Statute Law Revision: Repeal, Consolidation or Something More?

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Abstract

Statute law 'revision' started systematically in the UK in 1861, with two aims: removal from the statute book of enactments which had ceased to be in force, or had become "unnecessary"; and the production of a revised edition of live statutes. By 1969, statute law 'repeal', involving the excising of enactments "no longer of practical utility", had supplanted the Victorian approach – certainly within Great Britain.

This article examines what techniques each approach adopted, how they are distinguishable from other statute law 'reform' mechanisms, and whether an element of terminological drift can be unravelled. It concludes that statute law 'revision' delivers more than the sum of its parts, and – although not appropriate a vehicle for the UK today – it is valuable in other common law jurisdictions.

A. Introduction

I. Purpose and Hypothesis

The enactment of statutes is the only way by which the United Kingdom parliament (or any liberal democratic system) can make law. Resolutions and motions of either House are ordinarily not recognised by the courts as having the force of law. They lack authority. A sovereign legislature expresses its legislative legitimacy though measures which (in the UK) it describes as Acts, and those Acts conform to the pre-determined rubric either set down within the constitution as part of its fabric or by the legislature itself. Cumulatively, the Acts enacted become known as the statute book – which does not necessarily have to be in book form and which will be so extensive that it could never be reduced to a single volume.

The statute book is the source of all primary legislation, printed under parliamentary authority. It does not incorporate judicial rulings, even on statutory provisions. In a technical sense it does not include secondary or delegated legislation, although that legislation is made under parliamentary authority. It is the source of pure law, and it contains the original text of statutes as enacted,

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unless parliament has decreed that the text should be reprinted in an amended form. Even then, unless the original Act has been repealed by parliament, it remains a formal part of the statute book.

Statutory law is enacted so that society (and the organs of the state which administer the law, such as the courts and government departments) can have access to it – which means that it must be physically accessible, reliable and in a format which is comprehensible. The user needs to be able to access a statute book which has integrity, which is up-to-date and which makes sense. These are minimum requirements for a society which is governed though representative and binding democracy. And it is integral to that approach that the legislative body understands these needs and goes about its work in a way which ensures that statutory law (in a statute book or otherwise) is reviewed and refreshed.

To this end, legislatures in Westminster-style democracies have adopted a series of mechanisms which have been – and are – employed to keep the statute book modern and uncluttered by material which has become outdated. But those mechanisms have different objectives which have to balance the aim of simplifying the statute book against the need to ensure (certainly in the UK) that statute law remains both concise and precise.

The purpose of this article is to examine these mechanisms for statute reform in a critical way with a view to understanding:

(a) the way in which each mechanism operates, and the techniques involved in delivering it

(b) the extent to which each mechanism is self-contained or is inter-reliant, and

(c) the extent to which there has been a drift in terminology.

The original notion of statute overhaul was called statute law revision, and that notion (with that label) was used in a number of Westminster-style jurisdictions which had either a colonial or a Commonwealth linkage with the UK, and which shared similar legislative attributes. But as the years have gone by, the emphasis (certainly in England and Wales) has been on more focussed reform work, through consolidation and specific repeal projects. What this article aims to do is to understand whether there is actually a distinction between statute law revision on the one hand, and systematic statute law repeal, statute law consolidation (distinguishing consolidation from codification, with which this article is not concerned), statute law rewrite (which is an enhanced form of consolidation), and statute law restatement (which is, or can be, a form of re-enactment by amalgamation of previous amendments), on the other. All of these mechanisms have their place, especially when – in a post-analogue age – there is the need and the ability to create a rolling statute law database. The question is: is revision an all-embracing concept or does it deliver less than, for example, repeal and consolidation combined? As this piece of work will seek to show, the expression ‘statute law revision’ can mean “all things to all men.”[1]

[1] This expression is used in its secular sense, although it is actually derived from the New Testament: *see* St Paul’s letter to the Corinthians, at 1 Corinthians 9:22 “I have become all things

The hypothesis for this work is in this form:

That statute law revision within the United Kingdom (as an integrated mechanism for overhauling the statute book) was designed to facilitate production of revised editions of the statutes then in force, and sought to deliver more than the sum of the techniques for statute reform employed today.

II. Methodology

Statute law revision first saw the light of day in 1861, having been conceived in a slightly different form five years previously. As a mechanism for statute reform it formed the template for succeeding decades both in the UK and abroad. But in later years it was supplanted by different mechanisms, principally consolidation and repeal.

The approach of this article is to compare the various techniques, one against another, but also to draw on the experiences of other like jurisdictions, such as Ireland and Canada. What it will seek to do is –

- to map the various reform mechanisms, and to analyse the need for such mechanisms, their purpose and their effect
- to deconstruct each mechanism so as to form an understanding of its ingredients and how they interact
- to identify the component parts of statute law revision, and to compare those parts with those of the other mechanisms
- to establish, by analysis, whether statute law revision differs from other forms of statute reform process, and
- finally, to form a tentative view on which mechanisms (or combination of mechanisms) can best serve the aim of making the statute book more accessible.

Although this discussion will draw on other common law jurisdictions for examples of mechanisms used, and will seek to compare mechanisms as applied in the UK, this is not strictly a comparative exercise. The examples drawn from other jurisdictions will be used principally as illustrative material, designed to explain the working of similar mechanisms within different contexts.

To tackle the challenge logically, the optimum sequence appears to be to review the mechanisms of consolidation, repeal, rewrite, restatement and reprint in that order, and then to dissect the way in which the mechanism of statute law revision works or might work. That will be followed by a comparative analysis of the component parts of the various mechanisms, and then the drawing of some reasonably firm conclusions. The process will rely upon original source material and academic commentary on how the mechanisms operate in practice and how they might be enhanced.[2] The result should be to define statute law revision both

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to all men so that by all possible means I might save some." (The Holy Bible, New International Version, 1980).

[2] Academic material will also be supplemented, where available, by documented commentary from parliamentary bodies and the Law Commission for England and Wales.

positively (by understanding the ingredients of revision Acts) and negatively (by distinguishing the effect of alternative statute reform techniques).

B. Consolidation as a Mechanism

I. Purpose and Effect of Consolidation

Consolidation as a mechanism is designed to bring together the texts of existing statutes, usually within a single generic topic, and to amalgamate them in such a way that all the amendments are integrated into the new single text, the text itself is updated, and the text is structured (or re-structured) in a more logical sequence. The aim is to create a more accessible piece of statute law, which is not necessarily new but is comprehensive and refreshed. Consolidation has been described by different writers in a variety of ways, all of which boil down to much the same core. For example, in 1971 Norman Marsh suggested that the then state of the statute book was such that it acted as "a formidable barrier to the understanding and use of that very large part" of UK law embodied in statutory form. Consolidation was the solution (he said), and it had already been embarked upon in a new way by the Law Commission. It involved "the preparation for re-enactment of a number of older statutes, dealing with the same or allied subject-matter, in a single new Act rationally arranged and, as far as possible, expressed in modern language".[3]

The need for consolidation comes about because of several factors –

- the pace in which new legislation is placed by parliament on the statute book
- the need for new legislation to refine, and make amendments to, existing legislation
- the need for users of the statute book to have ready access to updated material
- the need to integrate statutory material which is derived from more than one source (for example, in colonies and dependant territories, where law is applied both generally and specifically by the imperial legislature, and where that law needs to dovetail-in with local devolved legislation)
- where legislative amendment has been made by reference rather than by textual amendment.

In this last instance, the Renton Committee recognised that although legislation "does not stand still" (and thus "the need for consolidation is perpetual"), nonetheless by adopting the "textual method of amendment" that need would "to some extent diminish."[4] However, the need would still remain and, as Edward

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[3] N. Marsh, *Law Reform in the United Kingdom: a New Institutional Approach*, 12 William & Mary Law Review 263, at 280 (1971). The Law Commission approach and contribution to this area will be described below.

[4] *See* The Preparation of Legislation: Report of a Committee Appointed by the Lord President of the Council Chairman Sir David Renton (Cmnd. 6053, May 1975, HMSO, London), at 85, paras

Caldwell has pointed out, the law has to remain "relatively settled" whilst the consolidation process is in train.[5]

II. Consolidation Techniques

In the UK consolidation has taken several forms, and the form adopted arguably has a direct correlation with the degree of effectiveness achieved in making the statute book more accessible.[6] In summary the techniques employed have been fourfold –

- the use of 'pure' consolidation
- the use of consolidation involving minor textual amendment only
- the use of a more radical consolidation approach (per the Law Commissions), and
- the promoting of bills which 'consolidate with amendments'.[7]

In these last two categories there is sometimes merit in using a 'paving' bill to tidy-up the existing law by repealing obsolete material and effecting some amendment in advance of the consolidation step. To the list the academic Alec Samuels would add a fifth category, the "hybrid" consolidation, which involves merging the amendment and consolidation stages, as occurred with the Adoption and Children Act 2002.[8]

Up until 1948, consolidation bills were designed to reproduce only the existing law "with all its blemishes and imperfections."[9] These "pure" consolidations involved what Lord Simon and J.V.D. Webb called "verbal re-enactment".[10] Consolidation commenced systematically in 1854, slowly at first, with the setting up by Lord Chancellor Cranworth of the Statute Law Commission. That body

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14.2 and 14.4. The Committee felt that consolidation would provide a proper base for the use of the textual method of amendment.

5 *See* E. Caldwell, *A Vision of Tidiness: Codes, Consolidations and Statute Law Revision, in* B. Opeskin and D. Weisbrot (Eds.), The Promise of Law Reform 40, at 44 (2005). He points out (from a very senior drafter's perspective) that more than once radical legislative change has led to a consolidation project being aborted. The Renton Committee had previously made the point that selection of a "relatively narrow field", albeit consistent with users' needs, should help circumvent the problems associated with the introduction of new (and unforeseen) legislation or pending governmental policy changes: *see* Renton Committee Report, *supra* note 4, at 92, paras. 14.28-14.32.

6 'Accessible' in this context does not mean just physically accessible, as in where can it be found, and how easily might it be handled? It means how easy is it for the user to navigate her or his way through the text, and how comprehensible and plain is that text to an educated but non-professional user?

7 Bills of this nature would be treated as ordinary programme bills and would have to go through all the usual parliamentary procedures.

8 A. Samuels, *Consolidation: a Plea*, 26 Statute Law Review 56, at 58 (2005).

9 *See* per Lord Jowitt, LC in debate on a consolidation bill [HL Debs (1947-48), Vol. 155 Col. 1172], referred to by Lord Simon of Glaisdale and J.V.D. Webb, *Consolidation and Statute Law Revision*, 1975 Public Law 285, at 292.

10 Lord Simon and Webb, *supra* note 9, at 293.

was superseded by Lord Chancellor Cairns' Statute Law Committee in 1868, and between 1870 and 1892 36 consolidation Acts were passed. Consolidation bills were first considered by parliamentary joint select committee (a speedier parliamentary process) in 1894, alongside statute law revision bills.[11]

The difficulty with this procedure was that it involved considerable parliamentary time (although less after 1894), and the degree of permitted amendment within the consolidation was very limited. The 1949 Consolidation of Enactments (Procedure) Act took the process a step forward. Under that Act, so as to facilitate consolidation, "corrections and minor amendments" could be made so long as a prescribed parliamentary procedure was followed. Permitted corrections and amendments were confined to those which resolved ambiguities and doubts, made obsolete provisions conform to modern practice, and removed "unnecessary provisions or anomalies which are not of substantial importance". General updating of "form or manner" was allowed, but the corrections were not to "effect any changes in the existing law of such importance" that they ought to be enacted separately.[12]

When the Law Commissions were established in 1965 they took the view from an early stage that the 1949 Act had its drawbacks, particularly that "all amendments which are desirable and uncontroversial cannot fairly be brought within [its] terms". From the outset the English Commission hoped that parliament would treat its consolidation proposals in a more lenient manner, in the knowledge that such amendments as were recommended by it as an independent body were advanced after "due inquiry and consultation" with the aim, not of achieving substantive reform, but of "producing a satisfactory consolidation".[13] Both the Law Commissions (England and Wales, and the Scottish) were charged with reviewing the law "with a view to its systematic development and reform" and, in particular, eliminating "anomalies", reducing the number of enactments, and simplifying and modernising the law (which included producing programmes of consolidation).[14]

The Law Commissions were able to secure agreement to a special parliamentary procedure whereby a consolidation bill would go forward with reasoned recommendations (via a command paper rather than a memorandum) for change for approval, first by the joint select committee and then for a fast-

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[11] Statute law revision bills were first considered by the joint committee from 1892. These are discussed in more detail later in this paper. For the history generally hereon, *see* Lord Simon and Webb, supra note 9, at 288-292, and also Erskine May, Treatise on The Law, Privileges, Proceedings and Usage of Parliament (Prof. Sir William McKay (Ed.), (2004), Chapter 28, at 842 and note 5.

[12] *See* Consolidation of Enactments (Procedure) Act 1949 (c.33), ss 1, 2. The Act is referred to in the remainder of this text as "the 1949 Act".

[13] *See* Law Commission's First Programme on Consolidation and Statute Law Revision (Law Commission, Report No. 2 (1966)), at paras. 5, 6.

[14] Law Commissions Act 1965 (c.22), s 3(1). Consolidation under the 1965 Act procedure is designed to produce "the reduction of the number of separate enactments and generally the simplification and modernisation of the law." By Section 3(1)(d) the relevant minister can request the preparation by the Commissions of "comprehensive programmes of consolidation and statute law revision."

track passage.[15] By 1984 the Marsh Working Party was able to report that the new approach "enables a more satisfactory result to be achieved" than under the 1949 Act (although it was hesitant about Lord Russell of Killowen's view that the tidying-up process was principally about removing ambiguities and improving drafting rather than introducing "any major change in the law or one which might be controversial").[16]

The Commissions' more radical approach has been supplemented, not only by the employment of Keeling schedules[17] during the parliamentary process, but also by the preparation and publication of tables of derivations and destinations. Both legislators and users are then able to understand where, for example, section 23 in the new Act came from within the previous (say) five Acts which have now been consolidated and repealed.

III. Case Study

The most recent (and very substantial) consolidation exercise undertaken by the Law Commission concerned legislation on the National Health Service. The NHS was originally created under the National Health Service Act 1946 (c.81) – a landmark piece of legislation because of its social consequences – and it was superseded (simply for practical purposes) by the National Health Service Act 1977, a consolidation measure. By 1977 the principal Act had been amended by Parliament on a number of occasions, particularly with regard to the configuration of bodies designed to deliver and superintend healthcare provision within the service. The 1977 Act was designed "to consolidate certain provisions relating to the health service for England and Wales; and to repeal certain enactments relating to the health service which have ceased to have any effect".[18] In other words, repeal of obsolete material was an integral part of the consolidation process.

By the early part of the present century the 1977 Act had itself been significantly amended in various ways. Most recently, the National Health Service and Community Care Act 1990 had created the concept of the self-governing health trust, operating within the remit of the NHS; the Health Authorities Act 1995 had reorganised the commissioning health authority arrangements, which authorities were shortly replaced by strategic health authorities under the National

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[15] *See* Marsh, *supra* note 3, at 281. This procedure was first used for the Sea Fisheries (Shellfish) Bill 1967. Although the joint committee will review the consolidation bill in detail, amendments can – unlike under the 1949 Act procedure – be made on the floor of either House, although this is done rarely: *see* Lord Simon and Webb, *supra* note 9, at 295.

[16] *See* Report of a Working Party of the Statute Law Society Consolidation of Enactments (Chairman: Norman S. Marsh), 5 Statute Law Review 170-179, at 174, para. 12 (1984). Lord Russell (quoted in the report) was in 1977 Chairman of the Joint Select Committee. In 1976/77 the Joint Committee expressed the view that amendments to the law in a consolidation bill should be used simply to tidy-up the law, to remove ambiguities, and to redress a lack of common sense in drafting, but not to introduce any substantial or controversial change in the law (*see* May, *supra* note 11, at 844, Chap. 28 and note 1).

[17] Keeling schedules are designed to show the effects of amendments in context, as they would appear in the text of the enacted Bill.

[18] Long title to the National Health Service Act 1977 (c.49).

Health Service Reform and Health Care Professions Act 2002 (and following the Government of Wales Act 1998 health authority functions were hived-off to the new National Assembly for Wales, and thence to local health boards). The Health Act 1999 changed various general practitioner and community health services; the Health and Social Care Act 2001 sought to facilitate patient involvement and to implement the government's NHS Plan; and the Health and Social Care (Community Health and Standards) Act 2003 established foundation trust status for well-performing hospitals (giving them greater autonomy), and sought to drive-up quality standards within the health and social care environment. All of these enactments made the tapestry of the 1977 Act even more complex, and inserted sections and subsections gave rise to an interesting nomenclature.

