

# Modernising English Criminal Legislation 1267-1970

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## 1. INTRODUCTION

English criminal - and criminal procedure - legislation is in a parlous state. Presently, there are some 286 Acts covering criminal law and criminal procedure with the former comprising c.155 Acts. Therefore, it is unsurprising that Judge CJ, in his book, *The Safest Shield* (2015), described the current volume of criminal legislation as 'suffocating'.<sup>1</sup> If one considers all legislation extant from 1267 - 1925 (see **Appendix A**) a considerable quantity comprises criminal law and criminal procedure - most of which is (likely) obsolete.<sup>2</sup> Given this, the purpose of this article is to look at criminal legislation in the period 1267-1970 as well as criminal procedure legislation in the period 1267-1925. Its conclusions are simple:

(a) the Law Commission should review all criminal legislation *pre*-1890 as well as a few pieces thereafter (see **Appendix B**). It should also review (likely) obsolete common law crimes (see **Appendix C**);

(b) at the same time, the Ministry of Justice (or Home Office) should consolidate all criminal legislation *post*-1890 into 4 Crime Acts.<sup>3</sup> These should deal with: (a) Sex crimes; (b) Public order crimes; (c) Crimes against the person; (d) Property and financial crimes (see 7). Once consolidated, any common law crimes which are not obsolete (see **Appendix C**) should be added to these Crime Acts.

In the case of (a) I have previously analysed many of these pieces of legislation in prior articles (as noted in the **Appendix B**). Thus, this article will only concentrate on those items of criminal legislation not previously analysed.

***The conclusion to this article is clear. It is perfectly possible to consolidate all criminal legislation into 4 Acts, providing early, obsolete, legislation is removed.***

## 2. LEGISLATION - STREET CRIMES

Among the earliest minor crimes known to English law, there were 'street' crimes. For example, digging up, or diverting, a street. This is mentioned in the *Laws of Henry I* (c.1113) as *stretbreche* (street breach). However, it is (likely) much older. Possibly, Anglo-Saxon.<sup>4</sup>

- Other street crimes may be seen in the early laws of London - such as a City Ordinance of 1277 prohibiting people from throwing rubbish (filth) in the streets.<sup>5</sup> This and others (such as letting pigs wander in the street *etc*) were punished as nuisances (annoyances) to the community. These were punished under the common law crime of common (public) nuisance where legislation did not otherwise provide;
- However, in early Victorian times, legislation enumerated various street crimes. One of the first was the City of London Police Act 1839 (repealed). It sought to gather together various old City street crimes into a more modern format (as well as clarify what they were). These street crimes was extended to the Metropolitan Police District of

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<sup>1</sup> Judge, *The Safest Shield* (2005), p 97.

<sup>2</sup> I calculate the figure is, at least, c. 85%.

<sup>3</sup> The word 'crime' is a better (and shorter) word than 'offence'.

<sup>4</sup> See GS McBain, *Abolishing the Crime of Public Nuisance and Modernising that of Public Indecency* (2017) International Law Research, vol 6, no 1, pp 1-108 especially, pp 10 (*royal roads*) & 14 (*stretbreche*). It may be noted that Anglo-Saxon law did not draw a distinction between civil and criminal offences (which also explains why a public nuisance can give rise to both civil and criminal remedies today). See also J Bosworth, *A Compendious Anglo-Saxon and English Dictionary* (1868)(*stret*) 'a street'.

<sup>5</sup> *Ibid*, p 30.

London ('MPD') by the Metropolitan Police Act 1839 (the '**1839 Act**', still extant). They were then extended to urban areas by the Town Police Clauses Act 1847 (the '**1847 Act**') as amended by the Public Health Act 1875, s 171 (both still extant).<sup>6</sup> There were also various Highways Acts, such as the 1835 Highway Act 1835 which sought to deal with obstructions to the streets.

Extant legislation on street crimes in the period 1267-1890 comprises the following:

**(a) Highway Act 1835**

This Act, section 72 states:

- s 72 (*Footpaths*). 'If any person shall *wilfully* ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers;<sup>7</sup> or shall *wilfully* lead or drive any horse, ass, sheep, mule, swine, or cattle or carriage of any description, or any truck or sledge, upon any such footpath or causeway; or shall tether any horse, ass, mule, swine, or cattle, on any highway,<sup>8</sup> so as to suffer or permit the tethered animal to be thereon...'; [penalty, level 2]

In essence, then, it is a crime to: (i) intentionally ride on a footpath or footway; (ii) intentionally lead (or drive) a horse *etc.* or truck *etc.* on a footpath or footway; (iii) tether a horse *etc.* on any highway (or permit the same). This section is general legislation. It may be compared with similar sections in the 1839 Act (which applies to the MPD only) and the 1847 Act (which applies to urban districts only), *viz*:

- **1839 Act s 54(7)** 'Every person who shall lead or ride any horse or other animal, or draw or drive any cart or carriage, sledge, truck, or barrow, upon any *footway* or curbstone, or fasten any horse or other animal so that it can stand across or upon any footway.' (*italics supplied*). This section should have been repealed by the Deregulation Act 2015, sch 23, pt 9;<sup>9</sup>
- **1847 Act, s 28** 'Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow upon any *footway* of any street, or fastens any horse or other animal so that it stands across or upon any *footway*.' (*italics supplied*). This section was repealed by the Deregulation Act 2015, sch 23, pt 9.<sup>10</sup>

These local Acts cover (covered) much the same as the Highway Act 1835, s 72 - save that the wording in the 1847 Act is more modern. The Highway Act 1835 also states:

- s. 78 (*Drivers of waggons or carts*) '... if the driver of any carriage whatsoever on any part of any highway shall by *negligence or wilful misbehaviour* cause any hurt or damage to any person, horse, cattle, or goods conveyed in any carriage passing or being upon such highway, or shall quit the same and go on the other side of the hedge or fence inclosing the same, or *negligently or wilfully* be at such distance from such carriage or in such a situation whilst it shall be passing upon such highway that he cannot have the direction and government of the horses or cattle drawing the same, or shall leave any cart or carriage on such highway so as to obstruct the passage thereof; ...; or if the driver of any waggon, cart, or other carriage whatsoever, or of any horses, mules, or other beast of draught or burthen meeting any other waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, shall not keep his waggon, cart or carriage, or horses, mules, or other beasts of burthen, on the left or near side of the road; or if any person shall in any manner *wilfully* prevent any other person from passing him, or any waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, under his care, upon such highway, or by *negligence or misbehaviour* prevent, hinder, or interrupt the free passage of any person, waggon, cart, or other carriage or horses, mules, or other beasts of burthen, on any highway, or shall not keep his waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, on the left or near side of the road, for the purpose of allowing such passage; or if any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously so as to endanger the life or limb of any passenger;'<sup>11</sup> [penalty, level 1] (*italics supplied*)

This section is very convoluted. However, in essence, it is a crime if the driver of a carriage on a highway:

- **Injure a Person, Animal etc** - by negligence or wilful misbehaviour [i.e. intentionally] cause any hurt or damage to any person, horse *etc* or goods conveyed in any passing carriage;
- **Drive other than on the Highway** - quit the same [i.e. the highway] and go on the other side of the hedge or fence inclosing the same;

<sup>6</sup> Ibid, pp 63-4. The Public Health Act 1875, s 171 states: 'The provisions of the [1847 Act], with respect to the following matters, (namely, (1) with respect to obstructions and nuisances in the streets; and (2) with respect to fires; and (3) with respect to places of public resort; and (4) with respect to hackney carriages; . . . shall, for the purpose of regulating such matters in urban [districts], be incorporated with this Act.'

<sup>7</sup> Cf. Highways Act 1980, s 329 (*footway*). See also Oxford English Dictionary (*causeway*) 'A highway; usually a paved way, such as existed before the advent of macadamization. Now historical or forming the part of ancient ways, *esp.* the Roman roads, the military roads of the 17th century *etc.*'. The word '*causeway*' is not now used.

<sup>8</sup> Highway Act 1835, s 5 'In the construction of this Act...the word '*highways*' shall be understood to mean all road, bridges...carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements.' See also Halsbury, *Statutes* (4th ed), vol 36 and cases cited therein.

<sup>9</sup> This should have been repealed since the equivalent section in the 1847 Act, s 28 (which covers urban districts) was repealed.

<sup>10</sup> See n 28.

<sup>11</sup> By the Local Government Act 1888, s 85(1) bicycles, tricycles *etc* are directed to be carriages within the meaning of the Highways Acts. By the Road Traffic Act 1988, s 19(1) the general law relating to carriages is applied to motor vehicles and trailers.

- **Not control the Carriage** - negligently or wilfully be at such distance from such carriage or in such a situation while it passes that he cannot have the direction and government [i.e. control] of the horse *etc* drawing it;
- **Obstruct the Highway** - leave any carriage on the highway, obstructing it;
- **Not Keep to the Left** - meeting any other carriage, or horse *etc*, shall not keep his carriage, or horse *etc*. on the left or near side of the road;
- **Prevent Passage** - wilfully prevent any other person from passing him or other carriage, horse *etc*. under his care, on such highway;
- **Hinder Passage** - by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any person, carriage, horse *etc* on any highway;
- **Not Keep to the Left** - not keep his carriage, horse *etc* on the left or near side of the road, for the purpose of allowing such passage;
- **Ride Furiously** - ride a horse *etc* or carriage furiously, to endanger the life (or limb) of any passenger.

This section 78 may be compared with sections in the 1839 and 1847 Acts which are narrower in scope:

- **1839 Act, s 54(4)** 'Every person having the care of any cart or carriage who shall ride on any part thereof, on the shafts, or on any horse or other animal drawing the same, without having and holding the reins, or who shall be at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same.' Also, s 54 (5) 'Every person who shall ride or drive furiously, or so as to endanger the life or limb of any person, or to the common danger of the passengers in any thoroughfare...'. These sections should have been repealed by the Deregulation Act 2015, sch 17.<sup>12</sup>
- **1847 Act, s 28** 'Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation) or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care.' Also, 'Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle.' These sections were repealed by the Deregulation Act 2015, sch 17.<sup>13</sup>

The Highway Act 1835 should be repealed and ss 72 & 78 be inserted in the Highways Act 1980 to the extent considered by the Department for Transport ('DfT') necessary. It may be noted that the Highways Act 1980 contains its own definitions of 'highway', 'footpath', 'footway', 'carriageway', 'bridleway', 'street' and 'horse'.<sup>14</sup>

***In conclusion, the Highway Act 1835 should be repealed and these crimes (to the extent necessary) placed in the Highways Act 1980, with more modern wording.***

#### **(b) Metropolitan Police Act 1839**

This Act only covers the MPD. However, it was used as the basis for the 1847 Act which applies to urban districts. As previously noted,<sup>15</sup> an error was recently made in respect of this Act in that various minor crimes were repealed in the 1847 Act but not in this one. The result is that certain street acts can still be crimes in the MPD but not in urban districts (and not at all in the City of London). This is undesirable since it creates - in effect - 'crime by post code.' It is asserted that this Act should be *wholly* repealed for the following reasons:

- **Street Processions**. Two sections relate to these.<sup>16</sup> These only apply to the MPD. Equivalent sections are to be found in the 1847 Act, ss 21 & 23 (see (c)). These sections in both Acts should be repealed and the DfT should make similar provision (as modernised) in the Highways Act 1980;
- **Fairs**. Two sections relate to these, ss 38 and 39:

Section 38 provides that fairs in the MPD may not operate between 11 pm and 6 am. Thus, anyone managing a stall, booth *etc*. open between those hours is guilty of a crime. So too, any person who fails to quit the same on being told by a police constable to do so.<sup>17</sup>

<sup>12</sup> See n 9.

<sup>13</sup> See n 28.

<sup>14</sup> Highways Act 1980. s 329(1).

<sup>15</sup> See n 9.

<sup>16</sup> e.g. 1839 Act, ss 52 (regulations for preventing obstruction in the streets during public processions) and 53 (deviation permitted when in accordance with the regulations in s 52).

<sup>17</sup> Ibid, s 38 'The business and amusements of all fairs holden within the [MPD] shall cease at the hour of eleven in the evening, and shall not begin earlier than the hour of six in the morning; and if any house, room, booth, standing, tent, caravan, waggon, or other place shall, during

Section 39 deals with where a fair has been unlawfully held (because there was no right to hold it) or where it has continued beyond the stated period. In such cases, persons driving fair carriages (and those therein) as well as - '*every person resorting to [it] with any show or instrument of gambling or amusement*' - commits a crime.<sup>18</sup>

Fairs, for the purpose of this Act, were not the same as markets.<sup>19</sup> They were annual events, many long standing. However, it is unlikely that any fairs now exist in the MPD since most London fairs were abolished in Victorian times (on the grounds of being disorderly) pursuant to the Fairs Act 1871 (still extant).<sup>20</sup> Also, even if such fairs still exist, the Markets and Fairs Clauses Act 1847 (still extant) enabled byelaws to be made for fairs, including the time and hours of operation. Thus, it is likely that MPD fairs would now be governed by the same. In any case, the crimes in the 1839 Act are replicated - to an extent - in the Metropolitan Fairs Act 1868, s 2 (extant)<sup>21</sup> which applies in respect of any fair in the MPD '*other than that on which a fair has been holden during each of the seven years immediately preceding*'.<sup>22</sup> In light of all this:

(a) it is asserted that these sections in the 1839 Act - as well as the Metropolitan Fairs Act 1868<sup>23</sup> - should be repealed. Such acts should not be crimes today.<sup>24</sup> In any case, these sections appear to have produced no caselaw since 1847 (or 1868) - a good indication there are unlikely to be any fairs in the MPD still held (fairs held in London parks would be governed by their byelaws);

(b) no similar legislation to sections 38 and 39 of the 1839 Act apply to the City of London or to urban districts. Thus, sections 38 and 39 are anomalous.

Given this - and the fact that there appear to be no markets or fairs in England and Wales operating today by way of Crown or local legislation -<sup>25</sup> it would also seem appropriate for the Law Commission to appoint an expert to review the law on markets and fairs. In particular, to consider the repeal of the Markets and Fairs Clauses Act 1847

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the continuance of any such fair, be open within the hours of eleven in the evening and six in the morning for any purpose of business or amusement, in the place where such fair shall be holden, it shall be lawful for any constable to take into custody the person having the care or management thereof, and also every person being therein who shall not quit the same forthwith upon being bidden by such constable so to do; and *the person so then having the care of management of any such house, room, booth, standing, tent, caravan, waggon, or other place, shall be liable to a penalty not more than [level 1], and every person convicted of having been therein, and of not having quitted the same forthwith upon being bidden by a constable so to do, shall be liable to a penalty not more than [level 1].*' (*italics supplied*)

<sup>18</sup>Ibid, s 39. 'If it shall appear to the commissioners of police that any fair ... holden within the [MPD] has been holden without lawful authority, or that any fair lawfully holden within the said district has been... holden for a longer period than is so warranted, it shall be competent to such commissioners to direct one of the superintendents belonging to the metropolitan police force to summon the owner or occupier of the ground upon which such fair is...holden to appear before a magistrate at a time and place to be specified in the summons, not less than eight days after the service of the summons, to show his right and title to hold such fair, or to hold such fair beyond a given period (as the case may be); and if such owner or occupier shall not attend in pursuance of such summons, or shall not show to the magistrate who shall hear the case sufficient cause to believe that such fair has been lawfully holden for the whole period during which the same has been... holden, the magistrate shall declare in writing such fair to be unlawful, either altogether or beyond a stated period (as the case may be); and the commissioners shall give notice of such declaration by causing copies thereof to be affixed on the parish church and on other public places in and near the ground where such fair has been ...holden; and if, after such notices have been affixed for the space of six days, any attempt shall be made to hold such fair if it shall be declared altogether unlawful, or to hold it beyond the prescribed period if it shall be declared unlawful beyond a certain period, the commissioners of police may direct any constable to remove every booth, standing, and tent, and every carriage of whatsoever kind conveyed to or being upon the ground for the purpose of holding or continuing such fair, and [to take into custody] every person erecting, pitching, or fixing, or assisting to erect, pitch, or fix, any such booth, standing, or tent, and *every person driving, accompanying, or conveyed in every such carriage, and every person resorting to such ground with any show or instrument of gambling or amusement [shall be guilty of an offence]; and every person convicted before a magistrate of any of the offences last aforesaid shall be liable to a penalty not more than [ level 1].*' (*italics supplied*) . See also s 40 (*recognizance*).

