

HOUSE OF LORDS
HOUSE OF COMMONS

Joint Committee on Consolidation Bills

1st Report of Session 2007–08

Statute Law (Repeals) Bill [HL]

Report with Evidence

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The Joint Committee on Consolidation Bills

The Joint Committee on Consolidation Bills is appointed by the House of Lords and the House of Commons to consider Consolidation Bills, Statute Law Revision Bills and Statute Law Repeal Bills.

The Joint Committee has a maximum of twelve Members appointed by each House, of whom the quorum for any formal proceedings is three from the House of Lords and two from the House of Commons.

Membership

| HOUSE OF LORDS | HOUSE OF COMMONS |
|--|--|
| Lord Acton (<i>Labour</i>) | John Bercow (<i>Conservative, Buckingham</i>) |
| Viscount Bledisloe (<i>Crossbencher</i>) | Mr Brian Binley (<i>Conservative, Northampton South</i>) |
| Lord Campbell of Alloway (<i>Conservative</i>) | Mr Russell Brown (<i>Labour, Dumfries and Galloway</i>) |
| Lord Christopher (<i>Labour</i>) | Mr Alistair Carmichael (<i>Liberal Democrats, Orkney and Shetland</i>) |
| Viscount Colville of Culross (<i>Crossbencher</i>) | Mr William Cash (<i>Conservative, Stone</i>) |
| Earl of Dundee (<i>Conservative</i>) | Mr Martin Caton (<i>Labour, Gower</i>) |
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| Baroness Mallalieu (<i>Labour</i>) | Mr Stephen Dorrell (<i>Conservative, Charnwood</i>) |
| Lord Methuen (<i>Liberal Democrat</i>) | Paul Farrelly (<i>Labour, Newcastle-under-Lyme</i>) |
| Lord Razzall (<i>Liberal Democrat</i>) | Mr John MacDougall (<i>Labour, Glenrothes</i>) |
| Lord Rodger of Earlsferry (<i>Chairman</i>) (<i>Crossbencher</i>) | Lynda Waltho (<i>Labour, Stourbridge</i>) |

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

The Reports and Evidence of the Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk

Committee Staff

The current staff of the Committee are: Dr Emily Baldock (Lords Clerk) and Dr Celia Blacklock (Commons Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Consolidation Bills, Public Bill Office, House of Lords, London, SW1A 0PW. The telephone number for general enquiries is 020 7219 5438.

STATUTE LAW (REPEALS) BILL

1. The Committee has considered the Statute Law (Repeals) Bill, which was referred to it and also the Report of the Law Commission and the Scottish Law Commission on the Bill (Cm. 7303). We have heard evidence on the Bill. The Committee is of the opinion that the enactments proposed to be repealed are no longer of practical utility (except in so far as their effect is preserved), and we approve their repeal.
2. There is no point to which the special attention of Parliament should be drawn.

MINUTES OF PROCEEDINGS

Monday 28 April 2008

Present:

| | |
|--|------------------------|
| Acton, L. | Mr Russell Brown |
| Campbell of Alloway, L. | Mr Alistair Carmichael |
| Mallalieu, B. | Mr William Cash |
| Methuen, L. | Mr Martin Caton |
| Rodger of Earlsferry, L. (<i>Chairman</i>) | Mr Stephen Dorrell |

It was moved by Mr Stephen Dorrell, That Lord Rodger of Earlsferry take the Chair for the present Session of Parliament; the same was *agreed to*.

Lord Rodger of Earlsferry in the Chair.

The Joint Committee considered the *Statute Law (Repeals) Bill [HL]*.

In the Title

Title of the Bill read and postponed.

In the Clauses

Clauses 1–3 read and *agreed to*.

In the Schedules

Schedules 1 and 2 read and *agreed to*.

In the Title

The Title again read and *agreed to*.

Draft Report laid before the Committee –

The Committee has considered the Statute Law (Repeals) Bill, which was referred to it and also the Report of the Law Commission and the Scottish Law Commission on the Bill (Cm. 7303). We have heard evidence on the Bill. The Committee is of the opinion that the enactments proposed to be repealed are no longer of practical utility (except in so far as their effect is preserved), and we approve their repeal.

There is no point to which the special attention of Parliament should be drawn.

Report *agreed to*.

Ordered, That the draft report be the First Report of the Joint Committee.

Ordered, That the Lord in the Chair do make the Report to the House of Lords and that Mr Stephen Dorrell do make the Report to the House of Commons and do report the Minutes of Evidence taken before the Committee.

Ordered, That the Committee be adjourned *sine die*.