Thus, when the functions of local health authorities were supplemented by primary care trusts (designed to deliver community-based care and to commission secondary acute care), the new sections became sections 16A and 16B in the Act, and when the changes relating to Wales came into being (given that the 1977 Act and its predecessor had been created pre-devolution), the new provisions inserted in 2002 became sections 16BA to 16BC. Likewise, the dental service changes made by the National Health Service (Primary Care) Act 1997 meant that section 28 was eventually joined by sections 28A to 28Y.[19] The time had obviously come to tackle another consolidation. But the difficulty in practice was that government had a seemingly never ending agenda of reform for the health service, and any consolidation legislation would have to take account of the most recent Acts, some of which were only partially in force.

The 2006 solution needed to take account of a number of factors. First, the day-to-day operation of the NHS in Wales now lay outside Whitehall, and that had resulted in a differing structure and governance pattern for NHS Wales. Secondly, it was necessary in the new consolidation legislation to differentiate clearly the various types of services which were being delivered statutorily. Thus medical services, dental services, ophthalmic services, pharmaceutical services and a host of other matters (such as public scrutiny) needed to be encompassed in self-contained codes under the umbrella of the NHS Act. Likewise, in policy terms it was expedient to leave outside the principal Act ancillary provisions relating to non-executive director appointments, standards and complaints, arrangements for redress, and mechanisms for recovery of NHS charges.[20]

The adopted solution was to draft and promote three separate Acts: what were to become the National Health Service Act 2006, the National Health Service (Wales) Act 2006, and the National Health Service (Consequential Provisions) Act 2006. These Acts were designed "to consolidate certain enactments relating to the health service" (as the long title for the first two put it) and "to make [separate] provision for repeals, revocations, consequential amendments, transitional and transitory modifications and savings in connection with the consolidation of enactments in the [two other Acts of] 2006" (as put in the Consequential Provisions

[19] Other amendments and insertions (particularly by the 2003 Act) contributed to this huge renumbering.

[20] A useful overview of these matters can be found in Halsbury's Statutes, Vol 30, at 374-390 (4th ed., 2007 reissue).

Act). The effect of putting the consequential arrangements in a separate Act (as has happened previously in English consolidations, such as in the voluminous Town and Country Planning legislation) was that the principal operational Acts would remain uncluttered by paraphernalia which was unlikely to be of interest to the regular user.

This consolidation process went well beyond the scope of the 1949 Act, and employed the tried and tested Law Commission template of effecting consolidation with – in places – not insubstantial amendment. One instance is worth reciting. First, by the original 1946 Act, Parliament laid down the basic governmental duty in these terms –

> 1(1) It shall be the duty of the Minister of Health (hereafter in this Act referred to as 'the Minister') to promote the establishment in England and Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of England and Wales and the prevention, diagnosis and treatment of illness, and for that purpose to provide or secure the effective provision of services in accordance with the following provisions of this Act.
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> (2) The services so provided shall be free of charge, except where any provision of this Act expressly provides for the making and recovery of charges."

By 1977 that provision had been recast (in a Law Commission consolidation exercise) to read –

> 1(1) It is the Secretary of State's duty to continue the promotion in England and Wales of a comprehensive health service designed to secure improvement –
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> (a) in the physical and mental health of the people of those countries, and
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> (b) in the prevention, diagnosis and treatment of illness,
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> and for that purpose to provide or secure the effective provision of services in accordance with this Act.
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> (2) The services so provided shall be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed."

The general duty was now separated out into component parts in subsection (1), and in subsection (2) the charging provision was extended to "any enactment" and not just the principal Act. That gave future legislators greater flexibility in the way in which charging legislation could be brought forward; it did not have to alter the principal Act each time.

Section 1 was supplemented by a new section 2 which gave the Secretary of State ancillary powers to do anything "conducive or incidental to" the discharge of his statutory duties, including providing appropriate services.[21] The general thrust of the 1946 Act was thus retained, but with a measure of greater flexibility. The statutory duty became one of 'continuation' of an existing service. By 2006 the formula was slightly rearranged by breaking the section into three portions,

[21] This provision had been added by the National Health Service Reorganisation Act 1973, s 2, but not by way of textual amendment to the 1946 Act. Instead it remained as a separate provision until the 1977 consolidation.

and by removing the requirement to secure that the provision of services will be 'effective'. So, at each stage, the adjustments are minor, but they make incremental differences.

However, over the lifespan of the three Acts, the volume of the content altered dramatically. In 1946 the Act encompassed 80 sections and 10 schedules. By 1977 that had risen to 130 sections and 16 schedules, and by 2006 the three Acts ran to 278 sections and 22 schedules (England), 209 sections and 15 schedules (Wales), and 8 sections plus 4 schedules (consequential provisions) respectively, probably a fourfold increase allowing for elements of duplication. The task of ensuring that the consolidation exercise mirrored the displaced legislation was Herculean. And as soon as the 2006 Acts were on the statute book they were joined by the NHS Redress Act 2006 and the Local Government and Public Involvement in Health Act 2007.

C. Repeal as a Mechanism

I. Purpose and Effect of Repeal

Straightforward repeal of whole Acts or of parts of Acts (such as sections or schedules) is one of the simplest ways of reducing the size of the statute book. The mechanism can be used undiluted or in combination with certain techniques, such as repealing with savings (which will preserve the effect of the repealed enactment for past events or transactions) or by effecting consequential amendments of other legislation related to the subject matter of that being repealed (such as by substituting or inserting in legislation provisions which the drafter and the legislature wish to preserve). In either scenario the mechanism can be effective in several ways. It can remove through a single repeals Act a raft of legislation which is obsolete or unnecessary for modern society; it can afford an opportunity to pave the way for more sophisticated consolidation of legislation which needs the decks cleared in advance; and it can ensure (by precision surgery) that those provisions which are often technical in nature or have very limited application (because of the age of their enactment) are retained but in a way which places them in a more appropriate legislative setting.

Once enacted, primary legislation of whatever description becomes part of the statute book. And it remains part of the statute book, whatever its age or condition, until it is formally repealed by the legislature. The bulk of enacted legislation still has a function many years after royal assent, but there are a number of circumstances in which the usefulness of legislation wanes. For example –

- because of the complexity of legislation these days, and the sheer length of statutes dealing with technical or regulatory matters, commencement of provisions is neither immediate or automatic. A number of enacted provisions lie inert on the statute book, uncommenced and ineffective,[22]

[22] The effect of statutes which are not yet in force is, according to Professor Atiyah, either that the law remains as it was (ie. unchanged) until the moment it comes into force, and the courts

- for political or other reasons of sensitivity, some statutes are enacted with a predetermined lifespan, so that they cease to have effect after a set period,[23]
- some statutes are enacted for a particular purpose, which purpose once complete renders the statute's continued existence unnecessary, and
- some statutes fall into desuetude (often because of changes in social circumstances), and become a 'dead letter' with limited or no remaining application.[24]

Although not all legislative provisions are enacted with a view to permanence, even these type of statutes remain – technically at least – live on the statute book. Where the legislature decrees that particular enactments shall "cease to have effect" on the occurrence of a particular event, the enactment is simply rendered ineffective, but unrepealed. That means that in statutory reprints, for example, the provision will keep reappearing, despite the fact that it may now impede a proper understanding of the particular area of law. As Professor Diamond wrote in 1975, in the context of the repeal of temporary Acts two years before, the repeal of such Acts "was not a useless exercise: it made clear what would otherwise have needed research in the statutes, that the time for operating the Act had never been extended".[25] And, moreover, that statement of effect is authoritative.

The effect of repeal is that a statutory provision ceases to exist. Although there are in the UK (and in other common law jurisdictions) special interpretative arrangements which govern the effects of repeal, the basic position is that repeal of a previous repeal enactment can revive the provision previously repealed; that repeal of primary legislation has the effect of repealing secondary or delegated legislation made under it; and that repeal of an enactment which amended a previous provision can have the effect of repealing the amendment (thus returning the provision to its unamended form). Why is this? Put simply, it is because the effect of repeal – without the incorporation of savings arrangements, actual or deemed – is to render the statute as if it never existed.[26] According to Bennion,

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will disregard the uncommenced statute; or that the courts will recognise the fact that parliament intended to change the existing law, as evidenced by the existence of the legislation and because it required changing, and will themselves then alter that law. *See* P.S. Atiyah, *Common Law and Statute Law*, 48 Modern Law Review 1-28, at 10 (1985) on the 'analogy' argument. This dichotomy is unsatisfactory.

[23] Such statutes would have their expiry time set out on their face. Parliament might decide subsequently to prolong their life using Expiring Laws Continuance Acts.

[24] Halsbury's Laws of England, Vol. 44(1) (4th edn., 1995 reissue), at para. 1282, makes the point that an Act, or a provision within it, does not lapse or become inoperative though desuetude, even though in practice it may be a "dead letter". Francis Bennion cites the Sex Disqualification (Removal) Act 1919 as such a statute. The effect had been to limit the degree of female emancipation at that time, notwithstanding its short title. The Act was not considered by the courts until 1966 and the issue, at the time of writing, was whether it still had "any kick" left in it (for example, to fill lacunae or overcome statutory exceptions in the Sex Discrimination Act 1975). The 1919 Act has since been partially repealed in 1989. *See* F. Bennion, *The Sex Disqualification (Removal) Act 1919 – 60 Inglorious Years*, 129 New Law Journal 1088, at 1089 (1979).

[25] A.L. Diamond, *Repeal and Desuetude of Statutes*, 28 Current Legal Problems 107, at 124 (1975).

[26] *See* Halsbury's Laws (1995), Vol. 44(1), at para. 1296. This principle applies except (a)

repeal comes in two forms. First, repeal of an enactment within an Act (a partial repeal) constitutes an amendment of that Act. In other words, the original Act, and its purpose, remains a matter for judicial recognition. Secondly, at common law, repeal of a whole Act makes it "as if it had never been", and the courts are then free to fill the void with judge-made law.[27]

II. Duration

In certain (and limited) circumstances repeal of time-limited provisions does not require specific repeal, because that repeal would amount to double repeal. Sunset clauses are inserted by parliament into legislation so as to ensure either that, where the statute is brought into force, it remains in force for a set period and has a finite lifespan unless parliament later decides that it should continue, or that, where the statute is not brought into force, it does not sit in a state of limbo indefinitely. In the first instance sunset provisions are used where the legislation is controversial, for example in connection with anti-terrorism remedies. This occurred in the context of the Northern Ireland troubles, and now can be found in the Anti-terrorism, Crime and Security Act 2001, s 29 (duration). It is presently being touted as a means of assuaging concerned backbench MPs in their opposition to government plans to extend pre-charge detention to 42 days. In 2003 the Secretary of State for Trade (Patricia Hewitt) advised the Commons that the government's recent guidance on regulatory impact assessments advised officials "to consider time-limiting or a sunset clause at an early stage of policy development."[28] Sometimes a sunset Act will contain a provision allowing for revivor or extension of the particular enactment (or part of it) by ministerial order, subject to parliamentary oversight, and this mechanism can be used as an alternative to the former practice of enacting Expiring Laws Continuance Acts.[29] What is interesting about sunset clauses, though, is that although they ordinarily provide for an enactment ceasing to have effect or expiring, only occasionally do they provide for concurrent and specific repeal. In other words, the enactment still sits on the statute book in moribund form.

At the other end of the spectrum are those Acts which have been placed on the statute book, but which have never been brought into force. We shall look shortly at this in more detail. Suffice for the present to say that this has given rise to concern to MPs in the past. In 1997, following a recommendation from the House of Lords Select Committee on Procedure, the Cabinet Office laid before parliament a report which reviewed those tranches of legislation enacted from 1979 to 1992 which had neither been repealed nor brought into force. The report set out the

for "transactions past and closed", which remain intact, and (b) for general or specific savings provisions in the repealing legislation. These provisions will be discussed in more detail later in this article. Of course, repeal does not actually destroy the original enrolled copy of the repealed Act – that remains as an archived (but legally ineffective) document.

27 *See* F. A. R. Bennion, Statutory Interpretation – A Code, Part IV, at 222, 229 (1997).

28 HC Deb. 1 July 2003 Written Answer 217, *cited in* D. Greenberg (Ed.), Craies on Legislation (2004), at 384, para. 10.2.4, note 7.

29 *See* Craies, *supra* note 28, at para. 10.2.6 and note 9.

reasons why government might feel constrained to delay the implementation of legislation, ranging from the need for further public consultation to the addressing of "unforeseen problems".[30] The solution here can be to tighten the parliamentary (and governmental) review processes and to consider inserting into appropriate statutes provision to the effect that the Act "would cease to have effect on a stated date if not previously brought into force."[31]

III. Repeal Vehicles

Any Act can make provision for repeal of earlier enactments for a host of reasons. In programme Acts, repeal is effected because the new provisions supersede the old (sometimes running directly counter to them), and leaving both on the statute book would give rise to confusion. Likewise in consolidation projects, there needs to be a clearing of the decks of the old legislation, and that often requires a complex combination of repeals, consequential arrangements and transitional provisions. But here we concentrate more on the pure repeal process, and how that is effected.

The first statute law repeals Act was enacted in 1856. Unlike its successors it was about repeal and not revision. The Repeal of Obsolete Statutes Act 1856 did exactly that.[32] Its purpose was "to repeal certain Statutes which are not in use", and through a schedule spanning four pages it repealed a raft of statutes chronologically from 1285 (Statute of Westminster the Second) to 1776. It was cast in wide terms so as to embrace also "all [unspecified] enactments (if any) confirming, continuing, or perpetuating the same [those specifically repealed] or any of them."[33] This Act was then followed from 1861 to 1966 by a whole series of revision (rather than repeal) statutes. And it came about – curiously – because of the work of the Statute Law Committee of 1854, which purported to focus on consolidation (pure and with amendment), and not through the short-lived Statute Law Board of 1853 which was charged with "the expurgation of defunct Acts" as well as consolidation of live Acts.[34]

The test in 1856 was one of being out of use, i.e. obsolescence and, as we shall see shortly, that test was expanded in the series of revision Acts which followed. Put simply, the subsequent Acts were designed to remove from the statute book material which had become spent, or had ceased to be in force, or had become

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[30] *See* Bringing Acts of Parliament into Force (Cm 3595, March 1997, Cabinet Office, London) at 3. Other issues included the need to prepare subordinate legislation and to co-ordinate commencement.

[31] This latter approach was suggested by the House of Lords Select Committee on Procedure of the House (Session 1995-96) (HL Paper 50), cited by Craies, *supra* note 28, at para. 10.1.19. Such a sunset provision was enacted in the Electronic Communications Act 2000, s16(4) and – interestingly – it decreed that the Act should "be repealed" and not merely "cease to have effect".

[32] 19 & 20 Vict. c.64 (1856). The Act was assigned this name in the Chronological Table of Statutes.

[33] The 1856 Act, s 1. The Act contained a very simple savings provision, to the effect that the repeals were not to "affect any legal proceeding commenced under any of the said Acts before the passing of this Act."

[34] *See* Lord Simon and Webb, *supra* note 9, at 288, citing the Lords Journals, Vol. 85, at 516.

unnecessary. Those Acts were linked with convoluted savings provisions and their principal purpose was to facilitate the compilation and publication of editions of statutes then in force. The position with repeals Acts seems different.

It was not until the formation of the Law Commissions in 1965 that the notion of promoting a run of repeals Bills (as opposed to revision Bills) came about. The Commissions took the view that the previous approach to statute law revision was to strike out "unrepealed provisions which had become inoperative" and that that task was being done by – and could just as well be performed through – amending programme Bills. The "revision" work was "now done concurrently with the amendments by the Repeals Schedule in the amending Act."[35] The Commissions proposed "to work systematically" through the statute book with a view to recommending repeals of enactments which "no longer serve[d] a substantial purpose" as well as those which could be "treated as inoperative".[36] The aim was both to reduce the number of statutes which would need to enter the consolidation process, and to pave the way for consolidation of those topics which were impeded by "unnecessary provisions".[37] What would be needed would be a new mechanism "to preserve the residual effect of an existing Act before [that] Act can be repealed."[38] This chimed with the remit of the Commissions in the 1965 Act which had been to keep under review all the law with a view, amongst other things, to "the elimination of anomalies, the repeal of obsolete and unnecessary enactments, [and] the reduction of the number of separate enactments."[39] More specifically, but only at the request of the appropriate minister, the Commissions were to prepare "comprehensive programmes of consolidation and statute law revision" (and the necessary enabling Bills).[40] Interestingly the 1965 legislation itself distinguished repeal and revision, and it appeared that the stance adopted by the Commissions in 1966 took a middle course.