<sup>19</sup> See GS McBain, *Abolishing some more Obsolete Crown Prerogatives: Pt 2* (2011) *Liverpool Law Review*, vol 32, pp 279-84.

<sup>20</sup> Ibid, p 282, fn 44. See also Fairs Act 1871. Ibid, p 283.

<sup>21</sup>viz. 'Where any fair is holden or notice is given of any fair proposed to be holden on any ground within the [MPD] other than that on which a fair has been holden during each of the seven years immediately preceding, it shall be competent for the Commissioner of Police to direct one of the superintendents of the Metropolitan Police Force to summon the owner or occupier of the ground upon which such fair is holden to appear before a magistrate forthwith, or at a time to be specified in the summons, to show his right and title to hold such fair; and if such owner or occupier do not attend in pursuance of such summons, or does not show to the magistrate who hears the case sufficient cause to believe that such fair is lawfully holden, the magistrate shall declare in writing such fair to be unlawful, and the Commissioner shall give notice of such declaration by causing copies thereof to be affixed on and near the ground where such fair is holden or proposed to be holden; and after such notice has been affixed for the space of six hours the Commissioner of Police may direct any constable to remove every booth, standing, and tent, and every carriage of whatsoever kind, conveyed to or being upon the ground for the purpose of holding or continuing such fair, and to take into custody every person erecting, pitching, or fixing, or assisting to erect, pitch, or fix, any such booth, standing, or tent; and *every person hiring, accompanying, or conveyed in every such carriage, and every person resorting to such ground with any show or instrument of gambling or amusement, and every person convicted before a magistrate of any of the offences aforesaid, shall be liable to a penalty of not more than [level 1].*' (*italics supplied*)

<sup>22</sup> The Metropolitan Fairs Act 1868, s 4 states: 'All powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by any other Act of Parliament, and any such other powers may be exercised as if this Act had not passed.'

<sup>23</sup> If this Act is repealed, the matter is still covered by the 1839 Act.

<sup>24</sup> See also Halsbury, *Laws of England* (4th ed), vol 29(2), para 1062 (statutory fairs, ability of the Attorney-General to bring suit). See also County Courts Act 1984, s 15(2)(b) (county court has no jurisdiction rean action concerning title to a fair). See also Halsbury, *Statutes* (5th ed), para 801 *et seq.*

<sup>25</sup> See McBain, n 19, pp 287-90.

- providing instead that any markets (or fairs) regulated thereunder (I suspect there are none) should now be governed by the Food Act 1984 (which Act makes provision for the time and hours of markets, byelaws *etc*);

- **Searching Vessels**. Section s 33 allows MPD officers to board vessels on the Thames and creeks.<sup>26</sup> This police power should be inserted in more modern legislation. Further, this section should be made into general legislation;
- **Street Crimes**. Sections ss 54 & 60 specify various street crimes. As previously noted, most of these *should* have been repealed by the Deregulation Act 2015, sch 23, pt 9.<sup>27</sup> Further, none of these should be retained if there are not also repeated in the 1847 Act and - since it is asserted that all those still in the 1847 Act should also be repealed (see (c)) - no street crimes in the 1839 Act are worth retaining.

***In conclusion, the 1839 Act should be repealed (including all streets crimes contained in it). Sections on carriage routes(ss 52-3) should be placed in general legislation. So too, s 33 (searching vessels).***

#### **(c) Town and Police Clauses Act 1847**

The 1847 Act only applies to urban districts. Various street crimes laid down in the 1847 Act, s 28 were repealed by the Deregulation Act 2015, sch 17.<sup>28</sup> Thus, the only street crimes left in s 28 are as follows, every person who:

- **Dogs** - suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal;
- **Furious Driving** - rides (or drives) furiously any horse (or carriage), or drives furiously any cattle;
- **Discharges Firearm** - wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework.

In the case of these:

- **Dogs**. This crime is no longer required since the first matter is now covered by the Dangerous Dogs Act 1991, s 3 (*keeping dogs under proper control*). Further, setting a dog (or other animal) on a person is a form of harassment, a distinct crime;
- **Furious Driving**. It may be noted that causing bodily injury by furious driving is dealt with in the Offences against the Person Act 1861, s 35.<sup>29</sup> This crime (which is, also, likely covered by that of cruelty to animals, in part) is not required. It is to be remembered that the 1847 Act only applies to urban districts. Thus, this is not a crime in the City of London, for example. Further, this crime, anyway, is covered by general legislation - the Highway Act 1835, s 78 (see (a));
- **Firearms etc**. Firearms - in respect of unlawful possession of the same is regulated by the criminal law. And, even if lawfully possessed, their discharge is regulated by the civil law (negligence, the reference in the Act to '*wanton*' suggests careless discharge or discharge without good reason). Also, by noise abatement requirements. In the case of missiles, today, the law focuses less on the act of throwing and more on the result - whether criminal damage or

<sup>26</sup> viz. 'Any superintendent or inspector belonging to the metropolitan police force shall have power, by virtue of his office, to enter at all times, with such constables as he shall think necessary, as well by night as by day, into and upon every ship, boat, or other vessel (not being then actually employed in her Majesty's service) lying in the said river or creeks, or in any dock or docks thereto adjacent, and into every part of every such vessel, for the purpose of inspecting and upon occasion directing the conduct of any constable who may be stationed on board of any such vessel, and of inspecting and observing the conduct of all other persons who shall be employed on board of any such vessel in or about the lading or unlading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order on board of any such vessel, and for the effectual prevention or detection of any felonies or misdemeanours.'

<sup>27</sup> See n 9.

<sup>28</sup> viz. 'In section 28 of the Town Police Clauses Act 1847 (which creates a number of offences) omit the paragraphs beginning - (a) "Every person who exposes for show, hire or sale"; (b) "Every person who slaughters or dresses any cattle"; (c) "Every person having the care of any waggon, cart or carriage"; (d) "Every person who causes any public carriage, sledge, truck, or barrow"; (e) "Every person who causes any tree or timber or iron beam"; (f) "Every person who leads or rides any horse or other animal"; (g) "Every person who places or leaves any furniture"; (h) "Every person who places, hangs up, or otherwise exposes to sale"; (i) "Every person who rolls or carries any cask"; (j) "Every person who places any line, cord or pole"; (k) "Every person who publicly offers for sale or distribution"; (l) "Every person who wilfully and wantonly disturbs any inhabitant"; (m) "Every person who flies any kite"; (n) "Every person who cleanses, hoops, fires, washes, or scalds"; (o) "Every person who throws or lays down any stones"; (p) "Every person who beats or shakes any carpet"; (q) "Every person who fixes or places any flower-pot or box"; (r) "Every person who throws from the roof"; (s) "Every occupier of any house or other building"; (t) "Every person who leaves open any vault or cellar"; (u) "Every person who throws or lays any dirt, litter, or ashes"; (v) "Every person who keeps any pigstye".'

<sup>29</sup> viz. 'Whosoever, having the charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanor...'

injury to the person. This is more appropriate. As for fires and firearms, general legislation - the Highways Act 1980, s 161 applies<sup>30</sup> as well as the Explosives Act 1875, s 80.<sup>31</sup>

It is asserted that these crimes are not required. Other provisions of the 1847 Act deal with: (a) regulations on street processions;<sup>32</sup> and (b) hackney carriages.<sup>33</sup> These should now be placed - in the case of (a) - in the Highways Act 1980. And - in the case of (b) - in more modern general legislation (see also 5).

***In conclusion, the 1847 Act should be repealed (including all street crimes contained in it). Sections on street processions and hackney carriages should be placed in general legislation.***

**(d) Metropolitan Police Act 1864**

This Act, s 1, concerns noise nuisance by street musicians in the City of London and the MPD. It states:

any householder within the [MPD], personally, or by his servant, or by any police constable, may require any street musician or street singer to depart from the neighbourhood of the house of such householder, on account of his illness or on account of the interruption of the ordinary occupations or pursuits of any inmate of such house, or for other reasonable or sufficient cause...'

This street crime is very limited in scope in that it applies to the MPD. Thus, it would not be a crime in the City of London or urban districts. Also, there appears to have only been one (old) case.<sup>34</sup> Today, there is more modern legislation concerning noise abatement which focuses on the noise, without specific reasons having to be given.

***In conclusion, the Metropolitan Police Act 1864 should be repealed.***

**(e) Metropolitan Streets Act 1867 & Metropolitan Streets Amendment Act 1867**

The extant sections of the first Act only cover a limited area of London.<sup>35</sup> It states:

- s 6 (*Deposit of Goods in Streets & Footways*). 'No goods or other articles shall be allowed to rest on any footway or other part of a street<sup>36</sup> within the...limits of this Act, or be otherwise allowed to cause obstruction or inconvenience to the passage of the public, for a longer time than may be absolutely necessary for loading or unloading such goods or other articles. [penalty, level 3].' Section 6 was amended by the Metropolitan Street Amendment Act 1867, s 1 which states that it: 'shall not apply to costermongers, street hawkers, or itinerant traders, so long as they carry on their business in accordance with the regulations from time to time made by the Commissioner of Police, with the approval of the Secretary of State.';
- s 7 (*Cattle*). 'No person shall drive or conduct any cattle<sup>37</sup> through any street within the...limits of this Act between the hours of ten in the morning and seven in the evening, except with the permission of the Commissioner of the Police [penalty, level 1].';
- s 9 (*Adverts*). 'No picture, print, board, placard, or notice, except in such form and manner as may be approved of by the Commissioner of Police, shall, by way of advertisement, be carried or distributed in any street within the... limits of this Act by any person riding in any vehicle, or on horseback, or being on foot... This section shall not apply to the sale of newspapers. [penalty, level 1].

These sections - which appear to have no caselaw, save for section 9<sup>38</sup> - apply to a limited area of London. It is asserted that s 6 (if required) should be inserted into the Highways Act 1980 since it relates to obstruction of the highway (which includes a street). Section 7 is not required since there are no live cattle (animal) markets within the '*limits of the Act*' now. It would also constitute an obstruction of the highway, as would section 9. Thus, these sections, which only apply to a limited area of London, are not required and - if determined otherwise - should now be contained in general legislation (i.e. no cattle, adverts *etc* save in accordance with local byelaws).

<sup>30</sup> viz. '(2) If a person without lawful authority or excuse - (a) lights any fire on or over a highway which consists of or comprises a carriageway; or (b) discharges any firearm or firework within 50 feet of the centre of such a highway, and in consequence a user of the highway is injured, interrupted or endangered....[penalty, level 3].'

<sup>31</sup> viz. 'If any person throw, cast, or fire any fireworks on or into any highway, street, thoroughfare, road or public place.'

<sup>32</sup> See 1847 Act, ss 21 & 23.

<sup>33</sup> Ibid, ss 37- 68.

<sup>34</sup> *Shields v Howard* [1897] 1 QB 84, per Grantham J at p 85 'unless there is some such cause, the street musician or singer, in refusing to obey the householder's requirement, commits no offence.'

<sup>35</sup> The Act, s 3, 'The following expressions for the purposes of this Act shall, unless the context requires a different construction, have the meanings herein-after assigned to them; that is to say,...."*the limits of this Act*" means - (a) the City of London; (b) the area enclosed in a circle of which the centre is Charing Cross, and the radii are six miles in length as measured in a straight line from Charing Cross.'

<sup>36</sup> Ibid, "*Street*" shall include any highway or other public place, whether a thoroughfare or not;..'

<sup>37</sup> Ibid. 'The word "*cattle*" shall include bull, ox, cow, heifer, calf, sheep, goats, and swine, also horses, mules, and asses, when led in a string or loose.'

<sup>38</sup> *Fulton v Kelly* (1889) 5 TLR 325 (lack of disapproval is sufficient).

***In conclusion, this Act should be repealed. However, if ss 6, 7 and 9 are thought to be still required, they should be inserted into the Highways Act 1980.***

**(f) Town Police Clauses Act 1889**

This Act<sup>39</sup> - which is construed together with the 1847 Act, only applies to a horse-drawn omnibus<sup>40</sup> (with the exception of s 5).<sup>41</sup> Thus, it is obsolete, as Halsbury notes.<sup>42</sup>

***In conclusion, this Act should be repealed - save for section 5 which refers to the 1847 Act and it should be placed therein, if still required.***

**3. LEGISLATION - RAILWAY & TRAM CRIMES**

There are various pieces of legislation *pre-1890* extant which relate to railways, viz.

- Highway (Railway Crossings) Act 1839;
- Railway Regulation Act 1840;
- Railway Regulation Act 1842;
- Railways Clauses Consolidation Act 1845;
- Locomotive Act 1861 (*spent*);
- Railways Clauses Act 1863;
- Railway Companies Act 1867;
- Regulation of Railways Act 1868;
- Tramways Act 1870;
- Regulation of Railways Act 1873 (*spent*);
- Railway and Canal Traffic Act 1888;
- Regulation of Railways Act 1889.

Only some of these Acts contain crimes, viz:

**(a) Railway Regulation Act 1840**

This Act, section 16, makes it a crime to: (a) obstruct a railway officer; (b) trespass on the railway. It states:

If any person shall wilfully [i.e. intentionally] obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon any railway, or any of the stations or other works or premises connected therewith *etc....* [penalty, level 1].

***This Act should be consolidated with later Railway Acts and the wording of these crimes modernised.***

**(b) Railways Clauses Consolidation Act 1845**

This Act contains various minor crimes, viz:

- Section 23 - interrupting gas or water supply;<sup>43</sup> s 24 - interrupting construction of the railway;<sup>44</sup> s 54 - not substituting a road;<sup>45</sup> s 57 - not restoring a road;<sup>46</sup> s 75 - omitting to fasten gates for the owner of adjoining lands;<sup>47</sup>

<sup>39</sup> It is also incorporated with the Public Health Act 1875. Thus, s 2 provides: 'This Act shall be construed as one with the principal Act [i.e. the 1847 Act], and the expression "*this Act*" in the principal Act shall be construed to mean the principal Act as amended by this Act. (2) This Act shall be deemed to be incorporated with the Public Health Act, 1875, by [s 171] of that Act.'

<sup>40</sup> Town Police Clauses Act 1889, s 3.

<sup>41</sup> Ibid, s 5 'Any licence may be granted under the principal Act [ i.e. Town Police Clauses Act 1847, s 37] to continue in force for such less period than one year as the Commissioners may think fit, and shall specify in the licence.' This section 5 should be repealed and the 1847 Act, s 43 amended to cover it, if required.

<sup>42</sup> Halsbury, *Statutes*, vol 36 (*Application of Act*).

<sup>43</sup> 'If by any such operations as aforesaid the company shall interrupt the supply of any water or gas...[penalty £20 for every day supply interrupted].'

<sup>44</sup> 'If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose [penalty, level 1].'

<sup>45</sup> 'If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit [£20 for every day].'

<sup>46</sup> 'If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special Act fixed for that purpose, the company shall forfeit [£5 for every day].'

<sup>47</sup> 'If any person omit to shut and fasten any gate or [to lower any barrier] set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the carriage, cattle, or other animals under his care have passed through the same [penalty, level 3].'

s 103 - a passenger refusing to leave a train when it reaches its destination for him;<sup>48</sup> s 116 - using improper engines;<sup>49</sup> s 119 - using improper carriages;<sup>50</sup> s 144 - defacing byelaw boards;<sup>51</sup> s 163 - railway company failing to keep a copy of any Special Act;<sup>52</sup>

- **Obsolete Crimes.** It is asserted that ss 23, 24, 54, 57, 116 & 119 should be repealed. They do not need to be treated as crimes - the issue is better dealt with as a civil matter (negligence or breach of contract, if not otherwise dealt with under other legislation relating to utilities). Further, ss 116 & 119 do not apply to modern rolling stock. Section 144 should also be repealed and the crime be that of causing criminal damage. Section 163 should be repealed. It is unnecessary to make this a crime;
- **Refusing to Leave Train.** As for s 103, the penalty is low, it is limited in extent (only applying when a person reaches his destination) and it is asserted that - in modern times - the crime of trespass would be more appropriate in any case (see also (a) and (f) which deal with trespass). There appear to have been no cases and this Act applied before British Transport Police were created. Thus, this crime should be repealed. Today, if a passenger refuses to quit the train at his destination - but is not committing any other crime (assault, harassment *etc*) - he can be charged for the excess. If committing another crime, he can be removed for it;
- **Not Shutting Gate.** As for s 75, most (if not all) railway gates are automated today and not raised or lowered by hand. Further, this crime was intended only to be for the benefit of occupiers of adjoining lands in respect of their carriage (car) or animals passing through and not for negligence generally in omitting to close a gate. It is not required.