Minutes of Evidence

TAKEN BEFORE THE JOINT COMMITTEE ON CONSOLIDATION ETC BILLS

MONDAY 28 APRIL 2008

| | | |
|---------|------------------------------------|------------------------|
| Present | Acton, L | Mr Russell Brown |
| | Campbell of Alloway, L | Mr Alistair Carmichael |
| | Mallalieu, B | Mr William Cash |
| | Methuen, L | Mr Martin Caton |
| | Rodger of Earlsferry, L (Chairman) | Mr Stephen Dorrell |

Examination of Witnesses

Witnesses: MR JOHN SAUNDERS, Head of Statute Law Repeals Team, Law Commission, MR JONATHAN TEASDALE, Lawyer in Statute Law Repeals Team, Law Commission, and MRS SUSAN SUTHERLAND, Head of Statute Law Repeals Team, Scottish Law Commission, examined.

Q1 Chairman: Since we have not met for some time for a Statute Law (Repeals) Bill, I think it is as well just to remind ourselves that the purpose and the main role of the Committee in dealing with this kind of Bill is to ensure that the legislation promotes the reform of statute law by the repeal of enactments which are no longer of any practical use. That is what we are here to examine, and we have with us the witnesses who have been involved in the preparation of the Bill. Perhaps, Mr Saunders, you could introduce your colleagues and introduce the Bill.

Mr Saunders: Thank you, my Lord Chairman. On my right is my colleague Jonathan Teasdale from the Law Commission. On my left is my colleague Susan Sutherland from the Scottish Law Commission. I should like to take just a couple of minutes to explain what this Bill is about and what purpose it serves. The Bill has been produced by the Law Commission in London and the Scottish Law Commission in Edinburgh in pursuance of their statutory duty under the Law Commissions Act 1965 to keep the statute book under review for the purpose of the repeal of obsolete and unnecessary enactments. The published report of the two Commissions gives more information about the repeals now being recommended. This Bill is part of the process of making the statute book more manageable by cutting out from it Acts and parts of Acts that no longer serve any useful purpose. This makes the statute book more accessible. Removing the obsolete material helps to highlight the legislation that is still living. This is becoming particularly important in an age when people expect to be able to access the law by going online. Indeed, since the last of these Bills four years ago, the official Statute Law Database has been open for public use. But the statute book is vast. There is no one source, whether on a database or in hard copy format, like *Halsbury's Statutes*, that

holds the entire body of primary legislation. No-one knows exactly how many Acts of Parliament are sitting on the statute book. In terms of public general Acts, that is, Acts that operate generally throughout the UK, there are probably 5,000 or more. That figure is much larger for local Acts, that is, Acts that apply to just part of the country, perhaps to a local authority or organisation. There are probably well over 20,000 of those still in existence. Repeals Bills like these (there have been 17 since the Law Commissions were established in 1965: this is the 18th) are part of the continuing process to keep the statute book as free as possible of dead wood. The overall purpose is to leave in place only laws which still have practical utility. The main substance of today's Bill is contained in Schedule 1, which lists the enactments recommended for repeal. This Schedule is divided into 11 Parts, ten of which reflect an individual part of the statute book, covering such topics as armed forces, the criminal law, the East India Company and so on. The 11th Part is for miscellaneous repeals. The way the Commissions operate in this area is to work topic by topic, examining every Act within each topic from earliest times to the present day. How do we go about deciding what topics to look at for each Bill? A very useful source here is the Chronological Table of the Statutes, which is published and maintained by the Stationery Office. This shows, in date order, every public general Act passed by this Parliament from earliest times. The earliest Act still in force is dated about 1267. Crucially, the Chronological table gives a bird's eye view of the areas of legislation that remain on the statute book. It shows whether an Act has been wholly repealed, partly repealed or not touched at all since Royal Assent. We look at the table to see if there are groups of Acts on broadly similar themes or topics which can be grouped

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together to make up a possible repeals project. There is also a Chronological Table of Local Legislation. This became available only in 1996. For the first time it became possible to view a huge body of local Acts, most of which have never been repealed, and see the extent to which useful work could be done by us in clearing away the dead material. This is now having a major influence on our repeals work. If you look at the Bill in front of you, much of it shows the impact of this new Chronological Table. Part 4 (East India Company) on pages 11 and 12 is a good example. Only the first two of those Acts, both 1796, are public general Acts. The other ten are all local Acts and would have been invisible to us before the production of the Local Act table in 1996. The same is true of other parts of the Bill, such as Part 7 dealing with rating and Part 10, turnpikes. All this goes some way towards explaining why some ancient Acts have managed to survive into the 21st century. Until the new Local Act table appeared, many of them did not feature in any reliable index of statutes. We knew very little about them. Of course, there are other reasons why it is only now that an ancient Act comes up for repeal. It may simply be that there has been a recent change in the law which has made the ancient statute unnecessary, but it is certainly the case that the Local Act table has opened up new opportunities for identifying obsolete legislation. The fact that an Act has been classified as local does not of itself make it any less important than a public general Act. The subject matter of local Acts is frequently of the greatest importance. Many of the powers of local government were to be found in local Acts. Most of our railways today rely on rights of way granted by Victorian local Acts. The same is true of utility companies. Individual hospitals, schools, universities and banks draw their powers from local Acts, as does the National Trust. It is as important that the local Act part of the statute book is reviewed for obsolescence as the public general part. Ministers bringing forward Government Bills need to be aware of the extent to which their new policy connects with existing local rights and duties. Members of the public have a legitimate interest in being able to find out about the local Acts that affect them. Not all the repeals in this Bill are of ancient statutes. Even recently passed legislation can become obsolete within a few years and find itself in one of our Bills. However, when you see that a fairly recent Act is listed here for repeal, especially if it is only a small part of an Act, the reason is probably that it is being repealed in consequence of a bigger repeal. Having carried out their research, the Commissions consult anyone with a likely interest in a particular statute, whether this is a government department, a local authority, a representative body like a trade union, or an individual. Only if there is general support for a repeal proposal does that proposal end up in our Bill.

