



THE LAW COMMISSION

(LAW COM. No. 28)

STATUTE LAW REVISION: SECOND REPORT

DRAFT WILD CREATURES AND FOREST LAWS BILL

*Presented to Parliament by the Lord High Chancellor
by Command of Her Majesty
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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Commissioners are—

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THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

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STATUTE LAW REVISION : SECOND REPORT

Draft Wild Creatures and Forest Laws Bill

To the Right Honourable the Lord Hailsham of Saint Marylebone, Lord High Chancellor of Great Britain

1. In performance of the duty imposed on us by section 3(1) of the Law Commissions Act 1965 of promoting the repeal of obsolete and unnecessary enactments and of simplifying and modernising the law we have prepared a draft Wild Creatures and Forest Laws Bill which accompanies this Report as Appendix 1 and an explanatory note on the contents of the draft Bill which is Appendix 2.

2. The draft Bill seeks to advance the process of statute law revision by repealing a number of enactments relating to forests and the forest law. It is, however, wider in scope than traditional Statute Law Revision Bills, which repeal spent or obsolete enactments, and is also wider than Bills (of which the Statute Law (Repeals) Act 1969 was an example) repealing enactments which no longer fulfil any useful purpose. Its scope is wider because in order to found the repeal of many of the enactments relating to forests and the forest law it is necessary to include a provision abolishing the forest law itself and any royal prerogative right to wild creatures.

3. The inclusion of such a provision, however, is not within the terms of reference of the Joint Committee on Consolidation (to which Consolidation and Statute Law Revision Bills are normally referred) as contained in the sessional resolution of both Houses of Parliament constituting the Committee. Accordingly the Bill cannot proceed as a Statute Law Revision or Statute Law (Repeals) Bill, but must take the form of an ordinary Law Reform Bill. We have included this report in our statute law revision series simply because it has been prepared pursuant to that part of our statutory functions.

4. The forestal rights of the Crown consisted essentially of the King's right to use land (called a forest), whether belonging to himself or another, for hunting game and for preserving the game and preserving the land in such a way as to give maximum shelter and free room for the game¹. In the early middle ages there was a special and rather oppressive body of law called forest law which applied to royal forests and was designed to protect these rights; it was enforced by a special organisation with special officers and special courts. The Norman and

¹ Manwood's Forest Laws (1598 Edn.) 1.

Angevin Kings tended to expand the areas used as forests to the detriment of their subjects living in or using the forests, and it was to restrict this tendency and to mitigate the severity of the forest law that the Charter of the Forest was granted and that much subsequent legislation about forests was passed.

5. By virtue of their prerogative right the Norman and Angevin Kings had granted certain franchises of preserving and hunting game on the grantee's own or another's land which were known as franchises of forest or free chase in the case of beasts of the forest or of chase on unenclosed land and franchises of free warren in the case of beasts and fowls of warren. There was also a franchise of park which consisted of the right to preserve and hunt beasts of the forest and of chase on the grantee's own enclosed land ; and for this a royal grant may at first have been needed only in the neighbourhood of royal forests.

6. The early medieval system is now obsolete. The forest organisation was in decay in the sixteenth century² and has not played even a formal part since the seventeenth. The only surviving feature is the existence of the verderers of the New Forest and the Forest of Dean, and the Crown has long ceased to enforce its prerogative in relation to game. Moreover it has for a long time been generally accepted that the sporting rights over any land belong to the owner of the land. We therefore think that the draft Bill is fully justified in abolishing these particular prerogative rights of the Crown and, with them, the related franchises of the forest law. A saving is included for the appointment and functions of the verderers of the New Forest and the Forest of Dean.

7. The Crown has also a prerogative right to royal fish, i.e., whales and sturgeons, which was confirmed by chapter 13 of the medieval statute of uncertain date concerning the royal prerogative. The Queen has indicated that she no longer wishes to retain this right in the case of whales and sturgeons. Indeed the public health disposal problem which arises when whales are washed on to the shore may require immediate action to be taken and it is inconvenient to have to seek royal approval. The Bill does not seek to abolish the royal prerogative right to swans.

8. Clause 2 defines the extent of the Bill's operation. With the agreement of the Scottish Law Commission subsection (2) applies to Scotland the only provisions of the draft Bill which can operate there, namely, the proposed abolition of the right to royal fish (which in Scotland means whales of large size) and the proposed partial repeal of the Night Poaching Act 1828.

9. Because the Northern Ireland Parliament has no power to legislate concerning Crown property subsection (3) of clause 2

² Preface to Manwood's *Forest Laws* (1598 Edn.)

extends the draft Bill to Northern Ireland. The prerogative right to wild creatures extends to Northern Ireland but the forest law does not, and of the scheduled enactments only the Confirmation of the Charters of 1297, the medieval statute of uncertain date concerning the King's prerogative and the statutes of 1405 and 1416 apply there.

10. In the preparation of the draft Bill, we have consulted, and obtained the agreement as respects the proposals which affect them of, among others, the Sovereign, the Royal Duchies of Cornwall and of Lancaster, the Government of Northern Ireland, your own Department, the Treasury Solicitor, the Crown Estate Commissioners, the Ministry of Agriculture, Fisheries and Food, the Forestry Commission, the Church Commissioners, the Charity Commissioners and the Remembrancer of the City of London.

11. We are grateful to Professor S. F. C. Milsom for help on historical questions in the preparation of this report.

(Signed) LESLIE SCARMAN, *Chairman.*

CLAUD BICKNELL.

L. C. B. GOWER.

NEIL LAWSON.

NORMAN S. MARSH.