***This Act should be consolidated with later Railway Acts and the wording of any of these crimes - if deemed to be worthy of retention - should be modernised.***

#### **(c) Malicious Damage Act 1861**

This makes it a crime to intentionally: (a) place (or throw) objects on the line; (b) remove (or displace) rails or other railway matter; (c) interfere with points, signals or other machinery; (d) do anything to obstruct *etc.* any engine or carriage. Thus:

- s 35 'Whosoever shall unlawfully and maliciously cut, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway[penalty, imprisonment];'
- s 36 'Whosoever, by any unlawful act, or by any wilful omission or neglect, shall obstruct or cause to be obstructed any engine or carriage using any railway, or shall aid or assist therein [penalty, imprisonment not exceeding 2 years].'

These crimes are also in the Offences Against the Person Act 1861 ('OPA 1861') see (d) below, with the proviso that the intent be to endanger passengers.

***In conclusion, this Act should be repealed.***<sup>53</sup>

<sup>48</sup> 'If any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage [penalty, level 1].'

<sup>49</sup> 'If any person, whether the owner or other person having the care thereof, bring or use upon the railway any locomotive or other engine, or any moving power without having first obtained such certificate of approval as aforesaid, or if, after notice given by the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine on the railway, such person do so use such engine without having first repaired the same to the satisfaction of the company and obtained such certificate of approval [penalty, level 2] ... Nothing in this section shall apply to the bringing or use of any rolling stock on track comprised in a network, the person having the management of which for the time being is the holder of a network licence; and in this section "rolling stock", "track", "network" and "holder of a network licence" shall be construed in accordance with Part I of the Railways Act 1993.'

<sup>50</sup> 'If any carriage, not being of such construction or in such condition as the regulations of the company for the time being require, be made to pass or be upon any part of the railway (except as aforesaid,) the owner thereof, or any person having for the time being the charge of such carriage,...[penalty, level 1]... Nothing in this section shall apply to the bringing or use of any rolling stock on track comprised in a network, the person having the management of which for the time being is the holder of a network licence; and in this section "rolling stock", "track", "network" and "holder of a network licence" shall be construed in accordance with Part I of the Railways Act 1993.'

<sup>51</sup> 'If any person pull down or injure any board put up or affixed [for the purpose of publishing any byelaw of the company or any penalty imposed by this or the special Act], or shall obliterate any of the letters or figures thereon [penalty, level 1. Also, the expenses of repair].'

<sup>52</sup> 'If the company shall fail to keep or deposit as hereinbefore mentioned, any of the said copies of the special Act [penalty, level 2 and £5 for every day during which such copy not be kept or deposited].' Section 2 states: 'The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorizing the construction of a railway, and with which this Act shall be so incorporated as aforesaid...'



**(d) OPA 1861**

This Act makes the following crimes: with intent to endanger passengers, unlawfully and maliciously to: (a) place (or throw) objects on the railway line; (b) remove (or displace) rails or other railway matter; (c) interfere with points, signals or other machinery; (d) do (or cause to be done) anything else. Also, (e) with intent to injure or endanger passengers - unlawfully or maliciously to throw (or cause to fall) objects at a train. Also, (f) by unlawful act (or omission) to endanger passengers. Thus, it states:

- s 32 'Whosoever shall unlawfully and maliciously put or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway...[penalty, imprisonment]';
- s 33. 'Whosoever shall unlawfully and maliciously throw, or cause to fall or strike, at, against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck of any train of which such first-mentioned engine, tender, carriage, or truck shall form part...[penalty, imprisonment]';
- s 34. 'Whosoever, by any unlawful act, or by any wilful omission or neglect, shall endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway, or shall aid or assist therein [penalty, imprisonment not exceeding two years]';

In a report on *Reform of Offences against the Person* (Law Com, no 361) in 2015, the Law Commission recommended these crimes be replaced by a more modern one - that of intentionally (or recklessly) causing danger to a person.<sup>54</sup> One would agree (it should also cover trams, see (e) below).

***In conclusion, these crimes should be repealed.***

**(e) Tramways Act 1870**

This Act - which needs to be modernised - provides, in section 47, that penalties may be imposed for breaches of the byelaws. It also makes the following, crimes:

- s 49 (*Penalty for obstruction of promoters in laying out tramway*). 'If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of tramway, or damages or destroys any property of any promoters, lessees, or licensees...[penalty, level 1]';
- s 50 (*Penalty for wilful injury or obstruction to tramway*). 'If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,) Interferes with, removes, or alters any part of a tramway or of the works connected therewith; Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway; Does or causes to be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon; Or knowingly aids or assists in the doing of any such thing...[penalty, level 1]';
- S 51 (*Penalty on passengers practising frauds on the promoter*). 'If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage...[penalty, level 1]';
- S 53 (*Penalty for bringing dangerous goods on the tramway*). 'No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature; and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending....[penalty, level 2]';
- S 55 (*Penalty for persons using tramways with carriages with flange wheels, &c*). 'If any person (except under a lease from or by agreement with the promoters, or under licence from the Board of Trade, as by this Act provided) uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway...[penalty, level 2]';

It is asserted that s 49 should be repealed and the general law on trespass, harassment and criminal damage apply instead. In respect of s 53, legislation on dangerous goods (firearms, explosive *etc*) should apply as well as civil remedies for damage (in any case, this minor crime does not seem to be replicated in railway

<sup>53</sup> The only other sections of the Act extant are: s 58 (*malice against the owner of the property unnecessary*) & s 78 (*offences committed within the jurisdiction of the Admiralty*). The latter is spent since there are no sections in the Act now relating to admiralty matters.

<sup>54</sup> Law Commission, *Reform of Offences against the Person* (2015), pp 178-9, 216.

legislation). Thus, it should be repealed. As for s 55, it is obsolete. The remaining sections should also be repealed and the crimes applying to railways in respect of - obstructing officers, trespass, causing danger to a person and avoiding payment of the fare - be extended to cover trams. This, manifestly, would make good sense.

***In conclusion, the crimes in this Act should be repealed and the crimes applicable to trains be extended to cover trams.***

#### **(f) Regulation of Railways Act 1868**

This Act makes it a crime to trespass on the railway line:

S 23 'If any person shall be or pass upon any railway, except for the purpose of crossing the same at any authorized crossing, after having once received warning by the company which works such railway, or by any of their agents or servants, not to go or pass thereon [penalty, level 1]'.<sup>55</sup>

The Railway Regulation Act 1840 (see (a)) also deals with trespass on the railway. Thus, it is asserted this, more specific, crime is not required. There appears to be no caselaw.

***In conclusion, the crime in this Act should be repealed.***

#### **(g) Regulation of Railways Act 1889**

This Act makes it a crime to fail to pay the train fare. Thus:

S 5(1) 'Every passenger by a railway shall, on request by an officer or servant of a railway company, either produce, and if so requested deliver up, a ticket showing that his fare is paid, or pay his fare from the place whence he started, or give the officer or servant his name and address...

(3) If any person - (a) travels or attempts to travel on a railway without having previously paid his fare, and with intent to avoid payment thereof; or (b) having paid his fare for a certain distance, knowingly and wilfully proceeds by train beyond that distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or (c) having failed to pay his fare, gives in reply to a request by an officer of a railway company a false name or address, they shall be liable on summary conviction to a fine [penalty, level 3]...or in the discretion of the court to imprisonment for a term not exceeding [3 months]....<sup>55</sup>

***This section should be modernised and should also apply to trams (assuming the Tramways Act 1870 is still required, see (e)).***

#### **(h) Conclusion**

The Law Commission should request the DfT to consolidate the above railway and tram legislation into a modern Act. It would seem the only crimes needing to be retained as 'railway' specific - are, to:

- intentionally obstruct a railway (or tramway) employee (see (a));
- intentionally (or recklessly) cause danger to a person on a railway (or tramway) or to a passenger (see (d));
- trespass on a railway (or tramway)(see (a));
- fail to pay the requisite fare (see (g));

### **4. LEGISLATION - CANALS, SHIPPING, PORTS & HARBOURS CRIMES**

In respect of legislation extant *pre-1890*:

- **Canals**. There are: Canal Carriers Act 1845, Canal (Carriers) Act 1847, Railway and Canal Traffic Act 1888 and the Canals Protection (London) Act 1898. However, they stipulate no minor crimes;
- **Shipping**. There are: Merchant Shipping Law Amendment Act 1853 and the Merchant Shipping Repeal Act 1854. However, they stipulate no minor crimes. They are also obsolete;

<sup>55</sup> See also s 5(2) 'If a passenger having failed either to produce, or if requested to deliver up, a ticket showing that his fare is paid, or to pay his fare, refuses [or fails] on request by an officer or servant of a railway company, to give his name and address, any officer of the company... may detain him until he can be conveniently brought before some justice or otherwise discharged by due course of law.' Also, s 5(4) The liability of an offender to punishment under this section shall not prejudice the recovery of any fare payable by him. [ (5) In this section - (a) "railway company" includes an operator of a train, and (b) "operator", in relation to a train, means the person having the management of that train for the time being].

- **Harbours, Ports, Dockyards**. There are the Harbours, Docks and Piers Clauses Act 1847, Harbours and Passing Tolls *etc* Act 1861, Harbours Transfer Act 1862 and the Dockyards, Ports Regulation Act 1865. The Act of 1847 contains (but the others do not) a number of minor crimes *viz.* in respect of:

- (a) section 15 (not providing a watch (customs) house);<sup>56</sup>
- (b) section 17 (not providing a lifeboat);<sup>57</sup>
- (c) section 19 (not providing a tide gauge or barometer);<sup>58</sup>
- (d) section 38 (masters giving no account (or notice) *re* cargo);<sup>59</sup>
- (e) section 43 (evading payment of rates);<sup>60</sup>
- (f) section 53 (not complying with the directions of the harbour master);<sup>61</sup>
- (g) section 54 (misbehaviour of harbour master);<sup>62</sup>
- (h) section 55 (bribery);<sup>63</sup>
- (i) section 62 (wilful cutting of moorings);<sup>64</sup>
- (j) section 63 (placing vessels near the harbour entrance without permission);<sup>65</sup>
- (k) section 67 (wharfinger giving undue preference in loading/unloading);<sup>66</sup>
- (l) section 71 (provisions for crimes *re* combustible material, gun *etc*);<sup>67</sup>
- (m) section 73 (throwing ballast into the harbour).<sup>68</sup>

<sup>56</sup>*viz.* 'If at any time such watch-house or boat-house or such huts or weighing materials shall be out of repair, or not provided as required by the said commissioners, and notice thereof be given to the undertakers, they shall repair or provide the same to the satisfaction of the said commissioners within three months after such notice, or in default thereof shall forfeit the sum of one hundred pounds for every month during which such watch-house, boat-house, huts, or weighing materials shall continue out of repair or be not provided...' See also s 14.

<sup>57</sup>*viz.* 'The undertakers shall be liable to a penalty not exceeding two pounds for every twenty-four hours during which the said life-boat, mortar, and rockets, or any of them, or the tackle belonging thereto, shall not be provided or maintained and stationed as aforesaid.' See also s 16.

<sup>58</sup>*viz.* 'The undertakers shall be liable to a penalty not exceeding two pounds for every twenty-four hours during which the said self-registering tide gauge and barometer shall not be provided or maintained, or such account of the wind and weather shall not be kept as aforesaid; and they shall be liable to a penalty not exceeding [level 1] for each month they shall neglect or refuse to send as aforesaid to the Secretary of the Admiralty a full and true account of the daily workings of the said tide gauge and barometer, and of the daily state of the wind and weather.' See also s 18.

<sup>59</sup>*viz.* 'Every master of a vessel of which the cargo or part of the cargo shall be unshipped within the limits of the harbour, dock, or pier, who shall have failed to deliver or to give any of the particulars in regard to the cargo or the notice in regard to the unshipment thereof hereinbefore required to be delivered or given by such master, or who shall deliver or give any false particulars or notice, shall for every such offence be liable to a penalty not exceeding [level 3].'

<sup>60</sup>*viz.* 'If the master of any vessel or the owner of any goods evade the payment of the rates payable to the undertakers in respect of such vessel or goods, or any part thereof, he shall pay to them three times the amount of the rates of which he shall so have evaded the payment, and the same shall be recovered from such master or owner respectively in the same manner as penalties imposed by this Act are directed to be recovered, or by action in any court of competent jurisdiction.'

<sup>61</sup>*viz.* 'The master of every vessel within the harbour or dock, or at or near the pier, or within the prescribed limits, if any, shall regulate such vessel according to the directions of the harbour master, made in conformity with this and the special Act; and any master of a vessel who, after notice of any such direction by the harbour master served upon him, shall not forthwith regulate such vessel according to such direction shall be liable to a penalty not exceeding [level 2].'

<sup>62</sup>*viz.* 'If any harbour master, or any of his assistants, without reasonable cause, or in an unreasonable or unfair manner, exercise any of the powers or authorities vested in the harbour master by this or the special Act, the person so offending shall for every such offence be liable to a penalty not exceeding [level 1].'

<sup>63</sup>*viz.* 'If any person give or offer any sum of money, or any thing whatsoever, by way of reward or bribe to any harbour master or any officer employed in or about the harbour, dock, or pier, for the purpose of gaining an undue preference in the execution of his office, or for the purpose of inducing such harbour master or other officer to do or omit to do anything relating to his office, or if such harbour master or other officer receive any such reward or bribe as aforesaid, every person so offending shall be liable for every such offence to a penalty of [level 2].'

<sup>64</sup>*viz.* 'Every person, other than the harbour master, who shall wilfully cut, break, or destroy the mooring or fastening of any vessel lying in the harbour or dock, or at or near the pier, shall for every such offence be liable to a penalty not exceeding [level 1].'

<sup>65</sup>*viz.* 'As soon as the harbour or dock shall be so far completed as to admit vessels to enter therein, no vessel, except with the permission of the harbour master, shall lie or be moored in the entrance of the harbour or dock, or within the prescribed limits; and if the master of any vessel either place it or suffer it to remain in the entrance of the harbour or dock, or within the prescribed limits, without such permission, and do not, on being required so to do by the harbour master, forthwith proceed to remove such vessel, he shall be liable to a penalty not exceeding [level 1], and a further sum of [£1] for every hour that such vessel shall remain within the limits aforesaid, after a reasonable time for removing the same has expired after such requisition.'

<sup>66</sup>*viz.* 'If any wharfinger or other servant of the undertakers, or any of their lessees, or the servants of such lessees, shall give any undue preference or show any partiality in loading or unloading any goods on any of the quays, wharfs, or other works belonging to the undertakers, the person so offending shall be liable to a penalty not exceeding [level 1].'

<sup>67</sup>*viz.* 'Every person who shall commit any of the acts following shall be deemed guilty of an offence, and shall for every such offence be liable to a penalty not exceeding [level 1]; (that is to say,) 1. Every person who shall boil or heat any pitch, tar, resin, turpentine, oil, or other combustible matter, in any vessel lying within the harbour or dock, or near the pier, or in any place within the limits of the harbour, dock, or pier, except in such place and in such manner as shall be specially appointed by the undertakers for that purpose: 2. Every person who shall have or cause to be had any fire or lighted candle or lamp in any vessel within the harbour or dock, or at or near the pier, except with the permission of the harbour master: 3. Every person who shall have or cause to be had any fire, candle, or lamp lighted within any of the docks or the works belonging to the same, except at such times and in such manner as shall be permitted by the byelaws of the undertakers: 4. Every person who shall bring any loaded gun on the quays or works of the harbour or dock, or on the pier, or shall have or suffer to remain any loaded gun in any vessel in the harbour or dock, or at or near the pier.'

<sup>68</sup> *viz.* 'Every person who shall throw or put any ballast, earth, ashes, stones, or other thing into the harbour or dock shall for every such offence be liable to a penalty not exceeding [level 1].'

It is asserted that, at least, some of these are obsolete and not required, such as (a)-(c). Others - such as bribery and cutting moorings (see (h) and (i)) - are better covered by the modern legislation on bribery and criminal damage which is more severe. Finally, those still worthy of retention should be modernised.