I can confirm that there are no outstanding objections to any of the repeal proposals in this afternoon's Bill. The Commissions operate independently of government, so the repeals identified in this Bill represent the recommendations of both Commissions. Government departments do sometimes suggest individual repeal candidates but the Commissions examine these on their merits, as they would any other repeal proposal. Turning to the Bill, clause 1 introduces the two Schedules. Schedule 1 contains the candidates selected for repeal. Schedule 2 contains provisions that are directly consequential on the repeals in Schedule 1. Clause 2 makes it clear that this Bill, if enacted, will have effect only in the United Kingdom—that is, England and Wales, Scotland and Northern Ireland—and in the Isle of Man. It will have no effect on the law of any other country, irrespective of whether the statute is also in force in that other country. Nor will it affect the Channel Islands or any British overseas territory unless an Order in Council is made to achieve that result. Clause 3 provides the short title. The repeals will all take effect when this Bill, if enacted, receives Royal Assent. Finally, so far as Scotland is concerned, the Committee will wish to know that the Scottish Parliament last week agreed that the relevant provisions of this Bill, so far as they fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament. The necessary legislative consent motion to that effect was passed on 23 April.

Chairman: Thank you, Mr Saunders. Are there any questions for Mr Saunders about these general matters which he has raised? Very well. We will take the three clauses together. Does anyone have any queries on those clauses?

ON THE TITLE

Chairman: The question is that the title be postponed. As many as are of that opinion will say “content”, the contrary “not content”. The contents have it.

The same is agreed to.

ON CLAUSES 1–3

Chairman: The question is that clauses 1-3 stand part of the Bill. As many as are of that opinion will say “content”, the contrary “not content”. The contents have it.

The same is agreed to.

ON SCHEDULE 1

Chairman: Turning then to the Schedule, what I propose to do is to take it Part by Part so that if members have any particular questions which they wish to put to the witnesses about the Part or any group in the Part, they can do it in that order. We start with Part 1, the Armed Forces. Does anyone have any questions in relation to these? Of course, there are very full notes, as people will have seen. Is

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there any question on the Armed Forces? Part 2, County Gaols. Any questions on those? Part 3, Criminal Law.

Q2 Mr Carmichael: My Lord Chairman, on page 11, the final two items on Part 3, Criminal Law, the Anti-terrorism, Crime and Security Act 2001, sections 37 and 38 and sections 122 and 123, and the Licensing Act 2003, Schedule 6, paragraph 2 seem remarkably recent. Could you perhaps give me some indication of what these concern?

Mr Saunders: Yes, certainly. In the case of the Licensing Act 2003, that is purely consequential upon the repeal earlier in Part 3 of the Disorderly Houses Act 1751. The Licensing Act 2003 wished to disapply the 1751 Act from the new regime, so a small amendment to the 2003 Act was made. In the case of the Anti-terrorism, Crime and Security Act 2001, these are purely provisions which became spent very early. Sections 37 and 38 are repealing provisions, and so when they repealed the legislation they took effect and became spent. Sections 122 and 123 relate to the duty on the Secretary of State to appoint a Committee to review the workings of the 2001 Act, and that section became spent in December 2003, when the Secretary of State laid the Privy Counsellor Review Committee's report before Parliament. Section 123 is linked with that. That provided for the Committee's report to specify any provision of the 2001 Act which had ceased to have effect. However, such ceasing to have effect would not apply if a motion were passed in each House and, because such a motion was duly passed in both Houses, section 123 itself became spent.

Chairman: Thank you. Have you any other questions on Part 3? Part 4, rather more exotic, the East India Company. It is quite sad to see some of these romantically named Acts disappearing from the statute book. I suppose it is a good idea.

