



LAW COMMISSION
PROPOSALS TO ABOLISH
CERTAIN ANCIENT
CRIMINAL OFFENCES

*Laid before Parliament by the Lord High Chancellor
pursuant to section 3(2) of the Law Commissions Act 1965*

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Commissioners are—

The Honourable Mr. Justice Scarman, O.B.E., *Chairman*.

Mr. L. C. B. Gower, M.B.E.

Mr. Neil Lawson, Q.C.

Mr. N. S. Marsh.

Mr. Andrew Martin, Q.C.

Mr. Arthur Stapleton Cotton is a special consultant to the Commission. The Secretary of the Commission is Mr. H. Boggis-Rolfe, C.B.E., and its offices are at Lacon House, Theobald's Road, London, W.C.1.

LAW COMMISSION

Item XV(e) of First Programme

ABOLITION OF CERTAIN ANCIENT CRIMINAL OFFENCES

1. The Law Commission, having completed its examination of certain ancient criminal offences and having taken into consideration the provisions of the Criminal Law Bill of the last Session and other matters which are understood to be under review by the Criminal Law Revision Committee, proposes the immediate abolition of certain ancient common law misdemeanours and statutory offences. Some of the statutory offences are created by Acts extending to Scotland and the proposal for their repeal has the approval of the Scottish Law Commission.

Common law misdemeanours

2. The five misdemeanours which are proposed for abolition include the issue of a challenge to fight, an offence which relates to and dates from the efforts to suppress duelling. The other offences in this group were aimed at various forms of social nuisance—listening to private conversations and spreading scandals (eavesdropping), persistently stirring up quarrels in the Courts or out of them (the common barrator), indulging in persistent abuse (the common scold) and being out and about when decent folk were abed (the common night walker). There have been no indictments for any of these offences for many years and it is, indeed, doubtful whether in the ordinary way persons charged with commission of the four latter offences were dealt with by indictment. As indictable misdemeanours, therefore, it is true to say that these offences are wholly obsolete.

3. As regards eavesdropping, the offence at common law consists of standing under walls and windows by night or day to hear news and carry it to others to make strife amongst their neighbours. The Commission considers that neither the pocket listening device, the modern menace of “bugging”, nor the “peeping Tom” type of offence can be made to fit into this ancient misdemeanour so as to justify its retention. Nuisances of the “peeping Tom” kind have in fact been dealt with satisfactorily by magistrates by the exercise of their powers to bind over. The Law Commission’s proposals do not affect the exercise of these powers.

Statutory offences: praemunire offences

4. The majority of the statutory offences which are proposed for abolition are those which are made subject to the penalties for praemunire, viz. imprisonment for life, being placed outside the Queen’s protection and forfeiture of property. The Criminal Law Bill, following in this respect the Seventh Report of the Criminal Law Revision Committee (Cmd. 2659. May 1965), proposed to abolish the two latter penalties in all cases. In paragraph 70 of that Report the Committee recommended that the abolition of all these

praemunire offences (other than that arising under section 11 of the Habeas Corpus Act 1689) should be considered in the interests of modernising the statute book. The result of the Law Commission's consideration is to propose that they should in fact (with the indicated exception) be abolished.

5. In their original form the praemunire offences were aimed at those who maintained the Papal supremacy in church affairs in England. Later they were extended to those who in other ways challenged the supremacy of the Crown in church affairs and still later to those who challenged that supremacy in other respects; instances are interference with the Royal courts, obstruction of legal proceedings concerned with unlawful monopolies or purveyances*, propounding opinions contrary to the constitutional settlements of 1661 and 1707. (The Succession to the Crown Act 1707 makes the propounding of such opinions in writing a treason and in speech a praemunire offence. Both the treason and the praemunire offence are proposed to be abolished.) The final statute creating a praemunire offence is section 3 of the Royal Marriages Act 1772 the essence of which is wilfully solemnising or assisting at a "Royal marriage" to which the appropriate consent has not been given.

