ Preamble to 26 Geo.3 c.55 (1786) (“the 1786 Act”), being “An Act to enable the Justices of the Peace for the County of Middlesex to raise Money, in Manner therein mentioned, for erecting a House of Correction within the said County”.

county rate, would place “a heavy burden upon the present inhabitants of the said county”.³⁷⁶

22. The justices promoted what became the 1786 Act in order to obtain powers to raise the necessary moneys. In summary the 1786 Act authorised the following:

- (a) the Middlesex justices to raise money to purchase the land and undertake building works by selling annuities (ie a form of bond) secured on the county rates;³⁷⁷
- (b) annuity holders would be preferential creditors against the county rate fund, would receive annual dividends free from “all tares and deductions whatsoever”, and would have their investment evidenced by written grant;³⁷⁸
- (c) annuity holders would be entitled to assign or transfer their grants or securities;³⁷⁹
- (d) the annuity purchase moneys were first to be applied by the justices in paying off all expenses associated with promotion of the 1786 Act, and the balance was then to be used for buying the site, erecting the building “with all necessary and proper conveniencies thereto”, and in fitting it out;³⁸⁰
- (e) the justices to levy a county rate which not only would fund “the general purposes of the said county” but also would underwrite the cost of paying the various annuities;³⁸¹ and
- (f) the justices to sell or let the current house of correction (and site), together with “certain ground and tenements” adjoining which had

³⁷⁶ The 1786 Act, preamble.

³⁷⁷ The 1786 Act, s.1. The annuities could last for the lifetime of the purchaser or his or her nominee, and their survivors, and would be granted in such manner as the justices decided appropriate.

³⁷⁸ The 1786 Act, s.2. The written form of grant was prescribed in the same section.

³⁷⁹ The 1786 Act, s.3. The transfer would only take effect on registration (the form of which was also prescribed in the section).

³⁸⁰ The 1786 Act, s.4. Any remaining surplus was then to be used in paying the annuities.

³⁸¹ The 1786 Act, s.5. The justices were to appoint a paid treasurer to handle the funds, and to ensure that all financial transactions were properly recorded in accounts which would be laid before each general or quarter sessions for approval: *ibid.*, ss.6, 7.

been let to the Quakers, and apply the proceeds towards the cost of rebuilding the house of correction and supplementing the rates for the payment of the annuities.³⁸²

Status of the 1786 Act

23. The 1786 Act did not recite by name any previous legislation. But it did provide, specifically by section 9, a saving for any powers given under “any former Acts of Parliament to justices of the peace, respecting houses of correction”. This may have been intended to refer to the general powers given previously under Acts of 1741, 1743, 1782 and 1784.³⁸³ The last two Acts, in particular, probably triggered promotion of the 1786 local powers Act.

24. The Middlesex Gaol Act 1786 did not on its face indicate an identified site for rebuilding of the house of correction. But, as explained below at paragraph 49, the house of correction was probably built at Cold Bath Fields in Clerkenwell (now Mount Pleasant) in 1794 and closed in 1877. Both the building - having been demolished by 1889 - and its function, no longer exist.

25. On this basis, the purpose of the 1786 Act is now spent, and the 1786 Act may be repealed in whole.

44 Geo.3 c.lxxxiv (1804) (London Debtors’ Prisons Act 1804)

Background and purpose

26. Early in 1804 the corporation received a report as to the state of the Poultry compter, one of its debtors’ gaols, sited within the city. That report found that the gaol was “in such a state of decay, as to become inadequate to the safe custody of the debtors and prisoners therein confined, and extremely dangerous, as well to the lives of the said debtors and prisoners as to other persons resorting thereto”.³⁸⁴

27. Faced with this situation, the corporation sought Parliamentary authority to transfer debtors and prisoners from the gaol to other secure premises whilst works

³⁸² The 1786 Act, s.8. Should any of the newly acquired land not be required for its purpose, the justices were empowered also to sell or let that (the moneys arising to be applied in like manner).

³⁸³ These Acts were, respectively: 15 Geo.2 c.24 (1741), 17 Geo.2 c.5 (1743), 22 Geo.3 c.64 (1782) and 24 Geo.3 Sess.2 c.55 (1784).

³⁸⁴ Preamble to 44 Geo.3 c.lxxxiv (1804) (“the 1804 Act”) being “An Act for enabling the Sheriffs of the City of London to remove the Debtors and Prisoners in the Poultry Compter to another Place of Confinement in the said City”.

were in train “for the rebuilding or repairing of the said compter, or providing another compter”.³⁸⁵ The very short 1804 Act enabled the following steps to be taken:

- (a) permitting the city sheriffs to effect the transfer of existing prisoners from the Poultry gaol to “the Giltspur-Street Compter, or to such other safe, secure, and convenient place within the said City as shall be approved of” by the corporation’s assembled Common Council, and likewise to hold future committed prisoners in the same manner;³⁸⁶
- (b) permitting the sheriffs to transfer their offices and records from the Poultry gaol to the alternative premises for the duration of the works; and
- (c) permitting the sheriffs to return the prisoners to the Poultry gaol “when and so soon as a new Poultry Compter shall be built or provided, or the present Poultry Compter of the said City of London, or any part thereof, shall have been rendered safe, and fit, and commodious, for the reception of prisoners”.³⁸⁷

28. The 1804 Act provided no powers to undertake the rebuilding works, or to raise moneys to defray the expenses. The corporation may have relied on other (possibly national)³⁸⁸ powers to undertake the physical works, although no other Acts were cited in the 1804 legislation.

Status of the 1804 Act

29. The purpose of the 1804 Act was narrow: to permit the transfer and return of prisoners between gaols, in order to release current pressure on the Poultry compter.

³⁸⁵ The 1804 Act, preamble.

³⁸⁶ The 1804 Act, s.1. (The printed version of the 1804 Act has only side headings for sections, but does not carry section numbers. The section numbers used in this note have simply been assigned informally to aid navigation through the Act’s text).

³⁸⁷ The 1804 Act, s.1. Section 1 of the Act anticipated the possibility that not all the prisoners in shrieval custody could later be returned to the Poultry compter, only “so many of them as can be respectively secured and kept secure in such Poultry Compter, when rebuilt, provided, or repaired as aforesaid”.

³⁸⁸ Akin, for example, to the powers contained in an Act of 1784 (24 Geo.3 Sess.2 c.54, which Act was directed principally to county justices). The powers in the 1785 Act (see above) had probably long-expired as they were time-limited.

30. The Giltspur Street compter (or civic gaol) was built around 1791, and was fully operational at the time of the passing of the 1804 Act. However, as indicated at paragraph 50 below, by 1855 it had been decommissioned and demolished.

31. The whole of the 1804 Act is spent, and it may now be repealed.

52 Geo.3 c.ccix (1812) (Debtors' Prison for London and Middlesex Act 1812)

Background and purpose

32. The corporation formed the view in the second decade of the 19th century that a new gaol needed to be constructed in order to relieve pressure on four other gaols in the area. To this end the corporation promoted a Bill resulting in a detailed Act of 1812.³⁸⁹

33. The four existing gaols were: Newgate (used as the common gaol for both London and Middlesex county to confine felons, offenders and “other persons in the custody of the sheriffs”)³⁹⁰; Poultry and Giltspur Street compters (which were used not only for housing civil prisoners - presumably debtors in the main - but also felons, other offenders, night custody prisoners and others “confined for further examination”)³⁹¹; and Ludgate prison (used for confining debtors of some social standing).

34. The corporation prayed in aid of their Bill the need for a house of correction to serve the city and the opportunity, which constructing a new gaol would create, of reutilising the existing gaol accommodation. The corporation had previously obtained power through a 1785 Act (see above) to demolish the Poultry and Wood Street compters and to rebuild on other land within the city confines.³⁹² Those powers, however, were insufficient to sustain the present project. In particular, the corporation needed Parliamentary authority to acquire land abutting Whitecross Street, to raise sufficient moneys for the acquisition and building project, and to convert (and

³⁸⁹ 52 Geo.3 c.ccix (1812) (“the 1812 Act”), being “An Act for building a new Prison in the City of London, for removing thereto Prisoners confined under Civil Process in the Gaol of Newgate and the Two Compters of the said City, and also the Prison of Ludgate, and for converting the Building now containing the said Two Compters and Ludgate into a Gaol for Criminals in the said Two Compters, and into a House of Correction for the said City of London”.

³⁹⁰ Preamble to the 1812 Act. Newgate was seen as having insufficient capacity for the number of prisoners housed there, causing “great inconvenience to such prisoners, and danger of contagious disorders”: *ibid.*

³⁹¹ Preamble to the 1812 Act. It was felt desirable that civil and criminal prisoners should not be held together.

³⁹² See above for the 1785 Act (25 Geo.3 c.97). This 1785 Act is specifically recited in the preamble to the 1812 Act.

redesignate principally for criminal use and use as a house of correction) the former gaols.³⁹³

35. In order to fulfil its purpose, the 1812 Act authorised (in broad terms) the following steps:

- (a) the acquisition of the necessary land in the St Giles-without-Cripplegate parish, and the construction of a new gaol (together with residential accommodation for the gaol keeper or keepers, and ancillary office space);³⁹⁴
- (b) in the event of failure to secure purchase of land by private treaty, the corporation was authorised to purchase compulsorily (after payment into the Bank of England of the assessed purchase price), and then to undertake such demolition as was necessary.³⁹⁵ The power to purchase was time-limited to five years from the passing of the 1812 Act;³⁹⁶
- (c) the disposal of any acquired parcels of land which later proved to be surplus to requirements³⁹⁷, and the reuse (or sale) of any building materials salvaged from demolished buildings;³⁹⁸
- (d) the raising of moneys solely for the project by selling interest-yielding redeemable annuities (in effect borrowing) worth up to £95,000, secured on the city's Orphans' Fund, and evidenced by written bond;³⁹⁹

³⁹³ The 1812 Act, preamble. The corporation needed to raise the (in those days) very significant sum of £95,000.

³⁹⁴ The 1812 Act, ss.1, 2. Schedule 1 to the Act set out the details of the several plots of land (and buildings) to be acquired. Section 1 provided that the new gaol was to be designed to contain "four separate and distinct parts or prisons" for the confining of different categories of prisoner (with subdivisions for male and female, and day and night, accommodation, plus work "apartments", separate infirmaries, proper bathing arrangements, and a chapel). The new gaol was to be accessed from White Cross Street.

³⁹⁵ The 1812 Act, s.2. Sections 3 to 23 set down a code for purchase (both by treaty and compulsorily), governing such issues as partial acquisition of a landholding, authorising land transfer where the landowner was under a legal disability, time-limiting claims, handling untraced and non-compliant owners (and assessing compensation), providing mechanisms for vesting good title and paying compensation (including with court sanction), and conveying mortgaged land.

³⁹⁶ The 1812 Act, s.4.

³⁹⁷ The 1812 Act, s.24. The moneys thereby released were to be repaid to the Orphans' Fund maintained by the corporation under other statutory powers.

³⁹⁸ The 1812 Act, s.25.

³⁹⁹ The 1812 Act, ss.30-38. If at any time the Fund were to be insufficient to honour the various calls upon it, any deficit would then be made good from the city chamber (ie. its main account): *ibid.*, s.35.

- (e) the employment, and regulation, of clerks and other officers in order to handle all aspects of the project;⁴⁰⁰
- (f) the making good by the corporation to the parish of lost land tax and rating revenues caused by the demolition of acquired houses or buildings;⁴⁰¹
- (g) once constructed, the new gaol was to be known as the Debtors Prison for London and Middlesex, and was to operate on the basis that it be sub-divided into four parts, each part of which was to replicate the function of one of the four former gaols;⁴⁰²
- (h) prisoners held in the designated parts of the new gaol were not to be liable for process relating to other jurisdictions in the gaol (and the respective sheriffs were not to be held liable for the safe custody of persons other than those specifically committed to them)⁴⁰³ and, once transferred, they were to be subject to the same management regime as pertained in the previous gaol;⁴⁰⁴
- (i) on completion of prisoner transfer, Newgate gaol was to be redesignated solely for criminal use⁴⁰⁵, and part of the two compters, together with part of Ludgate prison, were likewise to be converted and used for housing criminal prisoners, including those apprehended at night or detained “for further examination” (the gaol to be known as the Giltspur Street Prison);⁴⁰⁶

The cost of promoting the 1812 Act was also to be reimbursed from moneys raised and received under it: *ibid.*, s.88.

⁴⁰⁰ The 1812 Act, ss.39-41. The Act also made provision for the proper handling of, and accounting for, moneys.

⁴⁰¹ The 1812 Act, s.47.

⁴⁰² The 1812 Act, s.48. One part was designated for civil process prisoners in the custody of the sheriff of Middlesex (seemingly housed at Newgate); two further parts were designated to replace the existing two compters used for securing civil process prisoners in the custody of the city sheriffs; and the fourth part was designated the replacement for all the functions of the former Ludgate prison. Civil process included committals for contempt: *ibid.*, s.57. Once construction was complete, all the relevant prisoners were to be transferred from their existing gaols: *ibid.*, s.50. Additionally, criminal process prisoners who would have been held in the former two compters would be held in that part of the new gaol designated as the replacement facility for the compters and for Ludgate prison: *ibid.*, s.49.

⁴⁰³ The 1812 Act, s.51. Moreover, no sheriff was to have any civil liability for any criminal prisoner unless so ordered by a court (and communicated to the sheriff): *ibid.*, s.52.

⁴⁰⁴ The 1812 Act, s.54. This regime included the right to benefit from privileges, charitable aid and gifts. The proviso did not, however, apply to prisoners from the two compters: *ibid.*, s.55.

⁴⁰⁵ The 1812 Act, s.56.

⁴⁰⁶ The 1812 Act, ss.59, 60, 61 and 63. A further part of the three gaols was to be converted into a house of correction for the city: *ibid.*, s.59. Whilst the conversion works were in hand the prisoners were

- (j) the conversion of part of the two compters and Ludgate gaol into a house of correction by the Court of Aldermen (including the defraying of the cost by the corporation), ensuring that separate accommodation was set aside for those “committed for punishment by hard labour” (with “mills, looms, utensils and implements” and “materials for manufactures” for use by women prisoners);⁴⁰⁷
- (k) management and governance of the new gaol, the Giltspur Street prison and the house of correction, including ensuring that the facilities were kept washed and clean, constantly ventilated, and the prisoners to be bathed prior to leaving the establishments “on any occasion whatsoever”⁴⁰⁸; appointing (and dismissing) keepers, officers, governors or taskmasters, the latter to have the legal powers available within the county establishments⁴⁰⁹; laying down the rubric for the conduct of the officials and the running of the gaols (including securing good order and discipline);⁴¹⁰
- (l) providing an inspection regime by appointed visitors (a minimum of five aldermen) to review the state of the buildings, conduct of the officers, and treatment of the prisoners;⁴¹¹
- (m) providing for the appointment (and dismissal) of Church of England chaplains, and of experienced physicians, surgeons or apothecaries, to each of the gaols;⁴¹² and

to be held temporarily in “such safe, secure, and convenient place” within the city as the Court of Aldermen should approve: *ibid.*, s.62.

⁴⁰⁷ The 1812 Act, s.64. The corporation was to have management of the house of correction with the same powers as were then available to county justices: *ibid.*, s.65.

⁴⁰⁸ The 1812 Act, s.66.

⁴⁰⁹ The 1812 Act, s.67, 68.

⁴¹⁰ The 1812 Act, ss.69-79 and 85, and sch 2 (rules for the house of correction).

⁴¹¹ The 1812 Act, s.80. The visitors were empowered to make written report to the Court of Aldermen on any perceived abuses, and the court was obliged to give “immediate consideration” to the matter and to “adopt the most effectual measures for inquiring into and rectifying such abuses” as circumstances would permit: *ibid.* The keepers and governors of the several institutions had to make written returns of prisoners in their charge, counter-signed by the visitors, and also to lodge with the court an annual sworn certificate in prescribed form attesting to compliance with the 1812 Act’s requirements: *ibid.*, ss.81-84 and sch 3.

⁴¹² The 1812 Act, s.86.

- (n) providing a mechanism for appeal to quarter sessions by persons aggrieved by actions taken under the 1812 Act.⁴¹³

Status of the 1812 Act

36. The whole of the 1812 Act is still in force, with the exception of one section. Section 46 (which provided for the reimbursement of the Rector or Vicar of the Parish of Saint Giles without Cripplegate for tithes lost on buildings that were to be demolished under the Act, which instead would be charged against other corporation revenue sources) was repealed by the Saint Giles Cripplegate Tithes Act 1826, s. 11.⁴¹⁴ The 1812 Act was designed to secure more power than was afforded to the corporation in the 1785 Act (see above).

37. The powers contained in the 1812 Act were specifically extended to the 1815 Act (by section 7 of the 1815 Act: see below), the purposes of which were directly related.

38. As indicated at paragraph 52 below, the gaol at Cripplegate was later decommissioned (in 1870) and, by 1876, the building had been demolished and the site redeveloped.

39. Accordingly, the 1812 Act is now spent, and may be repealed in whole.

55 Geo.3 c.xcviii (1815) (Debtors Prison for London and Middlesex Act 1815)

Background and purpose

40. By 1815 the corporation had, under powers granted in 1812, started work on building a new gaol for the city, which was intended to replace the accommodation in four other gaols used for “prisoners confined under civil process”.⁴¹⁵ This new gaol (and its allied offices), situated on a piece of land in the parish of St. Giles without

⁴¹³ The 1812 Act, s.91. The 1812 Act also provided for recovery of penalties imposed (by distraint on goods), for ouster of jurisdiction for want of technical form, and for litigation time limits.

⁴¹⁴ 7 Geo.4 c.liv (1826) (“the 1826 Act”), being “An Act for extinguishing Tithes and Customary Payments in lieu of Tithes and Easter Offerings within the Parish of Saint Giles Cripplegate, in the Liberties of the City of London; and for making Compensation to the Vicar for the Time being in lieu thereof”. The 1826 Act was itself repealed in whole by the City of London (Various Powers) Act 1950, s.18 and sch 2.

⁴¹⁵ Preamble to 55 Geo.3 c.xcviii (1815) (“the 1815 Act”), being “An Act to amend an Act of His present Majesty, for building a new Prison in the City of London, and for removing thereto Prisoners confined under Civil Process in the Gaol of Newgate and the Two Compters of the said City, and also the Prison of Ludgate”. The 1812 Act, to which the 1815 Act referred, was 52 Geo.3 c.ccix (wrongly cited as c.109, and not c.209, in the 1815 Act’s side heading), for which 1812 Act see above.

Cripplegate⁴¹⁶, originally was designed to contain “four separate and distinct parts or prisons” which would reflect the gaols (and the jurisdictions) they replaced.⁴¹⁷ Thus, one part was to be designated to receive prisoners who would have been committed by the Mayor and Aldermen’s Court (under civil process) to the custody of the Middlesex sheriff; two parts were designated to replace the function of the two city compters (probably the Poultry and the Giltspur Street compters); and the remaining part designated to replace the function of the former Ludgate prison.⁴¹⁸

41. The new gaol also was to contain separate accommodation for male and female prisoners, plus “sufficient apartments and places for the use of such prisoners as might be willing to work for their maintenance while in confinement”, separate “infirmaries or sick wards”, and “proper and distinct airing grounds”.⁴¹⁹

42. Once building work on the project had started, and had made “considerable progress”, practical considerations then intervened. It became clear that the inflexible four-part subdivision required under the 1812 Act was less than sensible, and that the statutory requirement should be repealed and replaced. Experience showed, first, that one designated part may become overcrowded whilst another (or others) may be under-occupied; and, secondly, that separate airing grounds would be “too small and confined to afford sufficient air and exercise” for the occupying prisoners. The 1815 Act was promoted, therefore, to remedy the situation.

43. The 1815 Act’s primary purpose was simply to unpick certain of the statutory restrictions. Thus, it provided that:

- (a) the 1812 Act’s requirements relating to physical sub-division of accommodation and airing grounds were to be repealed;⁴²⁰

⁴¹⁶ The gaol was to be known as the debtors prison for London and Middlesex. It was located at White Cross Street in the city.

⁴¹⁷ The 1815 Act, preamble.

⁴¹⁸ The preamble to the 1815 Act made clear that, although committal of debtors by a court was to a new building under one roof, nonetheless the various committing jurisdictions were to remain separate (so that, once committed, a prisoner would not be liable to be charged with process relating to another jurisdiction, and the relevant sheriff would only be responsible for prisoners specifically committed to his custody).

⁴¹⁹ The 1815 Act, preamble.

⁴²⁰ The 1815 Act, s.1. Section 2 of the Act contained, however, a saving for the other facilities, in particular provision of work places, gender-separated infirmaries, and the provision of “proper and distinct airing grounds for the men and the women”.

- (b) prisoners confined under different custodial regimes within the new gaol might be held in any part of that gaol (it now being treated as a joint prison);⁴²¹
- (c) the shrieval jurisdictional responsibilities were to remain unaltered,⁴²² and
- (d) the remaining parts of the 1812 Act were specifically saved by the 1815 Act.⁴²³

Status of the 1815 Act

44. The debtors gaol at Whitecross Street, Cripplegate was built between 1813 and 1815 (under the 1812 Act), and closed around 1870 (see paragraph 52 below). It was subsequently demolished, and the site redeveloped.

45. The 1815 Act was designed solely to amend the principal empowering legislation, the 1812 Act, which itself is now spent (see above).

46. The whole of the 1815 Act is now spent, and it may be repealed.

Archive-based history

47. The cities of London and Westminster, and the county of Middlesex, in the 18th and 19th centuries contained a range of gaols built and maintained for different purposes: the housing of debtors, of vagrants and of criminals.

48. Newgate gaol was first built in the 12th century, and rebuilt three times (in 1672, in 1770-78 and finally, following the Gordon Riots of 1780, in 1780-82). The gaol abutted Old Bailey. Internal alterations were carried out around 1857-58⁴²⁴, and the gaol finally closed in 1902 (and was demolished). The present Central Criminal Court was built on the site and opened in 1907. Newgate gaol was used principally as a common gaol for felons taken in the City of London.

⁴²¹ The 1815 Act, s.3. The flexibility for holding prisoners allowed for “the intermixture of prisoners confined under different custodies” within the outer wall of the prison “or inclosure thereof”: *ibid.*

⁴²² The 1815 Act, s.4. The prisoners were to continue to be managed as if they were in their original gaols and to benefit from any “charities, gifts, benefits, and advantages whatsoever” to which they may have been entitled had they been housed in their former gaols: *ibid.*, s.5.

⁴²³ The 1815 Act, s.7. The costs falling on the Common Council of promoting and obtaining the 1815 Act were to be covered by the powers contained within the 1812 Act: *ibid.*, s.6.

⁴²⁴ www.institutions.org.uk/prisons/England/LDN/newgate_prison.htm, citing *The Builder*, Vol. 26, 1 February 1868, p. 73.

49. The Middlesex house of correction was built in 1794 at Cold Bath Fields in Clerkenwell. It may have been constructed from a previous gaol on the site. It was probably built pursuant to powers in the 1786 Act, but the Act itself was silent as to the location of the new facility.⁴²⁵ New buildings were added shortly after 1865.⁴²⁶ This house of correction remained in existence until 1877 (and the buildings finally demolished in 1889).⁴²⁷ Although the institution reputedly started life as a 'short sharp shock' regime (imposing hard work over a relatively short stay), by 1819 it apparently had become a general gaol for criminals, where the keeper and chaplain felt prisoners left in a state worse than better for their confinement.⁴²⁸ The site was later occupied by the Mount Pleasant Postal Sorting Office (located now within the London Borough of Islington).

50. The Poultry compter (a debtors' gaol) was in existence before 1724⁴²⁹ and was still operational in 1799.⁴³⁰ It appears to have been located in Cheapside in the city, and it ceased to operate in 1815.⁴³¹ Its function seems to have been replaced by the Giltspur Street compter (itself in existence by 1799, and probably built between 1787 and 1791).⁴³² This gaol, which was managed by the corporation, was operational in 1818⁴³³ and closed in 1854.⁴³⁴ The buildings were demolished in 1855,

⁴²⁵ The house of correction was managed by the county justices for Middlesex: see *House of Commons Committee Appointed to Enquire Into the State of His Majesty's Prison in Clerkenwell*, Journals of the House of Commons (Abbot Collection), Vol. 54, Session 1798-99.

⁴²⁶ Middlesex County Sessions (November 1865) decided to raise £20,000 towards the cost of erecting new buildings at Coldbath Fields, over and above the £65,000 previously authorised: *The Builder*, Vol. 26, 6 June 1868, p. 419.

⁴²⁷ www.ph.ucla.edu/epi/snow/1859map/middlesex_prison_a2.html.

⁴²⁸ www.londonancestor.com, citing S. Leigh *New Picture of London* (publ. 1819).

⁴²⁹ *Written protections in offices of Poultry Compter*, 1724 at www.bopcris.ac.uk/bop1700/ref681.html.

⁴³⁰ www.londonancestor.com citing P. Boyle *Boyle's View of London, and its Environs* (publ. 1799).

⁴³¹ See H.A. Harben *A Dictionary of London* (1918). We are grateful to Howard Doble, senior archivist with the Corporation of London, for this reference. We are advised also that registers of charges, in respect of the Poultry compter and held in the archive, do not survive beyond September 1815.

⁴³² www.victorianlondon.org ('prisons'), citing *Mogg's New Picture of London and Visitor's Guide to its Sights* (publ. 1844). By 1844 the Giltspur Street gaol was used for holding vagrants, night-time drunks and prisoners awaiting trial. The Poultry compter's functions may, in 1815, have transferred alternatively to the London and Middlesex debtors prison.

⁴³³ www.bopcris.ac.uk/bopall/ref2962.html, citing *Reports from the Select Committee on the State of the Prisons within the City of London and Borough of Southwark*, Parliamentary Sessional Papers, 1818, vol.8.

⁴³⁴ It was still in being in 1839 (www.oldtowns.co.uk/Middlesex/london-pt6.htm, citing a report of that year), but appears to have been decommissioned around 1850 (according to www.victorianlondon.org/publications5/prisons-05.htm, citing H. Dixon *London Prisons* (1850), pp. 7-10). Harben (see above) put the closure date at 1854, with demolition the following year. This seems the more likely chronology.

and the site was later occupied by the Viaduct Tavern at the junction of Newgate Street and Giltspur Street.⁴³⁵

51. The sheriffs courts, which had specific jurisdiction relating to debtors who were liable to be committed to the two compters at Poultry and at Giltspur Street, were formally abolished in 1977.⁴³⁶

52. The London and Middlesex debtors prison in Whitecross Street (on the corner of Fore Street) in Cripplegate was built on the site of the former Peacock Brewhouse between 1813 and 1815, so that debtors could be held separately from convicted felons.⁴³⁷ The gaol closed in 1870, and in 1876-77 the Midland Railway Company built a goods terminus on the site (which, in turn, was destroyed by air-raid in the Second World War).⁴³⁸

Extent

53. All seven Acts referred to in this note (running from 1766 to 1815) apply locally only within the City of London, and the London Borough of Islington, in England.

Consultation

54. The Home Office, HM Prison Service, the City of London Corporation and Islington London Borough Council have been consulted about this repeal proposal.

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⁴³⁵ The tavern (opened 1869) was so named because of its proximity to the newly operational Holborn Viaduct. It is said that some cells of the former gaol remain on the site, and were used as cellar accommodation.

⁴³⁶ By the Administration of Justice Act 1977, sch 4.

⁴³⁷ By 1838 this gaol was one of five prisons used exclusively in London for the holding of debtors.

⁴³⁸ www.easterling.btinternet.co.uk/london_sweden/john_easterling-1787_1853_.htm, citing J. Easterling *Families of England*.

COUNTY GAOLS - GREATER LONDON (SOUTH)

<i>Reference</i>	<i>Extent of repeal or revocation</i>
31 Geo.3 c.22 (1791) (Surrey Gaol Act 1791)	The whole Act.

31 Geo.3 c.22 (1791) (Surrey Gaol Act 1791)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout the country) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁴³⁹ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁴⁴⁰ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Surrey, in 1791, the county justices formed the view that the existing common gaol of the county (situated in St. George's parish, Southwark) was "ill adapted for the proper confinement of the many felons and debtors usually lodged therein, and is too small".⁴⁴¹ Moreover, the structure "being an ancient building, is greatly gone to decay, and [was] incapable of being properly repaired and enlarged".⁴⁴²

3. The justices based this view on the findings of the grand jury which had met at the Kingston county assizes in March 1790 and had then presented its findings.

⁴³⁹ 11 Will.3 c.19 (1698) ("An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties") which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth's *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁴⁴⁰ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁴⁴¹ Preamble to 31 Geo.3 c.22 (1791) ("the 1791 Act") being "An Act for building a new Common Gaol and Session House, with Accommodations thereto, for the County of Surrey, and for disposing of the present County Gaol, and the Ground thereto belonging".

⁴⁴² *Ibid.*, preamble.