***In conclusion, the Law Commission should ask the relevant Government departments (for example, Defra deals with canals) to consolidate the above legislation as well as confirm the appropriateness of repealing obsolete crimes.***

## 5. LEGISLATION - HACKNEY CARRIAGE CRIMES

There are a number of pieces of legislation *pre-1890* which relate to London hackney carriages. These comprise the:

- London Hackney Carriages Acts of 1831, 1843, 1850 and 1853 as well as the 1847 Act (i.e. the Town Police Clauses Act 1847, see 2(c)) and the Metropolitan Public Carriage Act 1869. There is also the Town Police Clauses Act 1889 which applies to horse-drawn buses. However, it is obsolete;
- This (very) antiquated legislation regulates London's black cabs, with fines for various breaches of the same. At present, the regulating authority is Transport for London ('TfL').

This material should not be in primary legislation but in byelaws - not least because of the problems of amending it. It should also be revised in the light of the Local Government (Miscellaneous Provisions) Act 1976, ss 45-80 which deal with hackney carriages not in London. In short, the Highways Act 1980 should provide that the DfT - and TfL in the case of London - may issue byelaws for the regulation of taxis (and older equivalents)<sup>69</sup> the same to include penalties for infractions up to a stated maximum level on the standard scale.

***In conclusion, the Law Commission should request that statutory provision be made for the DfT (and TfL) to issue byelaws governing taxis and carriages.***<sup>70</sup>

## 6. LEGISLATION - OTHER PRE-1890 CRIMES

If one considers the remaining legislation extant, *pre-1890*, there are few minor crimes set out in it. However, the following may be noted:

- **Markets & Fairs.** This legislation comprises the Markets and Fairs Clauses Act 1847, Metropolitan Fairs Act 1868, Fairs Acts 1871 & 1873 and the Markets and Fairs (Weighing of Cattle) Act 1887 (*obsolete*). These should be consolidated and modernised generally. However, the Markets and Fairs Clauses Act 1847 contains crimes in respect of:

- s 13 (sales other than in markets prohibited);<sup>71</sup>
- s 16 (*assault and obstructing a market or fair keeper*);<sup>72</sup>
- s 19 (*slaughtering cattle*);<sup>73</sup>
- s 37 (taking a greater toll than authorised);<sup>74</sup>
- s 40 (*assault and obstructing a collector of rents*);<sup>75</sup>
- s 59 (*failing to keep copy of the Special Act*).<sup>76</sup>

<sup>69</sup> Horse drawn carriages (i.e. hackney carriages) are still possible in London. For the history of vehicles in London, see GS McBain, *Time to Abolish the Common Carrier* [2005] JBL, Sept. pp 548-52.

<sup>70</sup> Alternatively, matters could be set out in a SI.

<sup>71</sup> viz. 'After the market place is opened for public use every person other than a licensed hawker who shall sell or expose for sale in any place within the prescribed limits, except in his own dwelling place or shop, any articles in respect of which tolls are by the special Act authorized to be taken in the market [penalty, level 1].'

<sup>72</sup> viz. 'Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty [penalty, level 1].'

<sup>73</sup> viz. 'After the expiration of ten days from the publication and posting of such notice no person shall slaughter any cattle or dress any carcass for sale as human food or food of man in any place within the limits of the special Act other than a slaughter-house which was in use as such before and at the time of the passing of the special Act, and has so continued ever since, or the slaughter-houses made in pursuance of this and the special Act; and every person who shall after such notice as aforesaid, slaughter any such cattle or dress for sale any such carcass within the limits of the special Act in any place other than one of such slaughter-houses [penalty, level 1].'

<sup>74</sup> viz. 'Every person who shall demand or receive a greater toll than that authorized to be taken under the provisions of this or the special Act [penalty, level 1].'

<sup>75</sup> viz. 'every person who shall assault or obstruct any person authorized to collect any stallage, rent, or toll authorized by this or the special Act [penalty, level 1].'

<sup>76</sup> viz. 'If the undertakers fail to keep or deposit, as herein-before mentioned, any of the said copies of the special Act [level 2, also £ 5 for every day afterwards during which such copy not kept or deposited].'

Cattle are not slaughtered at markets and fairs today. Thus, s 19 is not required. It is asserted that ss 16 and 37 are not needed as crimes since the general law on assault and battery should apply. The law on fairs and markets (which are treated the same as fairs in modern times) is antiquated and should be modernised by the Law Commission employing an expert to consider it. It may also be that the Markets and Fairs Clauses Act 1847 is no longer required since there do not appear to be any markets or fairs in England and Wales now operating pursuant to a Crown grant or local legislation. Rather, all seem to be governed by the Food Act 1984;<sup>77</sup>

- **Water.** This legislation comprises the *Waterworks Clauses Act 1847*, *Metropolis Water Act 1852*, *Waterworks Clauses Act 1863* (obsolete), *Metropolis Water Act 1871*, *Metropolis Management (Thames Water Prevention of Floods) Amendment Act 1879*, *Water Rate Definition Act 1885*, *Metropolis Water Act 1897*, *District Councils (Water Supply Facilities) Act 1897*, *Metropolis Water Act 1902*, *Metropolitan Water Board (Charges) Act 1907*, and the *Metropolitan Water Board (Charges) Act 1921*. These Acts should be consolidated. Those in *italics* contain various minor crimes;
- **Town Improvements Clauses Act 1847.** Section 215 imposes a penalty on a failing to keep a copy of the Special Act.<sup>78</sup> It is not required;
- **Commissioners Clauses Act 1847.** Section s 111 imposes a penalty on a failing to keep a copy of the Special Act.<sup>79</sup> It is not required;
- **Parks.** These comprise the *Metropolis Management Act 1855* (s 239), *Town Gardens Protection Act 1863* and the *Parks Regulation Act 1872*. The Act of 1863, section 5, makes it a crime to injure a garden within the terms of the Act.<sup>80</sup> The *Parks Regulation Act 1872*, s 6 makes it a crime to assault a park constable.<sup>81</sup> It is asserted the general law on assault and battery should apply today and that this section be repealed (or that the park keeper be treated as a police constable, when undertaking his duty);
- **Companies.** These comprise the *Companies Clauses Consolidation Acts 1845* and *1888* and the *Companies Clauses Acts 1863* and *1869*. It should be determined whether these are still required. In any case, the *Companies Clauses Consolidation Act 1845*, s 162 (it imposes a penalty for not keeping a copy of the Special Act),<sup>82</sup> should be repealed.

***In conclusion, the Law Commission should request an expert be appointed to review the law on: (a) fairs and markets; and (b) early company legislation. Also, for the relevant Government department to consolidate the law on water.***

## 7. POSITION FROM 1890-1970 - CRIME ACTS

The position as to criminal legislation, *post*-1890, is much simpler. There is no need for the Law Commission to analyse this legislation, with the exception of one or two Acts which are manifestly obsolete.<sup>83</sup> Instead, all this legislation can be consolidated into 4 Crime Acts ('crime' is a shorter - and more accurate - word than 'offence'), dealing with the following:

- **Sex Crimes.** The consolidating Act is the *Sexual Offences Act 2003*. Other legislation on sex crimes,<sup>84</sup> should now be consolidated with it, into one Act;

<sup>77</sup> See 2(b).

<sup>78</sup> viz. 'If the commissioners shall fail to keep or deposit, as herein-before mentioned, any of the said copies of the special Act [penalty, level 2, also £ 5 for every day afterwards during which such copy not kept or deposited].'

<sup>79</sup> viz. 'The commissioners shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months [deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situate][deposit in the office of the chief clerk], a copy of such special Act, so printed as aforesaid; and the said clerk of the peace and sheriff clerk respectively shall receive, and they and the commissioners respectively shall keep, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by the Parliamentary Documents Deposit Act 1837.'

<sup>80</sup> viz. 'Any person who throws any rubbish into any such garden, or trespasses therein, or gets over the railings or fence, or steals or damages the flowers or plants, or commits any nuisance therein [level 1 or 14 days imprisonment]... and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of A.B. and others.'

<sup>81</sup> viz. 'Where any person is convicted of an assault on any [park constable] when in the execution of his duty, [level 2 or to be imprisoned for term not exceeding 6 months].'

<sup>82</sup> viz. 'If the company shall fail to keep or deposit as herein-before mentioned any of the said copies of the special Act [£20 for every offence, and also £5 for every day afterwards during which copy not kept or deposited].'

<sup>83</sup> viz. *Aliens Restriction (Amendment) Act 1919*, s 3, *Incitement to Disaffection Act 1934*, *Common Informers Act 1951* (spent). See Appendix B.

<sup>84</sup> viz. (a) *Children and Young Persons Act 1933*, s 3 (*children in brothels*); (b) *Children and Young Persons (Harmful Publications) Act 1955*, ss1-4 (*harmful publications*); (c) *Sexual Offences Act 1956*, ss 33-7 (*brothels*); (d) *Street Offences Act 1959*, ss 1-1A (*loitering or*

- **Public Order Crimes.** Acts relating to public should be consolidated into one Act<sup>85</sup> together with legislation on: (a) alcohol;<sup>86</sup> (b) fireworks;<sup>87</sup> (c) vehicles;<sup>88</sup> (d) sporting events (including football);<sup>89</sup> (e) drugs;<sup>90</sup> (f) offensive weapons;<sup>91</sup> (g) firearms;<sup>92</sup> (h) explosives;<sup>93</sup> (i) terrorism;<sup>94</sup>
- **Crimes against the Person.** Acts on crimes against the person should now be consolidated into one Act. These include crimes relating to: (a) homicide, suicide and manslaughter;<sup>95</sup> (b) torture and mutilation;<sup>96</sup> (c) hostages and slavery;<sup>97</sup> (d) other offences against the person;<sup>98</sup> (e) harassment and intimidation;<sup>99</sup> (f) children;<sup>100</sup> and (g) attempts, conspiracy, incitement, assisting and concealing;<sup>101</sup>
- **Financial & Property Crimes.** Legislation on financial,<sup>102</sup> and property,<sup>103</sup> crimes should be consolidated into one Act.

***In conclusion, all criminal legislation should be placed in 4 Crime Acts. This is perfectly possible - and simple - providing obsolete material is removed.***

soliciting); (e) Obscene Publications Act 1959, ss 1-4 (*publications*); (f) Obscene Publications Act 1964, ss 1-2 (*publications*); (g) Sexual Offences Act 1967, s 6 (*homosexual brothels*); (h) Theatres Act 1968, ss 2,3, 8 (*obscene plays*); (i) Protection of Children Act 1978, ss 1-7 (*images*); (j) Indecent Displays (Control) Act 1981, ss 1-4 (*indecent displays*); (k) Criminal Justice Act 1988, ss 160 & 160A (*images*); (l) Sexual Offences (Amendment) Act 1992, ss 1-6 (*anonymity*); (m) Sexual Offences (Conspiracy and Incitement) Act 1996, ss 2-3,5(*material*); (n) Sexual Offences (Protected Material) Act 1997, s 8 (*not yet in force*); (o) Criminal Justice and Police Act 2001, ss 46-7 (*adverts re prostitution*); (p) Criminal Justice and Immigration Act 2008, ss 63-8 (*images*); (q) Coroners and Justice Act 2009, ss 62-8 (*images*)

<sup>85</sup> viz. Public Meetings Act 1908, Public Order Acts 1936 & 1986, Representation of the People Act 1983, s 97, Crime and Disorder Act 1998 (*dealing with religious and racial hatred*), Crimes committed by Crown Employees (i.e. Criminal Jurisdiction Act 1802 and Criminal Justice Act 1948, s 31), Official Secrets Acts 1911 & 1989, Incitement to Disaffection Act 1934 (*seducing members of the armed forces*).

<sup>86</sup> viz. Licensing Acts 1872 & 1902, Policing and Crime Act 2009, s 30, Criminal Justice and Police Act 2001, s 12, Sporting Events (Control of Alcohol etc) Act 1985, Licensing Act 2003, ss 137-44, Violent Crime Reduction Act 2006, ss 1-14, 27.

<sup>87</sup> viz. Fireworks Act 2003, Explosives Act 1875, s 80, Highways Act 1980, s 161, Sporting Events (Control of Alcohol) Act 1985, ss 2A-4 and the Fireworks Act 1951.

<sup>88</sup> viz. Criminal Justice and Public Order Act 1994, s 194, s 167(1), Vehicle (Crime) Act 2001. The Aggravated Vehicle Taking Act 1992 amends the Theft Act 1968 (thus, it should be placed with financial crimes). The Criminal Attempts Act 1981, s 9 should be placed with Crimes against the Person. The Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 143 (*causing injury by dangerous driving*) should be left in the Road Traffic Act 1988.

<sup>89</sup> viz. the Football (Offences) Act 1991, Football Spectators Act 1989 and the Criminal Justice and Public Order Act 1994, ss 166 & 166A.

<sup>90</sup> viz. Misuse of Drugs Act 1971, Drug Trafficking Act 1994 and Drugs Act 2005. Material not concerning crimes should be put in an annex.

<sup>91</sup> viz. Prevention of Crime Act 1953, ss 1 & 1A (*offensive weapon*), Restriction of Offensive Weapons Act 1959, s 1, Criminal Justice Act 1988, ss 139-42, Knives Act 1997, Crossbows Act 1987, Violent Crime Reduction Act 2006, ss 28-9 and the Criminal Justice and Public Order Act 1994, s 60.

<sup>92</sup> viz. Firearms Acts 1968 & 1982, Firearms Amendment Acts 1988 & 1997 and the Violent Crime Reduction Act 2006, ss 28-9, 32, 35-9.

<sup>93</sup> viz. OPA 1861, s 2830, 64-5, Explosives Act 1875 and the Explosives Substances Act 1883.

<sup>94</sup> viz. Terrorism Acts 2000 & 2006, Prevention of Terrorism Act 2005, Criminal Law Act 1977, s 51 and the Anti-Terrorism, Crime and Security Act 2001.

<sup>95</sup> viz. (a) Offences against the Person Act 1861, ss 4,5, 9-10 (*homicide*), (b) Homicide Act 1957, ss 1, 2, 4 (*homicide*); (c) Suicide Act 1961, ss 1-2B (*suicide*); (d) Domestic Violence, Crime & Victims Act 2004, ss 5-8 (*death of vulnerable adult*); (e) Corporate Manslaughter & Homicide Act 2007, ss 1-24 (*corporate homicide etc*); (f) Coroners and Justice Act 2009, ss 54-5 (*murder*).

<sup>96</sup> viz. (a) Criminal Justice Act 1988, ss 134-5, 8 (*torture*); (b) Female Genital Mutilation Act 2003, ss 1-6 (*genital mutilation*).

<sup>97</sup> viz. (a) Slave Trade Acts 1824, 1843 & 1873; (b) Taking of Hostages Act 1982, ss 1,2 5 (*hostages*).

<sup>98</sup> viz. Offences against the Person Act 1861.

<sup>99</sup> viz. (a) Offences against the Person Act 1861, s 16 (*threats to kill*); (b) Administration of Justice Act 1970, s 40 (*harassing debtors*); (c) Malicious Communications Act 1988, s 1 (*distressing letters*); (d) Criminal Justice & Public Order Act 1994, s 154 (*intentional harassment*); (e) Protection from Harassment Act 1997, s 1-13 (*harassment*); (f) Criminal Justice & Police Act 2001, s 42, 42A (*harassment in home*).

<sup>100</sup> viz. (a) Offences against the Person Act 1861, ss 27, 58-60 (*abortion etc*); (b) Infant Life (Preservation) Act 1929, s 1-2 (*child destruction*); (c) Children and Young Persons Act 1933, ss 1,4,11-2 (*various*); (d) Infanticide Act 1938, s 1 (*infanticide*); (e) Children and Young Persons Act 1963, ss 37-40 (*performances by children*); (f) Abortion Act 1967, ss 1-6 (*abortion*); (g) Tattooing of Minors Act 1969, ss 1-3 (*tattooing of minors*); (h) Child Abduction Act 1984, ss 1-10 (*child abduction*); (i) Surrogacy Arrangements Act 1985, ss 1-4 (*surrogacy*); (j) Domestic Violence, Crime & Victims Act 2004, s 5 (*death of child*).

<sup>101</sup> (a) Criminal Law Act 1977, ss 1-5 (*conspiracy*); (b) Criminal Law Act 1967, ss 4-5 (*assisting, concealing*); (c) Criminal Attempts Act 1981, ss 1-4, 6 (*attempts*); (d) Criminal Justice Act 1987, s 12 (*conspiracy to defraud*); (e) Serious Crime Act 2007, ss 44-6, 47-9 (*assisting*).