Statutory offences other than praemunire

6. The other statutory offences which are proposed for abolition are as follows:—

(a) *Maintenance and Embracery Act 1540 section 3*

The original purpose of this section was to introduce as an alternative to a criminal prosecution an action by a common informer for certain types of interference with the course of justice in proceedings concerned with the title to land. Such common informer actions have now been converted into summary prosecutions by the Common Informers Act 1951 and, so far as the offence is a live one at all, there is no sense in having a special rule in actions concerned with land. The abolition of the section does not affect proceedings on indictment at common law for maintenance (the procurement by financial assistance of another person to institute, carry on or defend civil proceedings without lawful justification) or for embracery (attempting by any corrupt means to influence or instruct any juryman).

(b) *The Brawling Act 1553*

Disturbance of religious worship is dealt with in more modern legislation, i.e. Places of Religious Worship Act 1812 and Ecclesiastical Courts Jurisdiction Act 1860.

(c) *Blasphemy Act 1697*

Creates the offence of denying certain tenets of the Christian religion after having been brought up in or having professed that religion. A first offence is visited with certain disabilities; and a second offence with disqualification from suing in the Courts, from holding any office, from being appointed a personal representative or from taking any gift or legacy, as well as with imprisonment for three years.

* The prerogative right of the Crown to buy up provisions and other necessaries for the Royal household at an appraised price and of impressing horses and vehicles at an appraised price for the Royal use (abolished by the Tenures Abolition Act 1660).

(d) *The Profane Oaths Act 1745*

This Act creates the offence of profane cursing and swearing punishable by fine graded to the social degree of the offender.

(e) *Fires Prevention Act 1785*

Imposes penalties for distilling turpentine or tar in dangerous proximity to buildings. These provisions have been superseded by public health and planning legislation and building regulations.

(f) *The Unlawful Societies Act 1799*

The Seditious Meetings Act 1817

The 1799 Act was aimed at the revolutionary societies which were a by-product of the Napoleonic Wars and the Irish unrest and the parts of the 1817 Act which it is proposed to repeal reinforce the earlier provisions. It is not proposed to repeal s. 23 of the 1817 Act which prohibits meetings of more than 50 people within one mile of Westminster when Parliament is sitting.

CONCLUSION

7. All the offences referred to in this Memorandum are obsolete. Consultation with Government Departments has revealed that there is no opposition to their abolition. The Commission takes the view that their abolition, as now proposed, is more akin to statute law revision than to law reform. It is for this reason that the Commission has not thought it necessary to consult the profession formally on the proposal, but informal reference has shown that there is no objection.

8. Appended hereto is a draft clause and schedule to give effect to the proposal.

24th May, 1966.

DRAFT CLAUSE

Abolition of certain offences. (1) The following offences are hereby abolished, that is to say—

- (a) any distinct offence under the common law in England and Wales of challenging to fight, eavesdropping or being a common barrator, a common scold or a common night walker ; and
- (b) any offence under an enactment mentioned in Part I of the Schedule hereto, to the extent to which the offence depends on any section or part of a section included in the third column of that Schedule.

(2) Accordingly the enactments mentioned in the Schedule hereto are hereby repealed to the extent specified in the third column of the Schedule, but subject to the provisions of Part III of the Schedule.

(3) This section shall extend to Northern Ireland only in so far as it relates—

- (a) to offences under any Act of the Parliament of Ireland ; or
- (b) to offences under any other enactment of which the repeal is in the Schedule hereto expressed to extend to Northern Ireland ;

and in so far as it repeals any such Act or enactment.