The justices resolved that a replacement “publick and common gaol” for the county⁴⁴³ should be constructed, together with a new sessions house and “other accommodations to answer the publick purposes of the said county”.⁴⁴⁴ The gaol and sessions house were to be co-located on a freehold site (measuring 3.5 acres) situated near Horsemonger Lane in Newington (within St. Mary’s parish).⁴⁴⁵ The site was seen as “commodiously and conveniently situated for the purpose of erecting such gaol, with proper offices and requisites, and a session house with proper accommodations”.⁴⁴⁶

4. The 1791 Act authorised the Surrey county justices to purchase and develop the site.⁴⁴⁷ To this end the Act spelt out (summarised here in broad terms) the following powers and purposes:⁴⁴⁸

- (a) that the justices be empowered to purchase all legal interests in all “houses, buildings, grounds, and other tenements or hereditaments” (as were necessary for siting the gaol and sessions house) situated on the south side of Horsemonger Lane running from the Turnpike Road (near Stones End); and all the land to the west of the intended gaol, up to and including the Turnpike Road (from Stones End to Newington Turnpike), so that a “proper avenue” could be created from the Turnpike Road to the west flank of the new gaol and sessions house;⁴⁴⁹
- (b) that the justices should first meet (after giving of public notice, and with a quorum of five) to put the Act into effect on 25 May 1791,⁴⁵⁰ and thereafter at regular intervals;⁴⁵¹

⁴⁴³ The 1791 Act, s.7.

⁴⁴⁴ The 1791 Act, preamble. The common gaol for the county was to be used for the “confinement of criminals, debtors, and others”: *ibid.*, s.5.

⁴⁴⁵ Horsemonger Lane, Newington later became Union Road, sited off the Newington Causeway. Union Road no longer exists, but the gaol appears to have been built on land adjoining Bath Terrace and Rockingham Street (in the SE1 postal district). Both these roads still exist.

⁴⁴⁶ The 1791 Act, preamble. The additional facilities were to include “a proper place for the residence of the gaoler”: *ibid.*, s.5.

⁴⁴⁷ *Ibid.*

⁴⁴⁸ The powers in the 1791 Act relating to the building and operation of the new Surrey gaol were expressed to be supplemented by all the powers then existing in national legislation relating to county gaols: the 1791 Act, s.17.

⁴⁴⁹ The 1791 Act, s.2. The land was to be conveyed to 22 named trustees (and their heirs): *ibid.* Power was given to the justices to appoint (in general quarter sessions) replacement trustees when the number of original trustees dropped (by death) to “under the number of six”: *ibid.*, s.6.

⁴⁵⁰ The 1791 Act was also to commence on this date: the 1791 Act, s.3.

⁴⁵¹ The 1791 Act, s.3. Authenticated minutes were to be kept for each meeting held.

- (c) that interest-holders with insufficient legal capacity be authorised to convey their land title to the gaol trustees. In the event of the justices and vendors failing to agree a purchase price, provision be made for determining valuation of the land by a special 12-man jury making recommendation to the justices;⁴⁵²
- (d) that the new “convenient gaol” and sessions house be built (following a justices’ resolution to that effect), the former for the purpose of confinement and “safekeeping” of debtors and criminal offenders. Both of these buildings were then to be “insured, maintained, supported and repaired” in accordance with the national legislative powers available for the maintenance and repair of other gaols in the kingdom;⁴⁵³
- (e) that on completion of the new gaol facility, the sheriff be empowered to transfer all prisoners within the existing gaol to the new one, and that the old gaol (then deemed to be vested in the justices) be demolished;⁴⁵⁴
- (f) that the county justices be required in general quarter sessions to assess the overall cost of land acquisition, demolition and new-build; to compute a rate to be apportioned amongst “every town, parish, hamlet, and place” within the county; and then to levy and collect that rate (in accordance with national legislation relating to county rating⁴⁵⁵);⁴⁵⁶

⁴⁵² The 1791 Act, s.4. The jury was to reach its valuation decision after examining relevant witnesses on oath and, if necessary, conducting a site inspection: *ibid.* In the event that the assessed sum could not be paid direct to the relevant vendor or vendors (because of their absence or refusal to accept), the trustees were empowered to lodge it with the clerk to the peace. Good title would then be deemed vested in the trustees: *ibid.*, s.5.

⁴⁵³ The 1791 Act, s.7. On the demise of the then existing national legislation relating to the maintenance of gaols (extended by the 1791 Act to include the Newington sessions house), the obligation to maintain and repair what, today, is the Inner London Crown Court building passed from the Surrey county justices to - eventually - the Lord Chancellor and Secretary of State for Constitutional Affairs: see Courts Act 2003, s.3 (effective 1 April 2005: S.I. 2005 No. 910) for current provision and maintenance obligation.

⁴⁵⁴ The 1791 Act, s.7. The materials salvaged from the old gaol were to be used for “building or finishing” the new gaol; and the site sold (with the proceeds being put towards the cost of building the new gaol and sessions house): *ibid.*

⁴⁵⁵ 12 Geo.2 c.29 (1738) (County Rates Act 1738) and related Acts.

⁴⁵⁶ The 1791 Act, s.8.

- (g) that the justices be authorised to defray the cost of building the new gaol and sessions house by borrowing (secured by mortgage on the county rates or by sale of annuities)⁴⁵⁷ such sums as appeared necessary, at “legal or lower interest”;⁴⁵⁸
- (h) that a prohibition be placed on increasing from its previous level any land-related tax (including house or window tax) due in respect of the newly acquired site or newly constructed buildings, notwithstanding provisions in any existing Acts of Parliament;⁴⁵⁹
- (i) that a prohibition be placed on the erection of any building, or the piling of any “pole, timber, earth, dung, hay, straw, wood, rubbish, or other thing” over 6 feet high, or the keeping of swine, within 40 feet of the gaol’s outside wall (or the allowing of any tree to grow within the designated zone);⁴⁶⁰
- (j) that the justices be authorised to appoint on salary (and dismiss) a treasurer and a surveyor;⁴⁶¹ and
- (k) that an appeal mechanism be put in place whereby any person “aggrieved by any thing done in pursuance of [the 1791] Act” could seek, on written notice, a determination from quarter sessions.⁴⁶²

⁴⁵⁷ The county rates were to provide up to £2,427 each year for the purpose of servicing the interest payments on the sums borrowed, and the payment of the annuities (as described below): the 1791 Act, s.13.

⁴⁵⁸ The 1791 Act, s.12. The loans by mortgage were to be taken in tranches, each not less than £100 (cf. Gloucester Gaol Act 1785, s.35, where the amount was not *to exceed* £100), or on an annuity basis spread over “any term of years not exceeding twenty-five years” or the purchaser’s lifetime. The form of mortgage was prescribed, and the mortgages and securities could be assigned by their owners to any third party, so long as the assignment was registered: *ibid.*, ss.12, 13 and sch. The annual sum of £2,427 was to be applied in (a) paying the costs of obtaining the 1791 Act, (b) paying interest and annuities, (c) discharging the costs of purchasing the necessary land and erecting and “fitting up” the buildings, and (d) lastly, creating a sinking fund: *ibid.*, s.15. Section 14 laid down the procedure for discharging mortgages or annuities.

⁴⁵⁹ The 1791 Act, s.9.

⁴⁶⁰ The 1791 Act, s.10. The purpose of the restriction was to secure “a free circulation of pure and wholesome air” around the gaol in order to prevent “the gaol fever, and other malignant diseases”. Discontinuance or removal could be effected by the justices by service of an enforcement notice and payment of a penalty for non-compliance: *ibid.* Any interference with the gaol building or the sessions house was made a punishable felony: *ibid.*, s.11.

⁴⁶¹ The 1791 Act, s.16. The treasurer was to be required to provide security for good performance in his office. The clerk of the peace (or his deputy) were to be required to take the minutes of all meetings held in the furtherance of the 1791 Act: *ibid.*

⁴⁶² The 1791 Act, s.19. This appeal route lay where “no particular method of relief hath been already appointed”: *ibid.* The 1791 Act applied a six month limitation period to the commencement of all legal proceedings under the Act: *ibid.*, s.21.

Status of the 1791 Act

5. The 1791 Act had two main purposes: to build and operate a new county gaol in Newington (then in the county of Surrey and now in the London Borough of Southwark); and to build a new sessions house.
6. Although the 1791 Act incorporated other existing national legislation into its provisions⁴⁶³, in terms of local powers it appears to have stood alone.
7. The provisions relating to the county sessions house were much narrower than those applying to the gaol. In essence they extended only to purchasing the relevant portion of land; building the sessions house; repairing and maintaining it; and raising the necessary capital and revenue moneys.⁴⁶⁴ Apart from the on-going commitment of repair and maintenance, the other obligations expired fairly shortly after completion of the building and fitting-out processes. The sessions house still operates today as the Inner London Crown Court. The obligation to repair and maintain the courthouse building passed in time to HM Courts Service (within the aegis of the Department for Constitutional Affairs).
8. The county gaol was built between 1791 and 1799, opening in the latter year. It closed in 1878 and the building ceased to exist when demolished in 1880.
9. The whole of the 1791 Act has become spent, and may now be repealed.

Archive-based history

10. The Surrey county gaol (known originally, until around 1859, as the Horsemonger Lane gaol)⁴⁶⁵ was opened in Newington in 1799. Prisoners were transferred to it from the first Marshalsea gaol⁴⁶⁶ and from the Surrey bridewell (house of correction).⁴⁶⁷ It functioned as a gaol for criminals and for debtors.⁴⁶⁸

⁴⁶³ The 1791 Act, ss.8 (as to rating powers), 17 (as to county gaol powers).

⁴⁶⁴ See para 4 above.

⁴⁶⁵ Horsemonger Lane became Union Road by 1859, and today is Harper Road, SE1.

⁴⁶⁶ See *Crime and Punishment* at <http://www.london-footprints.co.uk/wkcrimesadd.htm>

⁴⁶⁷ *Ibid.*

⁴⁶⁸ The previous county gaol (known as the White Lion gaol) was located next to St. George's churchyard in Southwark. This gaol site, in due course, was sold (in 1799) and then used as the new Marshalsea prison (from 1811). The borough library today stands on the site. [Information courtesy of Stephen Humphrey, the Local History Library Archivist for Southwark Council]

11. The new county gaol was located off Newington Causeway, adjoining Bath Terrace and Rockingham Street, and was sited to the south-east of the new sessions house.⁴⁶⁹

12. The gaol closed in 1878 and was demolished in 1880. Four years later, part of the site was laid out as a children's playground.⁴⁷⁰

13. No prisons operating under the auspices of HM Prison Service today are located in the London Borough of Southwark.

14. The sessions house was completed and became operational by 1794. It was later rebuilt and enlarged on the same site on several occasions to provide additional court accommodation: in 1875, between 1913 and 1917, in 1958 and finally in 1974. The court house (approached via the original gateway fronting on to Newington Causeway) became the Inner London Sessions in 1964 and the Inner London Crown Court in 1971. The present complex, housing ten courts, is protected for planning purposes as a listed building.

Extent

15. The 1791 Act applies locally only within the London Borough of Southwark in England.

Consultation

16. The Home Office, HM Prison Service, the Department for Constitutional Affairs, HM Courts Service and Southwark London Borough Council have been consulted about this repeal proposal.

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⁴⁶⁹ See *Guardian Unlimited: Forgotten Tribe* at <http://books.guardian.co.uk/extracts/story/0,6761,1252913,00.html>. For a description of the prison regime at Newington see *Old Towns: London in 1839* at <http://www.oldtowns.co.uk/Middlesex/london-pt6.htm>

⁴⁷⁰ See *Crime and Punishment* (cited above at note 466). The park is called Newington Gardens, although it is still known locally as Jail Park.

COUNTY GAOLS - HAMPSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
41 Geo.3 c.cxxxii (1801) (Winchester Gaol Act 1801)	The whole Act.
45 Geo.3 c.xliv (1805) (Portsmouth Gaol Act 1805)	The whole Act.

41 Geo.3 c.cxxxii (1801) (Winchester Gaol Act 1801)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁴⁷¹ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁴⁷² Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In the city of Winchester (in Hampshire), by 1801, the common gaol (“or bridewell”) for the city had “lately been taken down” because it had “become very ruinous from length of time and inadequate to the purposes for which it was intended”.⁴⁷³ In its stead “a new and more commodious [facility had been] in part erected”.⁴⁷⁴ However, two practical difficulties had intervened.

⁴⁷¹ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁴⁷² For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁴⁷³ Preamble to 41 Geo.3 c.cxxxii (1801) (“the 1801 Act”), being “An Act for completing the Common Gaol now building in and for the City of Winchester, and for purchasing certain Buildings within the said City for widening the Avenues thereto”.

⁴⁷⁴ The 1801 Act, preamble.

3. First, several houses and buildings stood close to the new gaol premises. If they remained *in situ* their existence would “be a great publick inconvenience”, both to the operation of the gaol and to the use of “the common street or way on which they bound”.⁴⁷⁵

4. Secondly, the city corporation had inadequate funds to complete the building of the gaol, and insufficient money or powers to purchase the buildings (and appurtenant land) for the purpose of demolition and clearance.

5. To rectify these difficulties, the city corporation promoted the Winchester Gaol Act of 1801.⁴⁷⁶ The broad purposes of the 1801 Act were as follows:

- (a) to provide for the appointment of the mayor, aldermen and bailiffs of the city as commissioners to carry the 1801 Act into effect;⁴⁷⁷
- (b) to authorise the appointment (and, if necessary, dismissal) by the commissioners of a “clerk, treasurer, collector, and other officer, or person” as the commissioners deemed appropriate;⁴⁷⁸
- (c) to authorise the commissioners to purchase various houses or buildings specified in the Act for the purpose of clearance and creation of open ground (which clearance they were to effect “within the space of twelve calendar months from the passing of this Act [*i.e.* by 1 July 1802], or as soon afterwards as conveniently may be”);⁴⁷⁹

⁴⁷⁵ *Ibid.*

⁴⁷⁶ The 1801 Act, preamble and s.1.

⁴⁷⁷ The 1801 Act, s.1. The commissioners (with a quorum of three) were obliged to transact their business through regular meetings held within the city limits. Meeting dates were to be publicised; the chairman was to have a casting vote; revocation of previous resolutions was to be subject to a special procedure; and minute books were to be maintained and made available for limited public inspection (with minutes signed by commissioners present): *ibid.*, ss.1-4.

⁴⁷⁸ The 1801 Act, s.5. All the appointed officers were obliged “from time to time”, and as often as specifically required, to account in writing for moneys received on the commissioners’ behalf and, in default, to answer before a justice (who was empowered, where there was a financial shortfall, to order distraint or imprisonment for up to 6 months, the latter “without bail or mainprize”, until the default was made good or a composition was reached with the commissioners): *ibid.*, s.6.

⁴⁷⁹ The 1801 Act, s.7. The section set out by name the interests to be acquired, and indicated that “all which houses or tenements are situate at the lower end of the High Street, within the said City, and on the south side thereof”: *ibid.* The materials salvaged from the demolition were to be sold on “for the best price that can reasonably be gotten for the same”: *ibid.* The Act also provided that those owners with legal incapacity were entitled to sell, and to convey good title, to the commissioners. The purchase moneys were to be paid into the Bank of England (to earn interest), under the control of the Court of Chancery, and then (when they exceeded a specified limit) to be used to acquire replacement lands to be held on similar trust for the person or persons with incapacity: *ibid.*, ss.7-9, and ss.26-28.

- (d) to vest in the commissioners ownership of “the ground or soil on which the said common gaol or bridewell is now erecting”;⁴⁸⁰
- (e) to authorise the commissioners to raise up to £3,000, for the purposes of defraying the costs of obtaining the 1801 Act, completing the “new gaol or bridewell”, and purchasing the “said several houses and other buildings”, by levying an annual rate (not to exceed £210 p.a.) on “the several occupiers of dwelling houses, and other premises within the said city, who are rateable” under an Act of 11 Geo.3 c. 9 (1771).⁴⁸¹ When the necessary moneys had been raised, the powers to levy and collect would “absolutely and utterly cease to all intents and purposes whatsoever, saving only as to what shall then be actually due and in arrear”;⁴⁸²
- (f) to authorise the borrowing by the commissioners of up to £3,000 (in £50 units), mortgaged for security against the local rates, and repayable with interest (so long as public notice of the intention to resolve to borrow had first been given);⁴⁸³ and
- (g) to provide an appeal mechanism for persons believing themselves “aggrieved by any rate or assessment” or “by any other matter or thing to be done” under the 1801 Act.⁴⁸⁴

⁴⁸⁰ The 1801 Act, s.20. The declaration of the land being “absolutely vested” was expressed to be “for the purposes of this Act for ever”: *ibid.*

⁴⁸¹ The 1801 Act, s.10. The Winchester Improvement Act 1771 (11 Geo.3 c. 9) was later repealed and replaced by the Winchester Improvement Act 1808. The 1771 Act dealt principally with paving, widening, lighting and policing the streets and passages in the city and its suburbs (and the raising of moneys for the purpose). Under the 1801 Act the commissioners were empowered to appoint remunerated collectors who would be accountable for the moneys brought in: *ibid.*, s.11. None of the moneys so collected were to be paid to the city of Winchester corporation by way of compensation for houses or buildings owned by it and acquired by the commissioners: *ibid.*, s.12.

⁴⁸² The 1801 Act, s.13.

⁴⁸³ The 1801 Act, ss.14, 15. Lenders were able to assign their interests, so long as the assignments were registered with the commissioners’ clerk or the treasurer. The forms of mortgage and of assignment were prescribed in the Act, so as to make them “good, valid, and effectual”: *ibid.*, ss.14, 16. All mortgagees were to be treated as creditors with equal status, and mortgages would be redeemed (in an order selected by ballot) as soon as the amount borrowed exceeded the amount required for the project (the “overplus”): *ibid.*, ss.17, 18. Interest would cease running if the principal had not been claimed by the mortgagee within 3 months of the date fixed for redemption: *ibid.*, s.19.

⁴⁸⁴ The 1801 Act, s.21. Appeal against a rate lay first to a meeting of the commissioners for “determination”, and then to the justices sitting in general or quarter sessions for the city. Appeal in respect of other matters lay direct to the justices: *ibid.* Time limits (3 months) were prescribed both for appeals and for legal proceedings under the Act generally: *ibid.*, ss.21, 29. Sections 22-25 and 30 contained ancillary mechanical provisions relating to legal actions.

Status of the 1801 Act

6. The 1801 Act was designed to provide supplementary powers to the city corporation. The preamble to the Act made clear on its face that building of a replacement gaol had already commenced. The problem in 1801 was that the corporation had inadequate powers to raise further moneys or to acquire the additional land it needed.

7. It is clear from the scheme of the 1801 Act that the corporation believed it had sufficient power to commence the replacement gaol project. The 1801 Act does not authorise retrospectively works undertaken (although it did remove all doubt about ownership of the gaol site by vesting it in the commissioners “for ever”).⁴⁸⁵ On the other hand, the 1801 Act neither recites the source of that power, nor seeks to amend previous enabling legislation. The Act appears to stand alone.

8. As shown below, construction of the new city gaol was complete by the end of 1801, although the accounts do not appear to have been closed for another 34 years. The gaol building was demolished by 1876. The existing Winchester Prison (built in 1849, and now within the control of HM Prison Service) is sited elsewhere in the city.

9. The powers contained in the 1801 Act have become spent, and the Act may now be repealed.

45 Geo.3 c.xliv (1805) (Portsmouth Gaol Act 1805)

Background and purpose

10. In Portsmouth (then a borough located within the county of Southampton), by 1805, the municipal corporation had formed the view that the existing borough gaol (which it owned) was “neither sufficiently large and spacious, [n]or in other respects well adapted for the reception, confinement, and separation of the felons and other persons confined therein”, and that a new gaol should be built “in a more commodious situation”.⁴⁸⁶

11. The corporation decided that the existing gaol should be sold, and the sale proceeds applied “towards the purchasing of land and the expense of building such

⁴⁸⁵ The 1801 Act, s.20 (see above).

⁴⁸⁶ Preamble to 45 Geo.3 c.xliv (1805) (“the 1805 Act”), being “An Act for building a new Gaol in the Borough of Portsmouth, in the County of Southampton.” This Act has been assigned the short title of Portsmouth Gaol Act 1805 in the *Chronological Table of Local Legislation*.

new gaol”.⁴⁸⁷ It was anticipated, however, that a financial shortfall (both for the building project and for its future maintenance) would arise, and that specific statutory authority would be required to enable the gap to be bridged. To this end the corporation promoted what was to become the 1805 Act.

12. The purpose of the 1805 Act was to provide for, or authorise, the following actions (in broad terms):

- (a) that the mayor and the borough justices (acting by a majority) purchase land or lands which they deem “proper and convenient for the building of such new gaol”,⁴⁸⁸
- (b) that the borough justices (acting in general or quarter sessions) should appoint a treasurer, a surveyor or surveyors, collectors of rates and “such other officer or officers as they shall judge necessary and proper for the purposes of this Act”, which appointees were to hold their posts for as long as the justices thought appropriate, and were to provide security “for the faithful discharge of their respective offices”,⁴⁸⁹
- (c) that the justices raise the necessary moneys for the project by assessing, levying and collecting a rate on the occupiers of various hereditaments within the borough (not exceeding 1 shilling in the £), which would be applied “towards the erecting and building of the said intended new gaol, and rendering the same fit for the reception, confinement, and separation of prisoners and for repairing, supporting, and maintaining the same, when so erected and built”,⁴⁹⁰ and by borrowing moneys (and paying interest) secured on the special rate fund;⁴⁹¹

⁴⁸⁷ The 1805 Act, preamble.

⁴⁸⁸ The 1805 Act, s.1. The land or lands to be acquired were not to exceed 3 acres in whole; were to cost no more than £1,800 (including associated expenses); and were “to be conveyed unto and to the use of the said mayor, aldermen, and burgesses, and their successors” (that is to say, to the borough corporation for the Act’s purposes): *ibid.*

⁴⁸⁹ The 1805 Act, s.2.

⁴⁹⁰ The 1805 Act, s.3. Sections 4 to 8 set out the rubric for publication (in the parish churches for Portsmouth and Portsea), recording and (where payment in default) recovery of rates, and for the accounting for moneys collected. Rateable occupiers believing themselves “aggrieved or overrated” under the Act were given a right of appeal to the borough general quarter sessions: *ibid.*, s.7 (which incorporated the provisions of 41 Geo.3 c. 23 (1801) [now repealed] relating to the collection of poor rates).

⁴⁹¹ The 1805 Act, s.12. The total to be borrowed was not to exceed £10,000.

- (d) that the proceeds from the sale by the corporation of the old gaol be applied towards supplementing the special rate fund, and the fund be used for defraying the cost of obtaining the 1805 Act;⁴⁹²
- (e) that the borough justices be required (within 6 months of the Act being passed) to meet in general or quarter sessions to determine a plan for the new gaol, and then to award the building contract, the gaol to “comprise proper apartments for the imprisonment of debtors under process of the court of record of the said borough, and for the purposes of a house of correction” together with “proper and convenient courts, yards, outlets, and avenues thereto”;⁴⁹³
- (f) that, once complete, the continuing expense of furnishing, repairing, maintaining and insuring the new gaol should fall on the borough’s special rate fund “for ever thereafter”;⁴⁹⁴
- (g) that the justices be empowered to purchase “such utensils, chattels, and materials whatsoever, as shall be thought proper and necessary for effectually employing and setting to work all or any of the prisoners”;⁴⁹⁵ and
- (h) that provision be made for the conduct of legal proceedings under the Act (and for a limitation period).⁴⁹⁶

Status of the 1805 Act

13. The 1805 Act relating to Portsmouth stood alone. It was designed simply to facilitate the building of a new gaol (with debtors’ prison and house of correction) on a new site - by raising moneys, by acquiring land and by construction and fitting-out.

⁴⁹² The 1805 Act, ss.9, 10.

⁴⁹³ The 1805 Act, s.13. Once the new gaol, debtors’ prison and house of correction were complete, they were to be designated institutions for the use of “the said borough and the liberties thereof” and were to be within the supervision of the mayor and borough justices under the same authority as they had “over the present gaol by any law now in force”: *ibid.*, s.14.

⁴⁹⁴ The 1805 Act, s.16. On completion of the gaol, the justices were to require the keeper of the old gaol “with all convenient speed” to transfer all prisoners in his custody to the gaol, debtors’ prison and house of correction as appropriate: *ibid.*, s.15.

⁴⁹⁵ The 1805 Act, s.17. The materials so purchased were to be paid for from the special rate fund and, together with furniture and clothing, were to vest in the clerk of the peace for the borough: *ibid.*, ss.17, 18.

⁴⁹⁶ The 1805 Act, ss.11, 19 and 20. The limitation period for proceedings (to be issued only in the county of Southampton) was 3 months: *ibid.*, s.20.

Apart from brief reference to existing rating powers, the Act did not refer to any previous legislation.

14. As indicated below, the borough gaol was decommissioned and demolished by 1893. Today, the only prison existing in Portsmouth is HM Prison Kingston, located on Milton Road in the city.

15. The powers contained in the 1805 Act have become spent, and the Act may now be repealed.

Archive-based history

16. At various times the city of Winchester housed several different gaols and bridewells: at Westgate, at Hyde Abbey, at Jewry Street and at Romsey Road (the last-mentioned being the site of the present HM Prison Winchester, constructed in 1849).

17. The gaol, which was the subject of the 1801 Act, was built on unoccupied land adjoining the High Street on what, today, is the site of the Guildhall Tavern (located on the west side of the present guildhall). The old city bridewell had been sited on the southern side of the High Street, towards the eastern end, in a building anciently known as the Sisterne House. The bridewell had operated as such (and as a house of correction) since the late 17th century. It was set in a row of buildings, all of which were demolished under the terms of the 1801 Act so that part of the High Street could be widened to form The Broadway.

18. Demolition of the old gaol had commenced by October 1799.⁴⁹⁷ The demolition and rebuilding works appear to have halted temporarily in July 1801, but resumed by November of that year.⁴⁹⁸ The gaol accounts were not “finally settled” until 1835.⁴⁹⁹

19. The new gaol appears to have closed by 1836, when the borough magistrates decided to contract with the county justices for the provision of custody services at

⁴⁹⁷ Hampshire Record Office (HRO) ref. W/J4/10, being the bill incurred by the city for work done by Henry Lucas in pulling down the old bridewell and building a new one.

⁴⁹⁸ HRO refs.W/J4/10 (*ibid.*), 125M88W/1.

⁴⁹⁹ See Winchester Gaol Commissioners minute book 1812-35, final meeting December 1835 (HRO ref. W/J4/6).

the county gaol situated in Jewry Street.⁵⁰⁰ The city gaol building was converted into the police station for the newly-formed Winchester city police (and used for that purpose until 1873). Finally, the building was demolished in or around 1876 to make way for a new school of art and public reading room (now occupied by the Guildhall Tavern).⁵⁰¹

20. In Portsmouth there appear to have been four gaols at various times. Two (one at Milton Road [now HM Prison Kingston] and one at St. Mary's Road) were opened in 1877 and 1878 respectively. A third, built to house convicts on-shore (as an alternative to using hulks afloat), was resolved upon in 1850, and was constructed in the north-eastern portion of the dockyard (Portsea).⁵⁰²

21. The fourth - and earliest - gaol, located between Penny Street and St. Nicholas Street (which site is relatively close to the High Street and the dockside), appears to be the gaol mentioned in the 1805 Act. Suitable land (partly developed) had been purchased on behalf of the borough justices under the terms of the Act by July 1805, and the new gaol was complete and operational by 1808.⁵⁰³

22. This gaol, sited close to one of the (then borough) police stations, was later decommissioned and the building used to house some of the city's archives.⁵⁰⁴ It was operational in 1850⁵⁰⁵, and as late as 1877 (when the Kingston gaol was opened)⁵⁰⁶, but was decommissioned by 1881. The building was demolished between 1891 and 1893 when the site was redeveloped for an extension to the Clarence Barracks.⁵⁰⁷

⁵⁰⁰ HRO ref. W/B5/30/1, Police and Watch Committee minutes (Winchester Borough Council) 1835-57.

⁵⁰¹ HRO ref. W/B3/1 for minute of School of Art Committee recommending rebuilding (October 1875).

We are most grateful to Stuart Bridges, archivist in the Hampshire Record Office, for providing the historic data shown above relating to the Winchester city bridewell and its demise.

⁵⁰² The Portsea prison closed in 1896 and was demolished by 1900: see W.G. Gates *The History of Portsmouth* (1900), p. 552.

⁵⁰³ Portsmouth City Records Service, document S12: Minutes of the Mayor and Justices relating to the building of a New Gaol, 1805-19 (minute for 20 July 1805). The justices agreed the purchase price of £1,500 plus legal costs (seemingly within budget). See also P. Thompson, *Portsmouth Borough Gaol in the 18th Century* (Portsmouth Paper No.33).

⁵⁰⁴ See *Local History: Guide to Sources at Portsmouth Records Office and Portsmouth Central Library* at www.portsmouthrecordsoffice.co.uk/local_history_guide.doc

⁵⁰⁵ See Lt.Col. Jebb's *Report on the discipline and management of the convict prisons, 1850* (HMSO, 1851) at

www.bopcris.ac.uk/cgi-bin/displayrec.pl?searchtext=portsmouth&record=/bopall/.

The 12th *Report of Inspectors of Prisons – Southern & Western District* (1847/48) refers to Portsmouth Borough Gaol and House of Correction: see

www.institutions.org.uk/prisons/England/HAM/portsmouth_gaol.htm

⁵⁰⁶ The borough gaol is listed in, for example, the Calendars of Quarter Sessions of the Borough of Portsmouth from January 1871 until, and including, January 1878: Portsmouth City records ref. S7/4.

⁵⁰⁷ The gaol does not feature in the 1881 census returns for Penny Street. The historic data above has kindly been provided by the Portsmouth City Museum and Records Service.

