

Statute law repeals at the Law Commission

A review of our work 1965 to 2010

HISTORICAL TIMELINE

- 1616** Sir Francis Bacon, when Attorney-General to James I, urged the repeal of obsolete laws: “Repeal all statutes which are sleeping and not of use but yet snaring and in force”.
- 1835-1845** A Statute Law Commission was appointed but achieved little repeals work
- 1854** Lord Chancellor Cranworth appointed a new Statute Law Commission.
- 1856** The first Statute Law Revision Act was passed (drafted by the Statute Law Commission)
- 1859** The Statute Law Commission was disbanded
- 1868** Lord Chancellor Cairns appointed a Statute Law Committee to produce a revised edition of the statutes (*Statutes Revised*) and to supervise progress on repeals and consolidation work
- 1861-1908** 34 Statute Law Revision (or similar) Acts were passed, mostly on the recommendation of the Statute Law Committee
- 1909-1952** Just three Statute Law Revision Acts were passed
- 1953-1966** Parliamentary Counsel took over repeals work. Nine Statute Law Revision Acts were passed
- 1965 to date** Law Commission takes over repeals work in 1965, since when 19 Statute Law (Repeals) Acts have been passed.

STATUTE LAW REPEALS AT THE LAW COMMISSION

On one view the Law Commission’s work since 1965 in repealing obsolete statutes is just a continuation of a process that was thought about in the early 17th century and begun in earnest in the mid-19th century.

But the significance of this work being passed to the Law Commission¹ is that, for the first time, there was a body with the statutory duty to carry it out.² As the historical timeline shows, before 1966 the task of identifying obsolete enactments was carried out by a series of non-statutory bodies and, later, by Parliamentary Counsel. Although a considerable volume of obsolete legislation was repealed as a result of their efforts, the work was not carried out on a systematic basis by staff engaged for that sole purpose.

Nor was the work carried out continuously. For example, 34 repeals Bills (mostly entitled Statute Law Revision Bills) were passed between 1856 and 1908, but only three such Bills were passed between 1909 and 1952. By contrast, the Law Commission’s first 48 years have resulted in 19 Statute Law (Repeals) Bills, all of which have been enacted. In addition there have been other repeals Acts in which the Law Commission has assisted.³

¹ “Law Commission” in this context means the Law Commission for England and Wales. Statute law repeals work has, however, been carried out jointly with the Scottish Law Commission ever since both Commissions were established in 1965.

² It is the duty of the Law Commission to take and keep under review all the law for which it is responsible with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the reduction of the number of separate enactments and generally the simplification and modernisation of the law: Law Commissions Act 1965, s 3.

³ Statute Law Revision (Northern Ireland) Acts 1973, 1976 and 1980; Statute Law Revision (Isle of Man) Act 1991.

But the success of the Commission's work since 1965 in repealing obsolete statutes does not lie solely in the fact that the Commission has a legal duty to carry out the work. Unlike any other law reform agency throughout the world, the Law Commission has established a permanent team whose sole purpose is that of identifying and researching obsolete statutes. This work is ring-fenced from the activities of the other teams at the Commission. By contrast no other law reform agency with a mandate for statute law repeals work has seen fit to earmark resources for a team to do such work to the exclusion of other law reform work of that agency.

Moreover, the Commission has benefited by the continuity of experience accruing over the years from a small team of lawyers who have been responsible for carrying out statute law repeals work. Most of these lawyers have spent a large part of their career in this one team, thereby facilitating the passing-on of experience from one repeals project to the next.

Also highly relevant to the Commission's success in this area is the long-standing recognition on the part of Government that statute law repeals work is essential and specialist and is best carried out at the Commission. The foundation of the Commission in the first place owes much to the fact that law reform could not simply be left to Government Departments. Day to day issues of government have always meant that there was never enough time to devote to high-quality law reform. Law reform of the statute book was never going to be the priority of any Department.

But even if a Department could spend time reviewing its obsolete laws, that would have no impact on the legislation affecting other Departments. Given that the statute book spreads across the policy issues of every Department, there is a clear advantage in having an agency that is at arm's length from individual Departments, whilst being in a position to review the statute book as a whole.