The first Law Commissions' bill led to the Statute Law (Repeals) Act 1969, which sought to "promote the reform of the statute law by the repeal . . . of certain enactments which (except in so far as their effect is preserved) are no longer of practical utility."[41] The Act scheduled a raft of repeals, organised chronologically within specific topic headings (a format which has been adopted ever since).

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35 *See* Law Commission's First Programme on Consolidation and Statute Law Revision Law Com. No.2 (Lord Chancellor, 1966, HMSO, London), at 6, para. 14. The Commission (England and Wales) had recommended that there was still a need for this limited approach (running in parallel with other approaches) "where temporary provisions have expired or where there has been some change of circumstances such that the facts on which an Act operates can no longer occur."

36 *Id*., para 14. That work continues today: *see* Tenth Programme of Law Reform (Law Com No. 311, June 2008), at 28, para. 3.41: repeal of spent and obsolete Acts an "integral part" of statute law reform.

37 *Id*., para 15.

38 *Id*., para 15.

39 *See* Law Commissions Act 1965, s3(1) preamble.

40 Law Commissions Act 1965, s3(1)(d). Apart from the first two (and only) programmes specifically on Consolidation and Statute Law Revision (Report Nos. 2 (1966) and 44 (1971)), the programmes on Law Reform made no substantive reference to the topics until the Sixth Programme (No. 234 (1995)), although the actual work on the ground continued unrelentingly.

41 Statute Law (Repeals) Act 1969 (c.52), long title.

When in 1971 the English Commission's second programme was laid before parliament, the Commission reported that the adopted formula for revision (as it still called it, in line with section 3(1)(d) of the 1965 Act) laid "no light onus" on the Commission to satisfy the joint select committee of the propriety of the repeal proposals, but that nonetheless it intended to proceed with its "systematic search", partly chronologically and partly by topic, in order to weed-out enactments which "serve no useful purpose" as well as being inoperative.[42] The historic approach to revision, by contrast, left on the statute book "a number of provisions of doubtful utility".[43] The Commission pointed out that not all revision would be carried out in an anodyne manner, but it accepted that revision embodying amendment would have to be undertaken by a law reform bill, which could both amend the common law and remove "dead or decaying wood" from the fabric of the statute book.[44]

The hall mark of these new repeals bills was that they would embrace limited savings provisions, and would incorporate – where appropriate – consequential and connected provisions. Thus, in the 1969 Act, savings were included within the body of the Act to preserve the continuation of certain practices (such as the holding of markets), and by the Act of 2004 – in order to facilitate the repeal of particular archaic Acts – specific provisions were lifted out of their original host Act (which was otherwise defunct) and transplanted within allied legislation as a form of mini-consolidation. Similarly, as time went by, it became necessary to spell out more clearly the territorial extent of the repeals Acts so that they did not automatically (or accidentally) have effect within the Channel Islands or British overseas territories.[45]

IV. The Need for Repeal

Various circumstances give rise to the necessity for repeal. Those circumstances might be classified in the following way:

(a) where the purpose underpinning the enactment has been overtaken by events, rendering it obsolete. So, for example, where there are references to bodies or organisations which have been dissolved or wound-up;

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[42] *See also* Minutes of Evidence before the Joint Select Committee on Consolidation and Statute Law (Repeals) Bills, 24 June 1969. Parliamentary counsel advanced 5 criteria to underpin the test of "no longer of practical utility" (in essence – superseded, unnecessary, later contradicted, not used through obscurity, and disregarded).

[43] *See* Law Commission's Second Programme on Consolidation and Statute Law Revision Law Com. No.44 (Lord Chancellor, 1971, HMSO, London) at 6, para. 15.

[44] *Id*., at para 16. The first bill in this vein was that which became the Wild Creatures and Forest Laws Act 1971 (c.47), promoted by the Law Commission to repeal certain enactments but also to abolish various prerogative rights of the Crown. *See* hereon Statute Law Revision: Second Report Law Com. No.28 (1970).

[45] *See* Statute Law (Repeals) Act 2004 (c.14), s1(2) and sch 2 for consequential and connected provisions, and s2 for extent. The Act extended to both Northern Ireland as part of the United Kingdom, and to the Isle of Man (but not to the Channel Islands without specific Order in Council being made, having first conferred with the devolved Islands' authorities).

(b) where there have been changes in social or economic circumstances since the original enactment came into being, rendering the legislation unnecessary;

(c) where provisions have become spent, in the sense that they were enacted for a specific purpose which has been activated and exhausted (for example, where transitional or savings provisions were enacted and they have ceased to be necessary);

(d) where provisions have expired, or ceased to be in force, because they were time-limited (or they were expressed to be temporary) and no continuation Act was promoted;

(e) where the enactment contained a 'sunset clause', which had the effect of discontinuing the Act's effectiveness, but did not repeal it;

(f) where later legislation purported to supersede the earlier, but where the earlier was not repealed concurrently, or where references to specific Acts in the earlier legislation have been superseded by more modern legislation (including EU legislation);

(g) where legislation was enacted, but has not been brought into force (by commencement order), usually for a substantial period, through change in circumstances; and

(h) where legislation has fallen into desuetude through lack of use, or it simply lacks practical utility.[46]

The basic test is to establish whether, as Bennion put it somewhat graphically, the seemingly moribund enactment "has any kick still left in it".[47] If it does, then it is not an appropriate candidate for repeal. What the Law Commission did from 1965 onwards – striking out inoperative provisions and provisions which were no longer of practical utility – was (in the view of the Renton Committee) a "change of major importance."[48] But the Commission did decide in 1974 that it would cease the practice of simply repealing "spent repealing enactments" because that step "no longer serve[d] any practical purpose" unless there were special reasons or where parallel provisions were being repealed.[49]

The difficulty with repeal, though, is that it is seldom a straightforward exercise. Some enactments can – in whole or in part – be repealed without more ado because they match the criteria just explained. Others, however, have to be repealed in a manner which makes adjustment for the consequence of repeal. Thus, where a provision had made amendments to another Act, and it is then

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[46] This list does not pretend to be exhaustive, although hopefully it is a general guide. It is based in part on the Background Notes prepared by the Law Commission for use when introducing specific repeals proposals for public consultation.

[47] *See* Bennion, *supra* note 24, at 1089.

[48] Renton Committee Report, *supra* note 4, at 91, para. 14.26. Today the practice continues: *see* Law Commission's Tenth Programme of Law Reform (now incorporating consolidation and statute law repeal), June 2008 (Law Com No. 311), at para. 3.41.

[49] *See* Law Commission Ninth Annual Report 1973-1974, Law Com. No.64 (1974, HMSO, London), at para. 57. 'Parallel provisions' is shorthand for saying (as in the Report) that the repeal of other provisions is proposed within the same Act.

repealed, notwithstanding the Interpretation Act 1978 it is necessary to make explicit that the repeal does not undo the amendment. For example, in the Law Commission's latest Bill (now the Act of 2008) it was provided that:

> The repeal by this Act of section 2 of, and Schedule 1 to, the Greenwich Hospital Act 1947 (c.5) does not affect the amendment made by those provisions to section 2 of the Greenwich Hospital Act 1883 (power to grant pensions, allowances and gratuities).[50]

The Interpretation Act contains a number of savings arrangements, but they are not wide enough to impact on amendment.[51] Savings provisions do, however, need to be used relatively sparingly, otherwise the effect of the repeal can be rendered nugatory.[52]

Similarly, there are occasions where it is expedient to remove an entire statute from the statute book, but to preserve a single provision within it which still has relevance. The alternative is to leave the entire statute intact, leaving the reader with no clue as to which parts are really live and which are truly dead. To achieve this, some precision surgery is called for, first to remove the good tissue and then to transplant it somewhere where it will add value. For example, again in the 2008 Act, provision was made in several instances for insertions or additions within other Acts so that application or interpretation clauses could continue to function.[53] So, in practice, "old statutes only fade away", whether it be by repeal or by disuse and the loss of legal effect.[54]

And finally, as in the previous revision Acts, provision still has to be made for issues such as territorial extent. This also involves some sophistication in the context of devolution. Ordinarily, repeal Acts extend to "the whole of the United Kingdom." That is achieved because the two Law Commissions work jointly in repeals projects (thus covering Scotland, England and Wales), and – for many years – the English Law Commission has also taken responsibility for statutes which cover the UK, including Northern Ireland. That arrangement may have to change (or be adapted) now that the Northern Ireland Law Commission has come into being. But repeal Acts usually also extend to the Isle of Man automatically (after prior consultation) in so far as they repeal statutes which originally "extended" to

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50 Statute Law (Repeals) Act 2008, s1(2) and Sch 2 (Consequential and connected provisions).

51 The 1978 Act (c.30) deals, amongst other things, with repeal of repeals (section 15) and general savings (section 16). We shall discuss these further in the context of statute law revision, below. Section 16(1)(b) provides that "unless the contrary intention appears" in the repealing statute, repeal does not affect the previous operation of the enactment repealed. That is probably not wide enough of its own to cover this situation.

52 We shall look at the impact of wide savings provisions in the Part below on 'statute law revision'.

53 *See* the 2008 Act, *supra* note 50, Sch 2, paras. 1, 3, 5 and 6. The expression "insert" is employed where new material is being introduced into the body of existing text; "add" is used where the material is being placed at the end of the existing text. By the same token "delete and substitute" is not required in conjoined form; it is inherent in "substitute" that there is first deletion.

54 *See* Diamond, *supra* note 25, at 124.

the island. On the other hand, the formula used is designed to ensure that it does not accidentally purport to repeal Acts which the Isle of Man authorities have "applied" to themselves (i.e. by voluntary and unilateral adoption).[55]

V. Case Study

One interesting aspect flowing from the 2008 Bill was the treatment by the parliamentary joint select committee of a miscellaneous repeal relating to the Employment of Children Act 1973 (c.24) and related legislation.[56] This was an instance of legislation being enacted some 35 years previously which had never been bought into force. As the Law Commission's report makes clear, the 1973 Act was brought into being for two reasons. First, it was designed to allow ministers to make regulations governing the employment conditions of school-age children (as to working hours and the like), which would supersede byelaw-making power vested in local education authorities; and, secondly, it gave LEAs supervisory powers so as to protect children's health and safety. The principle was to provide a consistent national regime of control.

But the Act was eventually overtaken by events. The Education Act 1996 provided primary powers to LEAs to restrict or prohibit the employment of schoolchildren. Then, in 1998, regulations were made under the European Communities Act 1972 in order to implement a 1994 Directive relating to the protection of young people at work. Those regulations (and supplemental regulations in 2000) amended the Children and Young Persons legislation so that the byelaw-making power was left in place, but its application would be standardised. At this point the 1973 Act became superfluous.[57]

The joint committee, however, was at pains to understand how the various superseding provisions worked, the view of the relevant departments (who had previously conducted a review) and the extent to which repeal might – or might not – have an impact on European law within the UK. These were all legitimate concerns, and demonstrated the care the joint committee took in formulating its recommendations to the two Houses.

D. Other Techniques: the 3 'R's

Thus far we have looked at mainstream modern techniques for statute law reform: consolidation and repeal. But other techniques are presently in use in common law jurisdictions, and they require some explanation in order that the

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[55] So far as the Channel Islands are involved, they have marginally more constitutional and governmental authority. On that basis, repeal is not automatic, and will only operate via Order in Council (as a matter of practice, only after consultation): *see* 2008 Act, *supra* note 50, s 2(4) on extent.

[56] *See* the 2008 Act, *supra* note 50, s1(1) & Sch 1 Pt 11 (Miscellaneous).

[57] *See* Statute Law Repeals: Eighteenth Report (with draft Statute Law (Repeals) Bill) Joint Report of the Law Commissions Law Com No.308/ Scot Law Com No.210 (Cm 7303, Lord Chancellor & Secretary of State for Justice, January 2008, TSO, London) at 125, paras 11.6-11.9.

proper dimensions for 'revision' can emerge. They are rewrite (which is a more sophisticated form of consolidation), restatement (which is used, for example, in certain Australian states and the Irish Republic), and reprint (which is the most simplistic, and does what it says on the tin).

I. Rewrite

In England and Wales there has been a continuing need for updating and consolidation of tax law in its various guises, not least because the annual enactment of the Finance Bill adds relentlessly to the accretion. As the statute law has become more technical and its compass more wide-ranging, so the consolidation exercise has become much more complex. By 1996 it became clear that, notwithstanding the remit of the Law Commission, consolidation on this scale was beyond the Commission's finite resources. As Edward Caldwell points out, the tax law rewrite project – which was designed to alter both the structure and the language of existing tax law – went "well beyond conventional consolidation".[58] The purpose of the project was to reproduce the existing law "without making major changes", via a process of staged implementation.[59]

The first rewrite Bill was enacted in 2001,[60] and its passage was facilitated by a 1997 amendment of House of Commons standing orders to reduce parliamentary debate after close scrutiny by the joint select committee.[61] Mary Arden described the project's aim as a "plain English rewrite" of the tax code employing modern techniques, such as in design and layout. But although the product used shorter sentences, it was evident that as a whole it was unlikely to be any shorter in overall length than the legislation it replaced.[62] Arden cites the Revenue's background paper to list the nine challenges which lay ahead (in 1995) for the rewrite. Put simply, the needs were:

- to overcome the use of complicated syntax, long sentences and archaic language
- to make the principles underpinning the rules more transparent

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58 *See* Caldwell, *supra* note 5, at 47.

59 *Id.*, at 45. The project took its cue from restatements being undertaken in Australia and New Zealand. The notion of staged implementation (as opposed to 'big bang') was canvassed in the Revenue's paper *Tax Law Rewrite: The Way Forward* (July 1996), at ch. 7. *See* text at http://www.hmrc.gov.uk/rewrite/wayforward/tlrc7.htm, (last accessed 22 Feb. 2008), where the advantages and disadvantages are spelt out.

60 Enacted as the Capital Allowances Act 2001 (c.2). The 2001 Act was followed by the Income Tax (Earnings and Pensions) Act 2003 (c.1), the Income Tax (Trading and Other Income) Act 2005 (c.5), and the Income Tax Act 2007. Bills 5 and 6 address corporation tax; the first of these has now been enacted as the Corporation Tax Act 2009 (c.4). Rewrites of subordinate legislation have also run in parallel. One of the practical difficulties has been that of harmonising tax law and national insurance contribution law as the process has developed. That seems to have necessitated enactment of Henry 8 clauses to facilitate the process, what David Hole has described as "a legislative gadget" to prevent duplication and overlap: *see* D. Hole *Legislative Wiring*, 1 British Tax Review 5, at 6 (2004).

61 S.O. No. 60 (HC) for Tax Simplification Bills.

62 *See* M. Arden *Modernising Legislation*, 1998 Public Law 65, at 70.

- to minimise the detail and drafting 'overkill'
- to make sections intelligible in their immediate context
- to reduce uncertainty in anti-avoidance (and other) rules
- to group tax rules more logically
- to bring together definitions
- to achieve a proper balance between rules in primary and those in secondary legislation, and
- to be more publicly open in the drafting process.

Arden highlights the truism that, in any reform process, "simplification of complex technical law can [sometimes] only be at the cost of precision and concision".[63] Either way, to use Professor Zander's expression, this was a "massive project" and it involved "substantial changes of language and format".[64]

The project's general drafting approach was to jettison "purposive or general principles" and to use (instead, and where appropriate), "statements of purpose", supplementing those with – amongst other things – logical reordering, directness of expression and improved layout (and textual appearance).[65] The whole exercise was to be overseen by a steering committee (which would monitor the work output)[66] and assisted by a consultative committee (made up of current tax professionals).[67] The aim, then, was to achieve a rewrite which would not change underlying tax policy but would effect some – but only minor – change to existing law.[68] Interestingly, the Revenue says that the rewrite facilitates legal simplification, and as such it is really no more than a restatement.[69] But that may not be seen to be quite right when we address, in a moment, the ingredients

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[63] *Id*., at 67.

[64] M. Zander The Law-Making Process (2004), Ch. 2, at 67. Zander also cites D. Salter, *Towards a Parliamentary Procedure for the Tax Law Rewrite,* 19 Statute Law Review 65-67 (1998)for discussion of the (then new) special procedure designed to prevent political re-opening of pre-established policy issues.