Mr Cash: I ought to say at this juncture, purely for my own personal record, that in fact my special subject at Oxford was England and India in the age of Warren Hastings, and Warren Hastings was at the heart, of course, of the East India Company and impeached for seven years by my predecessor, Richard Sheridan, who was then the MP for Stafford. I have no doubt he was hoping he would end up in Stafford gaol so both would be gone at the same time.

Mr Dorrell: I am sure that if you suspect that one of your forebears was a creditor of the Rajah of Tanjore you will be very pleased to see the statute repealed.

Q3 Mr Cash: There is one question I would like to ask actually and that is that in the arrangements for the independence of India, I recall in 1948 that I think section 1 contained special provisions relating to the Princes and I just wondered whether any of these enactments might conceivably impinge on that,

because they were kept, and I do not see any repeal of that provision, because they were given special rights under the Government of India Act—I think that would be the right way to describe it—in 1948. I just wondered whether there was any connection.

Mr Teasdale: My Lord Chairman, I have responsibility for the East India Company. To the best of my understanding, based on the research we did, there is no impact as far as the independence of India legislation is concerned. These were really very specialist pieces of legislation, as the background notes make clear. They had really exhausted themselves by the time the East India Company had dealt with the various debts, the indebtedness, and certainly by the time the East India Company was fully dissolved by Parliament in 1874. So to all intents and purposes, the position relating to the princely rulers and these pieces of legislation would have actually been entirely separate.

Q4 Mr Cash: I suppose the only other comment I would make is that I presume that the Government of India Act 1858 was the Act which was put through by—was it Aberdeen?

Mr Teasdale: Yes.

Q5 Mr Cash: And the campaign by John Bright, who happened to be one of my relations, was the India Act of 1853. Is that right?

Mr Teasdale: Yes. It was the Government of India Act 1858 and it came about because of the Great Rebellion in Bengal, which we would call the Indian Mutiny, which had happened the previous year, and by 1858 governance then was returned to the British Crown absolutely. Thereafter, of course, the East India Company's fortunes dramatically waned. It had little else to do, so from 1858 to 1874 the whole thing became downhill for it.

Lord Acton: My Lord Chairman, I am not totally clear on the distinction between all the different Acts concerning the Nabobs of the Carnatic but I assume I can vote with a clear conscience?

Chairman: Having studied this in great detail, I can reassure you that you can.

Lord Acton: Thank you, sir.

Q6 Baroness Mallalieu: My Lord Chairman, can I just ask one question, I think of Mr Teasdale, and it relates to the notes to this background to the legislation at page 301, where I see the notes refer to the authority of Wikipedia. I am just concerned to know whether this is something which is taken at face value or checked with some other source?

Mr Teasdale: Can I say, my Lord Chairman, it has not been taken at face value. I do not think one should entirely decry the value of Wikipedia as being completely useless. Some things actually appear to be rather authoritative, but the answer to the Noble

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Lady's question is that no, we have cross-checked this from more than one source and there is quite a lot of written authority on the East India Company, which we cite elsewhere.

The Committee suspended from 4.54 p.m. to 5.10 p.m. for divisions in the House of Lords and House of Commons

Chairman: We were in Part 4, the East India Company. Any more questions on that?

Mr Cash: My only comment is that on page 294 under note 45 it refers to an influential Whig MP and philosopher, Edmund Burke, and I have to say that "an" could be substituted by the word "the".

Chairman: We shall never get the draftsman to replace the words.

Mr Cash: I do not think that will happen but at least I have got it on the record. As he originates most Conservative philosophy, I think it is appropriate for me at least to make that minor comment.

Chairman: Subject to that, are we content to pass Part 4? Part 5, London.

Q7 Mr Dorrell: My Lord Chairman, this is as good a point as any to raise the question I asked informally during the adjournment. Consistently through here there are measures that are being repealed because they are spent: a piece of legislation provided for the repeal or provided for the abolition of something, and once the abolition had taken place the legislation is clearly redundant. Is it not possible for there to be a doctrine in law that says that, where a piece of legislation is spent in that very obvious sense, it automatically comes off the statute book? If that is possible, how can we introduce it in order to save future generations this bit of work?

Mr Saunders: I think one reason is that it can be quite difficult to know when the actual spending takes place. There is usually not one single moment in time at which an Act becomes spent. Often Acts are not single-purpose. They do a number of things. Perhaps they have matters which will run on for a few years, provisions about leases or existing rights. Usually the idea is to keep them on the statute book but they should be reviewed—of course they should—within a few years of their being enacted, and even though you cannot have a sunset clause in every piece of legislation, for good reason, there is definitely a reason for looking at Acts soon after they are passed to see if in fact they could now be repealed.

Q8 Chairman: For example, a repeal provision—is there no possibility of having it subject to a deemed sunset?