The advantage of statute law repeals work being carried out by the Commission is therefore three-fold. To start with, resources to carry out the work are ring-fenced from other activities. Secondly, the Commission is able to review the whole of the statute book and not just part of it. Thirdly, this specialist work is carried out by a small body of lawyers with the expertise accumulated and passed on over nearly half a century.

There is also a fourth advantage. The Commission is independent in the exercise of its statutory functions and therefore has no axe to grind in recommending reform. This is equally true of the Commission's statute law repeals work. When Parliament considers the Commission's repeals Bills it does so knowing not only that the work has been thoroughly researched and is therefore legally sound, but also that the Bill's contents are not influenced in any way by the vagaries of political consideration or expediency.

Actual repeals

So what has been repealed as a result of our statute law repeals work since the Law Commission started in 1965?

The following pages set out some of the more interesting repeals. To give an historical flavour they are grouped according to the reign in which they were originally passed by Parliament. The repeals were sometimes because the statutes in question had become obsolete (having done their work). But many repeals were because the Act had become superseded by later legislation. So the repeal of an Act banning (or allowing) a particular activity did not necessarily mean that the activity was thereafter made legal (or illegal): often it just meant that the Act was no longer needed because the activity in question was banned (or allowed) by more recent legislation.

EDWARD III

Statute of Northampton 1328

No command is to issue under the Great or Little Seal to disturb or delay common right (ie a right created by law). Any court receiving such a command is to disregard it.

HENRY VI

Sunday Fairs Act 1448

Banned the showing of goods, except necessary victuals, at fairs and markets on Sundays and Feast days

HENRY VII

Ordinances of Corporations Act 1503

Imposed penalty of £40 on any craft guild or fraternity that made bye laws in restraint of trade

HENRY VIII

Burgesses of Parliament Act 1514

Forbade any member of the House of Commons from departing before the end of a Session without the Speaker's licence

London Butchers Act 1532

Allowed the butchers of London to kill their cattle within the City walls

Queen's Jointure Acts 1533 and 1536

Gave (respectively) Anne Boleyn and Jane Seymour a life interest in certain landed property

HENRY VIII

Contd.

Suppression of Religious Houses Act 1535

Dissolved the smaller monasteries (having annual revenues of less than £200)

Suppression of Religious Houses Act 1539

Vested in the Crown all the rights and property of the monasteries already dissolved and any to be dissolved in the future

Barbers and Chirugians Act 1540

Provided for the union of barbers and surgeons (chirugians) as a trade or profession

EDWARD VI

Clergy Marriages Act 1548

Declared invalid any law prohibiting the marriage of priests

MARY

Queen Regent's Prerogative Act 1554

Enacted to dispose of any argument that, because Acts of Parliament referred to the Sovereign as being male, women should be barred from the throne. This Act ensured that regal power belongs to a Queen as it does to a King (this provision is unnecessary because the Interpretation Act 1978, s 10, ensures that references in an Act to the Sovereign are normally to be construed as references to the Sovereign for the time being).

ELIZABETH I

Translation of Bible etc into Welsh Act 1562

Provided for the translating of the Bible and the "Dyvine Service" into the Welsh tongue

Ecclesiastical Leases Acts 1571, 1572 and 1575

Passed to prevent the Elizabethan clergy from disposing of ecclesiastical property for private gain

JAMES I

Attainder of Guy Fawkes and others Act 1605

This "Acte for the Attainder of divers Offenders in the late moste barbarous monstrous detestable and damnable Treasons" deprived Guy Fawkes and his fellow conspirators of their civil and property rights

Limitation Act 1623

Passed to deal with the multiplicity of dilatory and vexatious suits in the courts at Westminster following the dissolution of the monasteries and the disposal of their lands

CHARLES I

Sunday Observance Act 1625

Banned meetings or assemblies of people on Sundays for any sport or pastime, bear-baiting, bull-baiting, interludes or common plays

Ship Money Act 1640

Declared that the raising of ship money by royal writ was illegal and that the decision against John Hampden in 1637 (prosecuted for refusing to pay the tax) was unlawful