<sup>102</sup> viz. (a) Evidence Act 1851, s 15 (*forgery*); (b) Forgery Act 1861, ss 34,36-7 (*forged registers*); (c) Documentary Evidence Act 1868, s 4 (*forgery*); (d) Debtors Act 1869, s 13 (*fraud re obtaining credit*); (e) Documentary Evidence Act 1882, ss 36-7 (*forgery*); (f) Criminal Justice Act 1925, s 3 (*forgery*); (g) Honours (Prevention of Abuses) Act 1925, s1 (*fraud re grant of honours*); (h) Forgery & Counterfeiting Act 1981, ss 1-10, 14-22, 24-5, 27-8 (*forgery*); (i) Criminal Justice Act 1991, s 29A (*false statements*); (j) Criminal Justice Act 1993, ss 52-64 (*insider dealing*); (k) Fraud Act 2006, ss 1-13 (*fraud*); (l) Bribery Act 2010, ss 1-16 (*bribery*).

<sup>103</sup> viz. (a) Malicious Damage Act 1861, ss 35-6, 58 (*criminal damage*) (this should be repealed, see 3(c)); (b) Public Stores Act 1875, ss 1-8, 12-13 (*public stores*); (c) Theft Act 1968, ss 1-32 (*theft*); (d) Criminal Damage Act 1971, ss 1-7, 9 (*criminal damage*); (e) Unsolicited Goods & Services Act 1971, ss 1-5 (*unsolicited goods*); (f) Criminal Law Act 1977, ss 6-10, 12, 12A (*trespassers*); (g) Theft Act 1978, ss 3,4 (*making off*); (h) Computer Misuse Act 1990, ss 1-16 (*computers*); (i) Criminal Justice and Public Order Act 1994, ss 61-79 (*trespassers etc*); (j) Mobile Telephones (Re-programming) Act 2002, ss 1-2 (*mobiles*); (k) Legal Aid, Sentencing and Punishment etc Act 2012, s 144 (*trespassers*).

## 8. POSITION FROM 1890-1970 - OTHER LEGISLATION

The position as to other legislation which contains crimes, *post*-1890, is also much simpler - not least, in that there is less legislation. Thus:

- **Highways.** There are few Acts in the period 1890-1970 and many are now piecemeal.<sup>104</sup> These include the Road Traffic Act 1930, Road and Rail Traffic Act 1933, Miscellaneous Financial Provisions Act 1955 (spent); Road Traffic Act 1960 and the Transport Acts 1962 and 1968. These should be consolidated. Minor crimes are contained in the Road Traffic Act 1960, s 232<sup>105</sup> as well as various sections of the Transport Act 1968;<sup>106</sup>
- **Railways & Trams.** There are few Acts in the period 1890-1970 and many are now piecemeal.<sup>107</sup> These include the Railway Fires Act 1905 (obsolete), Railway Fires 1905 (Amendment) Act 1923 (obsolete); Mines (Working Facilities and Support) Act 1923, London Passenger Transport Act 1933, Road and Traffic Act 1933, Railway and Canal Commission (Abolition) Act 1949, Transport Act 1962 (dealing with the Railways Board). These should be consolidated with earlier legislation on railways. They appear to contain no minor crimes;
- **Canals, Shipping, Ports & Harbours.** There are few Acts in the period 1890-1970.<sup>108</sup> These include the Canals Protection (London) Act 1898 and the Railway and Canal Commission (Abolition) Act 1949 (spent). In the case of ports and harbours, there are the Sea Fish Industry Act 1951, Transport Charges *etc* (Miscellaneous Provisions) Act 1954, Harbours Act 1964, Docks and Harbours Act 1966 and the Port of London Act 1968. The latter contains minor crimes, for example s 44 (*false information and evasion of charges*);<sup>109</sup>
- **Hackney Carriages.** There are few Acts in the period 1890-1970 and many are now piecemeal.<sup>110</sup> These include the London Cab Act 1896 and the London Cab and Stage Carriage Act 1907. They should be consolidated with earlier legislation on hackney carriages.

***In conclusion, the Law Commission should request the DfT to consolidate legislation on highways, railways, tramways and hackney carriages. And, Defra that on canals.***

## 9. CONCLUSION

Presently, our criminal legislation is badly fragmented. It should be consolidated into 4 Crime Acts. However, for this to be achieved, the Law Commission needs to review all criminal legislation *pre*-1890 - as well as a few pieces of legislation *post*-1890 - which are obsolete (see **Appendix B**). It would also be useful for the Law Commission to review obsolete criminal procedure, *pre*-1890, and recommend its repeal or modernisation (see **Appendix B**). This will leave the MOJ (or Home Office) to consolidate remaining crimes into 4 Crime Acts in the following order (easiest first), which is:

- (a) Sex crimes;<sup>111</sup>
- (b) Public order crimes;
- (c) Crimes against the person;
- (d) Financial and property crimes.

As well as reviewing the obsolete legislation in **Appendix B**, the Law Commission should review - and recommend the abolition of obsolete common law crimes - see **Appendix C**. Remaining common law crimes can then be inserted into the 4 Crime Acts. Finally, it is asserted that the Law Commission should request the relevant Government departments to consolidate older legislation on:

- (a) Railways and tramways (DfT);
- (b) Canals (Defra);
- (c) Harbours, ports & dockyards;
- (d) Markets and fairs;
- (e) Hackney carriages (taxis) (DfT and TfL);
- (f) Water (Defra);
- (g) Companies.

<sup>104</sup> See Halsbury, *Statutes*, vol 36.

<sup>105</sup> It deals with the duty to give information as to a driver's identity in certain cases.

<sup>106</sup> See e.g. ss 97AA (forgery of seals *etc* on recording equipment), *etc*

<sup>107</sup> See generally Halsbury, *Statutes*, vol 36.

<sup>108</sup> *Ibid.*

<sup>109</sup> See also ss 136, 199-204*etc*. See generally, Halsbury, *Statutes*, vol 39.

<sup>110</sup> See generally, Halsbury, *Statutes*, vol 36.

<sup>111</sup> This is the easiest since it is a matter of consolidating some 20 pieces of legislation with the Sexual Offences Act 2003.

Given that much of (c), (d) and (g) is likely obsolete, it would be a good idea for the Law Commission to advise that an expert be appointed to review its worth and whether much of it can now be repealed, as obsolete.



**Appendix A: ACTS OF PARLIAMENT: 1267 - 1925**

Acts in *italics* – obsolete or a compelling case for review.

<b><u>Date</u></b>	<b><u>Criminal</u></b> <sup>112</sup>	<b><u>Sections</u></b>
1275	<i>Statute of Westminster (1<sup>st</sup>)</i>	1
1313	<i>Bearing of Armour</i>	1
1351	<i>Law Presentment</i>	1
1351	<i>Treason Act</i>	1
1354	<i>Liberty of Subject</i>	1
1361	<i>Justices of the Peace Act</i>	1
1368	<i>None to Answer without Due Process</i>	1
1495	<i>Treason Act</i>	2
1695	<i>Treason Act</i>	2
1702	<i>Treason Act</i>	1
1679	Habeas Corpus Act	12
1750	<i>Constables Protection Act</i>	1
1781	Habeas Corpus Act (Ireland) Act	9
1799	Offences at Sea Act	1
1802	<i>Criminal Jurisdiction Act</i>	1
1803	Habeas Corpus Act	1
1804	Habeas Corpus Act	1
1805	Writ of Subpoena Act	2
1806	<i>Witnesses Act</i>	1
1814	<i>Treason Act</i>	1
1816	Habeas Corpus Act	6
1824	<i>Vagrancy Act</i>	4
1824	<i>Slave Trade Act</i>	5
1825	Juries Act	1
1825	<i>Universities Act</i>	1
1826	Criminal Law Act	2
1829	Metropolitan Police Act	3
1835	<i>Statutory Declarations Act (repeal in part)</i>	1
1835	<i>Highway Act</i>	3
1837	<i>Piracy Act</i>	1
1839	<i>Metropolitan Police Act</i>	30
1839	<i>Metropolitan Police Courts Act</i>	3
1842	<i>Treason Act</i>	2
1843	<i>Slave Trade Act</i>	1
1847	<i>Town Police Clauses Act</i>	47
1848	<i>Treason Felony Act</i>	3
1848	Indictable Offences Act	2
1849	Admiralty Offences (Colonial) Act	4
1850	<i>Piracy Act</i>	2
1851	Criminal Justice Administration Act	1
1853	Criminal Procedure Act	1
1857	<i>Penal Servitude Act</i>	2
1859	Remission of Penalties Act	1
1860	Metropolitan Police Act	3
1860	Admiralty Offences (Colonial) Act	1
1861	Accessories and Abettors Act	2
1861	<i>Malicious Damage Act</i>	4
1861	Forgery Act	4
1861	<i>Offences against the Person Act</i>	37
1862	Habeas Corpus Act	2
1864	<i>Metropolitan Police Act</i>	1
1867	<i>Metropolitan Streets Act (street offences)</i>	8
1867	<i>Metropolitan Streets Act Amendment Act</i>	2
1867	Criminal Law Amendment Act	1
1869	<i>Debtors Act (s 13, fraudulently obtaining credit)</i>	1
1871	<i>Foreign Enlistment Act</i>	30
1872	Licensing Act	2
1873	<i>Slave Trade Act</i>	6
1875	<i>Explosives Act</i>	24
1875	<i>Public Stores Act</i>	8
1878	Territorial Waters Jurisdiction Act	7
1879	<i>Convention (Ireland) Repeal Act (unlawful assemblies)</i>	2
1883	Explosive Substances Act	9
1898	Inebriates Act	1
1898	<i>Library Offences Act</i>	4
1898	Inebriates Act	1

<sup>112</sup> For the Game Acts *etc* see under heading 'Animals'.

1902	Licensing Act	5
1908	Public Meeting Act	2
1911	Perjury Act	16
1911	Official Secrets Act	9
1919	Aliens Restriction (Amendment) Act 1919 (s3, see also <i>Foreign and Colonial</i> )	1
1920	Official Secrets Act	8
<b>72 Acts</b>		
<b><u>Constitutional</u><sup>113</sup></b>		
1297	<i>Confirmation of the Charters</i>	2
1297	<i>Statute concerning Tallage</i>	1
1297	<i>Magna Carta (repeal some words)</i>	[4]
1297?	<i>Prerogativa Regis</i>	2
1322	<i>Revocatio Novarum Ordinationum</i>	5
1350	Status of Children Born Abroad	1
1382	Summons to Parliament	1
1405	<i>Liberties, Charters and Statutes Confirmed</i>	1
1415	<i>Confirmation of Charters and Statutes</i>	1
1423	<i>Confirmation of Liberties</i>	1
1512	Privilege of Parliament Act	2
1539	<i>House of Lords Precedence Act</i>	9
1603	Privilege of Parliament Act	1
1623	<i>Crown Lands Act</i>	2
1627	<i>Petition of Right</i>	5
1660	<i>Tenures Abolition Act</i>	1
1661	<i>Free and Voluntary Present to HM</i>	1
1688	<i>Convention Parliament</i>	1
1688	Royal Mines Act	1
1688	Bill of Rights	[2]
1688	Great Seal Act	1
1688	Coronation Oath Act	4
1689	<i>Crown and Parliament Recognition Act</i>	1
1693	Royal Mines Act	1
1694	Meeting of Parliament	1
1700	Act of Settlement	[4]
1702	Crown Lands Act	3
1702	<i>Demise of the Crown Act</i>	2
1706	Union with Scotland Act	[15]
1707	Succession to the Crown Act	4
1707	Union with Scotland (Amendment) Act	[3]
1711	<i>Princess Sophia's Precedence Act</i>	1
1727	<i>Demise of the Crown Act</i>	1
1737	Parliamentary Privilege Act	1
1770	Parliamentary Privilege Act	2
1793	Acts of Parliament (Commencement) Act	1
1797	Meeting of Parliament Act	1
1799	Meeting of Parliament Act	2
1800	<i>Crown Private Estate Act (rep some words)</i>	10
1800	Union with Ireland Act	[2]
1801	House of Commons (Disqualification) Act	3
1801	Crown Debts Act	1
1808	Acts of Parliament (Expiration) Act	1
1823	Crown Lands Act	1
1824	Clerk of the Parliaments Act	3
1829	<i>Roman Catholic Relief Act (see also Ecclesiastical)</i>	7
1837	Civil List Act	3
1840	Parliamentary Papers Act	4
1851	Crown Lands Act	4
1852	Commissioner of Works Act	4
1853	Privy Council Registrar Act	2
1855	Deputy Speaker Act	3
1856	House of Commons Offices Act	1
1858	Parliamentary Witnesses Act	2
1858	Durham County Palatine Act	3
1859	Clerk of the Council Act	1
1862	Crown Private Estates Act	11
1866	Parliamentary Oaths Act	4
1867	Representation of the People Act	1
1867	Prorogation Act	2
1869	Parliamentary Returns Act	2

<sup>113</sup> Left out are documents of major constitutional importance. viz: (a) Magna Carta 1297; (b) Bill of Rights 1688; (c) Act of Settlement 1700; (d) Union with Scotland Act 1706; (e) Union with Scotland (Amendment) Act 1707; (f) Union with Ireland Act 1800.

1870	Meeting of Parliament Act	2
1871	Parliamentary Witnesses Oaths Act	2
1873	Crown Private Estates Act	5
1874	Great Seal (Offices) Act	7
1877	Crown Office Act	6
1879	Public Offices Fees Act	6
1884	Great Seal Act	3
1890	<i>Crown Office Act</i>	1
1894	Crown Lands Act	1
1894	Commissioners of Works Act	4
1896	<i>Short Titles Act</i>	1
1901	Demise of the Crown Act	2
1902	Osborne Estate Act	3
1910	Accession Declaration Act	2
1911	Parliament Act	7
1917	Chequers Estate Act	4
1918	Parliament (Qualification of Women) Act	2
1920	Duchy of Lancaster Act	3

## 79 Acts

### Land

<i>Temp Incert</i>	<i>Statute concerning Tenants by the Curtesy</i>	1
1267	<i>Statute of Marlborough</i>	4
1285	<i>Statute of Westminster (2<sup>nd</sup>)</i>	1
1289	Quia Emptores	3
1535	Statute of Uses	3
1666	Cestui Que Vie	2
1707	Cestui que Vie Act	5
1709	<i>Landlord and Tenant Act (repeal most)</i>	5
1730	Landlord and Tenant Act	3
1737	Distress for Rent Act	14
1773	<i>Inclosure Act</i>	28
1832	Prescription Act	20
1833	<i>Inclosure and Drainage (Rates) Act</i>	3
1833	<i>Fines and Recoveries Act (repeal in part)</i>	43
1833	<i>Dower Act (repeal in part)</i>	3
1844	Execution Act	1
1845	<i>Inclosure Act</i>	65
1846	<i>Inclosure Act</i>	6
1847	<i>Inclosure Act</i>	5
1848	<i>Inclosure Act</i>	4
1849	<i>Inclosure Act</i>	2
1845	Lands Clauses Consolidation Act	93
1852	<i>Inclosure Act</i>	8
1852	Common Law Procedure Act	7
1854	Literary and Scientific Institutions Act	30
1854	<i>Inclosure Act</i>	17
1857	<i>Inclosure Act</i>	7
1859	<i>Inclosure Act</i>	7
1860	Lands Clauses Consolidation Acts Amendment Act	5
1864	Improvement of Land Act	66
1866	<i>Metropolitan Commons Act</i>	30
1867	Sale of Land by Auction Act	8
1868	<i>Inclosure etc and Expenses Act</i>	1
1869	<i>Metropolitan Commons Amendment Act</i>	2
1870	Apportionment Act	7
1870	Limited Owners Residence Act	8
1871	Limited Owners Residences (1870) Amendment Act	3
1876	<i>Commons Act</i>	17
1878	<i>Metropolitan Commons Act</i>	2
1878	<i>Commons (Expenses) Act</i>	3
1879	<i>Commons Act</i>	2
1879	Customs Buildings Act	5
1881	Conveyancing Act	1
1881	Inland Revenue Buildings Act	5
1882	Commonable Rights Compensation Act	5
1882	<i>Settled Land Act</i>	1
1892	Military Lands Act	21
1895	<i>Law of Distress Amendment Act</i>	4
1897	District Councils (Water Supply Facilities) Act (land charged for water supply)	6
1897	Military Lands Act	2
1897	Land Transfer Act	5
1899	Improvement of Land Act	4
1899	<i>Commons Act</i>	19