Mr Saunders: The problem is one of uncertainty. Then there is the question as to when the deeming kicks in, at what point they become obsolete. I do not think Parliament would want to lose an Act at a

particular time which was uncertain in advance. But there may be a case in certain circumstances for that to be done.

Q9 Chairman: There might be a case for thinking whether practice could be changed in some way.

Mr Saunders: It might, however, put myself and my colleagues out of work.

Mr Dorrell: It does not seem a very imminent risk.

Chairman: For your great grandchildren perhaps.

Mr Cash: As long as nobody repeals the Act which gives complete tax exemption to my constituents in a place called Knighton, save only for the poll tax, and when that arose, when the poll tax was being brought in, they actually had to introduce an exemption to make sure the poll tax did apply to them but for the rest of it, no taxation is payable. Apparently, it is the only place in the United Kingdom where no tax is payable of any description. This is a Charles II Act, and it quite clearly states that no taxes should be levied under any circumstances whatsoever, and it was because they helped to get Charles II away after the Battle of Worcester.

Chairman: Anything on London then? Part 6, Police. Any questions? Part 7, Rating? Part 8, Tax and Duties?

Q10 Mr Cash: Before we move on from part 8, I presume that the main consultation here is with the Inland Revenue.

Mr Saunders: The Inland Revenue primarily, and tax advisers.

Mr Cash: Because when you knock out a whole Act in relation to tax—and I have to admit having once been on the Income Taxes Consolidation Bill—I thought it was an extreme waste of time because I said that within a matter of five years we would be back to square one and I think we are now back to much worse than that.

Q11 Chairman: Yes, to square 10 probably. Presumably the Finance Act 1902 has long since been spent. Is that right?

Mr Saunders: Yes. It is surprising how long a Finance Act can carry on. There were some savings provisions in some of the earlier Acts but all those listed here are indeed spent and Her Majesty's Revenue and Customs have agreed that they can spare them.

Q12 Chairman: They are all ones which now, if there were anyone subject to paying them, the dates have long since passed.

Mr Saunders: There is no hope of recovering any tax at this distance so the Revenue for that reason, if for no other, are happy to lose the Acts.

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Q13 Lord Acton: Why do the Scots have to go on suffering under the brutal heel of the Customs, Inland Revenue and Savings Banks Act 1877?

Mr Saunders: Simply because the provision is being saved. The only remaining provision in that Act relates to Scotland, so the Act is spent so far as England and Wales is concerned. The Revenue in Scotland asked for that Act to be spared, because a section of it relates to probate, I believe, and the inventories of the assets of a deceased person, and so they asked for that to be spared. However, it did not affect taxpayers in England and Wales, so the repeal has gone ahead for the rest of the United Kingdom.

Q14 Chairman: Is that the position, Mrs Sutherland?

Mrs Sutherland: That is correct.

Mr Cash: Am I right in saying that the Finance Act 1911 was the one that gave rise to the changes in the House of Lords?

Chairman: Presumably it must have been, yes.

Mr Cash: So it is a historic moment when the Act of 1911 as a whole goes.

Chairman: Yes.

Mr Cash: Some of us are as interested in the history.

Lord Acton: We can rewind and have pre-1911 hereditary peers.

Chairman: It is interesting. I would have thought the Liberals would have been particularly sad to see it go.

Mr Cash: Richard, you can speak up now.

Lord Acton: We were respectable at that stage.

Mr Cash: Just about.

Lord Acton: Yes, that is right.

Chairman: With that nod to history, are we content with Part 8? Part 9, Town and Country Planning.

Q15 Mr Cash: That is quite recent stuff, is it not?

Mr Saunders: Really because town and country planning law is quite modern.

Q16 Chairman: 1947 onwards.

Mr Saunders: Yes.

Q17 Mr Cash: I have got to ask this question, which is relating to the Planning (Hazardous Substances) Act 1990. I am told, although I have been fighting against this for a long time, that European legislation cannot be repealed without an express and explicit statement that you are intending to override the 1972 Act. Is it possible that the Planning (Hazardous Substances) Act 1990 is derived from some European Directive? The Control of Pollution Act 1974 was in fact based upon European legislation and I am just wondering whether the Planning (Hazardous Substances) Act comes from the same framework and, if so, could it be repealed without using the words “notwithstanding the European Communities Act 1972”?

Mr Saunders: The 1990 Act is a consolidation of earlier provisions and the provisions here being repealed are technical provisions which are obsolete.

Q18 Mr Cash: That does not quite answer my question. Are any part of these consolidated provisions derived from the provisions of European legislation since 1972?

Mr Saunders: I could not answer that question. I would need notice of that question to answer it.

Mr Cash: I am giving notice of it now, because it is a highly important question in relation to other matters like the supremacy of Parliament.

Mr Brown: You are looking for a victory, Bill.

Mr Cash: I am waiting with bated breath.

Mr Dorell: Bated but not held.