Extent

23. The 1801 Act (relating to Winchester) applies locally only within the county of Hampshire in England.

24. The 1805 Act (relating to Portsmouth) applies locally only within the county of Hampshire in England.

Consultation

25. The Home Office, HM Prison Service, Hampshire County Council, Portsmouth City Council and Winchester City Council have been consulted about this repeal proposal.

(32-195-452)
LAW/005/002/06
25 April 2006

COUNTY GAOLS - HERTFORDSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
12&13 Will.3 c.21 (1700) (Removal of Hertford Gaol Act 1700)	The whole Act.
15 Geo.3 c.25 (1775) (Hertford Gaol Act 1775)	The whole Act.

12&13 Will.3 c.21 (1700) (Removal of Hertford Gaol Act 1700)

Background and purpose

1. Until the very end of the 17th century, and into the early 18th, the power to build and manage county gaols was vested in the local sheriffs. It was only in 1698 that the local justices started to secure limited control of the county gaols⁵⁰⁸, a control which extended to building new facilities and repairing existing stock, but which fell short of the power to manage gaols and their inmates.

2. Many gaols at this time had fallen into disrepair and their condition produced a significant health hazard.

3. In Hertfordshire, the local justices sought, and in 1700 obtained, a private and personal Act⁵⁰⁹ which was designed to supplement the public general Act powers contained in the 1698 Act. The then Hertford gaol was sited “in the middle of a street inclosed by adjacent houses which hinder the prisoners from having the benefit of the aire in their confinement”.⁵¹⁰ The justices intended to purchase an alternative site elsewhere in the town for the purpose of erecting a new gaol.

4. The 1700 Act referred specifically to the powers contained in the 1698 Act, which had enabled justices to build and repair gaols, but which omitted to provide

⁵⁰⁸ 11 Will.3 c.19 (1698) (“An Act to enable the Justices of the Peace to build and repair Gaols in their respective Counties”) (“the 1698 Act”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784). Rebuilding of gaols was also provided for in the 1784 Act.

⁵⁰⁹ 12&13 Will.3 c.21 (1700) being an Act relating to “the gaol or prison for the county of Hertford situate in the town of Hertford” which was “not only much out of repair but very incommodious and inconvenient” so that it needed to be removed “to some more convenient place in the said town of Hertford” (“the 1700 Act”). The Parliamentary Records Office version of the 1700 Act seems to carry neither a long nor a short title.

⁵¹⁰ The 1700 Act, preamble (first part).

power “for the raising money for that purpose”.⁵¹¹ The 1700 Act specifically granted to the county justices for Hertford[shire] the ability, sitting in general quarter sessions, to “raise and levy” by rate sufficient sums of money “that shall by them [be] adjudged necessary” to purchase “a convenient place or a piece of ground” for rebuilding of the gaol.⁵¹² The 1700 Act specifically limited the justices to raising moneys in accordance with “the directions of the said recited Act” of 1698.⁵¹³

5. Unlike later local Acts which were promoted for the purpose of rebuilding gaols in other counties, the 1700 Act was silent as to details relating to, for instance, the amount of moneys to be raised or the location of the new site or the mechanics of effecting land purchase.

Status of the 1700 Act

6. The 1700 Act made patent that, although it applied only to the county of Hertford, it was designed to supplement the powers contained in the 1698 Act (which had general effect).⁵¹⁴

7. The whole of the 1700 Act may now be repealed on the basis that its purpose (as illustrated by the historical note at paragraphs 13 to 16 below) was overtaken by events, and the Act has become spent.

15 Geo.3 c.25 (1775) (Hertford Gaol Act 1775)

Background and purpose

8. In 1775 a further Act was sought and obtained by the county justices in order to tackle the (seemingly continuing) problem of the common gaol for the county of Hertford[shire] which had now become even more unhealthy and fever-ridden. This gaol was described as being “situate near the middle of the Town of Hertford, and so closely encompassed by buildings that it is impossible to accommodate the unhappy persons confined therein with a sufficient supply of fresh air”.⁵¹⁵ Its location meant that the “gaol distemper”, which brought a “malignant fever” to the inmates, would on occasion spread beyond the gaol’s confines and infect the townspeople.⁵¹⁶

⁵¹¹ The 1700 Act, preamble (second part).

⁵¹² The 1700 Act, s.1. This Act does not have section numbers or side headings and, apart from its preamble, contains what appears to be only a single section.

⁵¹³ The 1700 Act, s.1.

⁵¹⁴ The 1700 Act, preamble (second part).

⁵¹⁵ Preamble to 15 Geo.3 c.25 (1775) (“The 1775 Act”).

⁵¹⁶ The 1775 Act, preamble.

9. The 1775 Act⁵¹⁷, which was designed to facilitate the demolition of the existing gaol and to erect a replacement in “a more airy situation”, acknowledged that the county justices had inadequate power, without a new Act, to take steps to purchase the necessary lands “within or near to the said Town of Hertford” and then to undertake the building programme.⁵¹⁸

10. In order to fulfil its purpose, the 1775 Act authorised (in broad terms) the following steps:

- (a) to negotiate with the owners⁵¹⁹ of “any houses, buildings, lands, tenements or hereditaments” which properties the county justices felt should be acquired for the Act’s purposes⁵²⁰ and, on payment of the contracted or tendered purchase price (as authorised by the justices sitting in general or quarter sessions), to vest the properties in themselves;⁵²¹
- (b) to enable persons or bodies with legal incapacity to sell and convey land and buildings;⁵²²
- (c) to enter into contracts for such houses or buildings as may be necessary to be demolished, the reusable materials to be sold, and the proceeds put towards the cost of rebuilding;⁵²³
- (d) to “cause to be built and finished” a “convenient gaol, for the confinement of criminals, debtors and others”, together with a gaoler’s house and other requisite buildings (re-using, where appropriate,

⁵¹⁷ “An Act for taking down the Common Gaol of the County of Hertford, and for building a New Gaol in a more commodious Situation”.

⁵¹⁸ The 1775 Act, preamble and s.1. (The sections in the Act are not numbered but, for ease of reference, we have adopted a numbering arrangement based on the sequence of section side headings).

⁵¹⁹ This included persons having an interest in the relevant property.

⁵²⁰ The 1775 Act, s.1. Unlike local legislation in this period for some other counties, the 1775 Act did not purport directly to place an upper ceiling on the amount of moneys to be spent on land acquisition and building.

⁵²¹ The 1775 Act, s.4.

⁵²² The 1775 Act, s.2.

⁵²³ The 1775 Act, s.5. Material from the old gaol would also be sold (where not re-used) and the proceeds re-invested in the new building: *ibid.*, s.9.

materials from the old gaol which would be dismantled and demolished);⁵²⁴

- (e) to raise the necessary moneys (within the space of four years from the passing of the Act) by levying a rate based on the annual value of lands, tithes, tenements and the like situate within the “parishes and places” in the county;⁵²⁵
- (f) to provide a mechanism for the collection of moneys by the churchwardens and overseers of the poor in each “parish and place” in the county, and the transmission of those moneys to the high constables for each hundred or division in the county within a set time;⁵²⁶
- (g) to provide for the handling of any surplus moneys raised (and not used for the statutory purpose) by payment into the “County Stock” for appropriate use, and for the making out of annual accounts;⁵²⁷ and
- (h) to provide for a right of appeal by persons “aggrieved” (through assessment or overcharge) to the county justices sitting at quarter sessions for such order as “shall seem meet” to the justices, and for a time limit on any legal proceedings under the Act.⁵²⁸

⁵²⁴ The 1775 Act, ss.6, 9. The new gaol was to be designated “a publick and common gaol for the said County” which would be “maintained, supported and repaired” in the same manner as applied to other gaols in the kingdom: *ibid.*, s.6. Responsibility for keeping prisoners in the gaol would be vested in the sheriff of the county: *ibid.*, s.7.

⁵²⁵ The 1775 Act, s.10. All hereditaments would be affected but for those specifically excepted in the Act. The rate was to be capped at 8d. in the £ overall, and 3d. in any one year: *ibid.*, s.10. The persons or bodies excepted (either in whole or in part) included the Liberty of St. Alban (without an ‘s’), the Earl of Salisbury’s hundred court (for the hundred of Cashio or the Liberty of St. Albans), hereditaments within the Borough of St. Alban, and any “parson, vicar or curate” in respect of his house or lands he held by virtue of his office: *ibid.*, ss.11-14, 21, 22.

⁵²⁶ The 1775 Act, ss.15-20.

⁵²⁷ The 1775 Act, ss.24-26.

⁵²⁸ The 1775 Act, ss.28, 29.

Status of the 1775 Act

11. The 1775 Act made clear (in its preamble) that “the aid of an Act of Parliament” was necessary to fulfil the justices’ objectives, but it was silent as to the existence of previous legislation (except that relating to the assessment, collection and levying of county rates).⁵²⁹ In the previous year Parliament had passed legislation of national application which was designed to address the growing problem of “gaol distemper”. It required local justices, amongst other things, to ensure that cells were kept clean and were provided with a supply of fresh air.⁵³⁰ It was probably this legislation which prompted the Hertfordshire justices more urgently to undertake a rebuilding programme.

12. For the reasons explained below, in paragraphs 13 to 16, because the Hertford gaol was built on acquired land and later decommissioned, the whole of the 1775 Act became spent and may now be repealed.

Archive-based history

13. A gaol was built in Hertford at Fore Street in 1702, presumably pursuant to the powers in the 1700 Act. As the years went by the gaol suffered operational problems: it was in constant need of repair and became insecure. In the early 1770s the responsible authorities decided that a new gaol should be erected to replace the Fore Street building.

14. Having obtained the 1775 Act powers, the local justices selected a site off the Ware Road for rebuilding (having identified and appraised several possible locations in the town). The Ware Road land was purchased for £500 and the building and construction work cost £6,000. This gaol remained operational until closure in 1878 (or thereabouts), at which point the then inmates were transferred to facilities at St. Albans.⁵³¹

15. A county gaol at Hertford is recorded as existing in 1837⁵³², and separate county quarter sessions records exist for both the gaol and the house of correction

⁵²⁹ The 1775 Act, s.16 (citing an Act passed in 1738 (12 Geo.2 c.29)).

⁵³⁰ 14 Geo.3 c.59 (1774) being “An Act for preserving the Health of Prisoners in Gaol, and preventing the Gaol Distemper”.

⁵³¹ We are indebted to the Senior Archivist at Hertfordshire County Council for this information. Some of the details are drawn from S.Walker *Crime in Hertfordshire: Law and Disorder*, pp. 78-9, and supporting evidence is to be found in, for example, the County Gaol Papers 1b - Leases and agreements relating to County Gaol and the House of Correction at Hertford (land and buildings), 1592-1844.

⁵³² *Second Report of the Inspectors appointed under the provisions of the [1835] Act 5&6 Will.4 c.38, To visit the Different Prisons of Great Britain (1837)*, pp. 358-373 (Hertford County Gaol).

from 1758 (showing various estimates, accounts and orders, and matters relating to prisoners and to staff).⁵³³

16. Today there is no prison in Hertford. The only prison operating (under the auspices of HM Prison Service) in Hertfordshire is located at Hemel Hempstead.⁵³⁴

Extent

17. The 1700 and 1775 Acts apply locally only within the county of Hertfordshire, in England.

Consultation

18. The Home Office, HM Prison Service and Hertfordshire County Council have been consulted about this repeal proposal.

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⁵³³ Reference to a gaol (beset with “gaol distemper”) at Hertford in 1748-9 also appears in William Ellis’ *The Country Housewife’s Family Companion* (publ. 1750).

⁵³⁴ HMP The Mount (opened in 1987 as a young offenders institution).

COUNTY GAOLS - NORFOLK

<i>Reference</i>	<i>Extent of repeal or revocation</i>
3 Geo.4 c.iv (1822) Norfolk County Gaol Act 1822	The whole Act.

3 Geo.4 c.iv (1822) (Norfolk County Gaol Act 1822)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁵³⁵ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁵³⁶ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Norwich (Norfolk) in 1820, the grand jury had made a “presentment” to the county assizes as to the condition of the county gaol then sited within Norwich castle. The report indicated that the gaol was “too small and insufficient in point of size for the accommodation of the prisoners confined therein, so as to render it impossible to comply with the directions of the several Acts of Parliament for the proper separation of the prisoners confined therein”.⁵³⁷

3. Prior to 1820, in the late 1780s, two Acts - having national application - had been passed by Parliament to encourage and facilitate the rebuilding of county gaols and houses of correction by county justices. Each of those Acts required the justices

⁵³⁵ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁵³⁶ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁵³⁷ Preamble to 3 Geo.4 c.iv (1822) (“the 1822 Act”), being “An Act to enable His Majesty’s Justices of the Peace, acting for the County of Norfolk, to build an additional Gaol, House of Correction, and Shire House for the said County, and for other Purposes relating thereto”.

to design the institutions so that prisoners could be held in “separate and distinct places of confinement”, segregating prisoners by gender as well as by status, *ie.* convicted felons separated from those on remand pending trial, those held for misdemeanours, and those held as debtors.⁵³⁸

4. The Norfolk justices promoted what was to become the Act of 1822, designed to facilitate delivery of the gaol-rebuilding project and to authorise provision of a new shire house with court accommodation (for the assize and quarter sessions hearings) and county records office.⁵³⁹ The 1822 Act had the following purposes (set out here in broad terms):

- (a) to authorise the county justices, or their appointed surveyor, (using contractors as necessary) “to lay out, design, make, build, and erect on the said Castle Hill, an additional gaol and house of correction” for the county’s use, together with the necessary accommodation for the keeper or gaoler, and for offices, and “water courses, and other conveniences for the same”; to extend or alter the existing gaol located “within the walls of the ancient castle of Norwich”; and to design and construct on Castle Hill, or in the surrounding Castle Ditch or garden, a new shire house to accommodate “proper and convenient courts of justice”, jury and witness rooms, and offices to preserve “the public records of the county”;⁵⁴⁰

⁵³⁸ The two Acts were 22 Geo.3 c.64 (1782) which dealt with houses of correction (section 1, which required the provision of “separate apartments” for prisoners convicted of felony and those convicted of theft or larceny, and for women prisoners) and 24 Geo.3 Sess.2 c.54 (1784) which dealt with gaols (quotation above taken from section 4).

⁵³⁹ The 1822 Act, preamble. The Act recited the justices’ belief that additional Parliamentary authority was required because “some of the objects herein-before mentioned cannot be obtained under the provisions of” the then existing legislation including, specifically, the Act of 24 Geo.3 Sess.2 c.54 (1784) (see above). Notwithstanding that concern, however, the 1822 Act, s.2 provided that both the new gaol and the extended gaol in Norwich should, so far as practicable, be “in conformity with the directions contained in the said [1784] Act”.

⁵⁴⁰ The 1822 Act, s.1. The justices were also authorised to determine the nature of the building materials for the construction, and the manner of water supply. They were given power generally, in connection with delivery of the project, to take any step which they “may think requisite or expedient for effectuating the purposes of this Act”: *ibid.* Once the additional gaol and the house of correction had been completed they were to be designated, respectively, the “common county gaol” (operating in conjunction with the old castle gaol) for confining felons, debtors and other committed prisoners, and “one of the common houses of correction of and for the said county” for imprisoning “felons and other persons from time to time committed thereto” under legal process: *ibid.*, s.6. Responsibility for safe custody rested with the high sheriff and the relevant gaoler or keeper, each of whom was answerable to the county justices, whose existing powers relating to gaols and houses of correction were extended to cover the new facilities.

- (b) to permit the demolition of the old shire house and a building (unspecified) adjoining the castle, and either to sell the salvaged materials or to re-use them in the construction of the new gaol, house of correction and shire house;⁵⁴¹
- (c) to provide that all building materials acquired by the justices for the project, and all furniture, should be vested in the justices (who would be entitled to indict any person who damaged or destroyed the new gaol, house of correction, or shire house, or who interfered with any of the building materials);⁵⁴²
- (d) to provide that the justices should keep the new buildings and furnishings “in good condition and repair”, and insured, at the expense of the general county rates or stock and that, through quarter sessions, they should be able to make the necessary orders;⁵⁴³
- (e) to authorise the justices to hold prisoners temporarily in other locations within the county of Norfolk, or the city and county of Norwich, whilst the building works were in train (the cost to be met from a special rate), on the basis that the prisoners remained under the jurisdiction of the gaoler or keeper of the original institutions;⁵⁴⁴
- (f) to authorise the holding of assizes and sessions hearings in the Norwich city guildhall (or in any other “convenient” building in the city) pending completion of the new shire house and courts;⁵⁴⁵
- (g) to authorise the justices to raise moneys for the rebuilding project (and for promoting the 1822 Act) by levying and collecting a rate from every

⁵⁴¹ The 1822 Act, s.1. The justices were also to use the proceeds of sale in furnishing and fitting-out internally the new gaol (and gaoler’s house), the extension to the old gaol in the castle, and the new shire house and records office.

⁵⁴² The 1822 Act, s.3. The justices were to hold the various buildings in trust for the county, and to allow the shire house (and its grand jury room) to be used by the assizes, quarter sessions and other courts “for the public administration of justice”, by meetings “for transacting the public affairs and business of the said county”, and “for all such other public uses and purposes” as appeared proper: *ibid.*, s.4.

⁵⁴³ The 1822 Act, s.6.

⁵⁴⁴ The 1822 Act, ss.7, 8. The justices were authorised to deploy criminals sentenced to hard labour, and any other prisoners who consented, on tasks both within and outside the additional gaol, and on any works relating to the rebuilding project, “without the same being deemed or taken to be an escape”: *ibid.*, s.9.

⁵⁴⁵ The 1822 Act, s.10. The temporary location was deemed, by section 10, “the usual place for holding” the court hearings, and section 11 conferred formal validity on all such proceedings.

town and place within the county in accordance with then existing rating legislation⁵⁴⁶ and to apply any surplus, which was not required for “the usual and customary expenses” of the county, towards the purposes of the 1822 Act,⁵⁴⁷ and

- (h) to provide for the conduct of legal proceedings by the justices, and for appeal to quarter sessions by persons aggrieved by “any assessment or other act to be made or done” under the Act.⁵⁴⁸

Status of the 1822 Act

5. The 1822 Act was designed to supplement, with local powers, the existing limited national powers⁵⁴⁹ relating to the building and repair of gaols by county justices. Although the Act incorporated the earlier powers, and thus was relatively short, for the purpose of the Norwich gaol (and the court and records house) it stood alone.

6. The Act contained a provision which had the effect of causing certain of its powers to expire once the new gaol and other buildings had been erected and fitted-out.⁵⁵⁰ The remainder of the Act remains live, although little could now be accomplished under it without a means to raise and spend moneys.

7. Neither the county gaol nor the house of correction exist today. They were decommissioned in 1887.

8. The shire house does exist. It is currently used by Norfolk Museums and Archaeology Service as an archive storage unit. The court rooms now have no judicial function.

⁵⁴⁶ The 1822 Act, ss.12, 13 and 18. The rate was to be assessed by the justices and collected by the county treasurer. Tenants were entitled to make a deduction from rent due to their landlords to take account of up to 2/3rds of the rates paid. By section 17 of the Act, the powers relating to assessing and collecting rates for the project were immediately to “end and be no longer in force” once the purposes of the Act were declared by the justices as having “been executed, performed, and fully completed”: *ibid.*, s.17. Any balance of moneys then remaining was to be transferred to aid the county rate.

⁵⁴⁷ The 1822 Act, s.14. The county treasurer was obliged to maintain separate accounts for moneys payable under the Act, and “if required” he had to attend the general quarter sessions in order to explain the moneys needed to be raised on the rates: *ibid.*, s.15. The treasurer, high constables and other officers involved in the rating process were to be remunerated for their “extra trouble” under the Act: *ibid.*, s.16.

⁵⁴⁸ The 1822 Act, ss.5, 19. The clerk of the peace for the county was to represent the county justices in any legal proceedings, and was to be reimbursed his expenses by the county treasurer from the public stock and general county rates.

⁵⁴⁹ Dating from 1784.

⁵⁵⁰ The 1822 Act, s.17, relating to rating.

9. The only prison under the auspices of HM Prison Service, operating within the city of Norwich, is HMP and YOI Norwich, located at Knox Road, just off Plumstead Road, Norwich. This prison was built in 1887 to house the prisoners from the county gaol built pursuant to the 1822 Act.

10. Accordingly, the 1822 Act is now spent, and may be repealed in whole.

Archive-based history

11. The Normans built Norwich castle between 1066 and 1075 and the first gaol was built on the site in 1165.⁵⁵¹ By the 17th century, the county justices had condemned the gaol as “not fitting to detaining prisoners in”.⁵⁵² There were many attempts to make the building fit for human habitation, but none were successful.

12. The new gaol and house of correction, built pursuant to the 1822 Act, were commenced on the site in 1824. They were completed by 1828 at a cost of £50,000.⁵⁵³ Shortly after, the facing on the side of the keep was noticed to be in bad repair and, in 1834, the architect Anthony Salvin refaced the keep with Bath stone.⁵⁵⁴

13. In 1887, the Norwich Corporation bought the castle and converted it into a museum and art gallery, which was opened in 1894 by the Duke and Duchess of York.⁵⁵⁵ The prisoners were moved to a new purpose-built prison on Mousehold Heath, off Plumstead Road. This prison remains there to this day. It is known as HMP/YOI Norwich, and houses male adults and young offenders on separate sites.⁵⁵⁶

14. The first shire house was built next to the castle in 1270 and was subjected to continual redevelopment until 1789, when Sir John Soane constructed a new shire hall on the same site. In 1825, William Wilkins won a competition to rebuild the shire hall pursuant to the 1822 Act. It was built at the base of the castle mound within the castle boundaries. The shire hall was connected to the castle by an underground

⁵⁵¹ See *Old Norwich: Castle* at <http://www.historicalnorwich.co.uk/castle2.htm>

⁵⁵² *Ibid.*

⁵⁵³ See the *Norfolk Record Office Information Leaflet 41: Prisons and Prisoners in Norfolk* at <http://www.archives.norfolk.gov.uk/leaflets/nroil041.htm>

⁵⁵⁴ See *Old Norwich: Castle* at <http://www.historicalnorwich.co.uk/castle2.htm>

⁵⁵⁵ *Ibid.*

⁵⁵⁶ See *Norwich* at <http://www.hmprisonservice.gov.uk/prisoninformation/locateaprison/prison.asp?id=355,15,2,15,355,0>

tunnel which was used to bring the prisoners straight through to the courts from the prison. The building was completed by the mid 1830s.⁵⁵⁷

15. The shire hall contained the city's courtrooms until 1988 when the civil and criminal courts moved to a new location near the cathedral. The civil courtroom became the Regimental Museum, but the other courtroom remained as part of Norwich Castle Study Centre.⁵⁵⁸

Extent

16. The 1822 Act applies locally only within the city of Norwich in Norfolk, in England.

Consultation

17. The Home Office, HM Prison Service, Norfolk County Council and Norwich City Council have been consulted about this repeal proposal.

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⁵⁵⁷ Information kindly provided by Philip Arkinstall, Derek Briggs and Alison Naylor of Norwich Castle Museum and Art Gallery.

⁵⁵⁸ See *Norfolk Museums & Archaeology Service: Norwich Castle Study Centre* at <http://www.museums.norfolk.gov.uk/default.asp?Document=210.20&Image=249&gst=>

COUNTY GAOLS - NORTHAMPTONSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
2 & 3 Vict. c.lxvii (1839) (Peterborough and Nassaburgh Gaol Act 1839)	The whole Act.

2 & 3 Vict. c.lxvii (1839) (Peterborough and Nassaburgh Gaol Act 1839)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁵⁵⁹ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁵⁶⁰ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Northamptonshire, by 1839, the county justices acting for the “liberty or soke” of Peterborough city and the “hundred” of Nassaburgh were concerned as to the condition of the common gaol and the (separate) house of correction. Although both institutions were located in the city, they served the two communities.⁵⁶¹

3. The buildings were recorded as being “of great antiquity, inconveniently situated, too small, and not properly constructed for the reception, confinement, and

⁵⁵⁹ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁵⁶⁰ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁵⁶¹ Preamble to 2 & 3 Vict. c.lxvii (1839) (“the 1839 Act”), being “An Act for building a new Gaol for the Liberty or Soke of Peterborough and Hundred of Nassaburgh in the County of Northampton, and for other Purposes connected therewith”. The old gaol was located in Minister Yard within “the city or borough of Saint Peter otherwise Peterborough”, and the house of correction in Cumbergate Street in St. John the Baptist’s parish.

classification of the prisoners usually confined therein”.⁵⁶² The justices were of the view that it “would be of great public utility” if replacement facilities could be “speedily erected” in a single new building, but that undertaking this project would require Parliamentary authority to supplement “the laws now in force”.⁵⁶³ To that end, the justices promoted the 1839 Act.

4. The broad purposes of the 1839 Act were as follows:

- (a) to sanction the county justices designing, siting and constructing a new, combined, common gaol and house of correction for receiving “debtors, criminals, and others”, and fitting it out, for the service of the locality,⁵⁶⁴
- (b) to empower the justices to purchase (compulsorily if necessary) the freeholds of various parcels of land within the parish of St. John the Baptist, together with such other land within Peterborough or Nassaburgh “which may appear to them proper or convenient” for the Act’s purposes;⁵⁶⁵

⁵⁶² The 1839 Act, preamble. Responsibility for keeping this old gaol in good repair, and for ensuring “the safe custody of all debtors confined in the said gaol” by order of any superior court of record at Westminster, lay with the Marquis of Exeter who held the office of keeper by virtue of being lord paramount of the hundred and high bailiff of the “liberty or soke and hundred”: *ibid.*, s.29. The release of the Marquis of certain of his responsibilities by the 1839 Act (see below) was not to be construed as diminishing any other of his “liabilities, rights, liberties, immunities, exemptions, franchises, and privileges” which he held by virtue of his offices of lord paramount of the hundred (Nassaburgh) or high bailiff (Peterborough): *ibid.*, s.70.

⁵⁶³ The 1839 Act, preamble. The single building would achieve consolidation of the operations, would be built “in a more open and airy” location, either within the city “or on land adjoining thereto”, and would provide for the “separation, employment, and regulation of the [confined] prisoners”: *ibid.*

⁵⁶⁴ The 1839 Act, s.1. The facility was to have adequate yards, “out-offices and other conveniences”, together with an infirmary, a chapel, and a gaoler’s residence. Amongst other things, the justices were also required to determine how the gaol complex would be provided with a water supply and drainage, and how in the future it would be “preserved and kept in good repair and order”. To achieve the Act’s various purposes, the enabling powers vested in the justices were expressed in wide terms: *ibid.* The gaol was to be designed so that it was surrounded by an undeveloped zone 30 feet wide “at the least”, in order “at all times to preserve a free circulation of air” around the complex: *ibid.*, s.47. Once the new gaol complex was complete, all the prisoners were to be transferred to it, and “immediately thereupon” the old gaol and house of correction were to cease to have operational status. The gaol buildings and site would revert to the Marquis, and the house of correction to the “party trustees”: *ibid.*, s.30.

⁵⁶⁵ The 1839 Act, s.2. The parochial lands (owned in the main by the dean and chapter or the lord bishop) were described in the 1839 Act, sch 1. The justices were empowered to acquire (from whatever source) up to a maximum of five acres of land for the project, which land was to be held in trust by the clerk of the peace or other nominee. However, the power to acquire was time-limited. The justices had five years from the passing of the Act either to purchase the various land parcels or to secure formal valuation assessments, and on expiry of the period the compulsory powers would lapse: *ibid.*, s.25. The form of conveyance was prescribed in section 3 of the Act.

- (c) to provide legal mechanisms for effecting the valuation and transfer of land (including the payment of compensation and making of good title);⁵⁶⁶
- (d) to authorise the justices to dispose (by private sale or public auction) of lands acquired which became surplus to requirements, subject to a “right of pre-emption”;⁵⁶⁷
- (e) to vest in the justices ownership of all building materials utilised in the project, and all furnishings and utensils acquired for the two institutions;⁵⁶⁸
- (f) to designate the new gaol and house of correction (on completion) as the common gaol and the common house of correction for Peterborough and Nassaburgh for the holding of felons, debtors and other persons committed by legal process; and to transfer to the justices for the district the responsibility for future maintenance of the fabric and furnishings (which would be funded from the “rates, stocks, or funds” of the liberty and hundred);⁵⁶⁹

⁵⁶⁶ The 1839 Act, ss.3-24. The Act provided for (amongst other matters): transfer of unencumbered title by persons or bodies with legal incapacity (*ibid.*, s.3); determination of value of land and compensation by special jury (or the justices) where the owner was resident abroad or untraceable, or refused or was unable to negotiate or to sell, and apportionment of moneys where several interest-owners involved (ss.4-6, 9); payment of compensation into the Bank of England, to be invested and applied by direction of the Court of Exchequer, or (where less than £200) by appointed trustees or the justices (ss.10-13); a rebuttable presumption that the possessor of land could make good title, and for the passing of title on payment or tender of compensation (ss.14, 18); the ascertaining and bearing of the costs of purchase (ss.15-17); the purchase and extinguishing (wholly or partially) of incumbrances on title (if any) (s.19); and the acquisition of mortgages, leases and short tenancies (ss.20-24).