[65] Tax Law Rewrite: The Way Forward, *supra* note 59, Ch. 10, paras. 2-4. There was also developed a technique of using 'signposts', in the form of sections at the start of an Act which would provide an overview of the Act or part of it. But the inherent risk here – it has been said – is that overview clauses can go out of date, and their exact standing is less than clear. Are they operative law, or are they simply pointers to interpretation?

[66] The chair of this committee is The Rt Hon the Lord Newton of Braintree, a former Conservative government minister.

[67] The project's work was to be further informed by public consultation on runs of draft clauses centred on specific topics. Some fairly comprehensive guidelines for the rewrite were also set down, on the understanding that they were to be used flexibly.

[68] In the Tax Law Rewrite – Report and Plans 2007/08 (*see* http://www.hmrc.gov.uk/rewrite/plans2007-08.htm, last accessed 22 Feb. 2008) the Revenue reiterated that the project was designed to rewrite existing tax law "as it stands", which remit "excludes the possibility of making substantive changes to the law" other than "minor identified changes at the margin, intended in the main to bring clarification or consistency or to bring the law into line with well established practice": *see* para. 2.15.

[69] *Id*., at para 2.16. The long title to the Corporation Tax Act 2009 says that it is "An Act to restate, with minor changes, certain enactments …"

within the second of the 3 'R's. As the rewrite project progresses, and now accelerates, new drafting techniques are being explored, including the use of method statements, formulae, tables, abbreviations, and informative labels for interpretation (all underpinned by various explanatory materials, and tables of origins and destinations).[70]

II. Restatement

Statute law restatement has been a mechanism by which the Irish government have sought to refurbish the nation's statute book as part of its 'Better regulation' policy. The process has gone hand-in-hand with two other mechanisms: revision (to which we shall return) and consolidation.

Like other countries which have inherited law from former imperial sources, Ireland's Westminster-style legislature operating in a common law environment inherited United Kingdom law on achieving independence, much of it increasingly irrelevant to the functioning of a modern autonomous state.[71] Writing over 40 years ago, Charles Haughey[72] indicated that the government was concerned to remove from its statute book swathes of law which had become obsolete (not least that passed down from the old Irish parliament pre-1800), and had embarked upon a law reform process involving amendment, 'pure' consolidation, revision and codification.[73] That had led to enactment of the Statute Law Revision (Pre-Union Irish Statutes) Act 1962.[74] This was to be the first Act in a series stretching from then until 2007,[75] and was the precursor to what Haughey envisaged – having all Irish statute law "contained in statutes passed by an independent Irish parliament."[76]

In 1999 the Statute Law Revision Unit was established to draw up a programme for both revision and consolidation. Its first recommendations led to the Restatement Act 2002.[77] This paved the way for what is "essentially an

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70 *Id*., at App. B.

71 Ireland attained semi-autonomous independence in 1922, separated from the United Kingdom (including Northern Ireland), whilst still remaining under the British Crown. In 1937 it adopted a new constitution, which replaced the Crown with an elected president, and in 1949 it became an independent republic (at the same time leaving the British Commonwealth of Nations). Under the 1922 settlement – for reasons of continuity – the Irish Free State adopted existing UK law as its own (*see* 1922 Constitution, Art. 73).

72 Then Irish Minister for Justice, and later to be Taoiseach (Prime minister).

73 *See* Ch. J. Haughey, *Law Reform in Ireland*, 13 International and Comparative Law Quarterly 1300, at 1306, 1307 (1964).

74 Statute No. 29/1962. This statute repealed some 119 enactments which were either spent or had ceased to be in force or had become unnecessary (utilising, as it happened, a British formula for revision – see later).

75 *See also* Statute Law Revision Act 1983 (No. 11/1983), Statute Law (Restatement) Act 2002 (No. 33/2002), Statute Law Revision (Pre-1922) Act 2005 (No. 32/2005), and Statute Law Revision Act 2007 (No. 28/2007).

76 Haughey, *supra* note 73, 307.

77 Statute No. 33/2002, *supra* note 75.

administrative consolidation of Acts that does not make any changes to the law".[78] The purpose behind the project was to effect an easy form of consolidation which would not expend time of the Oireachtas (parliament), but which also would not have the force of law (although it would act as evidence of the law).[79] As the 2002 Act says in its preamble, it was designed to make available any statute or combination of related statutes in a single text restatement form. The Attorney General is authorised to make available a certified "statement of the law contained in the provisions of the statutes to which it relates."[80] That restatement can exclude "spent, repealed or otherwise surplus provisions,"[81] and can incorporate notes or commentary showing derivation of the material. But it is important to note four things here:

- this is an administrative consolidation on the lines of that undertaken in some jurisdictions by commercial publishers, but it has the stamp of authority on it,
- it is designed to make the relevant statutory law more accessible to the user, but in the event of doubt arising as to meaning, the courts and others would be forced to turn back to the original statutes,
- this restatement can effect no change in any way to the law, and it cannot repeal and remove obsolete material from the statute book,[82]
- restatements do have "a finite lifespan", and by themselves they do not provide a "long term or comprehensive solution".[83]

Put simply, its purpose – certainly in statute law reform terms – is relatively limited. But used as a tool alongside statute law revision (as is the case in Ireland) it is valuable. The Law Reform Commission saw five specific benefits flowing from the restatement approach:[84]

(a) it improves transparency (some may say legibility) of legislation

(b) clear drafting brings benefits to the economy, not least by aiding smaller firms who have to grapple with regulation

(c) it benefits legislators in the legislative process and saves legislative time

(d) it assists the work of legal practitioners and the needs of litigants

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78 *See* The Law Reform Commission of Ireland, Consultation Paper: Statute Law Restatement (LRC CP 45-2007, July 2007, Dublin), Chap. 2(C), at 29.

79 *See* Restatement Act 2002, ss 4, 5(1).

80 *See* Restatement Act 2002, s 2(1).

81 *See* Restatement Act 2002, s 2(2).

82 The technique was used successfully in connection with the Freedom of Information Act 1997 (Ire) which comprised, for the restatement, the basic text of the 1997 Act with all textual and non-textual amendments which had been made to it post-enactment. *See* Law Reform Commission, *supra* note 78, at para 2.27.

83 *Id.*, at paras 2.70, 2.71. The Commission concedes this point in the light of international experience drawn from Australian states (NSW, Queensland, Capital Territory, Tasmania), New Zealand and Canada. Only e-legislation can address this problem with rolling updates to show in-force versions of enactments.

84 These are paraphrased for ease of understanding here. *See* Law Reform Commission, *supra* note 78, at paras 2.29-2.40.

(e) it makes the statute book more accessible, and facilitates the placing of legislation on-line electronically.

How then does this approach fit in with a wider and more comprehensive programme? In 2000 the director of the Statute Law Revision Unit in Ireland set out his perception of how the different techniques could work in sequence. He saw three approaches leading towards total reform of the statute book:

- *Phase 1 short term* – restatement on Australian lines, the administrative rather than legislative solution (useful where Acts have already been consolidated and subsequently amended)
- *Phase 2 medium term* – consolidation in 'pure' form, without change to substance or wording of the text, but with restructuring (sometimes prefaced by paving legislation, effecting repeals of "spent or inoperable" material)
- *Phase 3 long term* – statute law revision, involving the preparation of revision Bills leading to publication of 'statutes revised'. Revision Bills would allow for the combining of Acts, alteration in language, the making of "minor amendments" to clarify intent or to correct errors or to make consequential changes, and the omission of statutes repealed or of "no legal effect."[85]

Seen in this context, and in the context of a sovereign state which has an inherited backlog of statutory undergrowth, restatement is a useful starting point. But what demonstrably it is not is statute revision.

III. Reprint

And so to reprint of statutes, either through official channels or by commercial publishers (such as Butterworths / Lexis Nexis UK for England and Wales). Reprint is included here really for completeness. If restatement is not revision, then bare reprint is certainly not.

But what are its ingredients? And does it have a particular value? Lord Simon believed it did, as an auxiliary tool. In his later reprise, in which he advocated more consolidation with interim techniques,[86] he expressed concern that amendments to legislation were making statutory text incomprehensible to ordinary users (citing the 1984 Housing amending legislation), and that urgent consolidation was required. When piecemeal consolidation was rejected by the government the eventual solution was accelerated publication of the relevant portion of Statutes

[85] *See* E. Donelan, *Statute Law Revision, Codification and Related Policies in Ireland*, 29 International Journal of Legal Information 323 (2001), at 345 in particular. The article in similar, but revised, form also appears as *Recent Developments in Statute Law Revision in Ireland*, 22 Statute Law Review 1 (2001). This author makes the point – as have others – that textual amendments should in any event supersede amendment by reference or any other means (*see* first citation, at 352).

[86] Consolidations, he said, could be facilitated by paving Bills, but piecemeal consolidations should be avoided because they could prejudice the more comprehensive approach.

in Force with textual amendments (in a timeframe concertinaed from four to two months). However, as Lord Simon himself acknowledges, this was but an interim solution, with downsides.[87]

The key problem is that publication in this manner lacks statutory or other authority. It is less authoritative than the Irish restatement approach which is, after all, underpinned by statute. And it lacks "the potentialities for improvement" which come with consolidation. But it delivers an intelligible document.[88]

H.H. Marshall sought to distinguish revision and reprinting in his 1964 article, drawing down examples from the dependant territories, which were required to integrate and rationalise imperial and local law. Reprinting (he said) involves preparation of a fresh print of a statute by the government printer (with governmental authority), incorporating "all necessary additions, omissions, substitutions and amendments effected by amending statutes and eliminating all repealed matter". By contrast (as we shall see in the next Part) revision involves a host of other steps involving sometimes extensive change, albeit falling short of alteration to "the substance of any legislation".[89]

E. Statute Law Revision

In this part of our discourse the intention is to examine more closely the genesis and development of statute law revision as a concept, the mechanism adopted to achieve the 'revision' goal, and the purpose of the exercise. There is also value in seeking to identify the component parts of 'revision' legislation so as to ascertain whether it has recognisable and separate attributes.[90]

I. Background and Attributes

Within the United Kingdom, the notion of statute law revision (using that label specifically) came about in the mid-Victorian era. The first comprehensive steps were taken by Lord Cranworth, LC who appointed the Statute Law Board (in 1853), whose function was to revise the statute book by a combination of "the expurgation of defunct Acts" and consolidation of operational statutes.[91] That Board was superseded by a Statute Law Commission in the following year, which

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87 Lord Simon of Glaisdale, *Statute Consolidation: Interim Techniques*, 1985 Public Law 352, at 355.

88 *Id*. Lord Simon thought that a half-way house might be effected by producing a Keeling Schedule, but that even this step would be inappropriate if the principal Act (being amended) were "of great bulk" or had already been extensively amended.

89 *See* H. H. Marshall, *Statute Law Revision in the Commonwealth*, 13 International and Comparative Law Quarterly 1407, at 1410, 1414 (1964).

90 Some parallel examination of 'revision' in Ireland and Canada will also follow.

91 *See* Lord Simon and Webb, *supra* note 9, at 288, where the authors cite the Lords Journals for that year. It should be said, for completeness, that earlier attempts had been made, but with limited success. A consolidation exercise was undertaken, resulting in a significant reduction of customs Acts in 1825. In 1835 a Royal Commission was established to inquire into the expedience of further consolidation but, although over the next 10 years it worked diligently to produce reports, no new

produced some 90 consolidation Bills in the period 1854 to 1859.[92] The bulk did not find their way on to the statute book, but the first step towards systematic revision emerged in 1856.[93]

The Repeal of Obsolete Statutes Act 1856[94] set out to repeal a raft of statutes (scheduled not by topic, but drawn from the statute book chronologically for the period 1285 to 1776), both specifically (by title and regnal year) and by reference.[95] These were straight repeals, with no attempt made to include savings for past transactions or consequential provisions. The 1856 Act was followed by the first Statute Law Revision Act of 1861,[96] which paved the way for a regular succession of such Acts through to 1908.

The 1861 Act, in a schedule covering over 25 pages of text, repealed statutes from 1771 to 1853. Unlike its 1856 predecessor, it incorporated a simplified form of savings clause which effected repeal of the recited statutes

> except as to any operation already effected by, or act done under, any enactment herein comprised, or as to any right, title, obligation, or liability, already acquired or accrued under any such enactment.[97]

The schedule to the Act then identified the Acts being repealed and, in a separate column (as used today), the "extent" of the repeal (ie. whether it was in whole or in part). However, where partial repeal was involved, the extent did not always specify the section. Instead, nebulous expressions were employed such as "So much as relates to the manufacture of low wines and spirits, and to treble costs". In other words, partial repeal used a combination of specifics and of 'by reference'. The latter approach would still leave the non-lawyer reader in the dark as to the full consequences of the purported repeal.

But this was only the start. At appendix C to this work the reader will find a table showing exactly the revision Acts passed from 1856 right through to 1991.[98] What that table seeks to encapsulate is, first, the sheer volume of revision Acts which were passed during the late Victorian era and, secondly, (in the final column) the attributes or facets of those Acts and how they developed. We shall

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legislation flowed. A second Commission spanned the years 1845 to 1849, but again – although a Bill was produced – it was aborted.

92 In this year, because of parliamentary criticism, Lord Chancellor Campbell decided not to renew the commission. No formal body then operated between 1859 and 1868.

93 *See generally* Lord Simon and Webb, *supra* note 9, at 290.

94 19 & 20 Vict. c.64 (1856), being "An Act to repeal certain Statutes which are not in use". No short title was assigned by this Act.

95 The 1856 Act repealed the scheduled Acts "together with all enactments (if any) confirming, continuing, or perpetuating the same or any of them". This form of repeal formula failed to tell the reader exactly which other statutory provisions were being repealed concurrently.

96 24 & 25 Vict. c.101 (1861), being "An Act for promoting the Revision of the Statute Law by repealing divers Acts and Parts of Acts which have ceased to be in force." The short title was assigned for citation by Section 2.

97 *See* Statute Law Revision Act 1861 (c.101), s1.

98 The later Acts, after the 1966 Act (the last enacted after creation of the Law Commissions in 1965), related only to Northern Ireland or the Isle of Man (which devolved jurisdictions fell outside the England and Wales remit, and thus the amended formula for repeal discussed earlier in this work).

see in a moment the purpose underpinning this spate of legislation. For now, there are a number of common threads running through each of the Acts, apart from bare repeal. As the Acts developed they incorporated –

- savings, first for past operations and transactions and, later in much more sophisticated (and hugely complex) form, for a range of circumstances encapsulated in what became known as the 'Westbury savings'
- provisions as to territorial extent (for example, whether they applied in England or beyond; whether they were restricted to Ireland)[99]
- revivor (or amendment) of certain provisions which had been repealed by earlier revision Acts, and which now needed to be reinstated either because of previous error or through change in circumstances[100]
- non-revivor provisions
- more specialist provisions where the purpose of the particular Act was focussed on a topic, such as civil procedure reform (with extension of rule-making powers)
- omissions of text from Act titles or preambles (or omitting words of enactment),[101] and citation arrangements (using short titles)[102]
- omission of certain Acts from the published Revised edition of the statutes[103]
- the application of the revision Acts in the lower civil courts,[104] and
- deferral of commencement of certain repeal provisions.

The bulk of the actual repeals carried out through the revision Acts was based simply on a chronological exfoliation of the statute book, rather than (as was the case with the repeals statutes, discussed in Section C above) by topic.

Two issues, however, come to the fore when one seeks to understand (and distinguish) the functioning of revision Acts. They are: the purpose of the Acts, and the savings formulae used. These we now examine more closely.

II. Purpose

Revision Acts always had a narrow purpose. As Lord Westbury, LC told parliament in the lead-up to the 1863 Act, the statute book

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[99] From 1801 until 1922 Ireland was undivided and formed an integral part of the United Kingdom. Its legislation was enacted by the UK parliament based in Westminster. After 1921 (when Northern Ireland was formed as a devolved province of the UK) the Parliament of Northern Ireland was able to enact a range of legislative provisions which were not reserved to the UK Parliament. From 1922 onwards the Parliament of the Irish Free State had considerable (although not total) autonomy, and new Westminster legislation ceased to run in that jurisdiction.

[100] *See*, for example, the Statute Law Revision Acts 1872, 1874, 1874 (No.2), 1875, 1878, 1893 (No.2), 1894, 1898, and then in 1953 and in 1973 (Northern Ireland).

[101] For example, in the Statute Law Revision Act 1890, and onwards.