1899	Bodies Corporate (Joint Tenancy) Act	2
1900	Military Lands Act	5
1903	Military Lands Act	2
1906	Open Spaces Act	24
1906	Crown Lands Act	5
1908	Small Holdings and Allotment Act	28
1908	<i>Commons Act</i>	3
1919	Land Settlement (Facilities) Act	15
1920	Defence of the Realm Act (Acquisition of Land)	6
1922	Law of Property Act	8
1922	Allotments Act	15
1924	Law of Property (Amendment) Act	3

## 65 Acts

### Ecclesiastical

#### (a) General

1533	Submission of the Clergy Act	2
1533	Appointment of Bishops Act	3
1533	Ecclesiastical Licences Act	14
<b>1534</b>	<b>Suffragan Bishops Act</b>	<b>6</b>
<b>1536</b>	<b>Tithe Act</b>	<b>5</b>
1547	Sacrament Act	1
1548	Tithes and Offerings	1
1558	Act of Supremacy	1
<b>1588</b>	<b><i>Simony Act</i></b>	<b>8</b>
1662	Act of Uniformity	2
<b>1688</b>	<b><i>Simony Act</i></b>	<b>1</b>
<b>1708</b>	<b>Parochial Libraries Act</b>	<b>11</b>
<b>1714</b>	<b>Queen Anne's Bounty Act</b>	<b>4</b>
1776	Clergy Residences Repair Act	2
1804	Clergy Ordination Act	1
1811	Gifts for Churches Act	2
1816	Burial Ground Act	4
<b>1822</b>	<b>Church Building Act</b>	<b>2</b>
1825	Marriages Confirmation Act	2
1829	<i>Roman Catholic Relief Act (see also under Constitutional)</i>	
1830	Marriage Confirmation Act	1
<b>1832</b>	<b>Ecclesiastical Corporations Act</b>	<b>6</b>
1832	Tithe Act	7
<b>1836</b>	<b>Ecclesiastical Leases Act</b>	<b>9</b>
<b>1836</b>	<b>Ecclesiastical Leases (Amendment) Act</b>	<b>1</b>
1836	Tithe Act	2
<b>1836</b>	<b>Ecclesiastical Commissioners Act</b>	<b>10</b>
1837	Parish Notices Act	2
1838	Queen Anne's Bounty Act	2
1838	Parsonages Act	2
1838	Pluralities Act	58
1839	Tithe Act	2
1840	Ecclesiastical Commissioners Act	21
1841	Ecclesiastical Commissioners Act	7
1841	Bishops in Foreign Countries Act	4
1842	Ecclesiastical Houses of Residence Act	9
<b>1842</b>	<b>Ecclesiastical Leasing Act</b>	<b>28</b>
1843	New Parishes Act	1
1844	Lecturers and Parish Clerks Act	4
1849	Sequestration Act	2
1850	Ecclesiastical Commissioners Act	5
<b>1853</b>	<b>Colonial Bishops Act</b>	<b>1</b>
1855	Places of Worship Registration Act	13
1858	<i>Jews Relief Act</i>	1
<b>1858</b>	<b>Ecclesiastical Leasing Act</b>	<b>11</b>
1858	Bishops Trusts Substitution Act	5
1860	Ecclesiastical Courts Jurisdiction Act	4
1860	Tithe Act	1
1860	Ecclesiastical Commissioners Act	3
<b>1865</b>	<b>Ecclesiastical Leases Act</b>	
1865	Parsonages Act	
1865	Clerical Subscription Act	
1866	Ecclesiastical Commissioners Act	
1868	Compulsory Church Rate Abolition Act	
1868	Army Chaplains Act	
<b>1869</b>	<b>Residence of Incumbents Act</b>	
1869	New Parishes Acts and Church Building Acts Amendment Act	
1870	Clerical Disabilities Act	

1871	Ecclesiastical Titles Act
1871	Prayer Book (Tables of Lessons) Act
<b>1871</b>	<b><u>Sequestration Act</u></b>
<b>1872</b>	<b>Baptismal Fees Abolition Act</b>
1872	Church Seats Act
1873	Places of Worship Sites Act
1874	Colonial Clergy Act
1874	Births and Deaths Registration Act
1882	Places of Worship Sites Amendment Act
<b>1885</b>	<b><u>Pluralities Acts Amendment Act</u></b>
1888	Suffragans Nomination Act
1897	Isle of Man (Church Building and New Parishes) Act
1898	Benefices Act
1898	Suffragan Bishops Act
1914	Welsh Church Act
1919	Welsh Church (Temporalities) Act
1919	Church of England Assembly (Powers) Act
1920	Places of Worship (Enfranchisement) Act
1920	Convocations of the Clergy Measure
1921	Tithe Annuities Apportionment Act
1922	Revised Tables of Lessons Measure
1923	Ecclesiastical Dilapidations Act

#### (b) Burial & Cremation

1847	Cemeteries Clauses Act	60
1852	Burial Act	4
1853	Burial Act	4
1855	Burial Act	3
1857	Burial Act	4
1859	Burial Act	1
1864	Registration of Burials Act	
1867	Consecration of Churchyards Act	
<b>1868</b>	<b><u>Consecration of Churchyards Act</u></b>	
1880	Burial Laws Amendment Act	
1884	Disused Burial Grounds Act	
1885	Metropolitan Board of Works (Various Powers) Act ( <i>burial grounds</i> )	
1902	Cremation Act	

#### 93 Acts

*Acts underlined the Church of England intend to repeal. Sections not provided for in the case of those post 1860 since the C of E also intend to repeal a number of them.*

### Transport

#### (a) Carriage (inc Hackney Carriage)

1830	<i>Carriers Act</i>	9
1831	London Hackney Carriage Act	9
1843	London Hackney Carriages Act	18
1850	London Hackney Carriages Act	2
1853	London Hackney Carriage Act	8
1869	Metropolitan Public Carriage Act	13
1889	<i>Town Police Clauses Act (spent, applies to horse drawn buses)</i>	6
1896	London Cab Act	2
1907	London Cab and Stage Carriage Act	4

#### (b) Railways & Trams

1839	Highway (Railway Crossings) Act	1
1842	Railway Regulation Act	4
1845	Railways Clauses Consolidation Act	103
1861	<i>Locomotive Act (spent)</i>	1
1863	Railways Clauses Act	19
1867	Railway Companies Act	5
1868	Regulation of Railways Act	9
1870	Tramways Act	42
1873	Regulation of Railways Act	3
1888	Railway and Canal Traffic Act	10
1889	<i>Regulation of Railways Act (spent)</i>	3
1905	<i>Railway Fires Act</i>	4
1923	<i>Railway Fires Act (1905) Amendment Act</i>	1
1923	Mine Working and Facilities Act	19

**(c) Canals**

1845	Canal Carriers Act	11
1847	Canal (Carriers) Act	3
1898	Canals Protection (London) Act	8

**(d) Shipping & Ferries**

1853	Merchant Shipping Law Amendment Act	1
1854	Merchant Shipping Repeal Act	5
1919	Ferries (Acquisition by Local Authorities) Act	5

**(e) Others**

1919	Ministry of Transport Act	3
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**30 Acts****Schools & Universities****(a) Oxbridge & Durham**

1571	Oxford and Cambridge Act	7
1854	Oxford University Act	26
1856	Cambridge University Act	26
1857	Oxford University Act	2
1860	Oxford University Act	1
1862	Oxford University Act	13
1865	Oxford University; Vinerian Foundation Act	3
1871	Universities Tests Act	8
1877	Universities of Oxford and Cambridge Act	5
1923	Universities of Oxford and Cambridge Act	7

**(b) Schools etc**

1841	School Sites Act	14
1844	School Sites Act	4
1849	School Sites Act	5
1851	School Sites Act	2
1852	School Sites Act	1
1855	School Grants Act	2
1868	Public Schools Act	21
1871	College Charter Act	2
1891	Army Schools Act	1
1892	Technical and Industrial Institutions Act	10
1898	Elementary School Teachers (Superannuation) Act	9
1900	Elementary Schoolteachers Superannuation (Jersey) Act	5
1912	Elementary School Teachers (Superannuation) Act	3
1918	Education Act	2

**24 Acts****Treasury**

1694	Bank of England Act	3
1786	National Debt Reduction Act ( <i>amend</i> )	3
1815	<i>Stamp Act</i>	1
1816	Consolidated Fund Act	5
1818	National Debt Commissioners Act ( <i>amend</i> )	1
1823	National Debt Reduction Act	2
1844	Bank Charter Act	4
1848	<i>Paymaster General Act</i>	2
1849	Treasury Instruments (Signature) Act	1
1852	Bank Notes Act	1
1853	Stamp Act	1
1854	Public Revenue and Consolidated Charges Fund Act	3
1866	Exchequer and Audit Departments Act	14
1866	National Debt Reduction Act	1
1868	Exchequer Extra Receipts Act	1
1870	National Debt Act	17
1876	Customs Consolidation Act	4
1877	Treasury Bills Act	6
1882	Revenue, Friendly Societies and National Debt Act	4
1884	Revenue Act	1
1884	<i>National Debt (Conversion of Stock) Act</i>	1
1888	<i>National Debt (Conversion) Act</i>	1

1889	Revenue Act	3
1889	National Debt Act	3
1891	Stamp Act	33
1891	Stamp Duties Management Act	14
1892	Bank Act	2
1892	National Debt (Stockholders Relief) Act	5
1895	Finance Act	1
1897	Foreign Prison-Made Goods Act	3
1898	Revenue Act	4
1898	Finance Act	2
1899	Finance Act	3
1900	Finance Act	2
1901	Finance Act	2
1903	Revenue Act	2
1907	Finance Act	2
1909	Revenue Act	2
1915	Finance (No 2) Act	2
1916	Finance Act	4
1917	Finance Act	2
1921	Finance Act	2
1921	Exchequer and Audit Departments Act	3
<b>43 Acts</b>		<b>90</b>

### **Courts & Evidence**

#### **(a) Courts & Trials**

1828	<i>Revenue Solicitors 'Act</i>	1
1833	Judicial Committee Act ( <i>privy council</i> )	19
1836	<i>Stannaries Act (old mining courts)</i>	3
1843	Judicial Committee Act ( <i>privy council</i> )	11
1844	Judicial Committee Act ( <i>privy council</i> )	6
1855	<i>Stannaries Act (old mining courts)</i>	3
1874	Courts (Colonial) Jurisdiction Act	2
1883	Trials of Lunatics Act	2
1890	Colonial Courts of Admiralty Act	14
1895	Judicial Committee Amendment Act ( <i>privy council</i> )	2
1896	<i>Stannaries Court (Abolition) Act (old mining courts)</i>	4
1908	Appellate Jurisdiction Act ( <i>privy council</i> )	3
1915	Judicial Committee Act ( <i>privy council</i> )	2

#### **(b) Police & Police Receiver**

1861	<i>Metropolitan Police (Receiver) Act</i>	3
1867	<i>Metropolitan Police (Receiver) Act</i>	1
1886	<i>Metropolitan Police Act</i>	4
1887	<i>Metropolitan Police Act</i>	1
1895	<i>Metropolitan Police (Receiver) Act</i>	2
1897	<i>Metropolitan Police Courts Act</i>	2
1897	Police (Property) Act	4
1899	<i>Metropolitan Police Act</i>	1
1916	<i>Police, Factories etc (Miscellaneous Provisions) Act</i>	2
1923	Special Constables Act	2

#### **(c) Evidence**

1845	Evidence Act	3
1851	Evidence Act	13
1853	Evidence Amendment Act	2
1854	Attendance of Witnesses Act	6
1859	Colonial Affidavits Act	2
1871	<i>Prevention of Crimes Act</i>	2
1872	Review of Justice Decisions Act	3
1865	Criminal Procedure Act	10
1868	Documentary Evidence Act	5
1882	Documentary Evidence Act	3
1892	Witnesses (Public Inquiries) Protection Act	6
1895	Documentary Evidence Act	2
1898	Criminal Evidence Act	5

#### **(d) Imprisonment**

1884	Colonial Prisoners Removal Act	17
1891	Penal Servitude Act	2
1892	<i>Millbank Prison Act</i>	2

**(e) Oaths & Declarations**

1775	Oaths Act	1
1835	Statutory Declarations Act	17
1868	Promissory Oaths Act	16
1871	Promissory Oaths Act	3
1889	Commissioners for Oaths Act	7
1891	Commissioners for Oaths Act	2

**(f) Legal Positions & Fees**

1801	Public Notaries Act	2
1843	Public Notaries Act	5
1872	Judges Salaries Act	2
1872	Law Officers Fees Act	3
1876	Treasury Solicitor Act	7
1887	Sheriffs Act	24
1896	Judicial Trustees Act	5

**(g) Cinque Ports**

1821	Cinque Ports Act	8
1855	<i>Cinque Ports Act</i>	3

**(h) Indictments & Judgments**

1838	Judgments Act	3
1915	Indictments Act	8
1920	Administration of Justice Act	8

**(i) Other**

1840	Non-Parochial Registers Act	16
1842	Limitation of Actions and Costs Act	3
1870	Forfeiture Act	2
1881	Summary Jurisdiction (Process) Act	6
1886	Riot (Damages) Act	8
1914	Criminal Justice Administration Act	5

**63 Acts****Local Government****(a) Harbours & Dockyards**

1847	Harbours, Docks and Piers Clauses Act	92
1861	Harbours and Passing Tolls <i>etc</i> Act	12
1862	Harbours Transfer Act	11
1865	Dockyard Ports Regulation Act	21

**(b) Water**

1847	Waterworks Clauses Act	93
1852	Metropolis Water Act	20
1863	Waterworks Clauses Act	20
1871	Metropolis Water Act	29
1879	Metropolis Management (Thames River Prevention of Floods) Amendment Act	27
1885	Water Rate Definition Act	3
1897	Metropolis Water Act	3
1897	District Councils (Water Supply Facilities) Act	6
1902	Metropolis Water Act	38
1907	Metropolitan Water Board (Charges) Act	23
1921	Metropolitan Water Board (Charges) Act	9

**(c) Markets & Fairs**

1847	Markets and Fairs Clauses Act	45
1868	<i>Metropolitan Fairs Act</i>	5
1871	Fairs Act	3
1873	Fairs Act	5
1887	<i>Markets and Fairs (Weighing of Cattle) Act</i>	7

**(d) Parks & Gardens**

1855	Metropolis Management Act (s 239, parks in squares)	2
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1863	Town Gardens Protection Act	6
1872	Parks Regulation Act	12

**(e) Public Health**

1875	Public Health Act	32
1890	Public Health Acts Amendment Act	10
1907	Public Health Acts Amendment Act	16

**(f) Public Works**

1854	Public Statutes (Metropolis) Act	6
1863	Public Works and Fisheries Acts Amendment Act	4
1874	Works and Public Buildings Act	5
1875	Public Works Loan Act	40
1876	Public Works Loans (Money) Act	2
1911	<i>Public Works Loans Act</i>	2

**(g) Rates**

1872	<i>Poor Rates Recovery Act</i>	1
1875	<i>Jurisdiction in Rating Act</i>	2
1919	Statement of Rates Act	4

**(h) Powers**

1882	Metropolitan Board of Works (Various Powers) Act	5
1890	London Council (General Powers) Act	2
1892	London County Council (General Powers) Act	3
1894	London County Council (General Powers) Act	5
1900	London County Council (General) Powers Act	4
1903	London County Council (General Powers) Act	3
1907	London County Council (General Powers) Act	8
1920	London County Council (General Powers) Act	8
1921	London County Council (General Powers) Act	2
1923	War Memorials (Local Authorities' Powers) Act	4

**(i) Other**

1847	Commissioners Clauses Act	101
1847	Towns Improvement Clauses Act	200
1882	Municipal Corporations Act	24
1883	<i>Municipal Corporations Act</i>	8
1888	Local Government Act	11
1894	Local Government Act	13
1894	Commissioners of Works Act	4
1907	City of London (Union of Parishes) Act	16
1916	Local Government (Emergency Provisions) Act	4