⁵⁶⁷ The 1839 Act, s.26. In the first instance the justices were required to offer surplus lands to those persons (being in England and having legal capacity to purchase) who owned property which “immediately adjoin[ed]”: *ibid.* The power to sell surplus land was time-limited to 10 years from the Act’s passing; but any unsold land still surplus to requirements two years after completion of the gaol and house of correction would then automatically vest in the adjoining landowner.

⁵⁶⁸ The 1839 Act, ss.27, 55. The justices were empowered to bring proceedings for any theft of, or damage to, or interference with, the construction materials; and all existing statutory powers relating to “wilful damage or injury to any gaol or house of correction” were deemed to be extended to the Peterborough and Nassaburgh justices in respect of the new gaol complex: *ibid.*, ss.27, 28. Likewise, misappropriation of any “furniture, utensils, chattels, provisions, clothing, or materials” used in the institutions was made an offence: *ibid.*, s.56.

⁵⁶⁹ The 1839 Act, s.29. In consideration of the transfer of responsibility, and for being “ever absolutely discharged” of liability - except for liability to pay rates as all other occupiers of property - the Marquis of Exeter (as then keeper) paid the justices £500: *ibid.*, ss.29, 31. The discharge operated from the time of payment and not from the time of prisoner transfer: *ibid.*, s.32. The justices were then empowered to appoint and supervise the keeper (who would be salaried), to maintain the prisoners, and to effect fire insurance cover for the buildings and contents (and to rebuild in the event of conflagration): *ibid.*, s.29.

- (g) to authorise the justices, through general or quarter sessions, to raise moneys for the land acquisition and building project (to a maximum of £10,000) by determining and levying an annual rate on all the hereditaments within the liberty and hundred, apportioned according to rateable value,⁵⁷⁰ and to provide for collection of the rates levied;⁵⁷¹
- (h) to provide for the raising of moneys by mortgage loans secured on the rate;⁵⁷² and for the use of the moneys raised by rate and by loan to discharge various expenses;⁵⁷³
- (i) to require the justices to appoint (with salaries) a gaoler, keeper, governor, chaplain, surgeon and other appropriate officers;⁵⁷⁴
- (j) to require the justices (through general or quarter sessions) to make and certify regulations for the proper governance of the new gaol and house of correction,⁵⁷⁵ and to appoint from amongst their number a

⁵⁷⁰ The 1839 Act, ss.33, 34. The rate (whose product was not to exceed £900 in any one year) was to be raised and collected uniformly in accordance with the rubric for levying the poor rate in the district. It was not to be levied on “the cathedral church, and all churches, chapels, and burial grounds, and places of religious worship tolerated by law”, although it did not affect the power to raise other rates “necessary for the ordinary expences of the liberty”: *ibid.*

⁵⁷¹ The 1839 Act, ss.35-39. The sections provided for: the levying of distress on goods for those in default of payment; the proper accounting for moneys collected (with power to commit defaulters); the collection of rates from tenants; and apportionment of rates where occupiers move away from the parish part-way through the rating year.

⁵⁷² The 1839 Act, s.40. Mortgages were to be recorded in a register maintained by the clerk of the peace, were to be issued in prescribed form, and could be transferred, without restriction, by stamped deed: *ibid.*, ss.40, 41 and sch 2. Mortgagees had no priority for redemption. After completion of the project, they were to be redeemed on an annual basis (spread over a twenty years period) in £100 tranches, using a sequence determined by lot: *ibid.*, ss.43, 45. Pending redemption, the liberty’s treasurer was to pay half-yearly interest on the loan amounts out of the rates collected (based on the accounts previously settled by the justices): *ibid.*, s.42.

⁵⁷³ The 1839 Act, s.44. The expenses were: those incurred in obtaining the 1839 Act; payment of interest on sums borrowed; paying for land acquisition; paying for erecting and fitting-out the gaol complex; and using the surplus (if any) for the “gradual discharge of the principal sums” borrowed: *ibid.* Additionally, moneys were to be held back for land tax liabilities accrued on the new buildings: *ibid.*, s.46. Audited annual accounts (certified by the justices) had to be filed by the treasurer of the liberty and hundred with the clerk of the peace, and be made available for public inspection: *ibid.*, s.69.

⁵⁷⁴ The 1839 Act, s.48. The various appointees were to hold office during good behaviour (for which they were to provide “reasonable and sufficient” security): *ibid.* No holder of the office of bailiff for the liberty and hundred was eligible to be appointed gaoler, keeper or governor: *ibid.*, s.49.

⁵⁷⁵ The 1839 Act, s.50. The “rules, orders, and regulations” (which were not to “be contrary or repugnant to the laws of that part of Great Britain and Ireland called England” or any other provision in the 1839 Act) were to govern, amongst other things: the separation, classification and supervision of prisoners, their diet and clothing, employing and “reforming” them, and securing “cleanliness, temperance, and a decent and orderly behaviour” as well as “a just and humane treatment” for them; restricting outsiders from providing unauthorised supplies (including liquor); and regulating visiting hours. The regulations were to be displayed conspicuously: *ibid.* The gaolers and keepers were required specifically not to allow “tippling or gaming” or the sale of “any wine, beer, ale, or other liquors” on the premises: *ibid.*, s.57. Within the gaol and house of correction, debtors and convicts sentenced to transportation were to be held separately from other categories of prisoner: *ibid.*, s.54.

minimum of three justices to serve as visitors to oversee the institutions' operation;⁵⁷⁶ and

- (k) to provide for the conduct of legal proceedings by the justices, and for appeal to quarter sessions by persons aggrieved by "any rate or assessment" or conviction or regulation made pursuant to the 1839 Act.⁵⁷⁷

Status of the 1839 Act

5. The principal purpose behind obtaining the 1839 Act was to secure additional powers which would permit the rebuilding of the existing district gaol and house of correction. Although the Act incorporated other - unspecified - statutory powers, in practice it stood alone. It pre-dated the national consolidation of various compulsory purchase powers in 1845. Its provisions relating to the lord of the hundred had very local, and limited, application.

6. The 1839 Act contained several time-limited provisions relating to the acquisition of land (section 25), the disposal of surplus lands (section 26), and the redemption of mortgages (sections 43 and 45). The short limitation periods facilitated the early expiry of the Act.

7. The new gaol and house of correction were both built by 1842. The buildings were decommissioned and demolished by 1961.

8. The only prison operating today in Peterborough opened in Spring 2005. It was purpose-built to house male and female prisoners, under a private finance initiative with United Kingdom Detention Services. It is not located on any of the sites of the gaols or the house of correction referred to in the 1839 Act.

⁵⁷⁶ The 1839 Act, s.51. The appointed visitors were required to inspect the state of the buildings, the conduct of the officers, and the treatment of the prisoners; to keep under review the prisons' financial position; and to report any abuses to general or quarter sessions with a view to rectification "as soon as the nature of the case will allow": *ibid.* The visitors were also required to examine and annotate the gaoler's quarterly returns of prisoners before consideration by sessions: *ibid.*, ss.52, 53. Individual justices were permitted to make gaol inspections when they thought fit.

⁵⁷⁷ The 1839 Act, ss.58-68. The justices were authorised to sue (and be sued) in the name of the clerk of the peace. The Act also provided for compelling witness attendance, for the manner of service of statutory notices, for prescribing the form of conviction and for levying distress as a means of order enforcement. Appeals under the procedure were to be brought within four months and only where no other legal remedy existed. Successful appeals could lead to quashing of the rate or assessment or to the award of "restitution, damages, and costs": *ibid.*, ss.65, 66.

9. Accordingly, the 1839 Act is now spent and may be repealed in whole.

Archive-based history

10. Until 1874 (when the borough was incorporated), various administrative and judicial functions for the city of Peterborough were provided by the dean and chapter of the cathedral church.⁵⁷⁸ During the 16th century the lordship of the hundred of Nassaburgh passed from the church to the sovereign, Elizabeth. She vested the privilege in the incumbent Marquis of Exeter (Lord Burghley), whose family provided a separate gaol for the soke of Nassaburgh in Peterborough until the early 19th century. The original gaol was located at Minster Yard, and the house of correction was located just off Cumbergate, until both were decommissioned and demolished pursuant to the 1839 Act, probably in the early 1840s.

11. The newly-constructed gaol and house of correction, sited behind the recently-built sessions house, were completed (again, pursuant to the 1839 Act) in 1842. The loans for funding the gaol project spanned the 20-year period 1840 to 1860.⁵⁷⁹ The gaol was decommissioned and demolished by 1961.⁵⁸⁰ Today the gaol site forms part of the grounds of Peterborough District Hospital.⁵⁸¹

Extent

12. The 1839 Act applies locally only in the county of Northamptonshire, in England.

Consultation

13. The Home Office, HM Prison Service, Northamptonshire County Council and Peterborough City Council have been consulted about this repeal proposal.

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⁵⁷⁸ The dean and chapter were the successors to the abbot as lords of the manor, with power to appoint a steward and a bailiff.

⁵⁷⁹ The Northamptonshire county archives hold architectural drawings for the new Peterborough gaol building (dated 1840) and an account book for both the construction work and the loans raised to fund the project (1840-60: ref. ML 656).

⁵⁸⁰ See *The Peterborough Civic Society: The Heritage Plaque Trail* at http://www.peterborough.net/civicsociety/plaque_trail.asp

⁵⁸¹ Information kindly provided by Elisabeth Kingston, Archives Assistant at Peterborough Central Library.

COUNTY GAOLS - NORTHUMBERLAND

<i>Reference</i>	<i>Extent of repeal or revocation</i>
1&2 Geo.4 c.ii (1821) (Northumberland Gaol and County Offices Act 1821)	The whole Act.
3 Geo.4 c.lv (1822) (Newcastle-upon-Tyne Gaol Act 1822)	The whole Act.

1&2 Geo.4 c.ii (1821) (Northumberland Gaol and County Offices Act 1821)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁵⁸² That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁵⁸³ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Northumberland, the grand jury had reported in 1820 to the county spring assizes (a) that the common gaol for the county (located at Morpeth) was so “ruinous and in great decay” that there was significant risk of prisoners escaping; and (b) that the gaol was “too small and insufficient in point of size for the accommodation of the prisoners confined therein, so as to render it impossible to comply with the directions of the several Acts of Parliament, for the proper separation of the prisoners confined therein”, thus endangering their “health and lives”.⁵⁸⁴ Furthermore, the town hall at

⁵⁸² 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁵⁸³ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁵⁸⁴ Preamble to 1&2 Geo.4 c.ii (1821) (“the 1821 Act”), being “An Act to enable His Majesty’s Justices of the Peace acting for the County of Northumberland, to build a Common Gaol, House of Correction, and

Morpeth (which was in private ownership) had outlived its usefulness as a venue for the county justices' Easter quarter sessions. The solution was to demolish the "gaol and prison" and to build in its place, or on some other suitable site within the county, a "new common gaol and house of correction, and also a sessions house, with all necessary and proper offices and other conveniences to the same respectively".⁵⁸⁵

3. To this end, the county justices sought power to purchase the necessary land and to raise a county rate through an Act (because "such purposes cannot be effected without the aid and authority of Parliament") passed in 1821. That 1821 Act enabled the justices for Northumberland, through general quarter sessions, to act in the following manner (set out here in broad terms):

- (a) to contract for the demolition of the existing common gaol and house of correction, clearing of the site and erecting (and furnishing) "a new gaol, keeper or gaoler's house, and house of correction, and a proper and convenient court or sessions house, with a grand jury room and other suitable offices and accommodations for the same respectively", to the justices' specification;⁵⁸⁶
- (b) to contract (with the moneys, "or by any other of the ways and means", available under the Act) for the purchase of such lands or buildings as were necessary for the construction of the new gaol and appurtenances, being lands "situate, lying, and being adjoining or near" to the then existing gaol and house of correction, or lands elsewhere within the county if they provided "a more proper and convenient site" for the project and facilitated "the more easy, open, and convenient approach or road to, or communication with the said intended new gaol and house of correction and sessions house";⁵⁸⁷

Sessions House for the said County, with suitable, convenient, and proper Offices, and other Accommodations to the same respectively; and for other Purposes relating thereto".

⁵⁸⁵ The 1821 Act, preamble.

⁵⁸⁶ The 1821 Act, s.1. The new gaol, once erected, was to be designated "the common county gaol" (used for the imprisonment of felons, debtors and other committed persons), and the new house of correction as one of the county's "common houses of correction" (for confining felons and others). Both institutions were to be within the control and responsibility of the high sheriff for the county, and the respective gaolers and keepers: *ibid.*, s.7. Upkeep of, and fire insurance for, the gaol and house of correction were to be financed from the general county rates or stock: *ibid.*, s.7.

⁵⁸⁷ The 1821 Act, s.2. On payment (either directly or into the bank of England), or on tender, of the agreed purchase moneys it would be lawful for the justices or their agents to take possession of the lands to be acquired, at which point title would be deemed to vest in the county justices: *ibid.*

- (c) to sell (or exchange) the freehold of the old gaol, or such parts as were surplus to the new requirements, for the best value which “can or may be had or gotten for the same”, and to sell or reuse the various reclaimed building materials;⁵⁸⁸
- (d) to purchase all necessary materials for the new project, ownership of which would vest in the justices, as would ownership of the new gaol and court complex (to be held in trust) once built;⁵⁸⁹
- (e) to move, on a temporary basis, the “felons, debtors, and other prisoners” held in the old gaol and house of correction, to the New Moot Hall in Newcastle-upon-Tyne (or to some other suitable location) pending completion of the new facilities;⁵⁹⁰
- (f) to raise moneys for the building project through the county rate (which would be apportioned amongst, and levied on, individual wards and divisions within the county according to what was deemed “fair and equal”) up to 2 pence in the £ on the annual value of properties;⁵⁹¹
- (g) to facilitate and validate the purchase of land from persons or bodies under a legal disability or from those unwilling to co-operate, to provide for the appropriate application of compensation moneys in

⁵⁸⁸ The 1821 Act, s.3. The issue of a receipt for moneys paid by a purchaser would be binding evidence of the completion of the transaction: *ibid.* The moneys received by the justices were to be applied towards defraying the cost of carrying out the requirements of the Act and supplementing any moneys raised from the county rate: *ibid.*, s.4.

⁵⁸⁹ The 1821 Act, ss.5, 6. The justices were to allow the sessions house to be used for the “public administration of justice, or for transacting the public affairs and business of the said county”, and to provide public access for “other public uses and purposes” as seemed appropriate: *ibid.*, s.6. Any damage to the buildings of the complex, or theft of the building materials, would be an indictable offence or an actionable wrong: *ibid.* s.5.

⁵⁹⁰ The 1821 Act, s.8. Whilst incarcerated in Newcastle gaol, the Northumberland prisoners were to remain the responsibility of the gaoler and keeper of the old institution, and not to become the responsibility of the constable of the New Moot Hall (or other appointed facility): *ibid.*, s.9. The gaoler was permitted to employ convicted prisoners sentenced to hard labour on works both inside and outside the gaol, including on construction works relating to the new gaol: *ibid.*, s.10.

⁵⁹¹ The 1821 Act, s.11. On the issue of warrants by the justices to the several high constables within the county, the overseers of the poor in each division would be required “to levy and collect and pay” over to the county treasurer the amounts assessed on the rateable occupiers (inhabitants), backed up by enforcement powers (distrain on goods): *ibid.* Sections 12 to 16 set out a framework to enable the justices to deal with circumstances where no overseer of the poor had been appointed (including those “extra-parochial, peculiar, or other places”), or where the apportioned rate appeared “not fair and equal”, and to regulate the handling of moneys by the county treasurer. Where moneys remained after the purposes of the Act had been satisfied, the balance would be transferred and credited to the county in order to “ease and aid” the county rate: *ibid.*, s.16. Once this position had been reached, “the operation of this Act, so far only as regards the rating, assessing, and collecting money for the purposes of this

such circumstances, and to secure good title (through a prescribed form of conveyance);⁵⁹² and

- (h) to conduct legal proceedings under the Act, to regulate proceedings, and to provide an appeal mechanism for any person aggrieved by any rate, assessment or determination made under the Act.⁵⁹³

Status of the 1821 Act

4. The 1821 Act (giving powers to rebuild the then county gaol located at Morpeth in Northumberland) appears to stand alone. There is reference to the county gaol at Morpeth in an earlier local Act of 1809, but that Act did not seek powers to alter or rebuild the Morpeth gaol.⁵⁹⁴

5. The 1821 Act does not refer to, or expressly incorporate, other gaol-related legislation.

6. Part of the 1821 Act has already ceased to have effect. Section 16 provided that “when all and every the purposes of this Act shall, in the opinion of [the county quarter sessions], have been executed, performed, and fully completed”, and that had been declared in a formal order of sessions, “then and thenceforth the operation of this Act, so far only as regards the rating, assessing, and collecting money for the purposes of this Act, shall end and be no longer in force”. Although it is difficult to be

Act, shall end and be no longer in force”: *ibid.*, s.16 (and see later for further discussion on expiry). The costs of obtaining the 1821 Act were to be defrayed from the rates raised under it: *ibid.*, s.37.

⁵⁹² The 1821 Act, ss.17-29. Where compensation exceeded £200, and the vendor was unable to, or failed to, convey and make good title, the compensation moneys would be payable into the Bank of England (to the account of the Accountant General of the High Court of Chancery) to be applied under direction of the court, and the right to take possession (and title) would pass to the county justices: *ibid.*, ss.18, 21 and 26. Similar arrangements pertained where compensation was of a lesser sum. If the parties refused or failed to negotiate on the compensatable value of the property to be acquired, the justices were empowered to empanel a jury to determine the amount: *ibid.*, ss.23-25. Separate provision was made for the acquisition of leasehold interests of one year or less and of mortgages: *ibid.*, ss.27, 28.

⁵⁹³ The 1821 Act, ss.30-36. A limitation period for proceedings of 3 months was imposed: *ibid.*, ss.34, 36.

⁵⁹⁴ 49 Geo.3 c.clxxxv (1809) (“the 1809 Act”) was “An Act to enable His Majesty to grant the Moot-hall, Grand Jury Room, and certain Grounds and Buildings adjoining thereto, in the Castle Garth, within the Scite of the Old Castle of Newcastle-upon-Tyne, to the Justices of the Peace for the County of Northumberland; for building Courts of Justice, and also a Gaol for the said County; and for other Purposes therein mentioned relating thereto”. The “gaol for the said county” was not that at Morpeth; it was a gaol ancillary to the moot-hall court at Newcastle, used “for the temporary confinement of prisoners” brought on remand from Morpeth and awaiting trial at the Newcastle assizes: preamble to the 1809 Act. This gaol, similarly, was in such a poor state of repair as to be “unwholesome” for its purpose: *ibid.* It appears to have been rebuilt by 1821 because the 1821 Act refers to “the New Moot Hall in Newcastle-upon-Tyne” as a temporary place of confinement: the 1821 Act, ss.8, 9. The 1809 Act also mentioned “a large ruinous building” in Morpeth owned by, but physically separate from, the house of

precise, given the construction of the Act, it appears that sections 11 to 14 inclusive, and section 35, have now expired under the section 16 provision.

7. From the historic material described below, it is clear that the new county gaol at Morpeth was constructed in 1828 and was decommissioned in 1881. The building housed the courtroom from 1829 until 1980 and the county police headquarters from 1886 until 1939.⁵⁹⁵

8. The only prisons operating today in Northumberland, under the control of HM Prison Service, are HMP Acklington, near Morpeth and Amble (since acquisition in 1972, a category C adult male prison, formerly an RAF station) and HMYOI Castington (principally a young offenders' remand centre). Neither are located on the site of the former county gaol.

9. The powers contained in the 1821 Act have become spent, and the Act may now be repealed.

3 Geo.4 c.lv (1822) (Newcastle-upon-Tyne Gaol Act 1822)

Background and purpose

10. By 1820, the grand jury at the spring assizes had reported on the condition of the common gaol (Newgate gaol) and the house of correction in Newcastle-upon-Tyne. Both town institutions were described as being “out of repair and inconvenient, insufficient, and insecure”.⁵⁹⁶

11. The mayor, recorder and aldermen of the town (who were also justices) were concerned to erect a replacement gaol and house of correction, with minimum delay, in a more convenient part of the town. However, being unclear as to who had legal responsibility for remedying the situation (at least, so far as the existing gaol was concerned), and anxious “to avoid the delay and expence which would attend prosecuting proceedings at law for obviating those doubts”, the municipal office-holders promoted the 1822 Act to obtain the necessary “aid and authority”.⁵⁹⁷

correction there, which should be sold and the proceeds used towards the Newcastle project (section 15). Again, this did not affect the Morpeth county gaol.

⁵⁹⁵ Tweddle, A. *Town Trail for Morpethians, No. 1* (1983). This information has been provided to us courtesy of Mr Roger Hawkins of the Morpeth Antiquarian Society.

⁵⁹⁶ Preamble to 3 Geo.4 c.lv (1822) (“the 1822 Act”), being “An Act for building a new Gaol and a new House of Correction in and for the Town and County of Newcastle-upon-Tyne; and for other Purposes relating thereto”.

⁵⁹⁷ The 1822 Act, preamble.

12. The broad purpose of the 1822 Act was to provide (or impose) the following authorisation, powers and requirements:

- (a) that the mayor, recorder and aldermen, together with nominees representing four parishes, be appointed commissioners responsible for building the new town gaol and house of correction (and for undertaking the various functions of the Act);⁵⁹⁸
- (b) that the business of the commissioners be transacted through meetings held in accordance with the Act's rubric (as to public notice, chairing, quorum, minutes and so forth);⁵⁹⁹
- (c) that the commissioners ensure that their clerk keep proper books of account for "all sums of money received, paid, laid out, and expended towards the execution of this Act, or for or on account of the buildings to be erected by virtue of this Act, or in any way relating to the same, and of the several articles, matters, and things for which such sums of money shall have been disbursed, laid out, and paid";⁶⁰⁰
- (d) that the commissioners appoint a clerk and a treasurer (to be separate individuals) and such other salaried office-holders as they consider appropriate;⁶⁰¹
- (e) that the commissioners be authorised to purchase the freehold of any land or buildings within the town which "shall appear to them proper or

⁵⁹⁸ The 1822 Act, s.1. Newcastle-upon-Tyne was, at that time, designated a county as well as a town. The 1822 Act set down a procedure for electing replacement parochial commissioners in the event of death or unwillingness to act or of elevation to municipal office (in section 2), and the minimum qualifications for holding appointment, including the form of oath to act (in section 3).

⁵⁹⁹ The 1822 Act, ss.4-10. Ordinarily the mayor or recorder were to chair meetings; the chairman would have a casting vote; and the quorum was to be five commissioners. Commissioners who were also justices were not to be precluded from undertaking their duties as justices under the 1822 Act: *ibid.*, s.9.

⁶⁰⁰ The 1822 Act, s.11. The account books were to be made available for inspection by any commissioner or any "creditor on the rates or assessments": *ibid.*

⁶⁰¹ The 1822 Act, ss.12, 13. The officers were to include a surveyor (or surveyors) and collectors of rates. Each appointee had, if the commissioners thought it necessary, to provide security for good conduct: *ibid.*, s.12. All appointed officers were, as occasion required, to produce to the commissioners written account of all moneys handled. Power was given to the justices to call officers to account and, in cases of default, to distrain on their goods and to commit to gaol for up to 3 months pending production of accounts, payment or composition: *ibid.*, s.14. Commissioners were entitled to prosecute legal proceedings through their clerk or through one of their own number, and that person was to be indemnified for any costs or damages incurred: *ibid.*, ss.15, 16.

convenient” for the purposes of the Act (to be held, on acquisition, by the town justices after conveyance in prescribed form);⁶⁰²

- (f) that the commissioners be authorised to build (“with all convenient speed, after the passing of this Act”) on the acquired land, and to fit out, “a new and convenient” common gaol and house of correction with “sufficient out-courts and outlets thereto respectively” for “the confinement of criminals, debtors, and others”, together with infirmaries, residential accommodation for the gaolers and keepers, and ancillary buildings.⁶⁰³ The project was to be supplemented by the construction of “proper and sufficient roads, avenues, and approaches” for accessing the gaol.⁶⁰⁴
- (g) that the commissioners be authorised to demolish the old common gaol and house of correction, and to re-use the salvaged building materials (without charge) in the construction of the new gaol complex, which complex - when complete - would pass to the Newcastle justices;⁶⁰⁵

⁶⁰² The 1822 Act, ss.17, 31. The Act also provided a mechanism for facilitating purchases where a landowner had legal incapacity to convey, or where an interest-holder should “neglect or refuse to treat, or shall refuse to accept such price or recompence as shall be offered by the said commissioners ... or otherwise not agree for the sale” or should be absent. In these circumstances a special jury would be empanelled to determine, on evidence, the appropriate valuation, and the moneys (together, in certain instances, with reasonable legal expenses) would then be paid by the commissioners to the owner or, where it exceeded £20, into the Bank of England (to the order of the Accountant General of the High Court of Chancery): *ibid.*, ss.18-23, 27. The Newcastle justices (through the commissioners) were then entitled to unencumbered freehold title and to possession: *ibid.*, s.28. Provision was similarly made for compensation payment where a vendor was unable to make good title or was untraceable or where the purchase moneys were less than £20: *ibid.*, ss.24, 25. There was a rebuttable presumption that the person in possession of the land at the time of purchase was entitled to the compensation moneys: *ibid.*, s.26. Special arrangements were also made for terminating leases, tenancies, occupation rights and mortgagees’ interests: *ibid.*, ss.29, 30.

⁶⁰³ The 1822 Act, s.32. The aim was to create a complex which delivered facilities for “the reception, security, and health of the prisoners and persons confined therein respectively”. The commissioners were entitled to enter into contracts for the various works and to employ “such artificers, workmen, labourers, and others” as were necessary for the job: *ibid.*, and to employ prisoners sentenced to hard labour: *ibid.*, s.39. Once the gaol was complete, it was to be designated the common gaol for the town and county of Newcastle (for confining felons, debtors and others committed there under due process); and the new house of correction was deemed to be the common house of correction for the same locality (both under the jurisdiction of the town justices): *ibid.*, s.37.

⁶⁰⁴ *Ibid.*

⁶⁰⁵ The 1822 Act, ss.33, 36. Ownership of the old gaol was vested in the town corporation (the mayor and burgesses), and ownership of such building materials as were not used was to remain with the corporation. All materials acquired for, or used in, the construction of the new gaol and house of correction, however, were to be the property of the commissioners whilst construction was in hand. Theft of, damage to, or interference with the materials or the new buildings was made an offence actionable by the commissioners: *ibid.*, ss.34, 35.

- (h) that responsibility for the upkeep, maintenance and insurance of the new gaol and house of correction, once operational, pass to the town justices acting in quarter sessions, with the costs being borne from the town's "general rates, stock, or funds",⁶⁰⁶
- (i) that the commissioners be authorised to raise funding for the project by local taxation (to an overall maximum of £50,000), first by assessing annually the total amount required, and then by levying a rate (based on property annual value, but not exceeding 1s.6d. in the £) on all non-ecclesiastic hereditaments within the town and county of Newcastle, apportioned across "each parish, parochial chapelry, ward, and precinct" for the purposes of collection,⁶⁰⁷
- (j) that the commissioners be authorised also to raise funding, "for the more speedy and effectual carrying into execution the purposes" of the Act, by borrowing moneys secured by mortgage on the rates;⁶⁰⁸ and
- (k) that provision be made for appeal to quarter sessions by persons aggrieved by orders or actions under the 1822 Act (and that ancillary

⁶⁰⁶ The 1822 Act, s.37. Because construction of the new gaol relied upon demolition of the old gaol, the justices were empowered, as an interim measure, to hold prisoners (felons, debtors and others) in the New Moot Hall in Newcastle or other temporary approved place, pending completion. Whilst in this temporary accommodation the prisoners remained the responsibility of the gaoler or keeper of the former institutions: *ibid.*, s.38.

⁶⁰⁷ The 1822 Act, ss.40, 41. Where an individual considered him or herself "aggrieved by any such rate or assessment", they could make application for review to the commissioners for alteration to the rated amount or "such other order for relief or redress" as appeared appropriate: *ibid.*, s.40. The mechanisms for rate collection and enforcement in the event of "defalcation", locally and wider afield, and including apportionment for tenanted houses and tenements, were set out in sections 42 to 45 of the Act. The moneys raised by rate were to be applied by the commissioners in the following order: for defraying the cost of obtaining the 1822 Act, paying interest on the borrowed sums, paying for the acquired land, paying for the construction and furnishing costs on the new gaol and house of correction and, finally, using any surplus to discharge the principal sums borrowed: *ibid.*, s.50. As with the 1821 Act (above), the 1822 Act similarly provided that "all and every the trusts, powers, offices, and authorities hereinbefore by this Act given to or vested in the said commissioners shall absolutely cease and determine" as soon as the acquisition of land, construction and fitting-out of the gaol complex and repayment of all borrowed moneys "shall be fully completed and fulfilled": *ibid.*, s.52, and see discussion below under 'Status'.

⁶⁰⁸ The 1822 Act, s.46. The sums were to be borrowed "at legal or lower interest": *ibid.* The form of mortgage was prescribed by section 47, and the mortgagee was able to assign his or her interest (subject to registration) on an unrestricted basis. The treasurer appointed by the commissioners was required, half-yearly, to ensure that sufficient moneys had been held back from the rating fund to discharge the half-yearly interest payments (until the principal sums had been repaid in full): *ibid.*, s.48. Sections 49 and 51 set down the mechanism for repayment of the various principal sums borrowed.

provision be made for the conduct of legal proceedings in general, including limitation times).⁶⁰⁹

Status of the 1822 Act

13. The 1822 Act was designed to authorise Newcastle's senior townsmen to rebuild the common gaol and house of correction. As a piece of legislation it appears to stand alone. Although there is reference to using another gaol as a temporary measure (the New Moot Hall in Newcastle), the 1822 Act does not refer explicitly to, or rely on, other legislative powers.