SCHEDULE

REPEALS

PART I

ACTS CREATING OFFENCES TO BE ABOLISHED

Chapter	Short Title	Extent of Repeal
16 Ric. 2. c. 5.	The Statute of Praemunire.	The whole Chapter (this repeal extending to Northern Ireland).
24 Hen. 8. c. 12.	The Ecclesiastical Appeals Act 1532.	Section 2.
25 Hen. 8. c. 19.	The Submission of the Clergy Act 1533.	Section 4, so far as unrepealed.
25 Hen. 8. c. 20.	The Appointment of Bishops Act 1533.	Section 5.
25 Hen. 8. c. 21.	The Ecclesiastical Licences Act 1533.	Section 6.
26 Hen. 8. c. 14.	The Suffragan Bishops Act 1534.	Section 16.
28 Hen. 8. c. 16.	The Ecclesiastical Licences Act 1536.	Section 4, from "And that no such suffragan" onwards.
32 Hen. 8. c. 9.	The Maintenance and Embracery Act 1540.	Section 1, from "and shall never" onwards.
1 Mary Sess. 2. c. 3.	The Brawling Act 1553.	Section 3.
21 Jas. 1. c. 3.	The Statute of Monopolies.	The whole Act.
12 Chas. 2. c. 24.	The Tenures Abolition Act 1660.	Section 4, from "and if any person or persons shall after notice given" onwards.
13 Chas. 2. Stat. 1. c. 1.	The Sedition Act 1661.	Section 8.
9 Will. 3. c. 35.	The Blasphemy Act 1697.	Section 12, from "and if any person or persons shall after notice given" onwards.
6 Anne c. 41.	The Succession to the Crown Act 1707.	The whole Act, so far as unrepealed.
19 Geo. 2. c. 21.	The Profane Oaths Act 1745.	The whole Act.
12 Geo. 3. c. 11.	The Royal Marriages Act 1772.	Section 3 (this repeal extending to Northern Ireland).
25 Geo. 3. c. 77.	The Fires Prevention Act 1785.	The whole Act, so far as unrepealed.
39 Geo. 3. c. 79.	The Unlawful Societies Act 1799.	The whole Act, so far as unrepealed.
57 Geo. 3. c. 19.	The Seditious Meetings Act 1817.	Sections 25 to 28. In section 29, the words "any meeting of any society or club hereby declared to be an unlawful combination and confederacy or". Sections 30 and 31. Sections 34 to 38. The Schedule.
<i>Act of Parliament of Ireland</i>		
40 Geo. 3. c. 29. (Ir.)	[The Parliamentary Representation Act (Ireland) 1800].	Section 3 from "and every person" onwards.

PART II

CONSEQUENTIAL REPEALS

Chapter	Short Title	Extent of Repeal
39 & 40 Geo. 3. c. 67.	The Union with Ireland Act 1800.	In section 2, in the recital, the third section of the recited Act from "and every person" onwards.
1 & 2 Vict. c. 75.	The Fires Prevention Act 1838.	The whole Act, so far as unrepealed.
9 & 10 Vict. c. 33.	The Seditious Meetings Act 1846.	The whole Act.
23 & 24 Vict. c. 32.	The Ecclesiastical Courts Jurisdiction Act 1860.	In section 6 the words "the statute passed in the second session of the first year of the reign of Queen Mary, chapter three; or".
14 & 15 Geo. 6. c. 39.	The Common Informers Act 1951.	In the Schedule, the entries relating to the Maintenance and Embracery Act 1540 and to the Fires Prevention Act 1785.
<i>Act of Parliament of Ireland</i>		
40 Geo. 3. c. 38. (Ir.)	[The Act of Union (Ireland) 1800].	Section 4 from "and every person" onwards.

PART III

SAVINGS, ETC.

1. The repeal by this Act of the Statute of Praemunire shall not affect the punishment for offences against section 11 of the Habeas Corpus Act 1679, and accordingly in that section for the words "shall incur and sustain the pains penalties and forfeitures limited ordained and provided in the Statute of Provision and Praemunire made in the sixteenth year of King Richard the Second" there shall be substituted the words "be liable to imprisonment for life".

2. The repeal by this Act of the Unlawful Societies Act 1799 and the Seditious Meetings Act 1846 shall not be taken to extend to the provisions of those Acts set out in the Schedule to the Newspapers, Printers and Reading Rooms Repeal Act 1869 as those provisions have effect by virtue of the last mentioned Act.

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