**54 Acts****Commercial & Insurance****(a) Insurance**

1774	Fires Prevention (Metropolis) Act	2
1774	Life Insurance Act	5
1808	Life Annuities Act	1
1865	Metropolitan Fire Brigade Act	8
1865	Metropolitan Fire Brigade Act	8
1867	Policies of Assurance Act	9
1896	Life Assurance Companies (Payment into Court) Act	5
1906	Marine Insurance Act	94
1909	Marine Insurance (Gambling Policies) Act	2
1923	Industrial Assurance Act	16

**(b) Bills of Sale**

1878	<i>Bills of Sale Act</i>	
1882	<i>Bills of Sale Act (1878) Amendment Act</i>	
1890	<i>Bills of Sale Act</i>	-
1891	<i>Bills of Sale Act</i>	-

**(c) Pedlars**

1871	Pedlars Act	19
1881	Pedlars Act	2

**(d) Negotiable Instruments & Bills of Exchange**

1854	Common Law Procedure Act	3
1882	Bills of Exchange Act	107
1917	Bills of Exchange (Time of Noting) Act	1

**(e) Debtors & Bankruptcy**

1869	Debtors Act	9
1878	Debtors Act	2
1914	Deeds of Arrangement Act	27

**(f) Banks**

1879	Bankers' Books Evidence Act	10
1887	Savings Banks Act	3

**(g) Partnerships**

1890	Partnership Act	50
1907	Limited Partnerships Act	17

**(h) Others**

1623	Statute of Monopolies	4
1677	<i>Statute of Frauds (guarantee)</i>	1
1828	<i>Statute of Frauds Amendment Act (representations of character)</i>	1
1845	Auctioneers Act	1
1856	<i>Mercantile Law Amendment Act (guarantee, consideration)</i>	3
1878	<i>Innkeepers Act (disposal of goods)</i>	2
1889	<i>Factors Act</i>	15

**33 Acts****Company**

1845	Companies Clauses Consolidation Act	162
1863	Companies Clauses Act	39
1869	Companies Clauses Act	8
1888	Companies Clauses Consolidation Act	3
1891	Forged Transfers Act	4
1892	Forged Transfers Act	2
1915	Statutory Companies (Redeemable Stock) Act	3

**7 Acts****Medicine**

1858	Medical Act	2
1860	Medical Act	5

**2 Acts****Ministry of Defence**

1662	<i>City of London Militia Act</i>	1
1820	Militia (City of London) Act	7
1842	Defence Act	28
1854	Defence Act	3
1855	Ordnance Board Transfer Act	4
1859	Defence Act	3
1860	Defence Act	22
1862	Officers Commissions Act	2
1864	Naval Agency and Distribution Act	26
1864	Naval Prize Act	25
1864	Defence Act Amendment Act	4
1865	Defence Act	2
1865	Navy and Marines (Wills) Act	4
1865	Naval and Marine Pay and Pension Act	18
1865	Greenwich Hospital Act	21
1865	Navy and Marines (Property of Deceased) Act	18
1869	Greenwich Hospital Act	7
1872	Greenwich Hospital Act	4

1873	Militia (Lands and Buildings) Act	1
1873	Defence Acts Amendment Act	2
1876	Chelsea Hospital Act	2
1879	Registration of Births, Deaths and Marriages (Army) Act	3
1883	Greenwich Hospital Act	5
1884	Naval Pensions Act	2
1884	Pensions and Yeomanry Pay Act	5
1885	Greenwich Hospital Act	3
1890	London Council (General Powers) Act ( <i>drills</i> )	2
1892	Military Lands Act	20
1893	Debts (Deceased Servicemen <i>etc</i> ) Act	28
1894	Prize Courts Act	4
1894	Uniforms Act	4
1914	Prize Courts (Procedure) Act	2
1914	Army Pensions Act	1
1915	Prize Courts Act	4
1916	Naval Prize (Procedure) Act	2
1916	'Anzac' (Restriction of Trade Use of Word) Act	2
1917	Naval and Military War Pensions <i>etc</i> (Administrative Expenses) Act	4
1917	Air Force (Constitution) Act	7
1918	Wills (Soldiers and Sailors) Act	5
1918	War Pensions (Administrative Provisions) Act	2
1919	War Pensions (Administrative Provisions) Act	5
1920	Imperial War Museum Act	6
1920	War Pensions Act	7
1921	Admiralty Pensions Act	4
1921	War Pensions Act	6

**45 Acts****Animals**

1828	Night Poaching Act	5
1831	Game Act	36
1844	Night Poaching Act	1
1862	Poaching Prevention Act	4
1871	Dogs Act	1
1880	Ground Game Act	9
1892	Hares Preservation Act	4
1906	Ground Game (Amendment) Act	3
1906	Dogs Act	4
1911	Protection of Animals Act	5

**10 Acts****Agriculture & Fisheries**

1883	<i>Sea Fisheries Act</i>	2
1889	Board of Agriculture Act	4
1891	Fisheries Act	6
1891	<i>Markets and Fairs (Weighing of Cattle) Act</i>	5
1903	Board of Agriculture and Fisheries Act	3
1919	Ministry of Agriculture and Fisheries Act	2
1921	Corn Sales Act	3
1923	Agricultural Credits Act	2

**8 Acts****Colonial & Foreign**

1859	British Law Ascertainment Act	5
1865	Colonial Laws Validity Act	6
1865	Colonial Marriages Act	2
1887	<i>British Settlements Act</i>	6
1890	Foreign Jurisdiction Act	15
1895	Colonial Boundaries Act	2
1907	Evidence (Colonial Statutes) Act	2
1913	Foreign Jurisdiction Act	2
1923	Alderney (Transfer of Property <i>etc</i> ) Act	2
1914	Status of Aliens Act	4
1919	Aliens Restriction (Amendment) Act (see also <i>Criminal</i> )	4

**11 Acts****Marriage & Family**

1905	Provisional Order (Marriages) Act	2
1906	Marriage with Foreigners Act	5
1907	Married Women's Property Act	2

1907	Married Women's Property Act	2
1915	Marriage of British Subjects (Facilities) Act	3
1916	Marriage of British Subjects (Facilities) Amendment Act	2
1920	<i>Maintenance Orders (Facilities for Enforcement) Act</i>	14
1924	<i>Marriages Validity (Provisional Orders) Act</i>	18
<b>8 Acts</b>		
<b><u>Mining</u></b>		
1920	Mining Industry Act	7
<b>1 Act</b>		
<b><u>Patents &amp; Trademarks</u></b>		
1907	Patents and Designs Act	3
1914	Anglo-Portuguese Commercial Treaty Act	2
1916	Anglo-Portuguese Commercial Treaty Act	3
<b>3 Acts</b>		
<b><u>Pensions</u></b>		
1871	Pensions Commutation Act	10
1882	Pensions Commutation Act	3
<b>2 Acts</b>		
<b><u>Telecoms</u></b>		
1868	Telegraph Act	1
1869	Newspapers, Printers and Reading Rooms Repeal Act	2
1870	Telegraph Act	2
1881	Newspaper Libel and Registration Act	3
1885	Submarine Telegraph Act	11
<b>5 Acts</b>		
<b><u>Libel</u></b>		
1843	Libel Act	7
1845	Libel Act	1
1888	Law of Libel Amendment Act	5
<b>3 Acts</b>		
<b><u>Wills &amp; Inheritance</u></b>		
1833	Inheritance Act	12
1837	Wills Act	32
1859	Law of Property Amendment Act( <i>descent</i> )	1
1859	Confirmation and Probate Amendment Act	1
1884	Intestates Estates Act	5
1890	Intestates' Estates Act	7
1892	Colonial Probates Act	8
1893	Married Women's Property Act ( <i>wills</i> )	2
<b>8 Acts</b>		
<b><u>Other</u></b>		
1495	<i>Poynings' Law</i>	1**
1571	<i>Letters Patent Act</i>	1
1609	<i>Sea-Sand (Devon &amp; Cornwall) Act</i>	2
1750	<i>Calendar (New Style) Act</i>	6
1751	<i>Calendar Act</i>	3
1772	<i>Plate Assay (Sheffield and Birmingham) Act</i>	2
1781	<i>Yelverton's Act (Ireland)</i>	3**
1824	<i>Weights and Measures Act</i>	1
1828	<i>Nautical Almanack Act</i>	1
1833	Sunday Observance Act	1
1833	St Helena Act	2
1841	<i>Ordnance Survey Act</i>	6
1845	Geological Survey Act	3
1859	Queen's Remembrancer Act	4
1860	Refreshment Houses Act	1
1861	Domicile Act	1
1868	Gun Barrel Proof Act	37
1874	Board of Trade Arbitrations <i>etc</i> Act	4
1892	<i>Naval Knights of Windsor (Dissolution) Act</i>	-
1893	Statute Law Revision Act	2
1896	Short Titles Act	2

1896	Judicial Trustees Act	5
1906	Public Trustee Act	15
1907	National Trust Act	26
1917	Titles Deprivation Act	4
1919	National Trust Charity Scheme Confirmation Act	2
1920	Census Act	9
1920	Employment of Women, Young Persons and Children Act	16
1922	Irish Free State (Consequential Provisions) Act	3

## 29 Acts

### Summary: All Acts 1267 -1925

Criminal	- Total	73
Constitutional	- Total	79
Land	- Total	65
Ecclesiastical	- Total	93
Transport	- Total	30
Schools <i>etc</i>	- Total	24
Treasury	- Total	43
Courts/Evidence	- Total	63
Local Government	- Total	54
Commercial & Insurance	- Total	33
Company	- Total	7
Medicine	- Total	2
Ministry of Defence	- Total	45
Animals	- Total	10
Agriculture & Fisheries	- Total	8
Colonial & Foreign	- Total	11
Pensions	- Total	2
Telecoms	- Total	5
Libel	- Total	3
Wills & Inheritance	- Total	8
Marriage & Family	- Total	8
Mining	- Total	1
Patents	- Total	3
Other	- Total	29

These Acts could be condensed to 15 or so.

## **Appendix B: OBSOLETE CRIMINAL & CRIMINAL PROCEDURE LEGISLATION**

The Law Commission should review the following legislation on crimes and criminal procedure with a view to its repeal or - where still of worth - its being placed in modern form in more recent legislation. However, in 3 cases, it would seem best for a legal expert to review legislation separately, given that it is convoluted, viz.

- **Treason Acts**. The Treason Act 1351 (other than treasons concerning a Queens Bench judge and violation of the sovereign's wife which have no caselaw and are obsolete). Also, the Treason Acts 1495, 1695, 1702 and 1814.<sup>114</sup>
- **Habeas Corpus Acts**. Acts of 1679, 1781, 1803, 1804, 1816 and 1862;
- **Animals Acts**. The Night Poaching Act 1828, Game Act 1831, Night Poaching Act 1844, Poaching Prevention Act 1862, Dogs Act 1871, Ground Game Act 1880, Hares Preservation Act 1892, Ground Game (Amendment) Act 1906, Dogs Act 1906 and Protection of Animals Act 1911, as well as later legislation.

1275	Statute of Westminster (1 <sup>st</sup> )	1	No cases. Superseded by Representation of the People Act 1983, s 115 and firearms legislation. <b>Repeal Act.</b> <sup>115</sup>
1313	Bearing of Armour	1	No cases. Likely a temporary Act. Superseded by Treason Felony Act 1848 & Public Order Act 1936. <b>Repeal Act.</b> <sup>116</sup>
1351	Law Presentment	1	No cases. Repeats Magna Carta, ch 29. Remainder <i>re</i> privy council is obsolete. <b>Repeal Act.</b> <sup>117</sup>
1351	Treason Act	1	2 crimes therein have no cases (killing QB judge/ violating sovereign's wife). <b>See also above. Repeal wording.</b>
1354	Liberty of Subject	1	No cases. Repeats Magna Carta, ch 29. Covered by Human Rights Act 1998. <b>Repeal Act.</b> <sup>118</sup>
1361	Justices of the Peace Act	1	Superseded by Justices of the Peace Act 1968 s 1(7) <i>re</i> binding over as well as other legislation. <b>Repeal Act.</b> <sup>119</sup>
1368	None to Answer without Due Process	1	No cases. Repeats Magna Carta, ch 29. Covered by Human Rights Act 1998. <b>Repeal Act.</b> <sup>120</sup>
1495	Treason Act	2	No cases. <b>See above.</b>
1588	Simony Act	7	Superseded by Bribery Act 2010. <b>Repeal Act.</b> <sup>121</sup>
1688	Simony Act	2	Superseded by Bribery Act 2010. <b>Repeal Act.</b> <sup>122</sup>
1695	Treason Act	2	No cases. Procedural. <b>See above.</b>
1702	Treason Act	1	No cases. Likely expired in 1714. <b>See above.</b>
1750	Constables Protection Act	1	Needs to be amended to equal JP's liability. <b>Repeal Act.</b> <sup>123</sup>
1799	Offences at Sea Act	1	One sentence remains. Some wording obsolete. Modernise and insert in modern legislation. <b>Repeal wording.</b> <sup>124</sup>
1802	Criminal Jurisdiction Act	1	Superseded by Criminal Justice Act 1848 and Criminal Law Act 1971. <b>Repeal Act.</b> <sup>125</sup>

<sup>114</sup> The law is analysed in the following articles by GS McBain on: (a) *Abolishing the Crime of Treason* (2007) 81 ALJ 94-134; (b) *High Treason: Killing the Sovereign or Her Judges* (2009) 20 KLJ 457-88; (c) *High Treason: Violating the Sovereign's Wife* (2009) Legal Studies, vol 29(2) 264-80; (d) *Abolishing the Crime of Treason Felony* (2007) 81 ALJ 812-38; (e) *Modernising English Criminal Law* (2010) Coventry LJ, vol 15, no 2 (deals with the Treason Act 1702).

<sup>115</sup> See GS McBain, *Modernising English Criminal Law* (2010) Coventry LJ, vol 15, no 2.

<sup>116</sup> *Ibid*, *Abolishing Obsolete Legislation on Crimes & Criminal Procedure* (2010) Legal Studies, vol 30. No 3.

<sup>117</sup> *Ibid*.

<sup>118</sup> *Ibid*.

<sup>119</sup> GS McBain, *Modernising English Criminal Law* (2010) Coventry LJ, vol 15, no 2.

<sup>120</sup> *Ibid*, *Abolishing Obsolete Legislation on Crimes & Criminal Procedure* (2010) Legal Studies, vol 30. No 3.

<sup>121</sup> *Ibid*, *Abolishing Obsolete Legislation on Bribery* (2011) Coventry LJ, vol 16, no 2.

<sup>122</sup> *Ibid*.

<sup>123</sup> *Ibid*, *Our Criminal Law should only be 200 Years out of Date* (2014) Review of European Studies, vol 6, no 2

<sup>124</sup> It states '*All and every offence and offences which after the passing of this Act shall be committed upon the high seas, out of the body of any county of this realm, shall be and they are hereby declared to be offences...liable to the same punishments, respectively, as if they had been committed upon the shore.*' The underlined wording in the first instance is spent. That in the second is obsolete (it dealt with the need for crimes to be located in a county for specific JP's to have jurisdiction). Thus, a modern re-statement would be '*Any crime or offence committed on the high seas is liable to the same punishment as if it had been committed on shore.*'

<sup>125</sup> *Ibid*, *Consolidating Public Order Offences in a new Crime Act* (to be published).