14. The 1822 Act appears to have expired. Expiry is governed by section 52 (see above) and took effect once the Act's purposes had been fulfilled, that is to say, when the gaol was built and operational and all the debts had been paid off. All the powers within the Act were said then to have ceased and determined. It is probable, given the passage of time, that the debts relating to the gaol were cleared, but evidence to confirm the position is not readily available.

15. The original gaol seems to have been demolished by 1828. The new gaol (and house of correction) was constructed in 1823-1828, and operated until 1925 when it was decommissioned and demolished.

16. No prison, under the control of HM Prison Service, exists today within the city of Newcastle.

17. The powers in the 1822 Act have become spent, and the Act may now be repealed.

Archive-based history

18. At Morpeth in Northumberland, the old gaol was housed in a fortified tower sited in the centre of the town, on the south side of Bridge Street. It may have been built as early as 1603, and appears to have been used in part (by 1659) as a town gaol and house of correction. That use was continuing in 1802 and did not cease until (or just before) the replacement county gaol was built and operational, around

⁶⁰⁹ The 1822 Act, ss.56, 57 (as to appeals, with 6 months' time limit), s.58 (applying 3 months' limitation) and ss.53-55 (witness competence, want of form, and recovery of penalties).

1828.⁶¹⁰ The building remained in existence and was occupied by the Morpeth branch of the Department for Social Security⁶¹¹ in the 1980s and 1990s.

19. The new county gaol was constructed as an octagonal stone building in a suburb of Morpeth (south of the bridge, situated on a slightly elevated site to the east of the road, on the south bank of the River Wansbeck). It was completed in 1828 (approximately three years before the completion of the new court house, which was an integral part of the same building, in 1831⁶¹²), at a cost of almost £80,000. In 1868 the building was still a gaol, and contained a chapel and the sessions house for the conduct of county business at the Easter sessions.⁶¹³ The gaol appears to have closed in 1881⁶¹⁴, part of the building being demolished and part (as a restored grade II* listed building) being converted in recent years into serviced apartments. Morpeth police station is still housed in the old gaoler's house, originally sited in the centre of the gaol complex. The courthouse closed in 1980 and transferred to another site in Morpeth.

20. In Newcastle, the Newgate gaol was one of the town's better prisons (together with the house of correction at Manors) when inspected by the penal reformer John Howard in 1777.⁶¹⁵ By 1828 it had, however, been replaced by a new gaol sited at Carloli Croft to the east of the city, adjacent to the city wall. This was a significant gaol complex housing both the bridewell (probably the house of correction) and the debtors' prison, serving Newcastle and Gateshead. Debtors were relocated to Carloli Croft from the keep at Castle Garth.⁶¹⁶

⁶¹⁰ The tower was known variously as "Pele Tower", "Dacres Tower", and "Old Gaol". Historic references are to be found at <http://homepage.mac.com/philipdavis/English%20sites/2735.html>

⁶¹¹ <http://homepage.mac.com/philipdavis/English%20sites/2735.html>; and recollections of Mr Roger Hawkins, member of Morpeth Antiquarian Society.

⁶¹² Hodgson, J. *History of Morpeth* (1832). The courthouse "was first used for a county meeting, when the measure of reform in parliament was brought forward in it in February, 1831".

⁶¹³ See *Old Towns: Morpeth in 1851* at <http://www.oldtowns.co.uk/Northumberland/morpeth.htm>, and *National Gazetteer (1868) – Morpeth* at <http://www.genuki.bpears.org.uk/NBL/Morpeth/Gaz1868.html>

⁶¹⁴ Tweddle, A. *Town Trail for Morpethians No. 1* (1983). The outer walls were demolished in 1891.

⁶¹⁵ Better when contrasted to the conditions at the castle keep. See *The Castle Keep: Newcastle-upon-Tyne: Timeline: Industrial Revolution to Modern Day* at http://museums.ncl.ac.uk/keep/keep/timeline/keep_timeline_industrial.htm

⁶¹⁶ See http://museums.ncl.ac.uk/keep/keep/timeline/keep_timeline_industrial4.htm. Building of Carloli Croft spanned 1823-28.

21. The Carloli Croft gaol operated until 1925 when it was decommissioned and demolished.⁶¹⁷ A new telephone exchange was built on the site in 1931. Today, the Tyne Bridge, which, in 1928 was faced with stone from the demolished gaol, carries the A167(M) over the corner of Carloli Square, where the gaol was previously sited.⁶¹⁸

Extent

22. The 1821 Act (relating to Morpeth) applies locally only within the county of Northumberland in England.

23. The 1822 Act (relating to Newcastle) applies locally only within the county of Northumberland in England.

Consultation

24. The Home Office, HM Prison Service, Northumberland County Council, Newcastle City Council and Northumbria Police Authority have been consulted about this repeal proposal.

(32-195-452)
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25 April 2006

⁶¹⁷ "Penal Institutions and Reform School and Asylum: Borough Gaol and House of Correction, Newcastle upon Tyne" http://www.thenortheast.com/archives/UserGuides/14_LawOrder.html

⁶¹⁸ The Ordinance Survey Landranger grid reference is NZ252643.

COUNTY GAOLS - PEMBROKESHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
19 Geo.3 c.46 (1779) (Pembroke Gaol Act 1779)	The whole Act.
3 Geo.4 c.lxxiii (1822) (Haverfordwest Gaol and Lunatic Asylum Act 1822)	The whole Act.

19 Geo.3 c.46 (1779) (Pembroke Gaol Act 1779)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁶¹⁹ That power, however, fell short of outright control. In the latter half of the 18th century the power also of gaol management started to be ceded.⁶²⁰ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Pembrokeshire, the county justices found, by 1779, that the county's ancient common gaol (sited in Haverfordwest) was "greatly too small, inconvenient, and unsafe" and was located in "a low, unhealthy, and confined situation".⁶²¹ The only remedy, as they saw it, was to build a replacement gaol and then to decommission the existing gaol. This necessitated acquiring land for the replacement and securing the necessary statutory powers to undertake the project (including the power of compulsory purchase in the event that they could not negotiate a purchase).⁶²²

⁶¹⁹ 11 Will.3 c.19 (1698) ("An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties") which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth's *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁶²⁰ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁶²¹ Preamble to 19 Geo.3 c.46 (1779) ("the 1779 Act"), being "An Act for building a new Gaol and House of Correction for the County of Pembroke".

⁶²² The 1779 Act, preamble. The justices deemed it sensible at the same time to secure power to build a house of correction, both facilities to be located within Haverfordwest castle if they could achieve its purchase (failing which they would identify "some other convenient and healthy situation" in the town).

3. Once the existing gaol had been decommissioned, the intention was that the building would pass from the county of Pembroke to the Haverfordwest corporation (which was both a town and a county in its own right).⁶²³

4. The 1779 Act, in order to fulfil its purpose of promoting the safety and health of prisoners and of advancing “publick utility”, authorised (in broad terms) the following steps:

- (a) the purchase by the county justices of Haverfordwest castle (or an alternative site within Pembrokeshire), to be held by named trustees and their heirs or replacements;⁶²⁴
- (b) providing facility for the sale of land by persons having legal incapacity;⁶²⁵
- (c) providing a mechanism for valuing and transferring land where owners failed either to agree a sale price or to convey their holding;⁶²⁶
- (d) preserving the right of the Duke of Leeds to continue to receive any rents or payments which may be due to him from the castle and lordship of Haverfordwest (or from any other lands which the justices might acquire for the purposes of the Act);⁶²⁷
- (e) empowering the justices to build on land acquired “a convenient gaol and house of correction, for the confinement of criminals, debtors, and others”, together with a gaoler’s residence and ancillary accommodation;⁶²⁸

⁶²³ The 1779 Act, s.17. (The printed version of the 1779 Act carries only side headings and not section numbers. The section numbers used in this note have simply been assigned informally to aid navigation through the Act’s text).

⁶²⁴ The 1779 Act, ss.1, 2 and 13.

⁶²⁵ The 1779 Act, s.3.

⁶²⁶ The 1779 Act, ss.4-9 (as to valuation) and ss.10, 11 (as to vesting of land).

⁶²⁷ The 1779 Act, s.12.

⁶²⁸ The 1779 Act, s.14. Once built and operational, the gaol and house of correction were to become designated facilities for the “county of Pembroke” (separated from the town and county of Haverfordwest), and would be maintained “by such ways and means as other gaols and houses of correction in this Kingdom are by law to be maintained, supported, and repaired”: *ibid*, ss.14, 15. The county sheriff was to be responsible for safe custody of the prisoners, and was to retain the right to exercise all previous “privileges and customs” (such as the right of free passage) relating to the town of Haverfordwest: *ibid*, s.16.

- (f) authorising the raising by the justices of moneys to undertake the acquisition and building project, first by assessing the costs (to a maximum of £2,000) and, then, by levying a local rate upon the towns and parishes within the county (to be collected using the statutory procedure for the county rates);⁶²⁹
- (g) requiring the moneys raised to be accounted for and used, first, to defray the costs of promoting the 1779 Act; second, to defray the costs of building; and, finally, to transfer any surplus to the “publick stock of the said county” for county purposes,⁶³⁰ and
- (h) providing a right of appeal to quarter sessions for persons aggrieved by actions taken under the Act (and a limitation period for legal proceedings generally).⁶³¹

Status of the 1779 Act

5. The 1779 Act was framed so that it stood alone (except for importing national provisions relating to the assessment and collection of local rates).

6. As indicated below, it appears that between 1779 and 1780 a new gaol and house of correction was built inside Haverfordwest castle, and remained operational until around 1822. At that point, the premises were significantly rebuilt (still within the castle’s boundary) to accommodate both town and county prisoners. The gaol did not close until 1878.

7. The whole of the 1779 Act has become spent, and it may now be repealed.

3 Geo.4 c.lxxiii (1822) (Haverfordwest Gaol and Lunatic Asylum Act 1822)

Background and purpose

8. By 1822 the Haverfordwest town council had formed the view that the then county gaol should be used to house prisoners (criminals and debtors, but not lunatics) committed by the sheriffs both of the county (of Pembroke) and of the town.

⁶²⁹ The 1779 Act, s.18. The rate was to be collected by the county treasurer and paid to the county justices or their nominee. Sections 19 and 20 of the Act set out the mechanics for assessment.

⁶³⁰ The 1779 Act, ss.21-23.

⁶³¹ The 1779 Act, ss.24, 25.

The town gaol would then be converted for use for “the purposes of the custody of all lunatics being paupers or criminals”.⁶³²

9. The council promoted what became the (relatively short) 1822 Act in order to effect the legal transfer of functions between the institutions. In summary, the 1822 Act had the following main purposes:

- (a) decommissioning of the town gaol of Haverfordwest for the holding of prisoners committed to the custody of the town sheriff;⁶³³
- (b) requiring the transfer of prisoners from the town gaol to the county gaol, and redesignating the county gaol and house of correction as a gaol for the holding jointly of town and county prisoners;⁶³⁴
- (c) requiring the county gaoler to have responsibility for the custody of both town and county prisoners (although the separate sheriffs would only be answerable for prisoners within their own jurisdiction);⁶³⁵
- (d) empowering the county justices to appoint a governor for the house of correction, and other necessary officers, and empowering the town sheriff, mayor and magistrates to visit and inspect the gaol and house of correction;⁶³⁶
- (e) converting the former town gaol into a lunatic asylum “for the reception of lunatics and other insane persons” within the town;⁶³⁷

⁶³² Preamble to 3 Geo.4 c.lxxiii (1822) (“the 1822 Act”), being “An Act for converting the Gaol and House of Correction of the County of Pembroke into a Gaol for the said County, and for the Town and County of the Town of Haverfordwest; and for applying the Gaol of the said Town and County of the Town of Haverfordwest to the Purposes of a Lunatic Asylum”.

⁶³³ The 1822 Act, s.1. The prisoners included debtors but excluded lunatics.

⁶³⁴ The 1822 Act, s.2. The redesignated county gaol henceforward was to house all criminals (other than lunatics), all debtors, and all “persons charged with any crime, misdemeanour, or other offence, or debt”: *ibid.* The requirement (and power) to transfer prisoners was explicitly time-limited by the Act: it had to be effected within the period from Royal Assent (24 June 1822) to 1 July 1822. Once this rather tight time limit had expired, the power appeared to lapse.

⁶³⁵ The 1822 Act, ss.3, 4.

⁶³⁶ The 1822 Act, ss.5, 6. The town magistrates were entitled to make representations to the county justices on any matter relating to the institutions as they thought “requisite and necessary”: *ibid.*, s.6.

⁶³⁷ The 1822 Act, s.7. The asylum was to be governed in accordance with national legislation regulating care of the insane, set down in Acts from 1808 to 1815 (48 Geo.3 c.96, 51 Geo.3 c.79, 55 Geo.3 c.46).

- (f) requiring the transfer of confined lunatics from the county gaol to the newly designated asylum (and providing for the future committal of lunatics who were “criminals or paupers”)⁶³⁸, which would be managed by the town’s specifically appointed “visiting justices”;⁶³⁹
- (g) providing for apportionment and payment of the expenses of maintaining the various institutions, to be borne by the town council and the county justices respectively, assessed *per capita* on the numbers of inmates confined in each institution;⁶⁴⁰ and
- (h) providing time limits for legal proceedings arising under the Act.⁶⁴¹

Status of the 1822 Act

10. The 1822 Act is relatively short and it was designed principally to effect a transposition of gaol and mental health functions between existing buildings. Part of the Act was time-limited on its face.

11. As indicated below, it appears that the county gaol was closed in 1878, and the town asylum closed around 1874.

12. The whole of the 1822 Act has become spent, and may now be repealed.

Archive-based history

13. The town of Haverfordwest became the county town of Pembrokeshire during the 16th century. The town’s castle, already in a state of decay, became the site for the county gaol.

14. In 1774 the prison reformer John Howard visited Haverfordwest, and condemned the state of the county gaol situated in the castle’s cookhouse. Between 1779 and 1780 a new gaol was built against the south wall of the inner ward of the

⁶³⁸ The 1822 Act, s.8. No time limit was set for completion of transfer, although transfer itself was to commence from 29 September 1822 (by which date the former gaol was to have been converted and made ready): *ibid.*, s.7.

⁶³⁹ The 1822 Act, s.9. The county sheriff and magistrates were empowered “at all times freely to visit and inspect” the asylum, and to make representations to the visiting justices: *ibid.*

⁶⁴⁰ The 1822 Act, s.10. In the event of default, the parties were entitled to issue warrant of distress to enforce payment. The maintenance expenses excluded the capital costs of repairing, building and conversion. Cost of promoting the 1822 Act was to fall solely on the town council: *ibid.*, s.11.

⁶⁴¹ The 1822 Act, s.12.

castle (at a cost of around £1,200). This gaol appears to be the subject of the 1779 Act.⁶⁴²

15. In 1822 (following a recommendation of the local quarter sessions) a replacement county gaol was constructed as a three-storey building sited in the castle's outer ward. The gaol was later rebuilt in 1866, and finally decommissioned in 1878.⁶⁴³ The building then housed the Pembrokeshire constabulary. Today, it survives as the home of the county records office and the town museum.

16. It appears that the county gaol and house of correction remained co-located within the castle walls⁶⁴⁴, and that the town gaol - which was situated in the upper part of the town at St. Thomas' Green - was converted into a joint county and town lunatic asylum. The 1822 Act does not indicate that the town gaol was an old building, and an 1833 source suggests that it had been built relatively recently.⁶⁴⁵ On that basis, it would have been more suitable for conversion to asylum use than the much older facilities at the castle. The town gaol prisoners would have been transferred to the county gaol at the castle.

17. The mentally infirm seem to have been held at the new asylum from around - or just before - 1854 onwards, as part of a joint arrangement between the counties of Cardiganshire, Carmarthenshire, Glamorganshire and Pembrokeshire (the justices having agreed this arrangement in January 1848). The town asylum closed around 1874, and was succeeded by a larger infirmary, which itself was replaced after the First World War by the new county hospital built on an adjacent site. Today the original site is designated for leisure-related redevelopment.

⁶⁴² See www.gtj.org.uk/en/item1/25816, the Welsh cultural history website.

⁶⁴³ See "Haverfordwest" at www.acadat.com/HLC/milford/area/309.htm. The quarter sessions minute book for the period records the last payment of expenses for the day-to-day running of the gaol being made in April 1878 (information provided courtesy of the County Archivist for Pembrokeshire).

⁶⁴⁴ See the *12th Report of Inspectors of Prisons – Southern and Western District Pembrokeshire* (1847/48), which refers to the Haverfordwest County Gaol and House of Correction, at www.institutions.org.uk/prisons/Wales/haverfordwest_gaol.htm.

⁶⁴⁵ See Lewis *Topographical Dictionary of Wales* (1833) at www.genuki.org.uk/big/wal/PEM/Haverfordwest/Haverfordwest1833.html.

Extent

18. The 1779 and 1822 Acts apply locally only within the county of Pembrokeshire in Wales.

Consultation

19. The Home Office, HM Prison Service, the National Assembly for Wales, the Wales Office, and Pembrokeshire County Council have been consulted about this repeal proposal.

(32-195-452)
LAW/005/002/06
25 April 2006

COUNTY GAOLS - SOMERSET

<i>Reference</i>	<i>Extent of repeal or revocation</i>
56 Geo.3 c.lix (1816) (Bristol Gaol Act 1816)	The whole Act.

56 Geo.3 c.lix (1816) (Bristol Gaol Act 1816)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁶⁴⁶ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁶⁴⁷ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Bristol (which had the status of both city and county) the city corporation had been concerned as to the state of the “common gaol called Newgate” located in St. Peter’s parish within the city since before 1792. In that year the corporation had secured an Act which would have permitted the rebuilding of both the Newgate gaol and the Bridewell house of correction (the latter located in the parish of St. John Baptist). These institutions would have been relocated elsewhere within the city (on a new combined site) so that a new common gaol complex could provide larger, properly constructed and more convenient accommodation “for the reception, confinement, separation, and employment of prisoners”.⁶⁴⁸

⁶⁴⁶ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁶⁴⁷ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁶⁴⁸ Preamble to 32 Geo.3 c.82 (1792) (“the 1792 Act”), being “An Act for building a New Gaol, a Penitentiary House, and House of Correction, within the City of Bristol, and for regulating, maintaining, and supporting the same; and for disposing of the present Common Gaol of the said City of Bristol, and County of the same City, and for other Purposes.” Provision for “other purposes” included facilitating land acquisition, and the raising of moneys for the project.

3. Promotion of the 1792 Act had been a highly contentious issue in the city. The corporation in 1790, and again in 1791, had initiated (and then withdrawn, in the face of substantial local opposition) earlier Bills designed to empower the corporation to sell the existing Newgate gaol - which it owned, but which had been paid for by the city's inhabitants - and to rebuild elsewhere on lands to be acquired. The corporation sought, however, to transfer responsibility for maintaining the new gaol to the county justices, who would have to raise a special rate for the purpose. In 1792 the corporation successfully secured the Act in very similar form, notwithstanding a 4,000-signature petition of objection.⁶⁴⁹ Nevertheless, given the level and duration of public disquiet, the corporation allowed the powers in the 1792 Act to expire by effluxion of time.⁶⁵⁰

4. Nearly a quarter-century later the problem of the gaol's condition still existed and needed addressing. The preamble to an Act obtained in 1816 recited simply the fact that the 1792 "Act has not been carried into execution" and the city corporation's belief that "it is expedient that the same should be repealed".⁶⁵¹

5. The principal purpose (put in broad terms here) of the 1816 Act was as follows:

- (a) to constitute a board of commissioners who would have responsibility for building the new common gaol for the city and delivering the Act's aims;⁶⁵²
- (b) to set down a rubric for the holding and conducting of commissioners' meetings;⁶⁵³

⁶⁴⁹ Under the 1792 Act, although the city corporation would pay for acquisition of an alternative site, and would reinvest the proceeds of sale from the old gaol in the new project, the corporation's liability for maintenance and future upkeep was to be limited to an annual payment of £150: the 1792 Act, ss.33, 72. The local inhabitants took exception to this arrangement on the ground that the townspeople had already paid out once for the original gaol, and were now to be rated again. For more detail on the sequence of events, see Latimer *The Annals of Bristol in the Eighteenth Century* (reprinted in *George's Bristol*, 1970), pp. 488, 489.

⁶⁵⁰ The power of compulsory land acquisition in the 1792 Act, which underpinned the whole project, was time-limited to seven years from commencement of the Act: the 1792 Act, s.6.

⁶⁵¹ Preamble to 56 Geo.3 c.liv (1816) ("the 1816 Act"), being "An Act for building a new Gaol in the City of Bristol, and for other Purposes". The 1792 Act was repealed in whole by the 1816 Act, s.1.

⁶⁵² The 1816 Act, s.2. The commissioners were to include the mayor, city aldermen and a limited number of councillor and resident representatives (the last-mentioned being named in the Act), and were only qualified to act if they owned an interest in land within the city of Bristol, had no conflict of interest, and were not victuallers or sellers of alcohol: *ibid.*, ss.2, 4. Provision was made for replacing commissioners on death or indisposition (or on failure to attend meetings "without a reasonable cause"): *ibid.*, s.3. Each commissioner had to swear an oath attesting to his qualification for office (and acting

- (c) to authorise the commissioners to appoint a treasurer, clerk, collector and surveyor (and such other officers as they deemed necessary), and to hold those appointees to account for the undertaking of their duties;⁶⁵⁴
- (d) to authorise the commissioners to initiate or defend legal proceedings through their clerk;⁶⁵⁵
- (e) to authorise the commissioners to acquire parcels of land (both specific and in general, to a maximum of five acres) located within the city, the land to be held by the city corporation or trustees nominated by the corporation;⁶⁵⁶
- (f) to authorise the city corporation to sell land which the commissioners had acquired but which later became surplus to requirements (subject,

unqualified gave rise to a financial penalty): *ibid.*, s.4. Commissioners who were also justices for the city were not precluded from acting in their magisterial capacity “in the execution of” the 1816 Act: *ibid.*, s.10.⁶⁵³ The 1816 Act, ss.5-11. The Act provided for the fixing of meeting dates (including adjournments), quorum, giving of public notice, appointment of chairman (with casting vote), preparation of signed minutes containing resolutions and orders, the maintenance of books of accounts, and availability of minute and accounts books for public inspection (but only by “persons rated and assessed for the purposes” of the 1816 Act): *ibid.*, ss.5-8, 11. Commissioners were obliged to bear their own expenses in attending meetings: *ibid.*, s.9.

⁶⁵⁴ The 1816 Act, ss.12, 13. The commissioners were empowered to “take such security” from the appointees (for good behaviour in office) as they thought fit, and to require them to make “a true and perfect account in writing under their respective hands of all monies which shall have been by them respectively had, collected, and received, and how and to whom and for what purposes the same and every part thereof hath been disposed of”: *ibid.*, s.13. Failure, deliberately or negligently, to account for moneys held could give rise to judicial distraint on the officer’s goods or even committal to the common gaol or house of correction (without bail, for a maximum of 3 months) pending making a composition with his creditors.

⁶⁵⁵ The 1816 Act, s.14. The clerk was to be indemnified against any costs awarded, or damages incurred, in such proceedings: *ibid.*, s.15.

⁶⁵⁶ The 1816 Act, s.16. The specific parcel of land (4.25 acres) was specified in sch 1 to the 1816 Act. Sections 17 to 31 of the Act laid down the rubric for land acquisition by providing the following: a power to those persons or bodies with legal incapacity to sell and convey lands they held; a mechanism for assessing value of lands to be compulsorily acquired by a special jury (drawn from the county of Somerset) where the owner failed or refused to negotiate; a requirement that the clerk of the peace or other officer holding the records for the county of Somerset quarter sessions retain custody of any findings or orders so made; a limitation of time (three years from the Act’s passing) for purchase of the scheduled land or valuation of other lands subject to compulsory purchase (*ibid.*, s.22); a mechanism for paying and applying compensation moneys where the land owner had legal incapacity or failed to make good title or could not be traced (including making payment of larger sums into the Bank of England for reinvestment on the order of the High Court of Chancery); a rebuttable presumption that the person in possession of particular lands be deemed the lawful owner; a deeming provision that, on payment of the purchase price for land, title would pass to the city corporation with power to the commissioners lawfully to enter; and a requirement that mortgagees, tenants and occupiers give up possession subject to being given stipulated notice and appropriate compensation.

in the case of the scheduled land, to the commissioners giving first refusal on purchase to the original land owner);⁶⁵⁷

- (g) to require the commissioners to build on the acquired lands, “with all convenient speed”, a new common gaol (designated the common gaol for the city and county of Bristol) “for the confinement of criminals, debtors, and others”, which gaol was to be equipped with infirmaries, a room for the gaol visitors, residential accommodation for the gaoler and other officers, and ancillary buildings, and to be fitted-out so as to provide for the “reception, security, and health” of prisoners.⁶⁵⁸ The new gaol was to be laid out so that an undeveloped cordon, 15 feet wide, should surround the complex “so as at all times to preserve a free circulation of air in or about the said gaol”,⁶⁵⁹
- (h) after relocating the prisoners, to sell the old Newgate gaol (then owned by the city corporation), and to apply the moneys realised from the sale towards the new building project;⁶⁶⁰
- (i) to authorise the commissioners to raise moneys for the building project by assessing and issuing a precept on the city and county rate (which would then be levied by the local justices - through the general

⁶⁵⁷ The 1816 Act, ss.32, 33. The moneys arising on sale were to be reapplied in the “erecting, furnishing, and completing the said gaol, and other conveniences by this act authorized to be built”, and the commissioners’ treasurer’s receipt for the moneys was to act as sufficient discharge for the purchaser: *ibid.*, s.32. Where an offer to repurchase had to be made to the original landowner, but that person refused the offer or failed to treat, evidence of the offer (and its conformity to statute) could be provided by a certifying affidavit: *ibid.*, s.33.

⁶⁵⁸ The 1816 Act, ss.34, 37. To fulfil this purpose, the commissioners were authorised to enter into building and other contracts and “to employ such artificers, workmen, labourers, and others, and to do all such things as shall in their discretion appear requisite in the premises”: *ibid.*, s.34. Once built and operational, the gaol was to be maintained by the city corporation, and prisoners were to be in the charge of the city sheriffs: *ibid.*, ss.37, 39. All building materials for the project were to be vested in the commissioners, and it was made an offence for any person to interfere with such materials or to damage the gaol buildings: *ibid.*, ss.35, 36. Likewise, all gaol furnishings and utensils were vested in the city corporation, and it was an offence knowingly to “buy, secrete, or receive into pawn” any such items: *ibid.*, ss.60, 61.

⁶⁵⁹ The 1816 Act, s.53. If the minimum width could not be achieved because of the location of an existing public street or highway, the gaol’s proposed boundary wall was to be reconfigured accordingly.

⁶⁶⁰ The 1816 Act, s.38. The commissioners were authorised to sell the gaol as a whole or in lots, and to dispose of the gaol furniture (or to use the whole or part of it in the new gaol). The conveyance of land title would be undertaken by the city corporation (as landowner, under seal), and the financial proceeds of sale were to be paid over to the commissioners in order to help defray the expenses of building a replacement gaol: *ibid.*

quarter sessions - on all non-ecclesiastical properties within the city), to a maximum sum of £60,000;⁶⁶¹

- (j) to authorise the raising of moneys by borrowing on mortgage secured on the county rates, at “legal or lower interest”, to a maximum sum of £20,000.⁶⁶² The moneys raised on the rates and by mortgage were to be used in the following order:
- (i) paying all costs associated with obtaining the 1816 Act;
 - (ii) paying interest on the borrowed sums;
 - (iii) paying for lands acquired under the Act;
 - (iv) discharging the cost of building and fitting-out the gaol complex; and
 - (v) effecting the “gradual discharge” of the capital sums borrowed;⁶⁶³
- (k) to require the city sheriffs to appoint gaolers, keepers, a governor and such other necessary officers, subject to the appointees providing adequate security for the proper performance of their duties in office;⁶⁶⁴

⁶⁶¹ The 1816 Act, ss.40, 41. The supplemental rate was to be levied on “each parish and precinct” within the city in the same proportions as applied to the levying of the poor rate, and it was to be demanded and collected by the rate collectors in the same manner: *ibid.*, s.40. It was not to extend to any district which had formerly been located within the counties of Somerset or Gloucester, but which had been amalgamated with the county of Bristol under legislation relating to improvement of the port of Bristol (43 Geo.3 c.cxl (1803) (Bristol Harbour Act 1803, now repealed with savings)): *ibid.*, s.42. The commissioners were only entitled to levy an annual rate for the purposes of the Act to a maximum of 2s.in the £ based on each property’s rateable value: *ibid.*, s.41. The 1816 Act set out the mechanisms for recovery of rates (in default of payment, where premises were tenanted or let in apartments, and where occupiers left the parish part year through) in sections 43 to 46.