[102] *See*, for example, Statute Law Revision Act 1893.

[103] *Id.*

[104] *Id.*

> should be revised and expurgated – weeding away all those enactments that are no longer in force, and arranging and classifying what is left under proper heads, bringing the dispersed statutes together, eliminating jarring and discordant provisions, and thus getting a harmonious whole instead of a chaos of inconsistent and contradictory enactments.[105]

In setting up the Statute Law Committee in 1868, Lord Cairns, LC specifically intended that the Westbury approach should be taken a stage further: to the production of an edition of the Statutes Revised, containing only Acts which were in force. The first edition of Statutes Revised was published by 1885 (following completion of the Index to the Statutes in 1870). That was succeeded by a second edition in 1929, and the third edition in 1950.[106]

The statutory formula employed throughout the run of revision Acts was fairly consistent. It did not speak of obsolescence but, from 1867 onwards, in their preambles the Acts were saying that it was "expedient" to repeal expressly "certain enactments … which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal, or have, by lapse of time and change of circumstances, become unnecessary."[107] This repeal project was undertaken to revise the statute law and "particularly [with a view] to the preparation of a revised edition of the statutes."

As H. H. Marshall wrote in 1964, the purpose of statute law revision was to prepare for an "up-to-date set of the statutes in force in a particular territory at a particular date", with a minimal level of actual law reform.[108] That preparation for a published edition was evidenced especially by the run of revision statutes from 1890 onwards, where omissions of various mechanical aspects of republished Acts was to be permitted in order to facilitate compilation of the publication. In the colonies (as they then were), the revisions involved exclusion of repealed legislation, and the inclusion of a range of matters (such as adding short titles, supplying marginal notes, renumbering sections, transplanting provisions within more suitable Acts, and so forth).[109] But alterations or amendments of substance were precluded. This position contrasts with that today in, for example, Canada or Australia, where the term 'revision' has a wider spectrum of meaning.

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[105] Parl. Debates, 3rd series, Vol. 171, col 775 (1863), cited by Lord Simon and Webb, *supra* note 9, at 291.

[106] The 1950 edition was the last. It was replaced by Statutes in Force, first published in 1981, in looseleaf form. *See* R. F. V. Heuston, *Lord Chancellors and Statute Law Reform*, 19 Statute Law Review 186, at 188, 189 (1988). The Statute Law Committee (formed in 1868) existed until 1991 when Lord Mackay, LC replaced it with the Lord Chancellor's Advisory Committee on Statute Law (LCACSL): *see* Index to the Statutes, 1235-1990 (1992, HMSO, London), Vol. I, Preface, and Vol. II at 2186, 2187. The Advisory Committee functioned from 1991 until abolition in late 2006. At that point the new web-based Statute Law Database went live, replacing the need for hard copy printed volumes of text.

[107] By the Statute Law Revision Act 1958 the formula had widened out to capture four ingredients: obsolete, spent, superseded or unnecessary – a formula which continued through to the Statute Law Revision (Northern Ireland) Act 1980.

[108] *See* Marshall, *supra* note 89, at 1407.

[109] *Id.*, at 1410 for a comprehensive list of the alterations which colonial commissioners were ordinarily permitted to undertake in this process.

G. W. Bartholomew endorsed this notion. He indicated that the purpose of revision was to make legislation "easily available in a readily accessible form," and that meant it needed to be "up-to-date, comprehensive, concise, and readily available", omitting the "dead wood" of the statute book.[110] Bartholomew believed there were two mechanisms for revision: the ad hoc and the comprehensive approach. The former was less radical and involved reprinting statutes with both previous amendments and minor revisions (prefaced by revision Acts to clear the way of all expired, spent or non-effective enactments).[111] The latter involved the publication of the complete statute book in a "collected" or "revised" edition.[112]

The difficulty – which is central to this article – is ascertaining what the difference is between revision statutes and repeal statutes, and whether there is any overlap. Certainly, the UK parliamentary joint committee must decide into which category a Bill falls before it can remove such a Bill from the floor of the Houses. Halsbury's Laws gives a pointer. It says that "[t]he purpose of [a repeals Act] is wider than that of a Statute Law Revision Act and is to promote the reform of the statute law by the repeal of enactments which are no longer of practical utility."[113] Whether the description "wider" is strictly accurate will be canvassed later. Halsbury acknowledges that one of the underpinning purposes behind revision (and reform) was simplification of the statute book to facilitate publication of revised editions of the statutes. And, in so doing, statute law revision Acts were designed not to alter the existing law but simply to "strike […] out certain enactments which have become unnecessary."[114]

III. Savings Formulae

From the outset, revision statutes recognised the dangers of wholesale repeal, and the need to preserve the effect of transactions which had been undertaken in reliance on the statutory provision now being repealed. As indicated above, some limited form of saving was formulated for the first two revision Acts; but, from the 1863 Act onwards, the savings clause became progressively more sophisticated (and lengthy and complex).[115]

The more sophisticated form was developed by Lord Westbury, LC in order to prevent a "substantive alteration" to the existing law by mere repeal.[116] But there were unforeseen dangers attached. First, let us examine the ingredients of the clause in its final form. It provided that repeal would not affect -

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110 G. W. Bartholomew *Statute Law Revision*, 1 Hong Kong Law Journal 274, at 274 (1971).

111 *Id*., at 275.

112 In this context, Bartholomew, *supra* note 110, at 276, viewed Statutes Revised as a collected rather than a revised edition, because the compilers of the publication were not statutorily authorised of their own volition to repeal earlier statutes or to make amendments.

113 *See* Halsbury's Laws, Vol. 44(1) (4th edition 1995), at 724, para. 1227. Halsbury cites 302 HL Official Report (5th series), cols 311-318.

114 *See Robins v Robins*, [1907] 2 KB 13 at 17 per Joyce, J.

115 The savings provisions seem to have reached their most elaborate form by the Statute Law Revision Act 1892: *see* Appendix C to this work.

116 The formula adopted contained "very special terms" so as to "preclude any apprehension

- the force or construction of any statute, whether for the past or the future [this was not in the 1863 Act]
- any previous repeal or revivor or perpetuation of an enactment [this was in the 1863 version]
- any enactment in which the repealed statute has previously been applied or incorporated [this was in the 1863 version]
- any Crown right to "hereditary revenues" or their collection [this was not in the 1863 Act]
- the validity or consequence of things done, or any rights, titles or liabilities accrued (or any remedy), or any release or indemnity [this is an expanded version of the 1863 Act provision]
- any principle of law or the nature of any statute, or any jurisdiction, or any "usage, franchise, liberty, custom, privilege" or any form of benefit (or "any prospective right") previously recognised [as in the 1863 Act, but expanded]
- nor would revive, any jurisdiction or "franchise, liberty, custom" or the like which had previously ceased to exist [this was in the 1863 version], nor
- any enactment in force in any overseas dominion (unless specifically overridden) [and this was new].

Several of these provisions became otiose with the enactment of the Interpretation Act 1889.[117] But the main difficulty lay in their sheer complexity, which became the subject of judicial scrutiny. The revision Act of 1883 caused some particular problems.[118] In *Winfield v Boothroyd* (1886)[119] the Divisional Court wrestled with the extent to which provisions originally contained in the Common Law Procedure Act 1854 (repealed) were kept alive in the later Judicature Act 1873. The suggestion was made in argument that the Statute Law Revision Act 1883 repeal was negated by rules of court of the same date. Wills, J held (amongst other things) that the 1883 Act was not material – but he went on to say that "[i]t is very difficult to interpret the saving clause" within section 5(b) of the Act.[120] The clause (he said) "seems almost wide enough in language to preserve everything swept away by the repealing Act". The statute itself "seems to be an Act the professed object of which is to pave the way for a revised edition of the

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of a substantive alteration of the law": *see* P. M. McDermott, *Survival of Jurisdiction under the Chancery Amendment Act 1858 (Lord Cairn's Act)*, 1987 Civil Justice Quarterly 348, at 354, citing Report of the Law Reform Commission on the Application of Imperial Acts (LRC 4), Parliament of New South Wales (Nov 1967), at 33, 34, which reproduced a contemporaneous note attached to the 1863 Bill.

[117] *See* now the replacement Interpretation Act 1978 (c.30), and particularly sections 15-17 which deal with repeal of a repeal (not revived); general savings; and repeal and re-enactment.

[118] *See* the Statute Law Revision and Civil Procedure Act 1883 (c.49), ss 5, 6.

[119] (1886) 54 LT 574 (QBD), at 577.

[120] The clause reads: "The repeal effected by this Act shall not affect – (a) …; or (b) Any jurisdiction or principle or rule of law or equity established or confirmed, or right or privilege acquired, or duty or liability imposed or incurred, or compensation secured by or under any enactment repealed by this Act; or (c) …"

statutes."[121] As Peter McDermott said, "[i]n some instances it may be difficult to ascertain whether a repealed statute still has any operation" and it can be a problem identifying the extent of repeal.[122]

The dilemma surfaced again in 1924 in the *Leeds Industrial* case.[123] There, an 1858 Act[124] had been repealed by the revision Act of 1883,[125] with the section 5(b) proviso. Parts of the 1883 Act were then repealed by the 1898 revision Act,[126] but with a similar proviso. So, the issue was whether the original provision remained in force. Viscount Finlay prefaced his reasoning with the "truism that a Statute Law Revision Repeal was never intended to alter the law, but merely to remove from the Statute Book enactments which were obsolete or unnecessary". Against that backcloth, he formed the view that the 1883 Act had become unnecessary, and had been replaced by "some equivalent provision" (in the Judicature Act 1873).[127] The combined effect of the 1873 Act and the savings provision in the 1883 Act was that the earlier legal practice "remain[ed] unaltered". Put simply, "[t]hough the Act is gone, the law which it laid down still exists."[128]

Atiyah called this a "jungle of savings provisions,"[129] and McDermott cited the evidence of C.H. Chorley[130] to the effect that savings clauses of the Westbury complexity could operate "to nullify" the consequence of a repeal.[131] This meant that a savings clause could prevent a repealed statute from being entirely dead.[132] Bennion put this rather more tersely. If savings were the subject of "inept drafting," the repeal might be nullified, and the obsolete provision kept alive.[133]

IV. End Note

Suffice to say, then, that in the UK statute law revision Acts had their own hallmarks. They were promulgated with a view specifically to facilitating

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121 *See* (1886) 54 LT at 577.

122 *See* McDermott, *supra* note 116, at 140.

123 *See Leeds Industrial Co-operative Society Ltd v Slack*, [1924] AC 851 (HL) at 861-863.

124 The Chancery Procedure Amendment Act 1858 (known as Lord Cairn's Act).

125 Statute Law Revision and Civil Procedure Act 1883 (c.49), as above.

126 Statute Law Revision Act 1898 (c.22), s 1.

127 [1924] AC at 862.

128 [1924] AC at 863. A similar conundrum occurred in *Hanak v Green*, [1958] 2 QB 9 (CA) where Morris, LJ (at 22) had to hack his way through the thicket of a civil procedure repeals Act of 1879, the revision Act of 1883, and their respective savings provisions.

129 *See* Atiyah, *supra* note 22, at 11.

130 Of parliamentary counsel, who gave evidence before the Parliamentary Joint Committee in 1958.

131 *See* McDermott, *supra* note 116, at 355. The 1958 Joint Committee decided to drop the Westbury savings formula, so that the Statute Law Revision Act 1953 (c.5) was the last to carry it. Part of the reasoning was that the Interpretation Act 1889 provisions (now the 1978 Act) had long carried sufficient savings arrangements to make laborious repetition in a revision Act unnecessary (and confusing).

132 McDermott, *supra* note 116, at 140. In Australia (as McDermott notes) the reverse applied. Westbury savings were, on occasion, deliberately omitted from state legislation in order that there could be a substantial alteration in the law (both local law and imperial law): *Id*., at 142.

133 *See* F. A. R. Bennion Statutory Interpretation: A Code (1997), at 228, Section 89.

publication of Statutes Revised. They only worked (certainly at first) if they were shrouded in complex savings provisions, so that they did not inadvertently change the law. They were occasionally used as a vehicle for inserting more specialist procedural provisions into mainstream law. And, in the main, they went about their task of scything through the statute book systematically but chronologically, rather than by selecting and focussing on ring-fenced topics. In the following part we attempt to contrast this 'revisionist' approach with that adopted in other common law jurisdictions.

It is also worth mentioning one final factor. Although the Law Commissions adopted a new approach to repeal work from 1965 onwards, revision Acts continued to run alongside the repeals Acts beyond Great Britain.[134] In Northern Ireland, the devolved government of that province authorised the publication of Statutes Revised, Northern Ireland in 1956, with a second edition appearing in 1982.[135] The first edition was preceded by four Acts of the Parliament of Northern Ireland,[136] which specifically spoke of the need to facilitate publication of "a revised edition of the statutes affecting Northern Ireland"; and the second edition was preceded by three Acts of the UK Parliament,[137] which were designed to remove obsolete, spent, unnecessary or superseded enactments (although their underpinning purpose was not spelt out).

The new Northern Ireland Law Commission[138] is required to review the law with a view to, inter alia, the "elimination of anomalies" and "the repeal of legislation which is no longer of practical utility."[139] This latter requirement embraces the repeal formula used today in Great Britain rather than the revision approach used in connection with the compilation of Statutes Revised. Moreover, Statutes Revised (and the revision programme) have been superseded by the UK's electronic Statute Law Database, which now incorporates the Northern Ireland revised statutory text (although the maintenance of that text will be undertaken remotely by NISPO from Belfast).[140] So the concept of revision is now being replaced by repeal, with the consequences outlined earlier in this article.

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134 In both Northern Ireland and the Isle of Man. The Channel Islands ordinarily make their own arrangements. Great Britain means England, Wales and Scotland.

135 This still appears to be the current edition in 2008.

136 Statute Law Revision Acts (Northern Ireland) 1952 to 1954 (three Acts) and the Repeal of Unnecessary Laws Act (Northern Ireland) 1953 (c.5). These Acts each spoke of the repeal of Acts which had "ceased to be in force" or had "become unnecessary": *see* the various long titles.

137 Statute Law Revision (Northern Ireland) Acts 1973 (c.55), 1976 (c.12) and 1980 (c.59). In the periods 1972 to 1973, and 1974 to 2007 devolved government was in abeyance, and legislation was made either by direct-rule Order in Council or by Westminster statute in the UK Parliament. *See generally* http:/www.statutelaw.gov.uk/help/Background_Northern_Ireland.htm (last accessed 3 July 2008).

138 Operational from 2007, and established under the Justice (Northern Ireland) Act 2002 (c.26), s50.

139 *See* the 2002 Act, s51(b),(c). The Commission was also tasked with simplifying the law and modernising it generally, and was empowered to prepare "comprehensive programmes of consolidation and repeal of legislation".

140 NISPO is the Northern Ireland Statutory Publications Office.

Now we need to look at how statute law revision has developed beyond the shores of these islands, to see whether patterns can be deduced.

F. Revision Overseas

As we noted earlier, the concept of 'revision' (as an integral part of statute law reform) has taken on different meanings in different contexts. In the United States, for example, revision is a process which involves re-enactment of statutory law in order to produce a clarified statement of legislation, but with no substantive changes. In other words, it is a form of consolidation. In Pennsylvania in the late 1950s the effect of their revision programme had been not to replace the existing law, but "to continue the old law as changed" – in effect to consolidate the earlier amendments to create a cohesive text. It was more than repeal, even with savings.[141]

But the pace with which reform or revision could be undertaken was also a cause for concern. The removal of statutory obsolescence is never a simple or swift job although, as we shall see in the Irish context, there are ways of accelerating progress. In the States the courts were seen by some commentators as a means of putting pressure on legislators. There were calls for greater use of sunset clauses to ensure that the useful life of statutes was reviewed regularly. And some went further than that. Jack Davies[142] argued that, because it was constitutional for the legislature to provide an expiration date within a statute (making it "self-destructing"), it was also legitimate for the legislature to put a limitation on applicability which would make the enactment persuasive rather than binding.[143] That would leave the courts with the ability to modify or nullify the content of a statute after a set period, in effect putting statutory provisions into "semi-retirement".[144] But his principal concerns – leading to this radical approach – were twofold. First, he believed that in the common law world the style of drafting adopted (statutes written in detail) meant that "eventual obsolescence is inevitable."[145] And, secondly, he worried that there is no political imperative

[141] *See* hereon J. Fordham & C. Moreland, *Pennsylvania's Statutory Imbroglio: the Need of Statute Law Revision*, 108 University of Pennsylvania Law Review 1093 (1960), particularly at 1095, 1117. The difficulty at this time in the state was that a complete revision of the statute book was barred by a constitutional provision which required 'single subject' enactment in bills, so bills could not be promoted which sought to deal with a range of topics. Courts in other states had begun to find ways to subvert this restriction in their own state constitutions.