Chairman: I would presume you would hope it would be possible to repeal it.

Mr Cash: I would be delighted if I thought that what we were doing here was overriding the 1972 Act without reference to it.

Chairman: So you will not be opposing?

Q19 Mr Cash: No, I shall be vigorously supporting it. In fact, I shall regard it as an extremely valuable enactment and not hazardous in the slightest. Can somebody look at that?

Mr Saunders: Yes, of course.

Chairman: Thank you. Subject to that, we pass to Part 10, Turnpikes, which is obviously the result of a huge amount of research into turnpike local Acts.

Lord Acton: I am totally content. Get rid of them.

Chairman: Part 11, Miscellaneous.

Q20 Mr Dorrell: My Lord, the bit dealing with employment of children is the only set of statutes here that—I do not think I was responsible for any of them as a Minister but they were certainly passed at the time that I was a Minister with responsibility for children in England. The Scottish piece of legislation went through. Just reading this piece, it seems as though there was a fair amount of muddle about where responsibility for this issue lay and the drafting, in particular of the Children Act 1989, seems to have left something to be desired in terms of where responsibility lay and what the implications of the new piece of legislation were for the provisions of previously existing legislation. Is that a fair criticism effectively of the Parliamentary draftsman at the time? Or indeed of Ministers who are responsible for the words drafted by Parliamentary draftsmen?

Mr Teasdale: I would cautiously say perhaps it lay on that side rather than Parliamentary Counsel. This is a strange piece of legislation because, as members will see, it is 1973, required to be brought into force, nothing happens, and then suddenly minds are exercised when we get first to 1996, and after that there is a European Directive which leads to, first, the

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Education Act 1996 and then we have two more pieces of legislation, regulations of 1998 and 2000, and it is at that point it appears that minds in the relevant department really get focused on this. The purpose of the 1973 Act in essence, which seemed perfectly valid at the time, was to have a single cohesive regulatory framework, and that would have been achieved by the Secretary of State having regulation-making powers. Up until that point, under the Children and Young Persons Act 1933,—the 1937 Act in Scotland,—the local education authorities had byelaw-making powers and I think the concern was that they required beefing-up, the penalties required looking at and there needed to be a more consistent approach. It does have to be said that byelaws in practice are made in accordance with model byelaws and that is actually a means whereby national consistency is achieved. Anyway, we move on to 1996. First we had the Education Act, which gives primary powers to local education authorities to serve notice on employers of school pupils—we are talking here about compulsory school age children—relating to employment which might be either prejudicial to health or prejudicial to educational requirements. So here comes a first piece of legislation tucked into the Education Act which starts to make part of the 1973 Act less necessary. Then these regulations, which are, as I say, derived from a European Directive, come on tap in 1998 and 2000, and they dramatically beef-up the byelaw-making powers in the 1933 Act. So the bottom line is the conjunction of the 1996 legislation together with the now beefed-up provisions of section 18 of the 1933 Act, which really render the earliest employment of children provisions otiose. This is quite interesting because we had some to-ing and fro-ing when we lighted upon this with the then Education Department, likewise their Scottish counterparts, and we said, “This looks as if it really is obsolete. What do you think about it? We are minded to recommend repeal.” There was some concern and pause. Eighteen months to two years later, having continued to press them, the answer was “No, we have thought really hard about this and it is self-evident that these provisions, now beefed-up with these latest two sets of regulations, are adequate,” and I can say to the Joint Committee that both north of the border and south of the border the relevant Education Departments are perfectly content for this to be repealed. So it was valid at the time but then things come along and get in the way later on.

Q21 Lord Campbell of Alloway: Could I ask a question about this? So the position is that there is no need for any statutory provision because there is a European Directive. Could you identify it for me, please? What is the reference? In other words, I want

the management, ownership and everything to do with the running of the thing explained.

Mr Teasdale: Yes. If members look at page 125 in the Law Commission report, you will see reference to the European Directive, which was 94/33/EC of 1994. The Government in 1998 firstly made regulations to conform with that and then come along and have a second bite in 2000, and the effect of that, put simply, is that the byelaw-making provisions in section 18 of the 1933 Act are significantly amended. I can talk the Committee briefly through what happens. Two things happen. There are primary provisions plus the byelaw-making power. Firstly, the primary provision. There is a prohibition on children being employed under the age of 14 years, on doing other than light work, on working between certain hours, on working more than prescribed hours during the school week and during non-school time, with daily and weekly limits, and on working without a rest break. That is a clear, straight prohibition. Then the byelaw-making power comes into play and the byelaws can do several things. Firstly, they can authorise and regulate—this is in addition to the national arrangements—light work, which is defined in the regulations and the legislation, which is within specified categories, for children aged 13—remember that the prohibition was on under-14s earlier. It deals with employment for one hour before school, for example. It also prohibits in these byelaws work in specified occupations, and it prescribes or gives power to prescribe the minimum age for work, the maximum hours for work, the rest intervals, holidays, other conditions, the need to have compliance with a work permit and the production of employment records. There are actually, I should just say in parentheses, separate byelaws relating to children involved in street trading—that was section 20—and there are separate provisions relating to children being involved in entertainment, but in straight work within shops and light industrial premises these byelaw-making powers are now significantly altered and significantly beefed-up.