⁶⁶² The 1816 Act, s.47. Mortgages were to be in writing, in prescribed form, and were to be copied (together with transfers and assignments) into a record book maintained by the clerk to the commissioners: *ibid.*, s.47 and sch 2. The treasurer was required to hold back, out of the rates collected, sufficient sums to pay the annual interest due on the mortgages based on the closed accounts: *ibid.*, s.48. Once the construction of the new gaol was completed, the commissioners were obliged to meet to draw lots to establish the sequence of redemption of the various mortgages, and to ensure that not less than £5,000 was paid off in each succeeding year: *ibid.*, ss.49, 51.

⁶⁶³ The 1816 Act, s.50. These requirements were not to detract from any existing liability of the city corporation to pay duties or the like. On completion of the gaol project, including repayment of all borrowed moneys, the 1816 Act provided that “then and from thenceforth all and every the trusts, powers, offices, and authorities ... [by the Act] vested in the said commissioners shall absolutely cease and determine”, and the new gaol would vest in the city corporation, on the same terms as the old gaol: *ibid.*, s.52.

⁶⁶⁴ The 1816 Act, s.54. Negligence or misbehaviour in office could give rise to forfeiture of the security or imposition of a fine (of up to £10 per offence) enforceable by distraint on goods.

- (l) to empower the city justices (in general or quarter sessions) to make “rules, orders, and regulations” for the proper governance of the gaol;⁶⁶⁵
- (m) to require the appointment by the city corporation of a minimum of ten visitors to the new gaol, who would be charged with inspecting the gaol “as often as occasion shall require” for the purpose of ensuring that the buildings were in a fit state, that the treatment and condition of the prisoners (including their earnings from work) and the conduct of gaol staff were in order, and that the expense of running the gaol was appropriate;⁶⁶⁶ and
- (n) to provide for the conduct of legal proceedings.⁶⁶⁷

Status of the 1816 Act

6. The purpose of the 1816 Act was twofold: to repeal the earlier Act of 1792 (which authorised replacing the old Bristol city gaol, but which was never activated), and to replace the powers in that 1792 Act with a new, and broader, set of powers to purchase land, to build the new gaol and to regulate its functioning.

7. The 1792 Act was repealed in whole by section 1 of the 1816 Act. The 1816 Act also contained two provisions limiting aspects of its own operation:

⁶⁶⁵ The 1816 Act, s.55. The rules (which were to be displayed conspicuously in the new gaol) were not to be “contrary or repugnant to the laws of that part of Great Britain and Ireland called England”, and were to be submitted for confirmation and certification to “the justices of oyer and terminer and general gaol delivery for the said city and county”: *ibid.* They were intended to cover such aspects of gaol life as: segregation of prisoners (prisoners under sentence of transportation had to be held separately: *ibid.*, s.59), diet, clothing, employment, ensuring “cleanliness, temperance, and a decent and orderly behaviour, as for securing a just and humane treatment of them by the gaoler or gaolers, governors and keepers of the said new gaol”, regulating visiting hours and controlling visitors who may be deemed “improper” or who might provide to prisoners supplies or alcohol in breach of the gaol rules. Infringements could give rise to the imposition of “reasonable penalties and forfeitures”: *ibid.*, s.55. No gaoler was permitted to allow “tippling or gaming”, or the sale of any “wine, beer, ale, or other liquors”, in the gaol (or to be involved in any liquor business): *ibid.*, s.62.

⁶⁶⁶ The 1816 Act, s.56. The visitors were to be drawn from common council-members who were also justices (minimum of five) and from local inhabitants (minimum of five, to include an Anglican clergyman and a medical doctor). Any abuses detected by the visitors were to be reported on to general or quarter sessions for appropriate action although, in cases of urgency, the justices visitors were entitled to “proceed to regulate and redress the same”: *ibid.* The powers vested in the visitors did not derogate from the right of any justice or city councilman to enter a gaol of his own volition and to report on any abuses found, which then had to be enquired into and rectified “as soon as the nature of the case will allow”: *ibid.* Gaolers were required to make regular returns to the court of prisoners in their custody, specifying their offence and their “age, bodily estate, and behaviour”. Each return had to be certified and (if necessary) annotated by a visitor before onward transmission to the court: *ibid.*, ss.57, 58.

⁶⁶⁷ The 1816 Act, ss.63-72. Amongst other matters, the Act provided for the compelling of witness attendance, service of notices and summonses, appeals against orders and convictions under the Act

- (a) three years for purchase of the specified parcel of land or for valuation of other land to be acquired;⁶⁶⁸ and
- (b) on completion of the gaol building operation and repayment of all the loans, automatic expiry of the commissioners' various powers.⁶⁶⁹

8. The old Newgate city gaol was operating in 1787 when visited by the prison reformer John Howard. It was replaced in 1820 by a new gaol built under the auspices of the 1816 Act at New Cut. This gaol functioned until its closure in 1883, when it was superseded by the prison at Horfield.

9. Accordingly, the 1816 Act is now spent, and may be repealed in whole. The 1792 Act will remain repealed.⁶⁷⁰

Archive-based history

10. The original Newgate city gaol was located in Little Peter Street in Bristol (sited between Narrow Wine Street and Castle Mill Street), close to the castle. Built in 1148, it was rebuilt in 1691.⁶⁷¹ A second (county) gaol was located near Lawford's Gate, in one of the city's out-parishes (*ie.* then a parish within the county of Gloucester).⁶⁷² This gaol was built shortly before 1793 and was demolished in 1907.⁶⁷³

11. The replacement common gaol for the city was erected to the west of the city, at Bedminster, close to the new cut for the river Avon. It opened around 1820, and was functioning in 1847.⁶⁷⁴ It had been burned down by rioters in 1831 but rebuilt, and it remained in use until its closure in 1883.⁶⁷⁵ In November 1895 the site was

(to general quarter sessions for the city: s.69), and time limits for commencing proceedings (generally four months from the cause of action arising: ss.69, 72).

⁶⁶⁸ The 1816 Act, s.22.

⁶⁶⁹ The 1816 Act, s.52.

⁶⁷⁰ The Interpretation Act 1978, s.15 provides that the repeal of an Act will not revive any Act previously repealed, where words are not specifically incorporated for that purpose.

⁶⁷¹ See <http://members.lycos.co.uk/brisray/bristol/bhist6.htm>

⁶⁷² This county gaol appears to have been built to serve the western division of the county of Gloucester.

⁶⁷³ See publication *Bristol as it is and As it was*.

⁶⁷⁴ See www.institutions.org.uk/prisons/England/GLS/bristol_city_gaol.htm for extract from the 12th Report of Inspectors of Prisons - Southern and Western District relating to Bristol City Gaol and House of Correction (PP 1847/8 vol. XXXV)

⁶⁷⁵ See <http://member.lycos.co.uk/brisray/bristol/bhist6.htm>

sold by the city corporation to the Great Western Railway Company.⁶⁷⁶ The prison has long been demolished, although the gateway still remains.

12. The present prison in Bristol (today under the control of HM Prison Service) was built at Horfield and opened in 1883. It was extended during the 1960s. Located at Cambridge Road, it houses male prisoners and young offenders, both convicted and on remand.⁶⁷⁷

Extent

13. The 1816 Act applies, and the 1792 Act before it, locally only within the city of Bristol, in England.

Consultation

14. The Home Office, HM Prison Service and Bristol City Council have been consulted about this repeal proposal.

(32-195-452)
LAW/005/002/06
25 April 2006

⁶⁷⁶ City Rental ref. 09082/3 folio 1384; estates title deed 341, accession no. 01728 [Information provided courtesy of Margaret McGregor, Archivist with the Bristol City Record Office]

⁶⁷⁷ See www.hmprisonservice.gov.uk/prisoninformation/locateapison/prison.asp?id=282

COUNTY GAOLS - STAFFORDSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
27 Geo.3 c.60 (1787) (Stafford Gaol Act 1787)	The whole Act.

27 Geo.3 c.60 (1787) (Stafford Gaol Act 1787)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁶⁷⁸ That power, however, fell short of outright control. In the latter half of the 18th century the power also of gaol management started to be ceded.⁶⁷⁹ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Staffordshire, in 1787, the county justices formed the view that the then county gaol and house of correction were “very ill constructed, and neither sufficiently spacious, nor in other respects well adapted for the reception, separation, and confinement of prisoners”, and that the remedy was to build a new gaol, a “proper prison” for debtors and a house of correction for county use.⁶⁸⁰

3. To this end the justices obtained the 1787 Act, which authorised the construction project (and various allied matters). The Act provided specifically that the new county gaol, debtors’ prison and house of correction (once built) should be subject to the then existing national laws relating to the conduct of such

⁶⁷⁸ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁶⁷⁹ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁶⁸⁰ Preamble to 27 Geo.3 c.60 (1787) (“the 1787 Act”), being “An Act for building a new Gaol, and providing a proper Prison for Debtors, and House of Correction for the several Boroughs, Towns Corporate, Liberties, Franchises, and all other Places, within the County of Stafford; and for regulating the same respectively”.

institutions⁶⁸¹, and (so far as applicable) to an Act of 1785 relating to the building of new gaol facilities for the county of Gloucestershire.⁶⁸²

4. At the outset, the 1787 Act deemed each of the county justices a commissioner entrusted with executing the powers of the Act.⁶⁸³ The purposes of the statute were (in broad terms) to provide, initially, for the following:

- (a) that the nominated commissioners should meet regularly in order to “put this Act in execution”;⁶⁸⁴
- (b) that the commissioners should appoint a treasurer, a clerk, a surveyor or surveyors, and such other officers as may be necessary (such appointments to be subject to the taking of “sufficient security” from the appointees “for the faithful discharge of their respective offices”);⁶⁸⁵
- (c) that the commissioners, “with all convenient speed after the passing of this Act”, should identify a suitable site or sites “within or near to the town of Stafford” for the purpose of building a new gaol, a “prison for debtors if they shall think proper”, and a county house of correction (or, in the case of the latter two institutions, find ways to convert the present gaol to accommodate one of them);⁶⁸⁶

⁶⁸¹ Apart from an Act of 1774 (for which, see below) these “laws and statutes of this realm” were not particularised in the 1787 Act, but probably included (amongst others) two Acts passed in 1784 relating to the building, enlarging and repair of county gaols, and the inspection and alteration of houses of correction (24 Geo.3 Sess.2 c.54 and c.55 respectively).

⁶⁸² The 1787 Act, s.46. The Act of 1785 was 25 Geo.3 c.10, being “An Act for building a new Gaol, a Penitentiary House, and certain new Houses of Correction, for the County of Gloucester, and for regulating the same”. This 1785 Act is still in force, and is the subject of a separate repeal note in this series relating to Gloucestershire gaols.

⁶⁸³ The 1787 Act, s.1. The gaol commissioners were to be “all persons who now are, or who shall, for the time being, be named in the commission of the peace for the county of Stafford”: *ibid.*, s.1. Commissioners-designate were disqualified from office, however, if they had - or obtained - a conflicting pecuniary interest (either through holding any remunerated office or appointment under the Act, or from having any direct or indirect contractual interest): *ibid.*, s.2.

⁶⁸⁴ The 1787 Act, s.3. Meetings were to be publicly advertised in the “Birmingham Paper”, or other local newspaper with a county-wide circulation, and were to be presided over by an elected chairman (who would have an additional casting vote): *ibid.*, s.4.

⁶⁸⁵ The 1787 Act, s.5. The commissioners were also empowered to remove and to replace appointees, and to pay officers “salaries or other allowances” by way of reasonable remuneration.

⁶⁸⁶ The 1787 Act, s.6. In choosing a site, the commissioners were exhorted by the legislation to take into account not only the availability of “a pure air, dry and healthy situation, the accommodation of water, the avoiding of all ill smells, and of being overlooked” but also the need to ensure that it was “situated at a proper distance from the center of the town” and yet sufficiently near as to be both close to the county hall and able to benefit from the security of the town itself: *ibid.*

- (d) that the commissioners should negotiate and contract with appropriate landowners in order to buy such “houses, lands, tenements, or hereditaments” as may be needed to erect a new gaol, debtors’ prison and house of correction (and to provide “proper courts and outlets, and avenues to and from the same”, and a burial ground) and, to that end, they were authorised to make payment both for the acquisitions and for any consequential loss or damage caused by the building operation and “the execution of any of the powers of this Act”;⁶⁸⁷
- (e) the putting in place of mechanisms for the conveyance of purchased lands and the payment of purchase moneys (including facilitating sale by persons or bodies with legal incapacity, the making of good title, the discharging of mortgages, and the valuation of property by jury where owners failed to co-operate);⁶⁸⁸
- (f) that the commissioners should have the ability, on paying compensation, to extinguish rights in common land when purchasing property under the 1787 Act;⁶⁸⁹
- (g) that the commissioners should be able to raise the moneys necessary for the project by assessing the amount required and levying a precept on the county rate, which would then be apportioned to, and collected from, “every town, parish, or place, within the said county” (but the rate precept was not to exceed one shilling in the £ annually, or three shillings in total⁶⁹⁰, and the moneys so raised were to be applied - and

⁶⁸⁷ The 1787 Act, s.7. The various payments (including ancillary costs) were to be in amounts either agreed between the affected parties or, in default, settled by jury, and were to be drawn from moneys raised under the Act: *ibid.*

⁶⁸⁸ The 1787 Act, ss.8-11.

⁶⁸⁹ The 1787 Act, ss.12, 13. Extinguishment was only permissible where the land-take did not exceed 5 acres in whole. Compensation for taking common land would be payable by the commissioners to the overseer(s) of the poor in the town, to be used to reduce the poor’s annual rates obligation: *ibid.*, s.13.

⁶⁹⁰ The 1787 Act, ss.14, 16. The powers to levy and collect the statutory Land Tax within the county (especially as to enforcement and accounting) were to apply equally to the levying and collection of the present rates: *ibid.*, s.14. Moreover, the local assessors of the Land Tax (under the direction of the Commissioners of the Land Tax) were charged with issuing “a separate and distinct rate and assessment upon every such respective town, parish, or place, in due proportion to the assessment to the Land Tax for the time being”: *ibid.*, s.15. Where an occupier of a hereditament had only a minor interest in that land as a tenant (in general terms, a lease of less than 21 years, or having less than a life interest in a lease), it appeared that the occupier was exempt from payment of the rate in that he or she would be entitled to deduct the amount of rate from the rent due to the landlord: *ibid.*, s.15. Nor was any person to become liable under the Act for double rates: *ibid.*, s.17.

applied only - towards defraying the costs of obtaining the 1787 Act and then undertaking the Act's purposes);⁶⁹¹

- (h) that the commissioners should cause to be built, or provided, a gaol, a "convenient prison for debtors", and a house of correction to serve the various communities in the county, to be located "upon some eligible situation or situations, in or adjoining to the said town of Stafford" (and to benefit from "proper and convenient courts, yards, outlets, burial ground, and avenues thereto" and to be fitted-out with "all proper and necessary conveniences and things");⁶⁹²
- (i) that on completion, the new gaol, and the debtors' prison and house of correction, should be designated as available for use by the county and by the separate "boroughs, towns corporate, franchises, liberties, and places" within the county;⁶⁹³
- (j) that the commissioners should be required, in letting contracts for the various building works, to select and appoint contractors through a public tendering exercise, and to ensure: that adequate security for performance is taken; that contracts (incorporating penalty provisions) are formally executed and recorded; and that the works are inspected by an appointed surveyor or surveyors. In the event of default on a contract, the commissioners were also authorised to seek redress through the courts against the contractor or the surety;⁶⁹⁴

⁶⁹¹ The 1787 Act, s.18.

⁶⁹² The 1787 Act, s.19. The commissioners were also given power under the Act to convert the then existing gaol into a debtors' prison or a house of correction (as a facility for the boroughs, towns and so forth within the county) as they saw fit: *ibid.*, s.19. If it were not so used, the commissioners were empowered to sell the old gaol and to apply the proceeds towards the new gaol: *ibid.*, s.32. None of the works (of building or conversion) were to be commenced until proper plans had been drawn up, the works costed, the expenditure approved by the commissioners in a publicised general meeting, and contracts let to "one or more able and experienced workman or workmen" who supplied "sufficient sureties": *ibid.*, s.20. The works were to be supervised by an appointed surveyor or surveyors.

⁶⁹³ The 1787 Act, s.19. The gaolers and keepers were to be answerable for the prisoners in their custody to the respective municipal body which had placed the prisoners with them: *ibid.* Justices for the boroughs and towns were entitled to commit petty offenders (ie. those not attracting the death penalty) to the new facilities, but they were not required to do so: *ibid.*, s.22. And, likewise, officers of "inferior courts" within boroughs and towns ("courts of record for pleas, and also courts for the more easy and speedy recovery of small debts" from which issued "bailable process, and other writs and mandates") were entitled to commit to the new debtors' prison: *ibid.*, s.23. On completion of the buildings (and once on notice), the county sheriff and the gaolers were to effect the transfer of all existing prisoners in their custody, and the same was to apply to prisoners then in the borough and town gaols: *ibid.*, ss.30, 31.

⁶⁹⁴ The 1787 Act, s.21. Malicious interference with the gaol building works, or damaging the structure, was made an indictable felony: *ibid.*, s.29.

- (k) that the commissioners should be authorised for the building project to sanction (without charge) soil-digging, quarrying of sand, gravel and stone, and limestone-burning on or from “any common or waste land, river or brook”, so long as the contractor reinstated or fenced the pit or quarries to prevent hazard to “passengers or cattle”.⁶⁹⁵ All materials which were to be used for the building project (except those which were “the immediate property” of the commissioners’ agents or contractors) were to be deemed vested in the commissioners;⁶⁹⁶
- (l) that in planning the layout of the new gaol, debtors’ prison and house of correction, the commissioners should have regard to various requirements, namely: separating male and female prisoners in the “wards and apartments”; separating debtors and those imprisoned for non-payment of “pecuniary penalties” (and thus exempt from “corporal punishment”) from “persons in custody for felonies, or other crimes” (the latter to be kept in “separate and distinct cells”); placing in separate cells adapted “to a greater degree of constraint” those prisoners who were “refractory or disorderly”; separating prisoners who were to be witnesses in felony proceedings; and providing a chapel in a “plain and decent room”, an infirmary and baths (in accordance with a national 1774 Act)⁶⁹⁷, accommodation for prisoners to undertake remunerated work, “proper and distinct airing grounds” for recreation, together with accommodation for the gaolers and keepers.⁶⁹⁸

⁶⁹⁵ The 1787 Act, s.24. The extraction workings were to be as near as possible to the construction site but, failing that, the commissioners could authorise workings from existing pits or quarries within a two-mile radius or the opening of new workings on “any lands or grounds near adjoining” so long as (a) they were not “a garden, orchard, yard, park, paddock, planted walk, or avenue to a house, or ground planted and set apart as a nursery for trees” and (b) the commissioners tendered to the owners “reasonable” payment by way of damages for the interference (such payment, in the event of dispute, to be quantified by the justices in general county quarter sessions): *ibid.* The winning of materials from a quarry by others before a contractor had completed his work, and without authority, was made an offence.

⁶⁹⁶ The 1787 Act, s.25.

⁶⁹⁷ 14 Geo. 3 c.59 (1774) (“the 1774 Act”), being “An Act for preserving the Health of Prisoners in Gaol, and preventing the Gaol Distemper”. This Act required justices, amongst other things, to set apart at least two rooms in each gaol for sick prisoners (segregated by gender) and to provide for their care and treatment. The 1774 Act was repealed by the Statute Law Revision Act 1871, s.1, sch.

⁶⁹⁸ The 1787 Act, s.26. This section also required the commissioners to provide special prisoner-reception facilities (via “a lazaretto or ward in the said gaol, with separate cells”) so that new inmates could be held, pending examination by the surgeon or apothecary and, if necessary, washed “in order to prevent, as far as may be, the introduction of any infectious disease”. No prisoner prior to conviction was to be kept underground (unless “disorderly or refractory”): *ibid.*

- (m) that the commissioners should be empowered to enforce a development ban around the three institutional buildings in order to secure “a free circulation of pure and wholesome air” and to prevent the occurrence of “the gaol fever, and other malignant diseases”;⁶⁹⁹
- (n) that the commissioners should keep full records and accounts in respect of the project and, on completion, should hand those documents and any monetary balance to the clerk of the peace for the county and the county treasurer, respectively. The three penal institutions, their lands and “all things whatsoever relating thereto” would then be deemed vested in the clerk of the peace;⁷⁰⁰ and
- (o) the providing of an appeal mechanism for persons aggrieved by steps taken pursuant to the 1787 Act⁷⁰¹, and the setting down of jurisdictional and time limitations for legal process.⁷⁰²

5. Once the appointed commissioners’ functions had expired, their powers under the 1787 Act were to pass to the county sheriff and the county justices.⁷⁰³ Responsibility for maintenance of the new (or refurbished) gaol complex, and for effecting fire insurance cover, would then lie with the county.⁷⁰⁴ Much of the remainder of the 1787 Act was devoted to reinforcing the justices’ powers with respect to the following:

- (a) appointment of “an experienced surgeon or apothecary” to attend the institutions and to report to quarter sessions on the health of prisoners in his care;⁷⁰⁵

⁶⁹⁹ The 1787 Act, s.27. The designated zone extended for 40 yards from the various gaol buildings (which radius would be reduced to 10 yards for the debtors’ prison and house of correction if the old gaol were to be converted for such use: *ibid.*, s.28). The restriction related to the erection of buildings, the depositing of various materials on the land (excepting erecting a 6 foot fence), and the keeping of swine. Breach of the restriction (after service of a contravention notice) could result in financial penalty and removal of the offending structure or operation. The growing of trees within the designated zone was also prohibited.

⁷⁰⁰ The 1787 Act, s.33. The clerk of the peace was to be designated “a corporation sole” for the purpose of holding the property: *ibid.*

⁷⁰¹ The 1787 Act, s.49. In the absence of another route of redress, appeal was to lie to general quarter sessions. The justices’ determination was to “be final, binding, and conclusive, to all intents and purposes”: *ibid.*

⁷⁰² The 1787 Act, ss.49, 52.

⁷⁰³ The 1787 Act, s.34.

⁷⁰⁴ The 1787 Act, s.35.

⁷⁰⁵ The 1787 Act, s.37.

- (b) appointment of a gaoler or gaolers for the two prisons (and assistants) on the basis of a salary;⁷⁰⁶
- (c) appointment (from amongst their number) of prison visitors to carry out monthly inspections and general scrutiny;⁷⁰⁷
- (d) purchasing of “utensils, chattels, and materials” to facilitate prisoners undertaking work appropriate to their “age, sex, or condition”;⁷⁰⁸
- (e) vesting in the county justices ownership of all goods and materials purchased for the use of prisoners;⁷⁰⁹ and
- (f) in the event of the buildings being damaged (deliberately or accidentally), empowering a single justice to order necessary repairs so as to ensure “safe custody” of the prisoners.⁷¹⁰

Status of the 1787 Act

6. The principal purpose of the 1787 Act was to authorise and facilitate the construction of new gaol and correctional facilities for the county of Staffordshire. Apart from brief reference to national legislation (and an incongruous reference to gaol legislation relating to Gloucestershire, presumably as a short-hand to import allied powers into Staffordshire’s legislation), the 1787 Act appears to stand on its own.

⁷⁰⁶ The 1787 Act, s.43. The salaries were to be paid “in the same manner as the salary to the gaoler for the said county now is or has been usually paid”: *ibid.* The justices at quarter sessions were empowered to remove and disqualify a gaoler for misbehaviour in office: *ibid.*, s.44; and to retire on an annuity “proportioned to his merits” any gaoler who ceased to be able to carry out his duties through incapacity arising from “confirmed sickness, age, or infirmity”: *ibid.*, s.45.

⁷⁰⁷ The 1787 Act, s.38. Amongst other things, the visitors were to examine the state of the buildings, the conduct of the officers and the condition of the prisoners; to ensure that part of a prisoner’s earnings went (if appropriate) to his wife and any child of under 14 years resident in the county; to ensure that prisoners who were “most diligent, and endeavour[ed] to promote industry and good order in other prisoners” were rewarded; and to report to each quarter sessions on the state of the gaol, debtors’ prison and house of correction and on “all the abuses that may occur to their observation therein”: *ibid.* Other justices who were not designated visitors were also entitled to make spot inspections. On receiving any report of abuse, the justices in quarter sessions were required without unreasonable delay “to adopt the most effectual measures for enquiring into and rectifying” the situation and “promoting good order”: *ibid.*

⁷⁰⁸ The 1787 Act, s.39.

⁷⁰⁹ The 1787 Act, s.40. In the event that any person misappropriated goods or materials they would be liable to forfeit a financial penalty: *ibid.*, s.41. Section 47 set down a mechanism for enforcement against defaulters.

⁷¹⁰ The 1787 Act, s.42.

7. As indicated below, the gaol and other facilities were built in Stafford (as the county town) around 1793. Operational as a prison today, under the auspices of HM Prison Service, the 1787 local statutory powers (and obligations) were overtaken by national powers (creating a centralised prison system) from 1877 onwards.⁷¹¹

8. The whole of the 1787 Act has become spent, and may now be repealed.

Archive-based history

9. Stafford gaol was built and operational by 1793, replacing an overcrowded and much older gaol which stood in the vicinity of the town's North Gate. The new prison was located at what is now 54 Gaol Road in north Stafford. It was built originally with an accompanying governor's house which fronted on to Gaol Road, and the building has since been enlarged on several occasions.⁷¹² A wing called The Crescent was built around 1832 and extended in 1865 (when washing facilities were added).⁷¹³

10. It appears that convicted felons, prisoners in the house of correction and debtors were all held within the new (1793) gaol building, and not on separate sites.⁷¹⁴

11. Although the three institutions may have been co-located, the house of correction appears to have been transferred in or around 1832-33⁷¹⁵, and henceforth was located in a new crescent-shaped building (known as The Crescent: see above), within the northern part of the gaol complex site.⁷¹⁶

⁷¹¹ The Prison Act 1877 (c.21), vesting prisons in the Home Secretary, established the Prison Commissioners and laid down the rubric for the future management and maintenance of prisons in England and Wales.

⁷¹² See www.search.staffspastrack.org.uk/engine/resource/default.asp?theme=452&text

⁷¹³ *Ibid.*

⁷¹⁴ The quarter sessions order book entries for the Staffordshire county gaol (held by the Staffordshire County Records Office, ref. Q/SO 20 f167-f177, f236v) show that in January 1793 a single governor was to manage the gaol (operational from May 1793), paid from the county rate, and that his officers were to deal with all classes of prisoner on the site. In the January 1793 order book there was mention of a salary for the keeper of the house of correction at Stafford. By 1794 it appears that the house of correction had been transferred from another location (there being no mention of a separate house of correction, or a separate keeper, by the January 1794 session). [This information was provided courtesy of Rebecca Jackson, Archivist in the Staffordshire Record Office].

⁷¹⁵ See http://www.institutions.org.uk/prisons/England/SFK/stafford_gaol.htm for *The 12th Report of Inspectors of Prisons - Southern & Western District Staffordshire (1847/48)* relating to Stafford county gaol and house of correction; and

<http://www.staffspastrack.org.uk/exhibit/crimeandpunishment/imagepage/rules.htm>.

⁷¹⁶ The new house of correction accommodation is shown on a plan of 1841 in the County Record Office (Q/AG/2) and is described in *White's Directory of Staffordshire (1834)*. By 1856, several new buildings had been added to the site, and the 1793 building was then being used almost entirely for housing insolvent and county court debtors, the prison hospital, workshops and the governor's house (the 1833 house of correction addition was shown as housing male prisoners): CRO plan ref. Q/AE/1.

12. HMP Stafford today is an operational prison, holding category C prisoners, and incorporates a support wing for vulnerable prisoners.⁷¹⁷

Extent

13. The 1787 Act applies locally only within the county of Staffordshire in England.

Consultation

14. The Home Office, HM Prison Service and Staffordshire County Council have been consulted about this repeal proposal.

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⁷¹⁷ See www.hmprisonservice.gov.uk/prisoninformation/locateaprison/prison. On the history of Stafford gaol generally, see *The Victoria County History of Staffordshire*, vol. VI, pp. 204-5.

COUNTY GAOLS - WARWICKSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
8 Geo.3 c.40 (1768) (Coventry Gaol Act 1768)	The whole Act.
17 Geo.3 c.58 (1777) (Warwick Gaol Act 1777)	The whole Act.

8 Geo.3 c.40 (1768) (Coventry Gaol Act 1768)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout the country) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁷¹⁸ That power, however, fell short of outright control. In the latter half of the 18th century the power also of gaol management started to be ceded.⁷¹⁹ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Coventry, the city justices sought legislation in respect of the city's common gaol⁷²⁰ on the grounds that the building was "very ancient" and had so "greatly gone to decay" that it was incapable of proper repair. Moreover, the accommodation had become too small for its purpose; its replacement (on an adjoining site) needed to be larger. In 1768 Parliament authorised by local Act ("the 1768 Act")⁷²¹ the following steps:

⁷¹⁸ 11 Will.3 c.19 (1698) ("An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties") which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (cited in Holdsworth's *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784). Rebuilding of gaols was also provided for, after the Coventry Gaol Act of 1768, in 24 Geo.3 Sess.2 c.54 (1784).

⁷¹⁹ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁷²⁰ "Common" in the sense that it was occupied concurrently by "criminals, debtors, and others": the Coventry Gaol Act 1768, s.6. (Acts of this vintage used numbers in the margin of the text separate from the marginal notes, rather than using discrete section numbers as is the practice today. However, we have adopted a sectional form of citation as a convenient means of textual location and identification.)