[142] Law professor, but also Minnesota state senator.

[143] Davies termed this the withdrawal of "legislative primacy", in the context of a formal separation of powers. *See* J. Davies, *A Response to Statutory Obsolescence: The Nonprimacy of Statutes Act*, 4 Vermont Law Review 203, at 225 and note 67 (1979).

[144] *Id.*, at 204. The period he had in mind was 20 years.

[145] *Id.*, at 229 (and note 76). Davies contrasted this with the civil law approach, where statutes could be given a "liberal interpretation" by the courts because the draftsmanship adopted "broad concepts and language."

to repeal: "obsolete and misconceived statutes stay on the books because no one requests that they be removed."[146] These concerns probably hold good today, particularly in the UK.

Davies was not allowed to get away lightly with his radical solution. In a response, Guido Calabresi[147] argued that constitutional nullification is inadequate an answer. The notion of a sunset approach to legislative obsolescence (with judicial override) was far too mechanical and far too inflexible. "[D]ifferent statutes age at different times."[148] Statutory lifespan often depends upon "factors extrinsic to the statute itself", such as technological advance or social or ideological change.[149] Enactments which (as Calabresi put it) "skate close to the constitutional line" are less deserving of long-term protection than others which fulfil a genuine need.[150] But none of this detracts from Davies' real concerns: drafting style (which is probably surmountable only in a limited way)[151] and political imperative. That there are no votes in repeal or consolidation still holds good today, probably the democratic world over.

I. Political Imperative and Ireland

Ireland is one exemplar of the political imperative at work. Haughey back in 1964 had said that – from a politician's perspective – statute law revision was the mechanism by which the yoke of former imperial power could be thrown off, and that the aim was to produce a revised edition of the statutes which expunged obsolete and unnecessary (British) enactments. By 2001 the political impetus (or the rhetoric) had changed. Statute law revision, as it was termed, became an integral part of the Republic's regulatory reform agenda. Legislation needed to be "more coherent and more easily accessible" for the people.[152] The concept of 'revision' embraced a combination of repeal of "spent" statutes and "modernisation" of existing statutes by a process of consolidation.[153] Regulatory reform in Ireland meant more than just improving the efficiency of the national economy; it meant also achieving "social justice,"[154] and that led to the new three-phase approach described earlier.[155]

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146 *Id.*, at 229.

147 Yale professor of law.

148 G. Calabresi, *The Nonprimacy of Statutes Act: a Comment*, 4 Vermont Law Review 247, at 253 (1979).

149 *Id.*, at 254, note 21.

150 *Id.*, at 253.

151 For instance, as discussed earlier in this article, the amendment of statutory text by the use of textual alteration or substitution rather than by a referential approach reduces the need for consolidation and for allied repeal. *See*, for example, the views expressed in the Renton Committee Report (1975).

152 *See* Donelan, *supra* note 85, at 332.

153 *Id.*, at 327 where the author says that "the term revision encompassed consolidation" (and hence the change of name of the Irish drafting unit – in 1999 – to reflect this conjoined notion).

154 *Id.*, at 330, citing the OECD Report on Regulatory Reform (June 1997).

155 The three-phase approach involved restatement, consolidation and publication of statutes revised. *See* Section D above.

Post-independence, Ireland promoted four 'revision' Acts and a 2002 Restatement Act. In 1922 article 73 of the then Constitution (followed by art. 50 of the 1937 Constitution) had carried forward laws from the United Kingdom, so that Ireland did not, as its Law Reform Commission put it, "begin life with a blank legislative canvas". Something in the order of 23,370 statutes shaped the new nation.[156] In 1962 the first revision Act was passed, repealing (in whole or in part) some 160 Acts from the pre-Union era (1800 and before).[157] This was a significant start. It was followed by Acts in 1983, 2005 and, most recently, 2007.[158] The criteria adopted within each of these Acts was whether they were spent (or had ceased to have effect), or had ceased to be in force, or had become unnecessary (a test on the lines of the pre-1965 UK revision Acts), and the overall aim was promotion of "revision of the statute law".[159]

The 2007 Act was the product of an enormous amount of preparatory work, and its approach is impressive.[160] For a start, the project ascertained that some 12,557 pre-1922 Acts had never applied to Ireland, but were languishing on the Irish statute book. Many had applied to former UK overseas colonies on the other side of the world. Over 9,200 Acts had already been repealed in the UK. The approach of the 2007 Act was different from its predecessors. It repealed all remaining pre-1922 Acts which were obsolete, and then (in a separate schedule) it set out at length a "definite list" of 1,364 (live) Acts which should be retained pending further investigation.[161] The result was that the state could say that its statute book was now delineated: it comprised some 1,300 pre-1922 statutes and some 2,000 autonomous statutes post-1921. It is still left with the difficulty, however, that Acts are interlinked and not easily separable. There is no "overarching framework" and amending Acts are superimposed on previous Acts.[162]

The Irish revision project is but a partial solution to full statute law reform. The solution was to be the three-phase approach described previously: restatement, consolidation and republication. 'Revision' (and pruning) in this context was the beginning of the catalytic chain, but – unlike in other jurisdictions – it was an integral part of that chain. And the 2007 Act did more. Not only did it repeal (the dead) and clarify the status of (the living) Acts, it contained savings arrangements, it assigned or amended short titles, and it made copies of Acts self-producing in court proceedings. So, in many ways, it was the first step towards the publication (electronically rather than in hard copy) of a rolling edition of statutes revised. And in this sense the notion of 'revision' is, for all practical purposes, the same as that aspired to in Victorian Britain. Publication of Statutes Revised there was designed to reflect the culmination of both revision and consolidation work.

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156 Law Reform Commission, *supra* note 78, at Ch.1, para 1.10.

157 Statute Law Revision (Pre-Union Irish Statutes) Act 1962, No.29/1962 (Ire).

158 Statute Law Revision Act 1983, No.11/1983 (Ire); Statute Law Revision (Pre-1922) Act 2005, No. 32/2005 (Ire); and Statute Law Revision Act 2007, No.28/2007 (Ire).

159 *See* preambles to each of the Revision Acts (Ire) cited above.

160 Other states, such as Western Australia, have travelled to Ireland to understand (and possibly learn from) the approach adopted there.

161 *See* Law Reform Commission, *supra* note 78, at Ch. 2, paras 2.03-2.05.

162 *Id.*, at Ch. 2, para. 2.06.

II. The Canadian Experience

Back in 1964, according to Marshall, the Canadian notion of statute law revision was simply about facilitating the publication of revised editions of the statutes, usually printing them in volumes distinguished by topic. Unlike in the UK system, the work of selection and editing was carried out by commissioners who acted under statutory delegated authority (in the relevant statute law revision Act).[163] The element of actual or substantive law reform was minimal. But the revision process was much more comprehensive in its approach than that adopted in the UK, either in its revision or its repeals phase, particularly in the Canadian provinces. Statute law revision became (as Duncan Berry put it) "a combination of consolidation; rewriting whenever necessary; and rearranging the various statutes and their respective contents."[164] This allowed for minor modification of the text (without alteration of substance), which would "preserve a uniform mode of expression" and reconcile "seemingly inconsistent enactments."[165]

The most modern revision authority in British Columbia stems from an Act of 1992.[166] That legislation permits the chief legislative counsel to undertake ten separate steps, ranging from combining Acts or provisions, altering the arrangements within Acts, adjusting language and style, making consequential amendments, omitting spent, repealed and ineffective Acts, and producing a supplement of enactments not yet in force. But the ultimate purpose behind this exercise is still to publish the revised legislation within a series called Revised Statutes of British Columbia.[167] The legal effect of those edited and periodically republished statutes is that they do "not operate as new law but [have] effect and must be interpreted as a consolidation of the law" contained in the replaced provisions.[168] The political imperative is less evident in this scenario. It is, though, about more than clearing the dead wood (which, at best, is only a partial solution).

III. The Australian Experience

Marshall believed that the process of statute law revision embraced limited elements of law reform, operating on an upward sliding scale. Thus, at the bottom was the minimalist approach with repeal and minor amendment. This was really only an exercise to "clear the decks" in readiness for a more comprehensive revision. In the middle there was revision which embraced reforms "of a substantive and substantial (and not merely ancillary) nature."[169] And at the

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[163] *See* Marshall, *supra* note 89, at 1415.

[164] *See* D. Berry, *Keeping the Statute Book up-to-date – A Personal View,* 2007 The Loophole 33, at 39, 47. Mr Berry is consultant parliamentary counsel in Ireland.

[165] *Id.*

[166] *See* Statute Revision Act, SBC 1992, c.54. (reprinted as the Statute Revision Act RSBC 1996, c.440, in the Revised Statutes of British Columbia).

[167] *See* Statute Revision Act RSBC 1996 c.440, ss 2, 6.

[168] *Id.*, s8. *See generally* hereon J. Erasmus, *Statute Revision in British Columbia – Recent Developments from a Jurisdiction with a Long History of Statute Revision,* 2007 The Loophole 50.

[169] As occurred in British Honduras (as it then was).

summit was the revision of "basic law" within a territory in such a way that it "fundamentally changed".[170] The Australian approach fell into the minimalist category, along with the UK and the other older dominions.

Berry analysed the Australian position more recently and in greater detail. His conclusion was that a considerable amount of revision work had been undertaken, and that that work was more than minimalist. Thus in New South Wales, where the various methods of legislating had been "piled one upon the other", the first Revision Act of 1898 – using a "carefully drawn savings clause" – removed a swathe of statutes whose shelf-life had long expired.[171] This led in due course to a system of official reprints (by a commercial publisher) with textual amendments made by subsequent enactments. In other words, this revision transmogrified into a combination of consolidation and reprint. Similarly, in Western Australia the state adopted a mechanism of pure consolidation (which it called "compilation") and reprint. The label 'revision' was not attached to this process.

The Australian Commonwealth adopted a different and more purist approach for federal legislation. The Statute Law Revision Act 1934 (the first after the Commonwealth's formation in 1901) was designed as a tidying-up mechanism with one view in mind – the publication of reprints of Acts as amended (from 1936 onwards). Today the reprint continues as a 'rolling reprint', printing Acts as and when they are amended, and gathering them together in a looseleaf collection.[172] Revision, then, is not that many miles away from the 19th century approach in the UK.

G. Mopping-up: Analysis and Conclusion

The purpose behind this article was to gain an understanding of what 'statute law revision' was (and is) all about. And, more particularly, it was about seeking to define a fairly intangible notion, using both negative and positive inferences. So now is the moment when the various threads need to be drawn together in a meaningful way.

I. Analysis

The starting point, as explained in Section A, was to map the various statute law reform mechanisms, and to define (so far as practicable) their constituent elements. Having done that, a form of genetic diagram could – in theory at least – be mapped which might illustrate how the mechanisms differed from one another and, indeed, where there were (and are) similarities. It is useful to start here by recapping on the mechanisms and their key ingredients. We will then need to look

[170] As occurred in Aden and in Western Nigeria (as they then were). *See* Marshall, *supra* note 89, at 1429, 1430.
[171] *See* Berry, *supra* note 164, at 35.
[172] *Id.*, at 38.

a bit deeper to understand whether there are distinctions to be drawn between purpose (on the one hand) and criteria (on the other).

We reviewed at the outset the mechanisms for housekeeping the statute book presently used within the UK: consolidation and repeal. Consolidation has been a developing tool. It started life as a mechanism for pulling together disparate but linked older statutes on a single topic or theme – statutes which had become difficult to use, principally because amendments had been heaped on amendments. The mischief at which this was aimed has not changed today. Statutes, with ever-increasing complexity and length, continue to amend other statutes so that, without some form of database, the professional reader (not to mention the lay reader) would spend hours fathoming-out how a particular Act actually works, and which parts were in force or were amended, and which were not.

But, as we have seen, consolidation progressed through a series of stages – from 'pure', with practically no amendment, through the 1949 Act procedure, where 'minor' amendment was permitted, and on to the Law Commission era where more radical amendment (falling short of substantive change to the law) became the norm. The purpose behind consolidation was quite straightforward. It was to effect a piecemeal change in the statute book, with a view to making the statute law encompassed within the particular consolidation more readable, more logically ordered and, as a consequence, more accessible to users – professional, parliamentary and citizen alike. In this it has been demonstrably successful, but it has not produced a shortened (or even less complex) statute book. The watchwords 'precise' and 'concise' do not always run in constant harmony.

The criteria underpinning consolidation are far harder to define. Consolidation is needed when the material within its remit has ceased to be comprehensible (because of the amendments made to it), or rationally ordered, or drafted in modern user-friendly language. The legislation needs to be put in, as Alec Samuels put it, "single reorganised form". Consolidation was defined as "the process of combining the legislative provisions on a single topic into one coherent enactment."[173] That process can be a precursor to later – often much later – codification.

The second modern mechanism is the promotion of repeals bills. Today, in Great Britain, they are designed to identify and remove from the statute book material which has lost practical utility, usually through obsolescence. The repeals encompass both the whole and parts of enactments, and they are designed to be entirely uncontroversial. The exercise is not about removing live law from the statute book, or making any substantive alteration to the law (although it is necessary to make minor consequential amendments on occasion). The process is designed to be neutral. Its purpose, then, is to remove dead material from the statute book so that the reader knows that the enactments which she or he is reading have current value (and that the text does not include repealed statutes). But what

[173] *See* Law Commission's First Programme on Consolidation and Statute Law Revision Law Com. No.2 (1966, HMSO, London), at 3, para. 2, cited by Bridge (1970 article, above) at 463.

the exercise does not do in itself is tell the user what remaining legislation is actually in force: legislation which has been commenced rather than allowed to lie dormant, legislation which is not spent or expired or 'sunsetted', for example.

The criteria adopted within the modern repeals process are different from those used in the earlier 'revision' projects. The notion of "no longer of practical utility", on one level at least, makes repeals a wider notion than revision. But, as we shall see, although repeals projects were (and are) designed to capture and remove a wider range of statutory anomalies, to label the mechanism per se as more effective than statute law revision is to fall into the error of superficiality.

Three other mechanisms were explored: rewrite, restatement and reprint. Rewrite is an innovation designed to produce a form of enhanced consolidation within a particular sphere of legal activity (such as taxation or social insurance). Its underlying purpose is essentially the same as consolidation, but the techniques employed are far more radical. It was designed to simplify (so far as was practicable, without sacrificing precision of meaning), to minimise detail, to produce intelligibility and reduce uncertainty. All of these things were to be accomplished via a consolidation process which, on occasion at least, had to balance the conflicting demands of making minimal amendment to existing substantive law whilst, at the same time, not interfering with fundamental policy principles.

Restatement and reprint are interesting, and important, mechanisms in their own right. They have not, certainly thus far, been employed within the UK, although it might be said that production of the electronic Statute Law Database falls within the second category. Neither of these techniques helps in our quest to define the true extent of statute law revision. Although undertaken with parliamentary authority, restatement is in essence an administrative consolidation which effects no change to the substantive law and which cannot repeal obsolete material. It has never been seen as a comprehensive solution to statute reform. But it does inject transparency and legibility into the statute book.

Reprint is at the bottom of the heap. It is a useful but, critically, an auxiliary tool. It produces a readable and up-dated statutory text (taking on board previous amendments), but it lacks parliamentary authority or recognition by the courts, and it falls far short of even 'pure' consolidation. Its principal benefit is speed of production.

Revision, certainly in the UK today, is less in favour as a vehicle for statute law reform. As has been shown earlier, its principal purpose was a culling of the statute book of obsolete enactments in order to facilitate production of editions of Statutes Revised, or the like. But because it focussed in the main on repeal of enactments, often with complex savings provisions, and it did not tie-in with a systematic programme of consolidation, the resulting product was bound to be something less than a comprehensive overhaul of the statute book. Nonetheless, it did make possible three editions of Statutes Revised from 1885 down to 1950 (and beyond to 2006), and as a mechanism it survived for two parts of the United Kingdom – Northern Ireland and the Isle of Man – until the early 1990s. Indeed, but for the formation of the Northern Ireland Law Commission with its updated terms of reference, the notion of 'revision' might have survived there to this day.

Likewise, the position in Ireland and Canada was that revision was used to prune the statute book of obvious dead wood and to facilitate the production of a more accessible rolling edition of statutes in revised format.