CHARLES II

Parliament Act 1660

Declared the Long Parliament to be dissolved and the Restoration Parliament valid despite the absence of writs of summons and other procedures in convening it

Attainder of the Regicides etc Act 1660

This "Act for the attainder of several persons guilty of the horrid murder of His late sacred Majesty King Charles the First" deprived the defendants of their civil and property rights

Bengeworth Bridge Act 1662

Passed to restore the bridge near Evesham destroyed by soldiers during the English Civil War

Sunday Observance Act 1677

Prohibited the sale of any wares, fruit, herbs, good and chattels on a Sunday. Excepted was the selling of meat in inns and the selling of milk before 9am or after 4pm

WILLIAM III

London to Harwich Road Act 1695

Authorised county justices to establish turnpikes

London Streets Act 1696

Appointed Commissioners to negotiate the demolition of houses obstructing the southern approach to London Bridge

Piracy Act 1698

Appointed special Commissioners in the American plantations and in other colonies to try cases of piracy summarily and to execute those convicted

ANNE

Plymouth Workhouse Act 1707

Established a workhouse for the poor in Plymouth

GEORGE II

Disorderly Houses Act 1751

Regulated places of public entertainment

Railway Act of 1757

This Act was the first Railway Act ever passed and authorised the construction of a “waggon way” (a line of wooden rails of 4 foot 1 inch gauge over a distance of 3.5 miles from the coal works of Charles Brandling to a coalyard in Leeds)

GEORGE III

Isle of Man Purchase Act 1765

Gave effect to a contract for the sale of the Isle of Man to the Crown by the Duke and Duchess of Atholl for £70,000

Taxation of Colonies Act 1778

Repealed the 1767 Act that imposed duty on tea imported into America from Britain

East India Company Act 1796

Enabled the East India Company to buy additional land in the City of London and expand its headquarters

GEORGE III - --continued

Unlawful Oaths Act 1797

This Act resulted in the Tolpuddle Martyrs being sentenced in 1834 to 7 years' transportation for swearing oaths of secrecy as members of an agricultural workers trade union

Incitement to Mutiny Act 1797

An emergency measure passed as a result of the mutinies in the fleet at Spithead and the Nore in 1797, at a time when Britain was on the defensive against possible invasion by France

Prisoners of War (Escape) Act 1812

Passed during the Napoleonic Wars to provide a more effectual punishment for persons assisting the escape from England of French prisoners of war whilst on parole

Unlawful Drilling Act 1819

Enacted as a swift response to the 1819 Peterloo Massacre in Manchester when 11 people were killed and 400 injured

Wapping Workhouse Act 1819

Raised money for the workhouse described by Charles Dickens in *The Uncommercial Traveller*

GEORGE IV

Vagrancy Act 1824

This included section 3 whereby fortune-tellers setting out to deceive any of His Majesty's subjects were deemed to be rogues and vagabonds

Metropolitan Police Act 1829

This included section 6 which penalised publicans who knowingly harboured or entertained members of the Metropolitan Police Force whilst on duty

WILLIAM IV

London Hackney Carriage Act 1831

Section 51 made it an offence punishable by a 20 shilling fine for the owner or driver of a hackney carriage to feed his horse "in any street, road or common passage, save only with corn out of a bag, or with hay which he shall hold or deliver with his hands"

Slavery Abolition Act 1833

This provided for the emancipation of slaves in the West Indian plantations and in other territories under British jurisdiction

Quakers and Moravians Act 1833

Allowed Quakers and Moravians to make solemn affirmations or declarations (instead of swearing oaths)

VICTORIA

Metropolitan Police Act 1839

Section 10 authorised any police horse or van to use any turnpike road without paying the toll provided that the rider or driver "shall have his Dress and Accoutrements according to the Regulations of the Police Force at the Time of claiming the Exemption"

Naturalisation of Prince Albert Act 1840

This was one of two Acts passed providing for the naturalisation of "His Serene Highness Prince Albert of Saxe Coburg and Gotha"

Hosiery Act 1843

Passed to protect manufacturers from the seizure of their tools and apparatus to pay the rent or other debts of their out-workers in the hosiery and knitwear industries (in the dire conditions of the 1840s, creditors would seize anything of value in an out-worker's home)