⁷²¹ 8 Geo.3 c.40 (1768). The Act was expressed to be for "Rebuilding and Enlarging the Common Gaol of the City and County of the City of Coventry, and for appointing a Place for the Custody of Prisoners in the mean time".

- (a) purchasing by the local justices of a site from the corporation of the city and county of Coventry for a new gaol.⁷²² That site included (but exceeded the site of) the existing gaol, which was then owned by the corporation;
- (b) taking possession of the required land, which would then become vested in the justices for the purpose of building a common gaol, a gaoler's residence and "such other conveniences as may be necessary";⁷²³
- (c) valuing the building materials presently on site, and ordering plans and estimates for building a new gaol (having regard to the value of the reusable materials);⁷²⁴
- (d) agreeing demolition of the existing gaol, and rebuilding and "fitting up" the replacement facility on the designated site;⁷²⁵ and
- (e) raising sufficient money to defray the expenses involved in the land purchase, the rebuilding and in upgrading alternative temporary accommodation (see below).⁷²⁶ A town and parish rate to be levied across the whole county was authorised (capped at an aggregate £2,000), as were ancillary collection and enforcement powers.⁷²⁷ Provision was made for any surplus moneys thus raised to be paid into the "common stock" of the county,⁷²⁸ and for all receipts and expenditure to be regularly accounted for.

⁷²² The justices were authorised to assess the site's value, and the compensation payable, using an impartial jury who would be empanelled as part of the purchase process, which process would commence at the General or Quarter Sessions next following 25 March 1768 "or at any other subsequent General or Quarter Sessions": the 1768 Act, ss.1-4.

⁷²³ The 1768 Act, s.6.

⁷²⁴ The 1768 Act, s.7.

⁷²⁵ The 1768 Act, s.7.

⁷²⁶ The 1768 Act, ss.8, 9.

⁷²⁷ The 1768 Act, ss.9-11. A statutory appeal process was also put in place for persons who believed themselves "overcharged or otherwise aggrieved", together with provision for limitation of actions: *ibid.*, s.13.

⁷²⁸ The 1768 Act, s.12.

3. Whilst the demolition and rebuilding were in hand, prisoners were to be housed temporarily in the city's house of correction⁷²⁹ and the adjoining Gateway building (both owned by the corporation), subject to that accommodation first being made "of sufficient strength for a prison".⁷³⁰

4. The 1768 Act specifically provided that the common gaol and related buildings (which were deemed to be for the city and county) would "from time to time be maintained, supported, and repaired by such ways and means as other gaols in this Kingdom are by law to be maintained, supported and repaired".⁷³¹ Today, the obligation to maintain the fabric of operational prisons lies with the Secretary of State for the Home Department (and HM Prison Service, for which he is responsible).⁷³²

Status of the 1768 Act

5. The 1768 Act remains on the statute book. It was followed by further legislation with a similar purpose in 1822 ("the 1822 Act").⁷³³ The 1822 Act (which was a local Act, but which was expressed to be deemed a public Act)⁷³⁴ subsequently became spent and was repealed in 1980.⁷³⁵

6. The 1768 Act is now spent and should likewise be repealed. The following two factors (the provisions of the 1822 Act, and the history of Coventry gaol) point to this conclusion.

(a) The 1822 Act

7. As with the 1768 Act, the 1822 Act also was designed to provide for the replacement of the existing Coventry gaol⁷³⁶ and the city's house of correction on the ground that the buildings were "respectively too small, insecure, and unfit for the proper accommodation of the prisoners usually confined therein" and were

⁷²⁹ A "house of correction" was ordinarily a reformatory integral to the national system for poor relief (being a method of constraint provided for those unemployed persons who refused to work). By contrast, "gaols" were places of detention pending criminal trial or for punishment.

⁷³⁰ The 1768 Act, ss.7, 8.

⁷³¹ The 1768 Act, s.11.

⁷³² Prison Act 1952, s.4 (maintenance obligation), s.33 (power to alter, enlarge or rebuild).

⁷³³ "An Act for building a new Gaol and House of Correction for the City and County of the City of Coventry" (3 Geo.4 c.lxxii).

⁷³⁴ The 1822 Act, s.36.

⁷³⁵ West Midlands County Council Act 1980 (c.xi), s.121, Sch 5, pt 1. The 1980 Act (which was a local Act) did not refer to, or repeal, the 1768 Act.

⁷³⁶ The existing gaol and gaoler's house "adjoins to the County Hall": the 1822 Act, s.20. The County Hall was built in 1783-84.

“inconveniently situated”.⁷³⁷ The intention was to replace the two institutions with a new common gaol and a new house of correction built elsewhere in the city.⁷³⁸

8. Although not referring by name to the 1768 Act, the 1822 Act recites specifically in its preamble (by way of justification for its enactment) that “on account of certain local circumstances such gaol and house of correction cannot be erected and built by the laws now in force”. The 1822 Act was designed, as with its predecessor, to permit the local justices to purchase various parcels of land and to erect the necessary custodial facilities.

9. The general layout of the 1822 Act, although longer and more detailed than that of 1768, followed a not dissimilar pattern. It provided powers:

- (a) to purchase lands to a maximum of 2 acres;
- (b) to free certain lands from rights of common;
- (c) to ensure the passing of clean title (and provide indemnity);
- (d) to value the lands (and to determine valuation disputes);
- (e) to limit the time for purchase (to two years);
- (f) to hold in trust any purchase moneys due to persons with legal incapacity (to provide an income or acquire replacement property);
- (g) to effect land conveyance where the owner was non-compliant or failed to make good title (and to pay moneys into court);
- (h) “with all convenient speed after the passing of this Act”, to build and equip a “convenient” new gaol and house of correction⁷³⁹, together with an ancillary infirmary and gaolers’ residences;

⁷³⁷ The 1822 Act, preamble.

⁷³⁸ “in a more open and airy part”: the 1822 Act, preamble and s.1.

⁷³⁹ The 1822 Act, s.17. The gaol was to be designed “for the confinement of criminals, debtors, and others” and to be designated “the Common Gaol and House of Correction” for the city and county: *ibid.*, ss.17, 19.

- (i) to dispose of part of the existing gaol and buildings by sale (and retain part for use in connection with the assize and quarter sessions hearings⁷⁴⁰);
- (j) to raise loans for the work, mortgaged on the county rates;⁷⁴¹ and
- (k) to deal with appeals by “persons aggrieved” by steps taken under the Act.⁷⁴²

10. Obligations were placed on the local sheriffs to keep in repair and maintain the new gaol (and to have responsibility for the prisoners held in custody), and on the local justices to do the same for the new house of correction.⁷⁴³ The total cost of building and equipping the new facilities was capped at £20,000.⁷⁴⁴

(b) Gaol history

11. The second factor derives from the history of the gaol as recorded in local archive material.

12. The old Coventry gaol’s existence pre-dated erection of the County Hall (in 1783-84). It had been rebuilt and enlarged on its same site between 1764 and 1773.⁷⁴⁵ County Hall was built next to the old gaol, on the west side of Trinity Lane in Coventry, on the site of the former guildhall and courtroom.

13. Between 1823 and 1831 a new gaol was built immediately to the north of County Hall (on land purchased for the purpose)⁷⁴⁶, extending as far as Trinity Churchyard. Holy Trinity Vicarage and several houses in Trinity Lane were demolished to make way for it.⁷⁴⁷ The 1822 Act specifically included in its Schedule four houses to be taken in whole or in part (with appurtenant gardens), together with

⁷⁴⁰ For use as a “depository for prisoners brought up for trial” and for “lodging and securing depredaters and disorderly persons apprehended in the night time”, and for accommodating jurors (in the former gaoler’s house): the 1822 Act, s.20.

⁷⁴¹ The 1822 Act, ss.24, 25.

⁷⁴² The 1822 Act, s.34.

⁷⁴³ The 1822 Act, s.19. Repair, maintenance and running costs were to be met from the county rates: *ibid.*, ss.21, 22.

⁷⁴⁴ The 1822 Act, s.23. The annual rate raised was not to exceed £1,650.

⁷⁴⁵ According to the Sessions minutes for 19 April 1773 (Coventry Archives BA/E/B/24/3), which speak of the works being undertaken “in pursuance of the late Act of Parliament”. We are grateful to the County Record Office of Warwickshire County Council for this information.

⁷⁴⁶ Contracts for construction of the gaol (and other papers), 1823-31 (Warwickshire Record Office QS 64/11).

⁷⁴⁷ See *A History of the County of Warwick: Vol. VIII* (publ. 1969), pp 141-146.

“Lammas” land (for which compensation would be payable to the churchwardens of the relevant parish for use in that parish).⁷⁴⁸

14. The old gaol, on the site to the west of County Hall, became the house of correction (and this site remained in the county’s possession into the 19th century). The new gaol on the site to the north was sold by the county authority in 1865.⁷⁴⁹

15. The clear indications are that:

- (a) by 1773 the old gaol had been rebuilt and enlarged on its original site, which was situated to the west of where County Hall would shortly be built. Those works of rebuilding were undertaken in furtherance of the 1768 Act; and
- (b) by 1831 the old gaol had been replaced (as a gaol) by the construction of a new gaol building on a site acquired to the north of County Hall (pursuant to the powers in the 1822 Act).

The 1768 Act (and its purposes) had become redundant by the time the new gaol opened in 1831, and remains redundant.

16. No operational prison (within the aegis of HM Prison Service) exists today in Coventry.

17 Geo.3 c.58 (1777) (Warwick Gaol Act 1777)

Background and purpose

17. By 1776, the county justices for Warwickshire decided that the county gaol, in the county town of Warwick, was “too small for the reception and confinement of prisoners” (and that the local house of correction, which was used as an overspill facility, was also “too small, and insufficient” for this purpose).⁷⁵⁰ They petitioned Parliament by Bill for powers to enlarge the house of correction.

⁷⁴⁸ The 1822 Act, s.3.

⁷⁴⁹ Contract for sale and plans, 1865 (Warwickshire Record Office QS 24/604).

⁷⁵⁰ Preamble to 17 Geo.3 c.58 (1777) (“the 1777 Act”) being “An Act for enlarging the publick Gaol of the County of Warwick, and for other Purposes therein mentioned”. The grand jury at the county assizes had reported (in March 1776) on the inadequacy of the house of correction and the risk that “the lives and healths of the prisoners might be thereby greatly endangered”: *ibid.*, preamble.

18. Prior to petitioning, the justices had taken several steps in this direction.

Those steps were:

- (a) making an order to empower two or more justices to contract with a named landowner within the borough “for the absolute purchase of a certain messuage or tenement, . . . called The Bridewell” adjoining the existing house of correction, for “the purpose of enlarging the said house of correction, and rendering the same more healthy and commodious for the confinement and custody of prisoners”;⁷⁵¹
- (b) the placing of an upper limit of £700 on the purchase price, to be paid from the county stock,⁷⁵² and
- (c) the actual contracting to purchase the land, the payment over of the purchase price, and the conveyance in June 1776 of the “said messuage or tenement, with the appurtenances” to be held in trust for use as a house of correction (in conjunction with the existing adjoining house of correction).⁷⁵³

19. However, the grand jury shortly reported⁷⁵⁴ that the county gaol was “too small and insufficient” for its purpose, so that “the lives and healths of the prisoners might be greatly endangered”, and that those premises should be “enlarged, repaired and amended”. Against this recommendation, the county justices formed the view that it would be preferable to put aside the house of correction enlargement scheme and to use the acquired land to extend the public gaol. However, there arose a doubt as to whether legally the land could be put to another use, given the prior conveyance and trust, and the absence of specific statutory power.

20. The 1777 Act was designed, therefore, to bring about a limited number of consequences. These were:

- (a) to empower the named trustees (and their heirs and assigns) to continue to hold the acquired land “for the purpose of enlarging the publick gaol and house of correction of and for the said county of

⁷⁵¹ The 1777 Act, preamble.

⁷⁵² The 1777 Act, preamble.

⁷⁵³ The 1777 Act, preamble.

⁷⁵⁴ In March 1777: preamble to the 1777 Act.

Warwick, or either of them” in such manner as the justices in their discretion should decide;⁷⁵⁵

- (b) to empower the justices to use the combined site (the existing house of correction and the newly acquired land), or any part of it, for gaol or house of correction purposes as the justices deemed necessary;⁷⁵⁶
- (c) to authorise use of part of the combined site as a county records repository;⁷⁵⁷ and
- (d) to authorise expenditure flowing from securing, and executing the purposes of, the 1777 Act to be defrayed from the publick county stock.⁷⁵⁸

Status of the 1777 Act

21. The 1777 Act made clear (in its preamble) that “the aid and authority of Parliament” were required to fulfil the justices’ revised objectives, but the Act was silent as to the existence of previous legislation which may have required extending. No power was sought, for example, to raise a supplemental county rate, presumably because the county stock was then sufficient for the purpose.

22. For the reasons explained below, because the Warwick gaol was extended on to acquired land, and later was decommissioned and demolished, the whole of the 1777 Act became spent and may now be repealed.

Archive-based history

23. Early versions of the gaol and house of correction in Warwick were constructed around 1696, on the west side of Northgate Street. By 1758 urgent repairs were necessary to both institutions, but it was not until after 1776 that large scale reconstruction was decided upon.

⁷⁵⁵ The 1777 Act, s.1. (The 1777 Act carried only side headings for individual sections, but no section numbers. For ease of identification, therefore, we have adopted in this Note a notional numbering sequence). The effect of section 1 was that the permitted use, now extended, would override the more limited use recited in the original conveyance.

⁷⁵⁶ The 1777 Act, ss.2, 3. Once part of the land had been appropriated for either gaol or house of correction purposes, future use of that part would then be so designated: *ibid.*, s.3. The justices were empowered also to set aside “some convenient apartment” within an enlarged gaol for use as a chapel for the prisoners: *ibid.*, s.2.

⁷⁵⁷ The 1777 Act, s.4. The justices were empowered to reappropriate the accommodation for gaol or house of correction enlargement purposes if that became necessary in the future.

⁷⁵⁸ The 1777 Act, s.5.

24. Between 1779 and 1783 the gaol building was significantly enlarged on its then site. Following on from this, between 1784 and 1787, a new house of correction was built in Warwick, on the north side of Barrack Street. That building allowed parts of the former house of correction to be reutilised as an extension to the adjoining gaol premises from 1790 onwards (completed by 1798).⁷⁵⁹

25. Both the county gaol buildings and the rebuilt house of correction were decommissioned in 1860 in favour of a new - and larger - prison situated off Cape Road in the town (which, in its turn, was demolished by 1934). Some of the old gaol buildings were demolished in 1862 to make way for barracks erected for the Warwickshire Militia, although part of the complex was used as a military hospital in 1865.⁷⁶⁰ All the buildings - with the exception of the original gaol frontages on Barrack Street (which were retained until around 1972) - had been demolished by 1886.⁷⁶¹

26. No operational prison, under the aegis of HM Prison Service, exists today in Warwick. Two penal institutions serve Warwickshire; both are situated in Rugby.

Extent

27. The 1768 and 1777 Acts apply locally only within the county of Warwickshire, in England.

Consultation

28. The Home Office, HM Prison Service, Warwickshire County Council and Coventry City Council have been consulted about this repeal proposal.

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⁷⁵⁹ See *A History of the County of Warwick: Vol. VIII: The City of Coventry and Borough of Warwick* (publ. 1969, in the Victoria County History series), pp. 447-451.

⁷⁶⁰ See the 1865 *County Handbook* (information kindly provided by G. Booth, senior archivist at Warwickshire County Record Office).

⁷⁶¹ The Barrack Street range contained the former governor's house and the main entrance to the gaol (see the 1851 Board of Health plans of Warwick). Up until 1886, the buildings housed the town's police station (see 1886 edition 1:500 Ordnance Survey map, Warwickshire XXXIII.13.5). We are grateful to Mr. Booth (WCRO) for providing the 1972 date from his personal knowledge.

COUNTY GAOLS - WEST SUSSEX

<i>Reference</i>	<i>Extent of repeal or revocation</i>
27 Geo.3 c.58 (1787) (Sussex Gaol Act 1787)	The whole Act.

27 Geo.3 c.58 (1787) (Sussex Gaol Act 1787)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁷⁶² That power, however, fell short of outright control. In the latter half of the 18th century the power also of gaol management started to be ceded.⁷⁶³ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In Sussex, in October 1775, the county justices sitting in quarter sessions, following a recommendation from the grand jury, decided that the existing county gaol was inadequate and should be replaced. To that end they authorised the purchase of a suitable site (“in a more convenient situation” than the present gaol) in the town and borough of Horsham and the construction of the replacement gaol building.⁷⁶⁴ Acting (presumably) under existing national powers the justices, through named trustees, in December of the same year leased a parcel of land “for the purpose of erecting and building a common gaol or prison in and upon, for the use of

⁷⁶² 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁷⁶³ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁷⁶⁴ Preamble to 27 Geo.3 c.58 (1787) (“the 1787 Act”) being “An Act for vesting the Scite, Buildings, and other the Premises belonging to the Old Gaol or Prison of the County of Sussex, in Trustees, for the Purpose of conveying the same to the Right Honourable Frances Viscountess Irwin, and her Heirs; and to declare the New Gaol or Prison, lately built, to be the Common Gaol for the said County”. The old gaol (which was designated “the common gaol”) was described by the grand jury as being “insufficient, both as to the security and health of the prisoners”: *ibid.* The town of Horsham, having lost its borough status (dating back to 1235), is today located in the county of West Sussex.

the inhabitants of the said County of Sussex for ever, and to and for no other use, intent, or purpose whatsoever”.⁷⁶⁵

3. Building of “a complete and substantial gaol, gaoler’s house, chapel, and infirmary” was undertaken (the cost being charged to the county’s inhabitants by levy on the local rates), and the institution was then passed to the county sheriff for use from August 1779.⁷⁶⁶

4. Meanwhile, the old gaol (which had been vacated), and such land as was linked to it, were put up for sale by public auction. The best price (£620) was offered by Frances, Viscountess Irwin.⁷⁶⁷ Given the terms of the perpetual trust relating to the old gaol⁷⁶⁸, however, the three surviving trustees lacked legal authority to “make a good and perfect conveyance” of the site to the proposed purchaser.⁷⁶⁹ To this end, the three trustees “on behalf of themselves, and the inhabitants of the said county of Sussex” sought powers through the 1787 Act.

5. The 1787 Act authorised (in broad terms) the following steps:

- (a) that the new gaol (together with the gaoler’s house, chapel and infirmary) should “for ever hereafter be and remain [designated] the common gaol and prison of and for the said county of Sussex”, and that the various buildings should be “maintained, supported, and repaired” in the manner prescribed by national law;⁷⁷⁰
- (b) that all the land and buildings occupied for the purposes of the old gaol should be vested in the three named trustees (and their heirs and assigns), free from the trusts which were recited in the 1750 deeds, but subject to the requirement that the trustees “as soon as conveniently may be after the passing of [the 1787] Act”, and subject

⁷⁶⁵ The 1787 Act, preamble. The 1787 Act gives no indication of the specific statutory powers used by the justices in 1775 to acquire land or to expend moneys on the building operation.

⁷⁶⁶ The 1787 Act, preamble. The new gaol was to be used “as the common gaol or prison of the said county”: *ibid.*

⁷⁶⁷ The 1787 Act, preamble. Sale by auction was authorised by the county justices (in quarter sessions) in May 1782.

⁷⁶⁸ The old gaol was held in trust by appointed trustees and their successors. The site (at Ockledons in Horsham, abutting “the great street, commonly called The Bull’s Place”) had been leased to the trustees in January 1750: preamble to the 1787 Act.

⁷⁶⁹ The 1787 Act, preamble.

⁷⁷⁰ The 1787 Act, s.1.

to Frances, Viscountess Irwin first paying the “consideration money”, convey the premises to the Viscountess without encumbrance;⁷⁷¹

- (c) that the trustees should account to the county justices for the purchase moneys received and pay those moneys into the county stock, having first deducted the costs of obtaining the 1787 Act and completing the land conveyance;⁷⁷² and
- (d) that there be a general saving for all third-party rights in the respective parcels of land⁷⁷³ which may have accrued prior to the passing of the 1787 Act.⁷⁷⁴

Status of the 1787 Act

6. The main purpose of the 1787 Act - which was a relatively short piece of legislation - was to sanction prospective breach of the trust relating to the holding of land for the old gaol in Horsham, and to authorise sale and transfer of that land. The 1787 Act's purpose in connection with the new gaol was more limited. It did not seek to authorise the land acquisition or the building or the raising of moneys. Instead, it provided simply for gaol designation and future maintenance.

7. Although the 1787 Act referred to specific indentures (deeds), it did not refer by name to other legislation. It appears implied that there was already power to construct the replacement gaol and to expend moneys on that task. Authority probably stemmed from existing national legislation.⁷⁷⁵

8. The purpose of the 1787 Act, in the main, had expired once the old gaol was sold. The continuing obligations relating to the new gaol only remained relevant

⁷⁷¹ The 1787 Act, ss.2, 3.

⁷⁷² The 1787 Act, s.4. Once the moneys were paid into the county stock they were to be apportioned and credited to the county divisions in the same manner as those divisions contributed to the purchase price of the new gaol site.

⁷⁷³ *I.e.* the parcel sold to the Viscountess and the parcel purchased for the new gaol.

⁷⁷⁴ The 1787 Act, s.5.

⁷⁷⁵ By 1775 (when the county justices gave the go-ahead for the replacement project) the statute book already had on it Acts of 1698 (11 Will.3 c.19), 1711 (10 Anne c.24), 1719 (6 Geo.1 c.19), 1758 (32 Geo.2 c.28) and 1774 (14 Geo.3 c.59). It was probably this last-mentioned statute of 1774, “An Act for preserving the Health of prisoners in Gaol, and preventing the Gaol Distemper”, which helped energise the Sussex justices to take action. The position was reinforced by the enactment in 1784 (ahead of the 1787 Act) of legislation amending the 1698 Act and enabling justices to build and repair gaols in their counties (24 Geo.3 Sess.2 c.54). The 1787 Act did speak in non-specific terms, though, of power to build the gaol and ancillary buildings on the basis of “the proper costs and charges of the inhabitants of the several divisions of the said county, assessed, levied, and collected according to the form of the [unspecified] statute in that case made and provided”: preamble to the 1787 Act.

whilst that institution was functioning. As indicated below, the Horsham gaol closed in 1845.

9. The whole of the 1787 Act has become spent, and may now be repealed.

Archive-based history

10. The original county gaol appears to have been transferred from Lewes (in the eastern division of the county) to Horsham (in the western division) by the late 1530s. In its early embodiments it occupied various houses. In about 1641 it moved to a building which may have occupied the site of today's post office on the north side of the Carfax. In the 1720s the gaol was described as being a stone building, having a two-bayed two-storey façade crowned with battlements.⁷⁷⁶ In 1767 it was recorded that the gaol could accommodate 19 prisoners.⁷⁷⁷

11. Gaol conditions were severely criticised by the prison reformer John Howard in 1774, and in 1775 construction of a new gaol commenced. The old gaol was decommissioned, but it was known that as late as 1868 part of the original building still survived, although put to other use.⁷⁷⁸ Today, no trace of the old building exists (the last remains having been demolished around 1972).

12. The new gaol was sited on the north side of East Street (then known as New Street) on the margins of the town of Horsham, adjacent to Gaol Green. It was built partly with local stone, and designed in the classical style.⁷⁷⁹ The gaol was enlarged in 1819-20, but after 1830 (by which date the spring assizes had relocated to Lewes) it was used only for the confinement of debtors, those committed for trial, and as a place of execution for felons brought from Lewes.⁷⁸⁰ The gaol closed in 1845 and

⁷⁷⁶ British Library Lansd. MS.918, ff19, 28; W. Albery (see below), p. 338.

⁷⁷⁷ British Library Add. MS 32980, ff. 380-1.

⁷⁷⁸ See generally hereon: W. Albery *A Millennium of Facts in the History of Horsham and Sussex, 947-1947* (publ. 1947) ("Albery *Hist. Horsham*"), pp. 328-330, 332, 337-339, 342, 352; D.E. Hurst *Horsham: Its History and Antiquities*, (1868) p. 113, both referred to in 'Horsham: General history of the town', *Victoria County History: A History of the County of Sussex Vol. 6 Pt. 2* (Bramber Rape, North-Western Part, including Horsham) (1986), pp. 131-156 at www.british-history.ac.uk/report.asp?compid=18350. The parish tithe map of 1844 shows the plot occupied by the Richmond Arms Inn (information courtesy of Richard Childs, West Sussex County Archivist based, in part, on Annabelle Hughes' work *Horsham Gaol and Gaolers* (publ. 2001 in the Horsham Museum journal)).

⁷⁷⁹ The two-storey building comprised five bays set between two end pavilions, with the large prison block sited behind. Designed by the Duke of Richmond's surveyor, this was the first "model prison" built in England, and the first provided with single cells. See eg. Albery *Hist. Horsham*, pp. 323, 371, 379, 392-397.

⁷⁸⁰ Albery *Hist. Horsham*, p. 402.

was demolished shortly thereafter.⁷⁸¹ The site, by 1875, was occupied by the county police station.⁷⁸²

13. The only prisons presently operating in East or West Sussex (under the aegis of HM Prison Service) are those located at Lewes and at Ford (near Arundel).

Extent

14. The 1787 Act applies locally only within the county of West Sussex in England.

Consultation

15. The Home Office, HM Prison Service and West Sussex County Council have been consulted about this repeal proposal.

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⁷⁸¹ Apparently the salvaged materials were used in the building of the railway line between Horsham and Three Bridges (the junction with the London-Brighton main line): see Albery *Hist. Horsham*, pp. 403-5.

⁷⁸² As shown on the first edition Ordnance Survey map (1875, reprinted 1883). The site today is probably (odd nos.) 23-33 East Street, Horsham.

COUNTY GAOLS - WILTSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
39 & 40 Geo.3 c.liii (1800) (New Sarum Gaol Act 1800)	The whole Act.

39 & 40 Geo.3 c.liii (1800) (New Sarum Gaol Act 1800)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁷⁸³ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁷⁸⁴ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In the city of New Sarum (now Salisbury) in Wiltshire the common gaol for the city had, by the early 1780s, “become very ruinous and insecure, and [was] too small, and [was] also inconveniently situated”.⁷⁸⁵ This gaol was the responsibility of the Lord Bishop of Sarum (as lord of the manor of the city “in right of his see”)⁷⁸⁶ and of his appointed gaol keeper, both of whom were “subject to the repair, support, and maintenance of a proper gaol within the said city, and to the custody and safe

⁷⁸³ 11 Will.3 c.19 (1698) (“An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties”) which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth’s *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁷⁸⁴ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁷⁸⁵ Preamble to 25 Geo.3 c.93 (1785) (“the 1785 Act”), being “An Act for the Removal and Rebuilding of the Council Chamber, Guildhall, and Gaol, of the City of New Sarum; and for ascertaining the Tolls of the Market, and regulating the Chairmen within the said City”. In the *Chronological Table of the Statutes* this Act is assigned the short title “Salisbury: improvement Act 1785”. See also the Salisbury City minute book for 13 November 1782 (Wiltshire & Swindon Record Office, ref. G23/1/5) which records the city gaol as being in a poor state [information kindly provided by Andrew Crookston, county archivist].

⁷⁸⁶ The 1785 Act, preamble.

keeping of all prisoners, as well as felons and debtors, as others, within the liberties of the said city and the close [of the Cathedral canons]”.⁷⁸⁷

3. The mayor and commonalty of the city corporation were willing to take over the responsibility of rebuilding the gaol (and providing accommodation for the bishop’s courts and certain other facilities) in exchange for the bishop transferring ownership in the various lands to the corporation together with the benefit of all the “tolls, fees, and perquisites” arising from the bishop’s rights attached to the holding of fairs and markets within the city.⁷⁸⁸ The city corporation would then build “a good and substantial gaol for the said city, and the close thereof”; take on its repair and maintenance; and be responsible for the safe custody of the assigned prisoners.⁷⁸⁹

4. To this end the 1785 Act was promoted and the requisite powers obtained for transferring ownership of the gaol and its grounds by August 1785. With that ownership came the obligation of repair and support of “a good, substantial, and proper common gaol for the said city” and responsibility for the custody of the prisoners within it.⁷⁹⁰ The city corporation were then required to demolish the old common gaol (together with the council house and the guildhall, which were respectively fire-damaged and decayed), and to rebuild, amongst other things, a new common gaol for the city, conveniently sited within the city or its “suburbs or precincts”.⁷⁹¹

5. As an interim measure the prisoners then housed in the old city gaol (and those then committed by the city justices) were to be transferred to the county gaol.⁷⁹²

6. By 1800, however, the needs of the city had changed. The new city gaol had not been built under the terms of the 1785 Act, notwithstanding the enjoinder in the

⁷⁸⁷ *Ibid.*

⁷⁸⁸ *Ibid.*

⁷⁸⁹ *Ibid.*

⁷⁹⁰ The 1785 Act, ss.1, 2. On formal transfer, the bishop and the incumbent gaol keeper were discharged from all their legal obligations in this regard.

⁷⁹¹ The 1785 Act, ss.3, 6. This common gaol was to be designed to hold felons, debtors and “others”: *ibid.*, s.6. The 1785 Act, in sections 9 to 12, laid down the machinery for acquiring an alternative site, determining and settling the purchase moneys and raising the moneys on loan, remedying defects in title, effecting legal transfer, and so on.