Q22 Lord Campbell of Alloway: So we have moved out of the area of domestic legislation. We cannot by our own Parliament amend the European Directive and we are wholly dependent upon the management provisions of the European Directive.

Mr Teasdale: My Lord, in a sense you are not, because, of course, if the 1973 Act provisions had been triggered quickly, in 1974, you would have had a regulatory regime which would have run right from, say, 1974 to at least 1994. It is only because that is not done and because the European Directive comes on stream, then, as you rightly say, my Lord, you have to then convert that into regulations, so we have this tranche of regulations in 1998, 2000 and another little one in 2000 (the number 2 regs) that you then complete

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the picture. But it is driven at that stage, as you rightly say, by Europe.

Q23 Lord Campbell of Alloway: I hope I have got it right. We cannot introduce regulations. They have to be Commission regulations or European regulations. We cannot just introduce any form of management into it unilaterally.

Mr Teasdale: Parliament has a limited discretion. I do not pretend to be a European expert for one moment, but it has a limited discretion as to how it translates the European Directive into domestic legislation. So long as it keeps within the parameters of the European Directive, it has a limited room for manoeuvre but the bottom line is, as you rightly say, now Europe has said this is the way it has to be done, yes, the UK Parliament has accepted that is the position, has put the regulations in place and has taken it back to the 1933 Act and beefed that Act up. But the bottom line is, so far as I can tell, that you now have a good solid working regulatory regime, which is byelaw based.

Lord Campbell of Alloway: Thank you very much.

Q24 Mr Cash: Could I just come back to two other points? One is that I noticed anecdotally that the original enactment was introduced by Lord Archer, as Mr Jeffrey Archer, MP, in 1973. Was he consulted about the repeal of this great enactment of his, I wonder?

Mr Teasdale: No, he was not.

Mr Cash: The other thing is that I come back to the point I made—and this follows on from what Lord Campbell was saying—that if one wants to interfere—this is a lower-case example of the problem but it is a matter of principle—if you want to interfere in any way through Westminster with European legislation, and that would include repeal, and you run counter to European legislation, in a nutshell—and this is Denning in *Macarthys v Smith*, it is Diplock in *Garland* and Lord Justice Laws in *Thoburn*—you actually specifically have to state unequivocally that you are intending to override the 1972 Act and effectively therefore instructing the judges that they have to take note and to enforce that latest Westminster enactment which is inconsistent with European legislation. It can be done, because the words in the judgements are not merely to repeal the treaty. It also says “or any provision in it”. So the question is simply that. I do not want to make a meal of this but would it not have been more sensible, or at any rate convenient, to have included the words “notwithstanding the European Communities Act 1972” to guarantee the effectiveness of the repeal that you are now proposing in relation to this protection of children?

Chairman: As I understand it, the protection of children is secured in any event by other legislation and therefore there can be no question of a breach of the European legislation arising by the repeal of this Act.

Mr Cash: No, I do not think that is quite the question, my Lord, if I may say so. I think the issue of whether or not there is protection of children is something we would all advocate. The question, however, as a matter of law—and we are sitting here as a technical Committee looking at the repeals system—is whether in fact it is effective in law as compared to whether or not there are provisions which have survived. I am simply asking the questions and I am not sure what the answer is. I know what the principles of law are but I am not sure that you can easily repeal legislation which impinges on Europe because, just as on the one hand, if they pass a regulation or Directive, it can have an implied repeal on our legislation, so conversely, if we seek to repeal it, I would have thought we needed to include the words “notwithstanding the European Communities Act 1972”. I am open to thoughts from our experts on this.

Mr Dorrell: Can I offer, my Lord, a slightly different interpretation? Surely, provided after the repeal that is proposed our law still complies with the European Directive, then we are compliant in European law and we have a more up-to-date UK statute law, and therefore that is win-win.

Mr Cash: That may well be the position but providing you have not in fact infringed European law. I am very happy to do that but I am interested to know whether that has been the effect.

Chairman: Obviously, if the result were to put us down below the minimum standards set by the European legislation, the question would arise but if, as I understand it, that does not arise, the legislation which remains, the more modern legislation, maintains a standard which complies with the Directive, then in that situation I would have thought no problem arose.