Art Unions Act 1846

This assisted struggling artists by legalising lotteries to help them sell their works

Town Police Clauses Act 1847

Section 30 penalised anyone wilfully setting chimneys on fire

Chinese Passengers Act 1855

This regulated health and safety standards on ships leaving Hong Kong and China. It resulted from overcrowding on ships brought about by the 1849 gold-rush to California and the 1851 gold-rush to Australia

VICTORIA.....contd

Metropolitan Streets Act 1864

The contemporary Victorian nuisance of street organs and brass bands resulted in the passing of this Act to require the musicians to desist (on pain of a 40 shilling fine)

Channel Tunnel Company (Ltd) Act 1875

Authorised the Company to acquire land in St Margaret's Bay at Cliffe in Kent to carry out preliminary experimental operations towards digging a Cross-Channel Tunnel. The principal powers in the Act lapsed in 1878

Suez Canal (Shares) Act 1876

Passed to implement the purchase by the British Government of shares held by the Khedive of Egypt in the company that controlled the Suez Canal

Cheap Trains Act 1883

This empowered the Board of Trade to require railway companies to provide third-class accommodation at rates not exceeding 1 penny per mile, and to provide workmen's trains at reasonable fares between 6pm and 8am each day

Chimney Sweepers Act 1894

Made it an offence to solicit employment as a chimney sweep by knocking at doors, ringing bells or using any noisy instrument to the annoyance of any inhabitant

GEORGE V

Injuries in War (Compensation) Act 1914

Provided compensation schemes relating to injuries and disabilities arising from the First World War

Small Holdings Colonies Act 1916

Passed to allow the British Government to acquire 6,000 acres of land in England and Wales to provide agricultural work for ex-servicemen from the First World War

Termination of the Present War (Definition) Act 1918

Authorised the making of Orders in Council to declare which date was to be treated as being the end of the First World War for the purpose of any Act, contract or other instrument

Treaty of Peace Act 1919

Facilitated the implementation of the Treaty of Peace concluded at Versailles on 28 June 1919

Empire Settlement Act 1922

Empowered the Secretary of State to formulate and co-operate in migration and settlement schemes to encourage Britons to settle in Her Majesty's Overseas Dominions

GEORGE V Contd

Irish Free State (Agreement) Act 1922

This provided for the establishment of the Irish Free State with the status of a Dominion within the British Empire

Gold Standard Act 1925/ Gold Standard (Amendment) Act 1931

The 1925 Act restored the gold standard and required the Bank of England to sell gold bullion at the pre-WW1 rate of £3 17s.10½d per ounce. The 1931 Act was passed to suspend the gold standard (this suspension later became permanent)

Indian Church Act 1927

Enabled the Anglican Church in India to become self-governing and operate as a voluntary society

GEORGE VI

Air-Raid Precautions Act 1937

Passed to “secure that precautions shall be taken with a view to the protection of persons and property from injury or damage in the event of hostile attack from the air”

Holidays with Pay Act 1938

Empowered the Minister of Labour to assist voluntary schemes for securing paid holidays for workers in any industry

Reinstatement in Civil Employment Act 1944

Helped ex-service personnel regain their previous civilian jobs on demobilisation after the end of the Second World War. Employers could be compelled to reinstate their former employees

Palestine Act 1948

Provided for the end of British jurisdiction in Palestine on 15 May 1948

Public Works (Festival of Britain) Act 1949

The Festival of Britain in 1951 was opened on the centenary of the Great Exhibition of 1851. The 1949 Act was required to provide access to the Festival site on the south bank of the Thames

ELIZABETH II

Public Lavatories (Turnstiles) Act 1963

Abolished turnstiles in lavatories controlled by local authorities in Britain

Decimal Currency Act 1967

This paved the way for the introduction of decimal currency in the United Kingdom in 1971

Channel Tunnel (Initial Finance) Act 1973

Provided for an abortive project of construction of a rail tunnel between England and France

Referendum Act 1975

Provided for a referendum on the United Kingdom's membership of the EEC (referendum was held on 5 June 1975 and supported the UK's continuing membership)