⁷⁹² The county gaol was situated in the parish of Fisherton Anger (but the justices could also commit to any other suitable gaol or bridewell in Wiltshire): the 1785 Act, s.7. The city corporation was required to make financial provision (“pecuniary satisfaction”) for the maintenance of the prisoners so committed, and to provide financial compensation to the city gaol keeper who would be made redundant: *ibid.*, ss.7,

Act to ensure that its purpose was put into effect “with all convenient speed”.⁷⁹³ The city corporation, “in obedience to and performance of the said [1785] Act”, had demolished the original council house, common gaol and guildhall and, on the same site, had rebuilt “a proper council house and guildhall, of such size and construction”, and with such facilities, as were thought appropriate.⁷⁹⁴ However, in the intervening years, having transferred and committed convicted prisoners to the then county gaol at Fisherton Anger, and having found the situation perfectly satisfactory because “the said county gaol [was] very large and secure” and was in close proximity to the city’s boundary (accessed by a public bridge over the River Avon), the corporation decided to perpetuate the arrangement.⁷⁹⁵ The bishop was likewise content that debtors, and others against whom judgment was given by his courts of record of pleas, should be confined in the same gaol.

7. With the approval of the various quarter sessions sitting across the county, and aided by a gift of freehold land (abutting the county gaol to the north, the river to the east, and the Salisbury infirmary to the west) by the Earl of Radnor to the county justices “in order to make the said county gaol more commodious”, statutory power was sought (amongst other things) to vary the 1785 obligation relating to the city gaol.

8. To this end the 1800 Act provided authority for the following purposes (set out here in broad terms):

- (a) that “the clauses in the [1785] Act contained, requiring the Mayor and Commonalty of the said City of New Sarum to erect and build a gaol within the said city” be repealed;⁷⁹⁶

8. Whilst the new gaol was being built, the city justices and the justices for the Cathedral close would commit to the common gaol for the county.

⁷⁹³ The 1785 Act, s.6.

⁷⁹⁴ Preamble to 39 & 40 Geo.3 c.liii (1800) (“the 1800 Act”), being “An Act for Repealing so much of an Act, passed in the Twenty-fifth Year of the Reign of His Present Majesty, intituled, *An Act for the Removal and rebuilding of the Council Chamber, Guildhall, and Gaol of the City of New Sarum, and for ascertaining the Tolls of the Market, and regulating the Chairmen within the said City*, as requires the Mayor and Commonalty of the City of *New Sarum* to build a new Gaol within the said City, or the Suburbs or Precincts thereof; and for authorising the Commitment of Felons and other Persons within the Limits of the said City and the Close thereof, to the gaol of the County of *Wilts*; and for explaining and amending the said Act”.

⁷⁹⁵ The 1800 Act, preamble.

⁷⁹⁶ The 1800 Act, s.1. This provision did not identify exactly - by number - the sections (or clauses) in the 1785 Act which were to be repealed nor, on its face, did it repeal expressly the provisions relating to the city gaol other than those which required the construction of the replacement building. The 1800 Act was silent about decommissioning and demolition of the old gaol - which, by then, had happened - and about the transfer of prisoners and the consequential financial arrangements. Impliedly, it seems, these provisions were also repealed. The 1800 Act did make clear expressly, however, that its provisions were

- (b) that the land at Fisherton Anger to be gifted by the Earl of Radnor for gaol-related use should be held in trust for that purpose by the high sheriff of the county;⁷⁹⁷
- (c) that the ability of the city justices or the close justices⁷⁹⁸ to commit “felons or other prisoners” to the county gaol at Fisherton Anger (as if it were the city gaol) be legitimised on a permanent basis;⁷⁹⁹
- (d) that the bishop, acting through his “proper officer”, be empowered to detain in custody in the county gaol “all debtors and other persons who shall be legally arrested or taken in execution” (by order of the courts of record of pleas) and who are liable to be committed to “any gaol or place of security”, as if the county gaol were located within the city;⁸⁰⁰
- (e) that all city and close constables, sub-constables and peace officers, and all bishop’s court officers, be authorised to execute any justices’ or court order requiring the conveyance of prisoners to or from the county gaol as if it were the city gaol (and, in so doing, they should be immune from any legal action for acting outside their respective jurisdictions);⁸⁰¹
- (f) that the city and the close were to be responsible for paying for “the maintenance and support” of the prisoners committed by the relevant justices to the county gaol;⁸⁰²

not to “prejudice, lessen, or defeat any right, estate, or interest” vested in the bishop (as lord of the manor of New Sarum), except those already affected by the 1785 Act: the 1800 Act, s.15.

⁷⁹⁷ The 1800 Act, s.2.

⁷⁹⁸ *I.e.* the justices for the Cathedral close. These were the bishop, recorder and canons residentiary (see <http://www.oldtowns.co.uk/Wiltshire/salisbury.htm>).

⁷⁹⁹ The 1800 Act, s.3. Prisoners so committed were deemed to be imprisoned within the city limits: *ibid.*, s.11. The county gaol keeper’s responsibilities were specifically extended to cover the receipt and detention of “the felons, debtors, or other persons” committed from Salisbury, and he was required to provide adequate security for the safe-keeping of those prisoners: *ibid.*, ss.6, 8.

⁸⁰⁰ The 1800 Act, s.4. This applied to both the incumbent bishop and “his successors”: *ibid.*

⁸⁰¹ The 1800 Act, s.5. The county sheriff was likewise exempted from liability for any prisoner escape: *ibid.*, s.10.

⁸⁰² The 1800 Act, s.7.

- (g) that the cost of maintaining the “felons and prisoners” committed by the justices for the close was to be paid from the poor rates levied on the inhabitants of the close;⁸⁰³
- (h) that any future costs incurred by the county justices (acting through their general quarter sessions) in enlarging cells in the county gaol, or in building new cells, would be shared between the county and the city corporation on a 90%: 10% basis;⁸⁰⁴
- (i) that the office of bishop’s clerk (or prothonotary of the bishop’s court of record of pleas) in Salisbury, and that of clerk of the peace for the city, be made separate and distinct, and that the office-holders should in future be appointed by the bishop, and by the mayor and commonalty, respectively;⁸⁰⁵ and
- (j) that any legal proceedings arising from, or under, the 1800 Act be both jurisdiction and time-limited.⁸⁰⁶

Status of the 1800 Act

9. The principal purpose of the 1800 Act was to modify the statutory arrangements previously enacted in 1785. The 1785 Act⁸⁰⁷ had envisaged (in part) the construction of a new city gaol for the city of Salisbury, and it had made provision for both the demolition and rebuilding processes.

10. The remainder of the 1785 Act contained town improvement provisions unrelated, or only distantly related, to the gaol project. It dealt with (in broad terms):

- (a) rebuilding the existing council house and guildhall;⁸⁰⁸

⁸⁰³ The 1800 Act, s.9.

⁸⁰⁴ The 1800 Act, s.12. The mayor and commonalty of the city were required to pay their share within 3 months of receiving a full account and breakdown of the expenditure incurred.

⁸⁰⁵ The 1800 Act, s.13. Each office would carry with it its own “fees, perquisites, rights, and advantages”. In the case of the bishop’s clerk, that would exclude “the tolls, fees, and perquisites of the fairs and markets within the said city”, which would remain with the city corporation: *ibid*. The offices would only be held whilst the incumbents were of good behaviour.

⁸⁰⁶ The 1800 Act, s.14. Proceedings had to be brought within six months and commenced within “the county of Wilts and not elsewhere”: *ibid*.

⁸⁰⁷ The 1785 Act comprised a long title, a preamble and 22 sections.

⁸⁰⁸ The 1785 Act, preamble and ss.1, 3-5.

- (b) mechanisms for effecting land acquisition;⁸⁰⁹
- (c) the ability to raise moneys for the various projects by mortgaging or assigning “all or any of the said tolls, fees and perquisites arising or to arise from the fairs and markets within the said city”;⁸¹⁰
- (d) the ability of the mayor and city justices to designate sites in the city for livestock and produce markets, to make orders regulating the conduct of fairs and markets, to fix times for the setting-up and dismantling of stalls and for the sale of goods, and to levy tolls on the sale of livestock;⁸¹¹
- (e) the licensing by the mayor and justices of “hackney chairmen” operating within the city (and requiring the numbering or lettering of each licensed hackney chair), and the regulating of chairmen, the fares charged, and the use of “the publick stand”;⁸¹² and
- (f) various ancillary arrangements for the enforcement of court orders, the handling of appeals by persons aggrieved by steps taken under the 1785 Act, the laying down of time limits for legal proceedings, and the saving of rights vested in the bishop of New Sarum (as lord of the manor) and in the then bishop’s clerk (who was also clerk of the market).⁸¹³

11. Part of the 1785 Act (dealing with town improvements) is still in force.⁸¹⁴ The 1800 Act purported to repeal the provisions in the 1785 Act which dealt with building a city gaol, but failed to specify exactly which sections - or parts of sections - were to be repealed or modified.

⁸⁰⁹ The 1785 Act, ss.9-11.

⁸¹⁰ The 1785 Act, s.12.

⁸¹¹ The 1785 Act, ss.13, 14.

⁸¹² The 1785 Act, s.15. The expression “hackney chairmen” was not defined in the 1785 Act, but appears from its context to mean the operators of hackney chairs (being persons licensed to provide sedan chairs, or similar means of public transportation, for hire).

⁸¹³ The 1785 Act, ss.16-21.

⁸¹⁴ The *Chronological Table of the Statutes* shows the 1785 Act as being in force (and of limited geographic application), but not the extent of its effectiveness. The entry does not mention the partial repeal by the 1800 Act.

12. This repeal note relates only to the 1800 Act. It does not recommend repeal now of the 1785 Act, either in whole or in part, because:

- (a) the 1785 Act is a composite Act, dealing with town improvement issues as well as those relating to the gaol;
- (b) town improvement issues fall outside the remit of the present repeal review which is confined to county and town gaols; and
- (c) it is not possible to identify precisely the sections in the 1785 Act which have been repealed and those which remain to be repealed.

13. On the other hand, the whole of the 1800 Act has become spent, and may now be repealed.

14. The historic evidence set out below shows that the county gaol, located at Fisherton Anger, was decommissioned in 1870.

15. The ecclesiastical courts of record of pleas (being a category of inferior courts with local jurisdiction), and the secular office of clerk of the peace - each referred to in the 1800 Act⁸¹⁵ - have both been abolished. The inferior courts were abolished as obsolete by the Ecclesiastical Jurisdiction Measure 1963⁸¹⁶, and clerks of the peace by the Courts Act 1971.⁸¹⁷ The Salisbury Bishop's Court (classed as a borough civil court) was specifically abolished by the Local Government Act 1972.⁸¹⁸

Archive-based history

16. The 1800 Act, in its preamble, records that the Salisbury city gaol (along with the original council house and guildhall) had been demolished between 1785 and 1800.

17. A county gaol had first been built at Fisherton Anger (on the outskirts of Salisbury) by 1578. The final structure (gaol and bridewell) was built between 1818

⁸¹⁵ See the 1800 Act, s.13 and para. 8(i) above.

⁸¹⁶ (1963 No. 1), s.82(2). Section 82(2)(a) of the 1963 Measure speaks of abolition of "the courts of audience", but the Measure fails to define the term. The expression appears to embrace the provincial ecclesiastical courts, and includes the inferior courts of record. The office of prothonotary of the court of record of pleas was repealed by the Superior Courts (Officers) Act 1837 (itself now repealed).

⁸¹⁷ s.44(1)(a).

⁸¹⁸ s.221 and sch 28.

and 1822.⁸¹⁹ Existence of the gaol was recorded in 1837 in the Prison Report of that year,⁸²⁰ and in 1847 in the Report of Inspectors of Prisons.⁸²¹ It was closed in February 1870 (when all the prisoners had been transferred to Devizes New Prison).⁸²²

18. Part of the gaol building was demolished in 1875⁸²³, but the central block remained in use as a private residence (and later as an army HQ) known as Radnor House. It was finally demolished in 1959 to make way for a city ring road.⁸²⁴

19. Today, the former village of Fisherton Anger lies with the city limits of Salisbury, situated on the west side of the river Avon.

20. Only one prison now operates (under the aegis of HM Prison Service) in Wiltshire, at Devizes: HMP Erlestoke.

Extent

21. The 1800 Act applies locally only within the county of Wiltshire, in England.

Consultation

22. The Home Office, HM Prison Service, Wiltshire County Council and Salisbury District Council have been consulted about this repeal proposal.

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⁸¹⁹ See *Old Towns: Salisbury in 1841* at <http://www.oldtowns.co.uk/Wiltshire/salisbury.htm>; and E. Kite *Book 5: Wiltshire Notes and Queries, Vol. 5*, chap. 4, p. 137 dealing with the Fisherton gaol.

⁸²⁰ Part III 'Southern and Western District', pp. 004-008 showing "Wiltshire - Salisbury Fisherton Anger County Gaol".

⁸²¹ *12th Report of Inspectors of Prisons - Southern and Western District: Wiltshire* (1847/48, vol. 35). The county gaol was linked at this time with the county house of correction.

⁸²² See Wiltshire Quarter Sessions minute book for Easter Term 1870 (Wiltshire & Swindon Record Office ref. A1/150/27). In October 1867 one West Awdrey wrote to Henry Fox Talbot of the proposal to close the county gaol at Fisherton (and the Salisbury assize), notwithstanding "a very strong feeling on the part of South Wilts against" the potential loss: see <http://www.foxtalbot.arts.gla.ac.uk/corresp/09261.asp?target=360>.

⁸²³ By 1891 the Wiltshire Census Street Index appears to show houses built on the site of the "old gaol ground" in Fisherton Anger: see <http://www.mycensuses.com/1891Wiltshire.htm>

⁸²⁴ Radnor House was leased by the War Office from 1901 (and purchased in 1922) for use until 1957 as headquarters for the Army Southern Command. See generally *The Victoria History for the Counties of England: Wiltshire*, vol. 5 p. 42, and Ruth Newman & Jane Howells *Salisbury Past* (2001).

COUNTY GAOLS - WORCESTERSHIRE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
30 & 31 Vict. c.xxiii (1867) (Worcester Prison Act 1867)	The whole Act.

30 & 31 Vict. c.xxiii (1867) (Worcester Prison Act 1867)

Background and purpose

1. During the early part of the 18th century, justices of the peace (who were a key part of local governance in urban and rural areas throughout England and Wales) were given limited power by Parliament in connection with gaols, both to build new facilities and to repair existing stock.⁸²⁵ That power, however, fell short of outright control. In the latter half of the 18th century the power of gaol management also started to be ceded.⁸²⁶ Across the country, in a spate of prison reform (which was applied with varying degrees of enthusiasm in different localities), local justices sought specific powers to expand and improve the prison accommodation for which they were administratively responsible. Many local gaols had fallen into disrepair and their condition produced a significant health hazard.

2. In the 19th century, the earlier legislation on gaols and houses of correction was consolidated and amended, so that standards in these institutions could be improved, and some uniformity achieved in their operation (given that they remained under local control until the reforms of 1877). Acts were passed in 1823 and 1824 which started this process⁸²⁷, amended in 1839⁸²⁸, and added to in 1865.⁸²⁹

⁸²⁵ 11 Will.3 c.19 (1698) ("An Act to enable Justices of the Peace to build and repair Gaols in their respective Counties") which was time-limited, continued by 10 Anne c.24 (1711), and made perpetual by 6 Geo.1 c.19 (1719) (The 1698 Act was cited as a 1700 Act in Holdsworth's *A History of English Law* (1938), vol. 10, p.181). The 1698 Act was subsequently amended by 24 Geo.3 Sess.2 c.54 (an Act of 1784), which later Act also provided for the rebuilding of gaols.

⁸²⁶ For example, in 1758 by 32 Geo.2 c.28 (Debtors Imprisonment Act) and in 1791 by 31 Geo.3 c.46 (Gaols Act).

⁸²⁷ In 1823, the Gaols, etc (England) Act 1823 (4 Geo. 4 c.64) (repealing the 1698 Act, and itself repealed in 1865) and, in 1824, the Gaols, etc (England) Act 1824 (5 Geo. 4 c.85) (amending the 1823 Act, and also repealed in 1865).

⁸²⁸ By the Prisons Act 1839 (2 & 3 Vict. c.56) (repealed completely in 1948), which gave a limited role to the Secretary of State.

⁸²⁹ By the Prison Act 1865 (28 & 29 Vict. c.126) (repealed in 1952). This Act abolished the distinction between gaols, houses of correction, bridewells and penitentiaries: each was now termed a prison. The 1865 Act repealed the 1823 and 1824 Acts and a large part of the 1839 Act. The 1865 Act was followed by the Prison Act 1877 (40 & 41 Vict. c.21) (also repealed in 1952), which was the first to centralise the prison service for England and Wales.

3. In Worcester, by the mid-1820s, there were two separate gaols in operation: one for the county of Worcestershire (built around 1813, to replace the old county gaol in Worcester castle) and one for the city of Worcester (opened in 1824 and managed by the city corporation).

4. By 1867, the city corporation had formed the view that the city gaol was “of defective construction so that the proper separation of prisoners therein [could not] be maintained” and that, in the interests of “economy of management”, it would be “of local advantage” if the two existing prisons within the city could be amalgamated.⁸³⁰ To that end the city corporation and the county justices (acting through quarter sessions) had agreed the merger, and the corporation then sought legislative powers to implement the decision and to take steps to extend capacity within the county prison.⁸³¹

5. The broad purposes underpinning the 1867 Act were these:

- (a) to authorise a “union” of the county and city prisons as a single institution on a single site, deemed to be within the city⁸³², to be called the Worcester Prison;⁸³³
- (b) to provide the city corporation with power to acquire by compulsory purchase various lands adjoining the existing county gaol (which power was time-limited);⁸³⁴

⁸³⁰ Preamble to 30 & 31 Vict. c.xxiii (1867) (“the 1867 Act”), being “An Act for the Union of the Prisons of the County of Worcester and of the City and County of the City of Worcester; and for other Purposes”. The 1867 Act’s short title was the Worcester Prison Act 1867: *ibid.*, s.1. At this time, the city of Worcester had the status of both city and, in its own right, county.

⁸³¹ The costs incurred in obtaining the 1867 Act were to be borne solely by the city corporation: the 1867 Act, s.67.

⁸³² Except for offences committed in the newly designated prison, or in the shire hall, which were deemed to be committed within the county: *ibid.*, s.13.

⁸³³ The 1867 Act, ss.10, 12. The amalgamated prison was to act as a prison to which the Prison Act 1865 applied, including “being a place of confinement for debtors”. The Secretary of State was to be the final arbiter on the operational relationship between the 1865 Act and the 1867 Act: *ibid.*, s.11. [The 1865 Act abolished the distinction between gaol and house of correction, creating a new institution called the prison. Prisons did not move from local to central control until enactment of the Prison Act 1877, under which the Secretary of State then assumed control of all prisons: see above]. Once amalgamated, the Worcester prison was to be held in trust for the county justices (a 5/6th part) and the city corporation (a 1/6th part): *ibid.*, s.16. The 1867 Act was not to affect any existing liability of the county justices to repay debt mortgaged on the former county prison: *ibid.*, s.55.

⁸³⁴ The 1867 Act, ss.4-6. The city corporation was to act within the terms of the Municipal Corporations (England) Act 1835 (5 & 6 Will.4 c.76), as amended, and “other Acts and laws for the time being in force affecting the corporation”: the 1867 Act, ss.3, 4. The lands to be taken were described in detail in the plans and book of reference deposited with the respective clerks of the peace as part of the pre-legislative procedure: *ibid.*, preamble and s.5. The 1867 Act incorporated the relevant provisions of the Lands Clauses Consolidation Act 1845 and the Lands Clauses Consolidation Acts Amendment Act 1860

- (c) to authorise the corporation to construct and fit-out buildings on the acquired lands (and on part of the county prison site) for prison purposes, and to link the new and the existing structures, so as to provide additional cell accommodation within the complex;⁸³⁵
- (d) to authorise the corporation to enter into priced contracts for the execution of the construction and other works;⁸³⁶
- (e) to authorise the certification of completion of the new prison, when ready; the transfer of prisoners from the city prison to the Worcester prison (subject to the Secretary of State not issuing an order suspending transfer on the grounds of “any contagious or infectious disease” or other “sufficient” cause); and the decommissioning of the city prison;⁸³⁷
- (f) to authorise the city corporation to appropriate the old city prison to another public use, or to dismantle and dispose of it (by outright sale or by lease),⁸³⁸
- (g) to require the appointment, by the county justices and the city corporation, of visitors to the amalgamated prison. The visitors, who would act as both visiting justices and prison authority⁸³⁹, were obliged

which provided the statutory mechanisms for compulsory purchase of land and payment of compensation: *ibid.*, s.2. The powers of compulsory purchase were expressed specifically to lapse “after the expiration of three years from the passing of [the 1867] Act”: *ibid.*, s.6.

⁸³⁵ The 1867 Act, s.7: the building project was to be undertaken at the corporation’s expense and in accordance with plans agreed with the county justices and approved by the secretary of state. The amalgamated and expanded prison was to provide a maximum of 48 additional cells: *ibid.*, preamble and s.40.

⁸³⁶ The 1867 Act, s.8. The corporation was also entitled to “compound” with contractors for any contractual breaches (paying damages or “other recompence” into the city fund): *ibid.*, s.9.

⁸³⁷ The 1867 Act, ss.10, 14 and 15. The prisoners were categorised as sentenced, committed or debtor: *ibid.*, s.14. Once the prisoners had been removed from the city prison, that prison “shall cease to be a prison”: *ibid.*, s.15. All the powers and duties vested in the city and county officials (eg. sheriff, coroner) relating to the former prisons and inmates were to be retained in respect of the amalgamated Worcester prison: *ibid.*, s.34. The amalgamated prison was to continue to be staffed by county officers, but the city prison officers were to be deprived of their employment (although compensated “by gratuity or otherwise”): *ibid.*, ss.17, 56. Pending formal amalgamation (“the union”) of the prisons, an interim contract was to be in place for the holding and maintenance of city prisoners including debtors) within the county prison: *ibid.*, s.60.

⁸³⁸ The 1867 Act, s.58. Either way, the fittings and furniture could be sold on decommissioning. The proceeds from sale of the land and of the fittings were to be treated as capital sums within the city fund.

⁸³⁹ The 1867 Act, ss.18-23, 25, 26. The powers relating to visitors in the 1867 Act were designed to vary and supplement the general powers and responsibilities set out in the Prison Act 1865, and to give the visitors the powers of “justices in sessions assembled”: *ibid.*, s.21 (and also s.66). The chairman of quarter sessions for the county and the city mayor were each deemed *ex officio* visitors: *ibid.*, s.23.

to make rules to regulate their proceedings, to appoint a treasurer, and to report annually to their appointing bodies;⁸⁴⁰

- (h) to authorise the appointed visitors to enter into contracts for repair works (supported where necessary by bond), and to “compound” with any contractor for non-compliance or issue legal proceedings;⁸⁴¹
- (i) to authorise the visitors to pay salaries or wages, and to grant superannuation allowances, to their employed officers⁸⁴², and to have valued, and to take control of, “all the stock in trade” within both the former prison and the new prison;⁸⁴³
- (j) to provide for apportionment (if appropriate) of any future expenses arising from the need for new buildings, “tread-wheels, or extraordinary appliances”, and for the mode of payment;⁸⁴⁴
- (k) to authorise the city corporation to borrow moneys for the purposes of the project,⁸⁴⁵ and
- (l) to provide for various consequential issues.⁸⁴⁶

Visitors were to serve for yearly terms: *ibid.*, s.22. Non-visitor justices were not precluded by these provisions from making prison visits under Prison Act 1865, s.55: *ibid.*, s.28.

⁸⁴⁰ The 1867 Act, ss.24, 25, 27.

⁸⁴¹ The 1867 Act, ss.29-31. No justice or city corporation member was permitted to contract with the prison visitors for the performance of any works: *ibid.*, s.47.

⁸⁴² The 1867 Act, s.35. The county justices and the city corporation remained separately liable for payment of all previous pensions and similar gratuities granted to county and city prison officers: *ibid.*, ss.53, 54. The expenditure on various future obligations (including paying gratuities to widows of serving officers under section 57), and on maintaining and clothing prisoners, was to be borne by, and apportioned between, the county justices (as a statutory prison authority) and the city corporation (as a statutory municipal corporation) according to the number of prisoners confined in the prison within each body’s jurisdiction. Quarterly estimates were to be produced to the county and city treasurers (made and certified by the visitors) of anticipated costs and apportionments; and on those estimates advance payment to the visitors would be made: *ibid.*, ss.36, 37, 44 and 45. The prison accounts were to be audited retrospectively on a quarterly basis by an appointed accountant, and the auditor’s findings were to be reported to the county justices and the corporation: *ibid.*, ss.38, 39.

⁸⁴³ The 1867 Act, s.42. In contrast to the value of the stock in trade, the profits of prisoner labour accruing were to be apportioned and paid direct to the county justices and the city corporation for their respective funds: *ibid.*, s.43.

⁸⁴⁴ The 1867 Act, ss.40, 41. Apportionment would only occur where the need was not exclusive to the county or the city.

⁸⁴⁵ The 1867 Act, ss.48-52. Moneys borrowed could be secured on the city fund (although not with priority over existing mortgages), and were to be used solely for the Act’s purposes, with any surplus going as capital into the city fund. The Act prescribed certain methods of mortgage repayment (instalments over a period of 30 years from the Act’s passing, ie. by June 1897, or by sinking fund in accordance with the Commissioners Clauses Act 1847). Limited power to re-borrow was bestowed by section 51.

⁸⁴⁶ For example, for discontinuance of the city gaol sessions (the 1867 Act, s.59); for a rebate by the city corporation (within 6 months) where it is agreed that the new prison is not to be built, or that the number

Status of the 1867 Act

6. The purpose underpinning the 1867 Act was the need to secure authority to merge two prisons within the city of Worcester on a single site (to form an expanded prison), and to decommission the former city prison.

7. The 1867 Act built upon - and, for local application, varied - powers relating to prisons, to municipal government and to compulsory purchase of land, contained in earlier national legislation. Its purpose was not affected by other local Act powers and, in that sense, this legislation stood alone.

8. The 1867 Act also contained a time-expiry provision for part of the functions with which it dealt. By section 15, the Worcester city prison was deemed to cease to be a prison once all the prisoners had been removed from it or it had become empty. As the historic information below shows, the city prison was vacated, and the buildings were then sold for a different use.

9. No prison now operates within the city of Worcester. The only four prisons operating under the aegis of HM Prison Service within the county of Worcestershire are located at HMP Blakenhurst, HMP Hewell Grange, YOI Brockhill (all in Redditch) and at HMP Long Lartin (in Evesham).

10. Accordingly, the 1867 Act is now spent, and may be repealed in whole.

Archive-based history

11. Worcester county gaol was situated in Worcester Castle until 1814 when the prisoners were transferred to the new county gaol built in 1813 at Castle Street.⁸⁴⁷ Worcester city gaol was built in 1822 spanning Union Street and Friar Street, and prisoners were moved into it in 1824.⁸⁴⁸

of new cells should be less than 48, and the costs so far incurred are less than £10,000 (subject to the right to obtain provision later if circumstances then dictate) (*ibid.*, s.61); for agreed variation of the timing and conditions of amalgamation (*ibid.*, s.62); and for resolving by arbitration any disputes arising (*ibid.*, ss.63, 64).

⁸⁴⁷ See *Welcome to the City of Worcester: Worcester in the Middle Ages, 12th-15th Century* at <http://www.cityofworcester.gov.uk/heritage/middleages.shtml>

⁸⁴⁸ See *Worcester People and Places: The City Gaol* at <http://www.worcesterpeopleandplaces.com/articles/20050630185320.asp>

12. Pursuant to the 1867 Act, the two gaols were subsequently amalgamated (the prison extension work spanning 1868/69).⁸⁴⁹ The combined prison was located at the county gaol site on Castle Street. It was decommissioned and closed in 1922⁸⁵⁰, and the buildings then were used as temporary accommodation for the city's homeless. The façade was demolished during the 1930s, but some of the cells survived until 1987. The site today is occupied by modern flats and townhouses.⁸⁵¹

13. The city gaol building, located at Union Street, was sold in 1867 to the local member of Parliament (and solicitor) William Laslett. He converted the building to almshouses to accommodate elderly married couples.⁸⁵² It still remains intact. Laslett's Almshouses were registered as a charity with the Charity Commission in 1964.⁸⁵³

Extent

14. The 1867 Act applies locally only within the county of Worcestershire, in England.

Consultation

15. The Home Office, HM Prison Service, Worcestershire County Council, Worcester City Council and the Trustees of the Laslett's Almshouses have been consulted about this repeal proposal.

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⁸⁴⁹ See *Worcestershire Prisons* at

http://www.institutions.org.uk/prisons/England/WOR/worcestershire_prisons.htm

⁸⁵⁰ See Littlebury's Directory of Worcester for 1922, information supplied by the County Archivist for Worcestershire.

⁸⁵¹ See *Worcestershire City Museums: Worcester Now & Then: The County Gaol, Castle Street* at <http://www.worcestercitymuseums.org.uk/content/aswas/asw05.htm>

⁸⁵² See *Worcester People and Places: William Laslett* at <http://www.worcesterpeopleandplaces.com/articles/20050630211651.asp>

⁸⁵³ The charity for the almshouses exists today, registered under charity number 233695.