1805	Writ of Subpoena Act	2	2 sections remain. Place in rules instead. <b>Repeal Act.</b> <sup>126</sup>
1806	Witnesses Act	1	Superseded by Civil Evidence Act 1968. <b>Repeal Act.</b> <sup>127</sup>
1814	Treason Act	1	Procedural. <b>See above.</b>
1824	Vagrancy Act	4	Section 4 ( <i>wandering</i> ) obsolete. Remainder should be in modern legislation. <b>Repeal Act.</b> <sup>128</sup>
1824	Slave Trade Act	3	Superseded by Modern Slavery Act 2015. <b>Repeal Act.</b> <sup>129</sup>
1825	Universities Act	1	Obsolete <i>re</i> reference to Oxford university. <b>Repeal wording.</b> <sup>130</sup>
1825	Juries Act	1	Challenge for cause. Place in modern legislation. <b>Repeal Act.</b>
1826	Criminal Law Act	2	Compensation for assisting. Prior to modern police force. <b>Repeal Act.</b>
1829	Metropolitan Police Act	3	Obsolete. <b>Repeal Act.</b> <sup>131</sup>
1829	Roman Catholic Relief Act	1	Section 18 is obsolete and has no caselaw. <b>Repeal section.</b> <sup>132</sup>
1835	Statutory Declarations Act	1	Section 13. Last case in 1843. No longer necessary. <b>Repeal section.</b> <sup>133</sup>
1835	Highway Act	3	Insert sections (if required) in Highways Act 1980. <b>Repeal Act.</b> <sup>134</sup>
1837	Piracy Act	1	No cases. Obsolete (treats attempted murder as murder). <b>Repeal Act.</b> <sup>135</sup>
1839	Metropolitan Police Act	25	This applies to MPD only. Insert ss 38-9 (on processions) into the Highways Act 1980. Insert s 33 (searching vessels) into modern police legislation. <b>Repeal Act.</b> <sup>136</sup>
1839	Metropolitan Police Courts Act	3	Concerns stolen goods. Obsolete. Applies to MPD only. <b>Repeal Act.</b> <sup>137</sup>
1840	Railway Regulation Act	1	Insert s 16 into more modern railway legislation. Consolidate remainder with railway legislation. <b>Repeal section.</b> <sup>138</sup>
1842	Treason Act	2	Assault. Needs to be modernised. Insert into modern legislation. <b>Repeal Act.</b>
1843	Slave Trade Act	1	Superseded by Modern Slavery Act 2010. <b>Repeal Act.</b> <sup>139</sup>
1845	Railways Clauses Consolidation Act	10	Ss 23-4, 54, 57, 75, 103, 116, 119, 144 & 163 are obsolete. Repeal these and consolidate Act (if needed) with railway legislation. <b>Repeal sections.</b> <sup>140</sup>
1845	Companies Clauses Consolidation Act	1	Section 162 (copy of Special Act). <b>Repeal section.</b> <sup>141</sup>
1847	Town Police Clauses Act	47	Applies to urban districts only. Insert ss 21 & 23 into

<sup>126</sup> Ibid, *Our Criminal Law should only be 200 Years out of Date* (2014) Review of European Studies, vol 6, no 2

<sup>127</sup> Ibid, *Abolishing Obsolete Legislation on Bribery* (2011) Coventry LJ, vol 16, no 2.

<sup>128</sup> Ibid, *Modernising the law on Minor Public Order Offences* (to be published).

<sup>129</sup> Ibid, *Modernising the Slave Trade Acts 1824, 1843 and 1873* (2015) International Law Research, vol 4, no 1.

<sup>130</sup> GS McBain, *Our Criminal Law should only be 200 Years out of Date* (2014) Review of European Studies, vol 6, no 2.

<sup>131</sup> The Metropolitan Police (Receiver) Acts 1861, 1867 and 1895 as well as the Metropolitan Police Acts 1886, 1887 and 1889, the Metropolitan Police Courts Act 1897 and the Police, Factories etc (Miscellaneous Provisions) Act 1916 are also obsolete.

<sup>132</sup> Information supplied to the Law Commission,

<sup>133</sup> Ibid, *Abolishing Obsolete Legislation on Crimes & Criminal Procedure* (2010) Legal Studies, vol 30. No 3.

<sup>134</sup> See this article.

<sup>135</sup> Ibid, *Abolishing Obsolete Legislation on Crimes & Criminal Procedure* (2010) Legal Studies, vol 30. No 3.

<sup>136</sup> Ibid. See also this article.

<sup>137</sup> Ibid,

<sup>138</sup> See this article.

<sup>139</sup> See n 129.

<sup>140</sup> See this article.

<sup>141</sup> Ibid.

			Highways Act 1980. Modernise ss 37-68 on hackney carriages and insert into modern legislation. <b>Repeal Act.</b> <sup>142</sup>
1847	Harbours, Docks and Piers Clauses Act	5	Ss 15, 17, 19, 55 & 62 are obsolete. <b>Repeal sections.</b> <sup>143</sup>
1847	Markets and Fairs Clauses Act	4	Ss 16, 19, 40 & 59 are obsolete. <b>Repeal sections.</b> <sup>144</sup>
1847	Town Improvement Clauses Act	1	Section 215 (copy of special Act). <b>Repeal section.</b> <sup>145</sup>
1847	Commissioners Clauses Act	1	Section 111 (copy of special Act). <b>Repeal section.</b> <sup>146</sup>
1848	Treason Felony Act	3	<b>See above.</b>
1848	Indictable Offences Act	2	Procedural. Modernise and place in rules. <b>Repeal Act.</b>
1849	Admiralty Offences (Colonial) Act	4	Section 4 is obsolete. Remainder needs to be modernised. <b>Repeal Act.</b>
1850	Piracy Act	2	No cases. Superseded by Aviation and Maritime Security Act 1990. <b>Repeal Act.</b> <sup>147</sup>
1851	Criminal Justice Administration Act	1	Procedural. Place in rules. <b>Repeal Act.</b>
1853	Criminal Procedure Act	1	Procedural. Place in rules. <b>Repeal Act.</b>
1857	Penal Servitude Act	2	Penal servitude was abolished in 1948. <b>Repeal Act.</b>
1858	Jews Relief Act	1	Section 4 is obsolete. <b>Repeal section.</b> <sup>148</sup>
1859	Remission of Penalties Act	1	Procedural. Needs to be modernised. <b>Repeal Act.</b>
1860	Metropolitan Police Act	5	Obsolete. <b>Repeal Act.</b>
1860	Admiralty Offences (Colonial) Act	1	Needs to be modernised. <b>Repeal Act.</b>
1861	Accessories and Abettors Act	2	Needs to be modernised. <b>Repeal Act.</b>
1861	Malicious Damage Act	4	Covered by OPA 1861 (see below). <b>Repeal Act.</b> <sup>149</sup>
1861	Forgery Act	4	Need to modernise.
1861	Offences against the Person Act	37	<b>Law Commission has proposed repeal re assault crimes.</b> Modernise remainder.
1864	Metropolitan Police Act	1	Obsolete. Applies to MPD only. <b>Repeal Act.</b> <sup>150</sup>
1867	Metropolitan Streets Act ( <i>street offences</i> )	8	Obsolete. Applies to MPD only. <b>Repeal Act.</b> <sup>151</sup>
1867	Metropolitan Streets Act Amendment Act	2	Obsolete. Applies to MPD only. <b>Repeal Act.</b> <sup>152</sup>
1867	Criminal Law Amendment Act	2	Procedural. Place in rules. <b>Repeal Act.</b>
1868	Regulation of Railways Act	1	Section 23 obsolete. Insert remainder into modern railways legislation. <b>Repeal section.</b> <sup>153</sup>
1869	Debtors Act (s 13)	1	Needs to be modernised and placed in modern legislation.
1870	Tramways Act	5	Ss 49-51, 53 & 55 obsolete. Repeal. Insert remainder (if required) into modern railway legislation. <b>Repeal Act.</b> <sup>154</sup>

<sup>142</sup> Ibid. *Abolishing Obsolete Legislation on Crimes & Criminal Procedure* (2010) Legal Studies, vol 30. No 3. See also this article.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> See n 135.

<sup>148</sup> See n 132.

<sup>149</sup> See this article.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.



1871	Foreign Enlistment Act	30	Only one case. 1976 Diplock Report proposed repeal. <b>Repeal Act.</b> <sup>155</sup>
1872	Licensing Act	2	Modernise and insert into modern legislation. <b>Repeal Act.</b> <sup>156</sup>
1872	Parks Regulation Act	1	Section 7 (assaulting park officer). Not required. <b>Repeal section.</b> <sup>157</sup>
1873	Slave Trade Act	6	Superseded by Modern Slavery Act 2010. <b>Repeal Act.</b> <sup>158</sup>
1875	Explosives Act	24	Needs to be modernised. <b>Law Commission considering.</b>
1875	Public Stores Act	8	s 8 obsolete, brass shells no longer used. Modernise s 5. <b>Repeal section.</b> <sup>159</sup>
1878	Territorial Waters Jurisdiction Act	7	Modernise and place in modern legislation. <b>Repeal Act.</b>
1879	Convention (Ireland) Repeal Act	2	A contempt of Parliament. No caselaw. Obsolete. <b>Repeal Act.</b>
1883	Explosive Substances Act	9	Needs to be modernised. <b>Law Commission considering.</b>
1887	Sheriffs Act 1887	1	S 27 superseded by Bribery Act 2010. <b>Repeal section.</b> <sup>160</sup>

After 1890, the following legislation *pre*-1970 should be repealed or modernised:

1889	Town Police Clauses Act	6	Obsolete. Applies to horse-drawn buses only. Repeal, with s 5 placed in modern legislation on hackney carriages, in required. <b>Repeal Act.</b> <sup>161</sup>
1898	Inebriates Act	1	Modernise and place in modern legislation. <b>Repeal Act.</b> <sup>162</sup>
1898	Libraries Offences Act	4	Obsolete. <b>Repeal Act.</b>
1902	Licensing Act	5	Modernise and place in modern legislation. <b>Repeal Act.</b> <sup>163</sup>
1908	Public Meeting Act	2	Modernise and place in modern legislation. <b>Repeal Act.</b> <sup>164</sup>
1911	Perjury Act	16	Modernise and place in modern legislation.
1911	Official Secrets Act	9	<b>Law Commission is considering this.</b>
1920	Official Secrets Act	8	<b>Law Commission is considering this.</b>
1919	Aliens Restriction (Amendment) Act 1919	5	Section 3 obsolete, sedition abolished. <b>Repeal section.</b> <sup>165</sup>
1934	Incitement to Disaffection Act	4	Amend to tally with Police Act 1996, s 91. <b>Repeal Act.</b> <sup>166</sup>
1951	Common Informers Act	2	Obsolete. <b>Repeal Act.</b>

Total : 83 Acts

<sup>155</sup> GS McBain, *Modernising Various Crimes against the State* (2014) Journal of Politics and Law, vol 7, no 2.

<sup>156</sup> GS McBain, *Consolidating Public Order Offences into a new Crime Act* (to be published).

<sup>157</sup> See this article.

<sup>158</sup> See n 129.

<sup>159</sup> GS McBain, *Abolishing Obsolete Legislation on Crimes & Criminal Procedure* (2010) Legal Studies, vol 30, no 3.

<sup>160</sup> See n127.

<sup>161</sup> See this article.

<sup>162</sup> See n 156.

<sup>163</sup> See n 156.

<sup>164</sup> Ibid.

<sup>165</sup> GS McBain, *Modernising Various Crimes against the State* (2014) Journal of Politics and Law, vol 7, no 2.

<sup>166</sup> Ibid.

### Appendix C - Common Law Crimes

The following appear to be common law crimes still extant:

- Kidnapping<sup>167</sup>
- Conspiring to defraud
- Perverting the course of public justice<sup>168</sup>
- Personating a juror<sup>169</sup>
- Contempt of court<sup>170</sup>
- Murder<sup>171</sup>
- Manslaughter<sup>172</sup>
- Outraging public decency<sup>173</sup>
- False imprisonment<sup>174</sup>
- Cheating the public revenue<sup>175</sup>
- Misconduct in a public, or judicial, office<sup>176</sup>
- Unlawful treatment of dead bodies<sup>177</sup>
- Escape, prison breach and rescue<sup>178</sup>
- Refusing to assist a police constable<sup>179</sup>
- Assault & battery<sup>180</sup>

All the above should be statutory. The following common law crimes should be abolished, being obsolete:

- *Keeping (maintaining) a disorderly house*<sup>181</sup>
- *A common innkeeper refusing to provide board and lodging to the public*<sup>182</sup>
- *Contempt of the sovereign*<sup>183</sup>
- *Refusing to serve in (i.e. execute) a public office*<sup>184</sup>
- *High crimes and misdemeanors*<sup>185</sup>
- *Contempt (apart from contempt of Parliament and of court)*<sup>186</sup>
- *Frankpledge (a legal obligation with a criminal penalty for non-observance)*<sup>187</sup>
- *Hue and Cry (ibid)*<sup>188</sup>
- *Public nuisance (also, conspiring to commit a public nuisance)*<sup>189</sup>
- *Conspiring to outrage public decency*<sup>190</sup>
- *Effecting a public mischief (also, conspiring to effect a public mischief)*<sup>191</sup>
- *Corrupting public morals (contra bonos mores) also, conspiring to corrupt public morals*<sup>192</sup>

<sup>167</sup> See Law Commission, (2011) *Kidnapping* (no 200).

<sup>168</sup> See Law Commission, (2013) *Juror Misconduct and Internet Publications*. Also, (2013) *Court Reporting*.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> See Law Commission, *Murder, Manslaughter and Infanticide* (2006) HC 30, no 304. Also, (2004) *Partial Defences to Murder* (Cm 6301, no 290). See also GS McBain, *Modernising the Law of Murder and Manslaughter* (2015) *Journal of Politics and Law*, vol 8, no 4.

<sup>172</sup> Ibid.

<sup>173</sup> The Law Commission has recommended this become a statutory crime. One would agree. See Law Commission, (2010) *Public Nuisance and Outraging Public Decency* (no 193).

<sup>174</sup> See GS McBain, *False Imprisonment and Refusing to Assist a Police Officer* (2015) *Journal of Politics and Law*, vol 8, no 3.

<sup>175</sup> Ibid, *Modernising the Common Law offence of Cheating the Public Revenue* (2015) *Journal of Politics and Law*, vol 8, no 1.

<sup>176</sup> Ibid, *Modernising the Common Law offence of Misconduct in a Public or Judicial Office* (2014) *Journal of Politics and Law*, vol 7, no 4.

<sup>177</sup> Ibid, *Modernising the Law on the Unlawful Treatment of Dead Bodies* (2014) *Journal of Politics and Law*, vol 7, no 3.

<sup>178</sup> This is analysed in GS McBain, *Modernising the Law on Escape, Prison Breach and Rescue* (2014) *Rev European Studies*, vol 6, no 4.

<sup>179</sup> See n 174.

<sup>180</sup> See GS McBain, *Modernising the Common Law offences of Assault and Battery* (2015) *International Law Research*, vol 4, no 1.

<sup>181</sup> Ibid, *Abolishing the Common Law offence of Keeping a Disorderly House* (2015) *Journal of Politics and Law*, vol 8, no 2.

<sup>182</sup> Ibid, *Abolishing some Obsolete Common Law Crimes* (2009) 20 KLJ 89-114.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid, *Abolishing High Crimes and Misdemeanours etc.* (2011) 85 ALJ 810-79.

<sup>186</sup> See n 185.

<sup>187</sup> J Ritson, *The Jurisdiction of the Court Leet* (2nd ed, 1809), pp vi-ii, frankpledge had sunk into 'total disuse, there not having been any freepledges in the kingdom for two or three centuries.' See also Mc Bain, n 143 and GS McBain, *Modernising the Law: Breaches of the Peace and Justices of the Peace* (2015) *Journal of Politics and Law*, vol 8, no 3.

<sup>188</sup> See Mc Bain, n 174 and GS McBain, *Modernising the Law: Breaches of the Peace and Justices of the Peace* (2015) *Journal of Politics and Law*, vol 8, no 3.

<sup>189</sup> See Law Commission, (2010) *Public Nuisance and Outraging Public Decency* (no 193). Also, GS McBain, *Abolishing the Crime of Public Nuisance and Modernising that of Public Indecency* (2017), vol 6, no 1.

<sup>190</sup> The Law Commission has recommended this become a statutory crime. One would agree. See Law Commission, (2010) *Public Nuisance and Outraging Public Decency* (no 193). See also McBain, n 189.

<sup>191</sup> The House of Lords in *DPP v Withers* [1975] AC 842 held there was no offence of conspiring to effect a public mischief. However, a number of prior cases were decided on the opposite basis (indeed, public mischief seems to have been little more than a re-naming of the crime of 'cheat', itself, 16th Roman cant for the medieval crime of 'deceit'). Thus, for the avoidance of doubt, it would seem wise to formally abolish public mischief (which will also abolish any conspiring in respect of the same). See also McBain, n 189.

'Breach of the Peace.' This is not a crime as such. However, it should be replaced by a reference to a '*breach of the criminal law*' which is what it means today (albeit, the legislative context indicates which crimes are involved).<sup>193</sup>

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<sup>192</sup> A number of cases adopted this description and it is uncertain the extent to which the crime of '*Outraging Public Decency*' has superceded it. Thus, for the avoidance of doubt, it would seem wise to formally abolish it. See also McBain, n 189.

<sup>193</sup> See GS McBain, *Modernising the Law: Breaches of the Peace and Justices of the Peace* (2015) *Journal of Politics and Law*, vol 8, no 3.