Where 'revision' came a second best to 'repeal' was in the criteria employed to deliver the product. In its latest incarnation in the UK, revision focussed on the repeal of statutes which had demonstrated themselves to be obsolete (which looks like a variant on 'ceased to be in force'), spent, unnecessary or superseded. The post-1965 approach dropped these criteria and substituted the wider notion of 'no longer of practical utility'.[174] By contrast, in Ireland and especially in Canada, revision took on a wider meaning. It was not just about repealing the obsolete; it went hand-in-hand with consolidation, rewriting, internal rearrangement and restructuring, and textual reconciliation (without making any substantive amendment of existing law or policy). Essentially this is the modern format for revision in Westminster-style democracies.

Put in tabular form, pictures seem to emerge. This does not seem to have been done previously in any published academic work.

First, an analysis of the differing purpose behind each of the statute reform mechanisms looks like this:

Table 1

Statutory mechanism	Purpose
Consolidation ('pure', with minor amendment, and with more radical amendment)	To amalgamate existing statutory text, dealing with a single topic, in a single and coherent statute
Repeal	To remove from the 'live' statute book enactments which are obsolete, and to promote reform of statute law
Rewrite	To produce a form of enhanced consolidation, whereby existing enactments are amalgamated and updated with parliamentary authority
Restatement	To effect a consolidated text of existing enactments as an administrative exercise, without affecting existing law (either by amendment or repeal)
Reprint	To produce an informal updated statutory text (often by topic)
Revision (UK and overseas)	To facilitate the production of revised editions of the statutes (chronologically or by topic) by repealing the obsolete and running in parallel with programmes for statutory consolidation and restructuring

Then, an examination of the delivery criteria which underpin each of these mechanisms produces something like this:

[174] *See* Appendices B and C to this article for tables showing the criteria used in UK 'repeals' statutes and 'revision' statutes. The criteria should, of course, be distinguished from those used in programme Bills, where repeal is both an integral part of substantive law amendment and necessary to prevent duplication of provision or conflict between the old (now superseded) and the new.

Table 2

Statutory mechanism	Criteria
Consolidation ('pure', with minor amendment, and with more radical amendment)	Enactments which have been subjected to complex amendment, which have been supplemented by related enactments, which contain obsolete material, and which need logical re-ordering
Repeal	Removal from the statute book of enactments (in whole or in part) which no longer have practical utility
Rewrite	As with consolidation (above), but involving the rewriting and reordering of complex statutory material which is outdated
Restatement	Pulling together of existing statutory material which has been amended piecemeal to produce a comprehensive text (but without removing obsolete material, unless formally repealed)
Reprint	Reprinting statutes as amended
Revision (UK and overseas)	Removal from the statute book of enactments (in whole or in part) which are obsolete, spent, unnecessary or superseded (but, non-UK, in tandem with programme of consolidation and restructuring)

This analysis begins to demonstrate that statute law revision (as a version of statute law reform) has its own attributes, and is distinguishable from the other mechanisms in use. Put simply, 'revision' is not the same as either repeal or consolidation.

II. Conclusion

The hypothesis upon which this article is based is that statute law revision, in the United Kingdom, is a mechanism designed to facilitate production of revised editions of statutes – but that it also delivered (or was capable of delivering) more than the sum of the techniques in use today. That assertion does appear correct. Revision, when viewed from the perspective of the criteria employed to deliver it, was narrower a mechanism than the stand-alone repeals mechanism now in use.[175] But when viewed from the purposive standpoint, the opposite is clear. Revision was designed, in the UK, to facilitate delivery of revised editions of statutes – initially in multi-volume editions, then in looseleaf form and, eventually (well beyond the ken of the Victorian pioneers), in electronic web-based form. And when the concept of 'revision' took root beyond these shores, in Ireland and Canada and in many British overseas possessions, it flourished in a different way. It became the vehicle for statute law reform, running alongside consolidation and other techniques designed to produce a genuinely restructured and modernised statute book. In these territories the authorities had another challenge. They had to reconcile their local-made law with the overlaid imperial law, and had to ensure that the statute book was shorn of conflicting and ambiguous material. This was no easy task.

[175] Using Statute Law (Repeals) Bills over, ordinarily, a four-year cycle. These Bills repeal outdated legislation by topic (but marshalling the enactments within the relevant topic chronologically).

So when, in late 2007, the Law Commission reviewed the right labelling for the work that it was undertaking in the field of stand-alone repeals it concluded, correctly, that the designation 'revision' for its specialist unit was no longer appropriate: instead, in line with the Bills it researched and promoted, it should be called the Statute Law Repeals team. Although the Law Commissions Act 1965 empowered the Commission to undertake 'revision' work, it was "the repeal of obsolete and unnecessary enactments" provision, now with its 'no practical utility' focus, that properly reflected the work undertaken.[176]

We may have started on a biblical note, but it is right to end with a word from Lord Thring, dubbed by some the 'high priest' of parliamentary drafting.[177] Thring was adamant that referential amendment was wrong because it involved "passing an Act which cannot be understood without referring to the enactments contained in some other Act," even though the underlying purpose was to speed the progress of Bills through parliament "by partially withdrawing from the consideration of the legislature the subject-matter with which it has to deal." Had he been alive today he would have echoed the continuing concerns of the Renton Committee. Thring said "[s]uch a system is calculated to make Acts of Parliament unintelligible to the ordinary reader, who is, nevertheless, called upon to obey the law."[178] Complex amendment was anathema to him. It made consolidation all the more difficult and, for us, it highlights the need for regular statute law revision in whatever form is appropriate within our own jurisdictions and traditions.

Appendix A[179]

Consolidation Acts passed since the Law Commission began in 1965

- Mines (Working Facilities and Support) Act 1966 c.4
- Sea Fisheries Regulation Act 1966 c.38
- Plant Health Act 1967 c.8
- General Rate Act 1967 c.9
- Forestry Act 1967 c.10
- Teachers' Superannuation Act 1967 c.12
- Development of Inventions Act 1967 c.32
- Air Corporations Act 1967 c.33
- Industrial Injuries and Diseases (Old Cases) Act 1967 c.34

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[176] *See* Law Commissions Act 1965 (c.22), s 3(1), cited previously, and the Law Commission's Annual Report 2007-08 (Law Com No. 310).

[177] *See*, for example, *Editorial Henry Thring – A Hundred Years On*, 28 Statute Law Review iii (2007). Thring (1818-1907) was appointed first head of the Office of Parliamentary Counsel in London in 1869, which he held until retirement in 1886. He was, in every sense, the mentor for modern-day legislative drafting.

[178] *See* Lord Thring, Practical Legislation (1902), Ch. 2, at 55, 56.

[179] This Appendix A is based on a list of statutes consolidated, produced by the office of the Senior Parliamentary Counsel within the Law Commission for England and Wales. The list is reproduced with the kind permission of Senior Parliamentary Counsel. Appendices B and C below are based on original research work by the present writer.

- Advertisements (Hire-Purchase) Act 1967 c.42
- Road Traffic Regulation Act 1967 c.76
- Sea Fisheries (Shellfish) Act 1967 c.83
- Sea Fish (Conservation) Act 1967 c.84
- Provisional Collection of Taxes Act 1968 c.2
- Capital Allowances Act 1968 c.3
- Criminal Appeal Act 1968 c.19
- Courts-Martial (Appeals) Act 1968 c.20
- Criminal Appeal (Northern Ireland) Act 1968 c.21
- Rent Act 1968 c.23
- Export Guarantees Act 1968 c.26
- Firearms Act 1968 c.27
- Customs Duties (Dumping and Subsidies) Act 1969 c.16
- Trustee Savings Banks Act 1969 c.50
- Late Night Refreshment Houses Act 1969 c.53
- Taxes Management Act 1970 c.9
- Income and Corporation Taxes Act 1970 c.10
- Sea Fish Industry Act 1970 c.11
- Guardianship of Minors Act 1971 c.3
- Vehicles (Excise) Act 1971 c.10
- Hydrocarbon Oil (Customs and Excise) Act 1971 c.12
- Coinage Act 1971 c.24
- National Savings Bank Act 1971 c.29
- Attachment of Earnings Act 1971 c.32
- Prevention of Oil Pollution Act 1971 c.60
- Tribunals and Inquiries Act 1971 c.62
- Town and Country Planning Act 1971 c.78
- Local Employment Act 1972 c.5
- Summer Time Act 1972 c.6
- Road Traffic Act 1972 c.20
- Betting and Gaming Duties Act 1972 c.25
- Contracts of Employment Act 1972 c.53
- Land Charges Act 1972 c.61
- National Debt Act 1972 c.65
- Poisons Act 1972 c.66
- Costs in Criminal Cases Act 1973 c.14
- Matrimonial Causes Act 1973 c.18
- Independent Broadcasting Authority Act 1973 c.19
- Powers of Criminal Courts Act 1973 c.62
- Slaughterhouses Act 1974 c.3
- Legal Aid Act 1974 c.4
- Juries Act 1974 c.23
- Friendly Societies Act 1974 c.46
- Solicitors Act 1974 c.47
- Insurance Companies Act 1974 c.49

- Supply Powers Act 1975 c.9
- Social Security Act 1975 c.14
- Social Security (Northern Ireland) Act 1975 c.15
- Industrial Injuries and Diseases (Old Cases) Act 1975 c.16
- Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975 c.17
- Social Security (Consequential Provisions) Act 1975 c.18
- House of Commons Disqualification Act 1975 c.24
- Northern Ireland Assembly Disqualification Act 1975 c.25
- Ministers of the Crown Act 1975 c.26
- Ministerial and other Salaries Act 1975 c.27
- Nursing Homes Act 1975 c.37
- Export Guarantees Act 1975 c.38
- Salmon and Freshwater Fisheries Act 1975 c.51
- Iron and Steel Act 1975 c.64
- Recess Elections Act 1975 c.66
- Airports Authority Act 1975 c.78
- Fatal Accidents Act 1976 c.30
- Legitimacy Act 1976 c.31
- Lotteries and Amusements Act 1976 c.32
- Restrictive Practices Court Act 1976 c.33
- Restrictive Trade Practices Act 1976 c.34
- Police Pensions Act 1976 c.35
- Adoption Act 1976 c.36
- Resale Prices Act 1976 c.53
- Land Drainage Act 1976 c.70
- Supplementary Benefits Act 1976 c.71
- Agricultural Holdings (Notice to Quit) Act 1977 c.12
- British Airways Board Act 1977 c.13
- Rent Act 1977 c.42
- Protection from Eviction Act 1977 c.43
- National Health Service Act 1977 c.49
- Commonwealth Development Corporation Act 1978 c.2
- Refuse Disposal (Amenity) Act 1978 c.3
- Northern Ireland (Emergency Provisions) Act 1978 c.5
- Export Guarantees and Overseas Investment Act 1978 c.18
- Oaths Act 1978 c.19
- Interpretation Act 1978 c.30
- Employment Protection (Consolidation) Act 1978 c.44
- Customs and Excise Management Act 1979 c.2
- Customs and Excise Duties (General Reliefs) Act 1979 c.3
- Alcoholic Liquor Duties Act 1979 c.4
- Hydrocarbon Oil Duties Act 1979 c.5
- Matches and Mechanical Lighter Duties Act 1979 c.6
- Tobacco Products Duty Act 1979 c.7

- Excise Duties (Surcharges or Rebates) Act 1979 c.8
- Wages Councils Act 1979 c.12
- Agricultural Statistics Act 1979 c.13
- Capital Gains Tax Act 1979 c.14
- International Monetary Fund Act 1979 c.29
- Exchange Equalisation Account Act 1979 c.30
- Prosecution of Offences Act 1979 c.31
- Sale of Goods Act 1979 c.54
- Justices of the Peace Act 1979 c.55
- Child Care Act 1980 c.5
- Foster Children Act 1980 c.6
- Residential Homes Act 1980 c.7
- Reserve Forces Act 1980 c.9
- Magistrates' Courts Act 1980 c.43
- Limitation Act 1980 c.58
- Overseas Development and Co-operation Act 1980 c.63
- Highways Act 1980 c.66
- English Industrial Estates Corporation Act 1981 c.13
- Public Passenger Vehicles Act 1981 c.14
- National Film Finance Corporation Act 1981 c.15
- Film Levy Finance Act 1981 c.16
- Judicial Pensions Act 1981 c.20
- Animal Health Act 1981 c.22
- Betting and Gaming Duties Act 1981 c.63
- New Towns Act 1981 c.64
- Trustee Savings Banks Act 1981 c.65
- Compulsory Purchase (Vesting Declarations) Act 1981 c.66
- Acquisition of Land Act 1981 c.67
- Broadcasting Act 1981 c.68
- Agricultural Training Board Act 1982 c.9
- Industrial Training Act 1982 c.10
- Civil Aviation Act 1982 c.16
- Iron and Steel Act 1982 c.25
- Aviation Security Act 1982 c.36
- Insurance Companies Act 1982 c.50
- Industrial Development Act 1982 c.52
- Representation of the People Act 1983 c.2
- Matrimonial Homes Act 1983 c.19
- Mental Health Act 1983 c.20
- Pilotage Act 1983 c.21
- Litter Act 1983 c.35
- Car Tax Act 1983 c.53
- Medical Act 1983 c.54
- Value Added Tax Act 1983 c.55
- Public Health (Control of Disease) Act 1984 c.22

- Registered Homes Act 1984 c.23
- Dentists Act 1984 c.24
- Road Traffic Regulation Act 1984 c.27
- County Courts Act 1984 c.28
- Food Act 1984 c.30
- Inheritance Tax Act 1984 c.51
- Building Act 1984 c.55
- Companies Act 1985 c.6
- Business Names Act 1985 c.7
- Company Securities (Insider Dealing) Act 1985 c.8
- Companies Consolidation (Consequential Provisions) Act 1985 c.9
- Cinemas Act 1985 c.13
- Reserve Forces (Safeguard of Employment) Act 1985 c.17
- Housing Act 1985 c.68
- Housing Associations Act 1985 c.69
- Landlord and Tenant Act 1985 c.70
- Housing (Consequential Provisions) Act 1985 c.71
- Weights and Measures Act 1985 c.72
- Agricultural Holdings Act 1986 c.5
- Insolvency Act 1986 c.45
- Company Directors Disqualification Act 1986 c.46
- Parliamentary Constituencies Act 1986 c.56
- Income and Corporation Taxes Act 1988 c.1
- Coroners Act 1988 c.13
- Road Traffic Act 1988 c.52
- Road Traffic Offenders Act 1988 c.53
- Road Traffic (Consequential Provisions) Act 1988 c.54
- Extradition Act 1989 c.33
- Opticians Act 1989 c.44
- Capital Allowances Act 1990 c.1
- Town and Country Planning Act 1990 c.8
- Planning (Listed Buildings and Conservation Areas) Act 1990 c.9
- Planning (Hazardous Substances) Act 1990 c.10
- Planning (Consequential Provisions) Act 1990 c.11
- Deer Act 1991 c.54
- Water Industry Act 1991 c.56
- Water Resources Act 1991 c.57
- Statutory Water Companies Act 1991 c.58
- Land Drainage Act 1991 c.59
- Water Consolidation (Consequential Provisions) Act 1991 c.60
- Social Security Contributions and Benefits Act 1992 c.4
- Social Security Administration Act 1992 c.5
- Social Security (Consequential Provisions) Act 1992 c.6
- Taxation of Chargeable Gains Act 1992 c.12
- Protection of Badgers Act 1992 c.51

- Trade Union and Labour Relations (Consolidation) Act 1992 c.52
- Tribunals and Inquiries Act 1992 c.53
- Charities Act 1993 c.10
- Clean Air Act 1993 c.11
- Radioactive Substances Act 1993 c.12
- Health Service Commissioners Act 1993 c.46
- Probation Service Act 1993 c.47
- Pension Schemes Act 1993 c.48
- Vehicle Excise and Registration Act 1994 c.22
- Value Added Tax Act 1994 c.23
- Drug Trafficking Act 1994 c.37
- Merchant Shipping Act 1995 c.21
- Shipping and Trading Interests (Protection) Act 1995 c.22
- Goods Vehicles (Licensing of Operators) Act 1995 c.23
- Police Act 1996 c.16
- Industrial Tribunals Act 1996 c.17
- Employment Rights Act 1996 c.18
- Education Act 1996 c.56
- School Inspections Act 1996 c.57
- Architects Act 1997 c.22
- Lieutenancies Act 1997 c.23
- Nurses, Midwives and Health Visitors Act 1997 c.24
- Justices of the Peace Act 1997 c.25
- Petroleum Act 1998 c.17
- Audit Commission Act 1998 c.18
- Powers of Criminal Courts (Sentencing) Act 2000 c.6
- European Parliamentary Elections Act 2002 c.24
- Wireless Telegraphy Act 2006 c.36
- Parliamentary Costs Act 2006 c.37
- National Health Service Act 2006 c.41
- National Health Service (Wales) Act 2006 c.42
- National Health Service (Consequential Provisions) Act 2006 c.43