Q25 Mr Dorrell: My point in raising this, my Lord, was a slightly different one but I think that, if we can take it for these purposes there was a consistent desire to comply with the relevant European Directive, what appears to have happened is that the various pieces of legislation that went through from 1973 onwards did not take proper account of each other at the time that the new pieces of legislation were put on the statute book, and I just hope that that point will be taken away, because that will reduce one element of the requirement for retrospective repeals.

Mr Teasdale: My Lord Chairman, I think Mr Dorrell is almost certainly right about that. I will be honest and say I have not researched Hansard in all those aspects, but the point is correct, that the current

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legislation to all intents and purposes replicates that which was available in 1973. It may have been—and I have not looked at the 1996 Hansard, and there will not be very much anyway on the regulations—that the 1973 Act was overlooked in debate but I think, in fairness to Parliamentarians at the time, of course, the 1973 Act was not commenced. It was sitting there not as a piece of active law. I think that is what you are seized of today. It was something that Parliamentarians, Ministers, had not for 25 years thought fit to activate. But the general position is that Mr Dorrell is right, I think.

Q26 Lord Campbell of Alloway: Is there a vacuum, putting it in a rather odd way, that requires that it should be filled by our process of law, if I am making sense?

Mr Teasdale: My Lord, there is not today, in the sense that the Directive is there. Putting aside moral arguments about protection of children, the Directive is there. It would need to be implemented. Of course, the bottom line is—it has been implemented. It has been done seemingly thoroughly by three sets of regulations amending the 1933 Act, and therefore that renders the need for the 1973 Act now long since gone. So I do not think you have a vacuum. I think the issue has been properly addressed. If it was not, I do not think we could . . .

Chairman: There has not been an enforcement provision, measures taken by the European Commission on the basis that we were in breach of the Directive, so I think we can take it that we are all right. Are there any other questions?

Mr Cash: I am slightly intrigued by one last point, and that is the Historic Buildings and Ancient Monuments Act 1953, which is on page 26 under item 7.

Chairman: That is actually Schedule 2. Please restrain your enthusiasm. We have not got there yet.

Mr Cash: We have that pleasure still in store.

Chairman: Yes. Apart from that, anything else on Part 11 of Schedule 1? No. In that case the question is that Schedule 1 be the first Schedule to the Bill. As many as are of that opinion will say “content”, the contrary “not content”. The contents have it.

The same is agreed to.

ON SCHEDULE 2

Chairman: Now we come to Schedule 2, and we can now take the question on the Historic Buildings and Ancient Monuments Act 1953.

Q27 Mr Cash: I was just looking for the reference. I just wondered. I have historic buildings as one of my interests. I am interested to know that it does not actually override these arrangements and why.

Mr Saunders: This is a purely technical amendment. That is a consequence of the repeal, in Part 9, of section 12 of the Town and Country Amenities Act 1974. The 1974 Act amended the 1953 Act.

Mr Cash: What page is it in this great volume?

Chairman: It is page 128 in the slim volume.

Mr Cash: Did you consult the Historic Houses Association, by any chance? I only mention that because they are the repository of all matters of this kind. They are the sort of trade association for historic house owners. It does not look very important, I have to say.

Q28 Chairman: It is preserving the existing law, is it not?

Mr Saunders: The law is not being changed at all.

Q29 Chairman: It is to ensure that it is not changed.

Mr Saunders: It is putting a patch on an earlier Act to ensure that what we are doing now does not affect the earlier Act, so the law has not been changed at all.

Mr Cash: Fair enough. OK.

Chairman: Are there any questions on Schedule 2? In that case, the question is that Schedule 2 be the second Schedule to the Bill. As many as are of that opinion will say “content”, the contrary “not content”. The contents have it.

The same is agreed to.

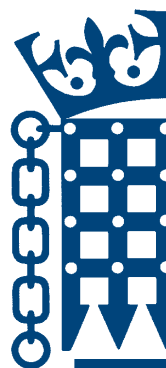
ON THE TITLE OF THE BILL

Chairman: The question is that this be the title of the Bill. As many as are of that opinion will say “content”, the contrary “not content”. The contents have it.

The same is agreed to.

Chairman: Finally, I propose that the terms of our report should be as follows: “The Committee has considered the Statute Law (Repeals) Bill which was referred to it and also the Report of the Law Commission and the Scottish Law Commission on the Bill. We have heard evidence on the Bill. The Committee is of the opinion that the enactments proposed to be repealed are no longer of practical utility, and we approve their repeal. There is no point to which the special attention of Parliament should be drawn.” That will be the first report of the Joint Committee for this session. It is my pleasure to invite Mr Dorrell to present the report to the House of Commons and also to report the minutes of proceedings. I would ask leave of the members of this House to make the report to the House of Lords. That is our business. I am very grateful to members of the Committee.

Mr Dorrell: May we once again congratulate you on your skilful and good-natured chairmanship of the Committee, my Lord.



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