Total no. of Acts: 220

Appendix B

Table of Statutes relating to 'statute law repeals' enacted since 1965 by UK Parliament on recommendation of Law Commissions

	Act Title	*Criteria*	*Facets*
1	Statute Law (Repeals) Act 1969 (c.52)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic) (first in repeals series); replacement provision enacted for Statute of Westminster 1285; various savings; territorial extent and N. Ireland saving; minor extension to C.Is and IoM
2	Wild Creatures and Forest Laws Act 1971 (c.47)	Abolition of certain prerogative rights & abrogation of forest law, repeal of enactments unnecessary or no longer of practical utility	Abolition of common law rights; repeals (chronological); various savings; territorial extent; N. Ireland saving
3	Statute Law (Repeals) Act 1971 (c.52)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); territorial extent; N. Ireland saving
4	Statute Law (Repeals) Act 1973 (c.39)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic) with savings; amendments to preserve certain effects; territorial extent and N. Ireland saving; power to extend to C.Is or IoM or any colony
5	Statute Law (Repeals) Act 1974 (c.22)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic) with savings; amendment to preserve certain effect; territorial extent and power to extend to C.Is or IoM
6	Statute Law (Repeals) Act 1975 (c.10)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); amendment by substitution; declaratory provision; territorial extent
7	Statute Law (Repeals) Act 1976 (c.16)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); amendments consequential on repeals; various savings notwithstanding the repeals; territorial extent and power to extend to C.Is or IoM or any colony
8	Statute Law (Repeals) Act 1977 (c.18)	To promote reform of statute law – enactments no longer of practical utility; to facilitate citation	Repeals (by topic); amendments consequential on repeals; saving; assigning of short titles for citation; territorial extent, incl. (in part) Hong Kong; power to extend to C.Is or IoM

	Act Title	*Criteria*	*Facets*
9	Statute Law (Repeals) Act 1978 (c.45)	To promote reform of statute law – enactments no longer of practical utility; to facilitate citation	Repeals (by topic); amendments consequential on repeals; assigning of short titles for citation; territorial extent and power to extend to C.Is or IoM
10	Statute Law (Repeals) Act 1981 (c.19)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); amendments consequential on repeals; territorial extent, incl. (in part) C.Is and IoM; power to extend to C.Is or IoM or any colony
11	Companies Consolidation (Consequential Provisions) Act 1985 (c.9), ss 28-30	In connection with consolidation – repeal of provisions of Companies Act 1948 no longer of practical utility	Various provisions in 1948 Act to cease to have effect; repeals (chronological) incl. whole of 1948 Act; amendments consequential on consolidation; territorial extent, excl. N. Ireland (but with N.I. saving)
12	Statute Law (Repeals) Act 1986 (c.12)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); consequential provisions; territorial extent, incl. N. Ireland; partial extension to C.Is or IoM; partial extension to any colony, with power to extend further to any colony
13	Statute Law (Repeals) Act 1989 (c.43)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); consequential provisions and savings; territorial extent, incl. N. Ireland and IoM; power to extend to C.Is or any colony; deferred commencement for Malaysian Act repeals
14	Statute Law (Repeals) Act 1993 (c.50)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); consequential and connected provisions (incl. consequential amendments), and savings; revivor of 1776 Enfield Act repealed by 1978 Act above; territorial extent, incl. N. Ireland and IoM; power to extend to C.Is or any colony; specific commencement provisions
15	Statute Law (Repeals) Act 1995 (c.44)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); consequential and connected provisions (incl. consequential amendments), and savings; territorial extent, incl. N. Ireland and IoM; power to extend to C.Is or any colony

	Act Title	*Criteria*	*Facets*
16	Statute Law (Repeals) Act 1998 (c.43)	To promote reform of statute law – enactments and instruments no longer of practical utility	Repeals and S.I. revocations (by topic); consequential and connected provisions (incl. consequential amendments), and savings; territorial extent, incl. N. Ireland and IoM; power to extend to C.Is or any colony; deferred commencement for two IoM repeals
17	Statute Law (Repeals) Act 2004 (c.14)	To promote reform of statute law – enactments (incl. measures) and instruments no longer of practical utility	Repeals and S.I. revocations (by topic); consequential and connected provisions (incl. consequential amendments), and savings; disregard of Act for Regulatory Reform Act 2001 purposes; territorial extent, incl. N. Ireland and IoM; power to extend to C.Is or any British OT
18	Statute Law (Repeals) Act 2008 (c.12)	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); consequential and connected provisions (incl. consequential amendments), and savings; territorial extent, incl. N. Ireland and IoM; power to extend to C.Is or any British OT
19	Statute Law (Repeals) Bill 2012 in early preparation	To promote reform of statute law – enactments no longer of practical utility	Repeals (by topic); consequential and connected provisions (as in 2008 Act above), and savings; territorial extent, incl. N. Ireland and IoM; etc.

Appendix C

Table of Statutes relating to 'statute law revision' enacted since 1850 by UK Parliament

	Act Title	*Purpose*	*Criteria*	*Facets*
1	19 & 20 Vict. c.64 (1856) (Repeal of Obsolete Statutes Act)	Not specified	Acts not in use	Repeals; included unspecified continuation Acts; saving for legal proceedings
2	Statute Law Revision Act 1861 (c.101)	Revised edition of statutes	Acts ceased to be in force	Repeals; savings for past operations and acts done, rights, titles, liabilities
3	Statute Law Revision Act 1863 (c.125)	Revised edition of statutes	Enactments ceased to be in force or become unnecessary	Repeals; England only; 'Westbury' savings first used, incl. non-effect on revivors and perpetuations, past operations

	Act Title	*Purpose*	*Criteria*	*Facets*
4	Statute Law Revision Act 1867 (c.59)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings incl. hereditary revenues of the Crown; territorial extent (excl. overseas Dominions)
5	Statute Law Revision Act 1870 (c.69)	Revised edition of statutes	Enactments ceased to be in force or consolidated	Repeals; related specifically to National Debt and Forgery; savings using different formula
6	Statute Law Revision Act 1871 (c.116)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings as per 1867 Act above
7	Statute Law Revision Act 1872 (c.63)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings; minor amendment to 1871 Act
8	Statute Law Revision Act 1872 (No.2) (c.97)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings
9	Statute Law (Ireland) Revision Act 1872 (c.98)	To make revised edition applicable to Ireland	Enactments ceased to be in force or become unnecessary	Repeals; Ireland only; shorter form of savings provision
10	Statute Law Revision Act 1873 (c.91)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings
11	Statute Law Revision Act 1874 (c.35)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings; revivor of 1815 Dublin Act repealed by 1873 Act above
12	Statute Law Revision Act 1874 (No.2) (c.96)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings; amendment to repeal provision in 1874 Act above
13	Statute Law Revision Act 1875 (c.66)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings; one repeal connected with passing of specific Act; revivor of an 1828 Act provision repealed by 1873 Act above

	Act Title	*Purpose*	*Criteria*	*Facets*
14	Statute Law Revision (Substituted Enactments) Act 1876 (c.20)	Not specified	Enactments repealed but provisions saved and substituted elsewhere	Complex repeals and specific substitution provisions; brief savings provision for past acts done
15	Statute Law Revision (Ireland) Act 1878 (c.57)	Revised edition of Irish statutes	Irish enactments spent, ceased to be in force, or become unnecessary	Repeals; shorter 'Westbury' savings
16	Statute Law Revision Act 1878 (c.79)	Revised edition of statutes	Enactments spent, ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings; revivor of various provisions repealed by 1873 & 1875 Acts above; minor amendment to repeal by 1875 Act above
17	Statute Law Revision (Ireland) Act 1879 (c.24)	Revised edition of Irish statutes	Irish enactments spent, ceased to be in force, or become unnecessary	Repeals; shorter 'Westbury' savings
18	Statute Law Revision and Civil Procedure Act 1881 (c.59)	Revision of civil procedure law	Enactments spent, or ceased to be in force, or become unnecessary, or superseded by other Acts, or for other reasons	Repeals; England & Wales only; different formulation of savings; non-revivor provision; extension of rule-making power
19	Statute Law Revision Act 1883 (c.39)	Revised edition of statutes – con-tinuation	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings
20	Statute Law Revision and Civil Procedure Act 1883 (c.49)	Revision of civil procedure law	Enactments spent, or ceased to be in force, or become unnecessary, or superseded by other Acts, or for other reasons	Repeals; England & Wales only; different savings, but shorter than 1881 Act above; non-revivor provision; extension of rule-making powers; application in lower civil courts
21	Statute Law Revision Act 1887 (c.59)	Revised edition of statutes – im-provement	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; 'Westbury' savings

	Act Title	*Purpose*	*Criteria*	*Facets*
22	Statute Law Revision Act 1888 (c.3)	Revised edition of statutes – improvement	Enactments with superfluous expressions, or spent, or ceased to be in force, or become unnecessary	Repeals; extension of Crown Office rules for outlawry; extended 'Westbury' savings
23	Statute Law Revision (No.2) Act 1888 (c.57)	Revised edition of statutes – improvement	Enactments with superfluous expressions, or spent, or ceased to be in force, or become unnecessary	Repeals; extended 'Westbury' savings; application in lower civil courts
24	Master and Servant Act 1889 (c.24)	Revised edition of statutes – improvement	Enactments, because of social conditions, ceased to be in force or become unnecessary	Repeals; reduced form of 'Westbury' savings
25	Statute Law Revision Act 1890 (c.33)	Revised edition of statutes – omissions	Enactments superfluous, or spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles; omission of certain Acts from revised edition; 'Westbury' savings; application in lower civil courts; amendment to repeal by 1888 (No.2) Act above
26	Statute Law Revision (No.2) Act 1890 (c.51)	Revised edition of statutes – omissions	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles; 'Westbury' savings; application in lower civil courts; omission of turnpike Acts from revised edition
27	Statute Law Revision Act 1891 (c.67)	Revised edition of statutes – omissions	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles; 'Westbury' savings; application in lower civil courts
28	Statute Law Revision Act 1892 (c.19)	Revised edition of statutes – omissions	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles; 'Westbury' savings (in most elaborate form contrasted to 1863); application in lower civil courts
29	Statute Law Revision Act 1893 (c.14)	Revised edition of statutes – omissions and substitutions	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles; 'Westbury' savings; application in lower civil courts; citation by short titles in revised edition (in substitution)

	Act Title	*Purpose*	*Criteria*	*Facets*
30	Statute Law Revision (No.2) Act 1893 (c.54)	Revised edition of statutes – omissions	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles; 'Westbury' savings; application in lower civil courts; substitution of repeal provision made by 1892 Act above
31	Statute Law Revision Act 1894 (c.56)	Revised edition of statutes – omissions	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles, and of enacting words; 'Westbury' savings; application in lower civil courts; substitution of repeal provisions made by 1888 (No.2) and 1892 Acts above
32	Statute Law Revision Act 1898 (c.22)	Revised edition of statutes – omissions	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles; 'Westbury' savings; application in lower civil courts; substitution of repeal provision made by 1893 Act above
33	Statute Law Revision (Scotland) Act 1906 (c.38)	Revised edition of statutes – omission	Enactments spent, or ceased to be in force, or become unnecessary	Repeals (Scotland not specified); omissions from titles or preambles; 'Westbury' savings; new extent of repeal provision
34	Statute Law Revision Act 1908 (c.49)	Revised edition of statutes – omission	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles; 'Westbury' savings; application in lower civil courts
35	Statute Law Revision Act 1927 (c.42)	Revised edition of statutes – omission	Enactments spent, or ceased to be in force, or become unnecessary	Repeals and deferred repeals; omissions from titles or preambles; 'Westbury' savings; application in lower civil courts; omission of enactments relating solely to Irish Free State

	Act Title	*Purpose*	*Criteria*	*Facets*
36	Statute Law Revision Act 1948 (c.62)	Revised edition of statutes – omission	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles, of enacting words and certain terms, of obsolete or unnecessary words, and of Dominion enactments; 'Westbury' savings (further expanded); application in lower civil courts; short title citations
37	Statute Law Revision Act 1950 (c.6)	Revised editions of statutes – omission	Enactments spent, or ceased to be in force, or become unnecessary	Repeals; omissions from titles or preambles, and of Dominion and N. Ireland enactments; 'Westbury' savings (expanded form); application in lower civil courts; provisions relating to N. Ireland revised edition of statutes; restriction of repeal provision made by 1948 Act above for N. Ireland
38	Statute Law Revision Act 1953 (c.5)	Revised editions of statutes – omission	Enactments spent, or ceased to be in force, or become unnecessary	Repeals (with new extent provision); omissions from titles or preambles in revised editions (incl. N. Ireland); 'Westbury' savings; application in lower civil courts; revivor of provisions repealed by 1950 Act above; N. Ireland savings
39	Statute Law Revision Act 1958 (c.46)	Not specified	Acts obsolete, or spent, or superseded, or become unnecessary	Repeals (with widened formula, distinguishing whole and partial); repeal of civil proceedings provisions; limited repeal of Government War Obligation Acts 1914-19; N. Ireland saving. N.B. No 'Westbury' savings
40	Statute Law Revision Act 1959 (c.68)	Not specified	Acts obsolete, or spent, or unnecessary, or superseded	Repeals (distinguishing whole and partial, the latter now by topic); N. Ireland saving
41	Statute Law Revision Act 1960 (c.56)	Not specified	Acts obsolete, or spent, or unnecessary	Repeals (by topic); saving for 1911 Railway Companies Act; N. Ireland saving

	Act Title	*Purpose*	*Criteria*	*Facets*
42	Statute Law Revision Act 1963 (c.30)	Not specified	Acts obsolete, or spent, or unnecessary, or superseded	Repeals (chronological); N. Ireland saving
43	Statute Law Revision Act 1964 (c.79)	Not specified	Acts and Measures obsolete, or spent, or unnecessary, or superseded	Repeals (by topic); N. Ireland saving
44	Statute Law Revision (Scotland) Act 1964 (c.80)	Revised edition of Scotland Acts (1908)	Scotland Acts obsolete, or spent, or unnecessary, or superseded	Repeals (chronological); short title citations; reference to 1908 revised edition
45	Statute Law Revision (Consequential Repeals) Act 1965 (c.55)	Not specified	Enactments repealed in consequence of coming into force of four consolidation Acts	Repeals (chronological); brief (but convoluted) savings provision; extended to N. Ireland
46	Statute Law Revision Act 1966 (c.5)	Not specified	Acts and Measures obsolete, or spent, or unnecessary, or superseded	Repeals (by topic); N. Ireland saving
47	Statute Law Revision (Northern Ireland) Act 1973 (c.55)	Not specified	Acts obsolete, or spent, or unnecessary, or superseded	Repeals (chronological); substitution of correct repeal for earlier mistaken repeal by a 1971 N. Ireland Act; territorial extent and N. Ireland saving
48	Statute Law Revision (Northern Ireland) Act 1976 (c.12)	Not specified	Enactments obsolete, or spent, or unnecessary, or superseded	Repeals (by topic); territorial extent; no savings
49	Administration of Justice Act 1977 (c.38), s 23 & Sch 4 and s 32(4) & Sch 5 Pt V (Ancient Courts)	Curtailment of jurisdiction of certain ancient courts (see Law Com No. 72, Feb. 1976)	Enactments obsolete or unnecessary	Cesser of legal jurisdiction of certain specified courts; repeals (by topic and chronological); saving for customary business; power to make incidental or transitional orders
50	Statute Law Revision (Northern Ireland) Act 1980 (c.59)	Not specified	Enactments obsolete, or spent, or unnecessary, or superseded	Repeals (by topic); territorial extent; no savings
51	Statute Law Revision (Isle of Man) Act 1991 (c.61)	Not specified	Extension to IoM of previous repeals of enactments, and new repeals	Repeals (unspecified enactments contained in SLR Acts 1861 to 1971); repeals (chronological); territorial extent (IoM only)

Note

See also in this context the Interpretation of Acts Act 1850 (13 & 14 Vict. c.21), s 5.