J. M. CARTWRIGHT SHARP, *Secretary.*

27 June 1970.

APPENDIX 1

Wild Creatures and Forest Laws

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A.D. 1970

Abolish certain rights of Her Majesty to wild creatures and certain related rights and franchises; to abrogate the forest law (subject to exceptions); and to repeal enactments relating to those rights and franchises and to forests and the forest law; and for connected purposes.

BEIT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Abolition of prerogatives of the Crown as to wild creatures, and franchises derived therefrom.

1.—(1) There are hereby abolished— 5

(a) any prerogative right of Her Majesty to wild creatures (including royal fish but not including swans), together with any prerogative right to set aside land or water for the breeding, support or taking of wild creatures; and 10

(b) any franchises of forest, free chase, park or free warren.

(2) The forest law is hereby abrogated, except in so far as it relates to the appointment and functions of verderers.

(3) Any right of common originating in the forest law shall be free of restriction by reason of the fence month or the winter heyning or any payment in place of it, but the foregoing provision shall not affect the suspension or exclusion of any such right for the time being effected by or under any enactment or any limitations or restrictions for the time being imposed by or under any enactment on the exercise of any such right. 20

Wild Creatures and Forest Laws

(4) The enactments mentioned in the Schedule to this Act (being enactments which, or parts of which, are made unnecessary by subsections (1) and (2) above or, apart from those subsections, are no longer of practical utility) are hereby repealed 5 to the extent specified in the third column of that Schedule.

(5) Except as provided by subsection (3) above, no existing right of common or pannage originating in the forest law shall be affected by the abrogation of the forest law or by the repeal by this section of any enactment giving or confirming that right.

10 (6) Notwithstanding the abrogation by this section of the forest law or the repeal by this section of the Dean Forest Act 1667, verderers in the Forest of Dean shall continue to be elected and hold office as at the passing of this Act.

15 (7) The repeal by this section of section 13 of the Act 1 & 2 Geo. 4. c. 52 (powers of purchasers of forestal or other rights held in right of the Duchy of Lancaster) shall not affect the operation of that section in relation to any existing power to depute or appoint gamekeepers.

20 2.—(1) This Act may be cited as the Wild Creatures and Forest Laws Act 1970. Short title
and extent.

(2) Section 1(1) of this Act, so far as it relates to royal fish and the partial repeal by that section of section 2 of the Night Poaching Act 1828, extend to Scotland, but except as aforesaid this Act does not extend to Scotland.

25 (3) This Act extends to Northern Ireland and shall, as respects matters within the powers of the Parliament of Northern Ireland, be subject to alteration by that Parliament as if it had been an Act passed before the day appointed for the purposes of section 6 of the Government of Ireland Act 1920.

Wild Creatures and Forest Laws

Section 1.

SCHEDULE
ENACTMENTS REPEALED

Statute, etc.	Title, short title or subject	Extent of repeal
25 Edw. 1. (1297).	The Charter of the Forest.	The whole statute, so far as 5 unrepealed.
25 Edw. 1. (1297).	(Confirmation of the Charters).	In chapter 1, the words " and the Charter of the Forest ", where first occurring, and the words " and the Charter of the Forest for the wealth of our realm ".
33 Edw. 1. (1305).	An Ordinance of the Forest.	The whole statute.
34 Edw. 1. (1306).	An Ordinance of the Forest.	The whole statute, so far as 15 unrepealed.
[Of uncertain date.]	Of the King's Prerogative.	Chapter 13, so far as unrepealed.
[Of uncertain date.]	The Customs and Assise of the Forest.	The whole statute. 20
1 Edw. 3. Stat. 2. (1327).	(Botes in forest).	Chapter 2.
25 Edw. 3. Stat. 5. (1351).	(Limit on demand of puture in forest).	Chapter 7.
7 Hen. 4. (1405).	(Confirmation of Liberties).	The words " and the Charter 25 of the Forest ".
4 Hen. 5. Stat. 2. (1416).	(Confirmation of Charters and Statutes).	The words " and the Charter of the Forest ".
27 Hen. 8. c. 7. (1535).	An Act for the abuses in the forests of Wales.	The whole Act. 30
16 Chas. 1. c. 16.	The Delimitation of Forests Act 1640.	The whole Act.
19 & 20 Chas. 2. c. 8.	The Dean Forest Act 1667.	The whole Act, so far as unrepealed.
9 Will. 3. c. 33.	The New Forest Act 1697.	The whole Act. 35
39 & 40 Geo. 3. c. 86.	The New Forest Act. 1800.	The whole Act.
41 Geo. 3. (U.K.)c.108 (1801).	An Act for enabling His Majesty to grant commis- sions for executing an Act made in the 39th and 40th years of the reign of His present Majesty, intituled An Act for the better preservation of timber in the New Forest in the county of Southampton, and for ascertaining the boundaries of the said forest, and of the lands of the Crown within the same.	The whole Act. 40 45 50
48 Geo. 3. c. 72.	The Dean and New Forests Act 1808.	The preamble. Sections 1 and 2. In section 3 the words from the beginning to " be it 55 enacted that "; the words

Wild Creatures and Forest Laws

Statute, etc.	Title, short title or subject	Extent of repeal
5		“ and New Forest respectively ”; the words “ in the said forests respectively ” in both places; the words “ and six thousand acres in the New Forest ”, in both places; the words from “ and the quantities, butts and boundaries ” to “ of record for ever ”; and the words “ the said recited Acts and,” in both places.
10		In section 4 the words from “ the lord high treasurer ” to “ shall determine that ”; and the words “ the said recited Acts or ”.
15		Sections 5 and 7.
20	50 Geo. 3. c.116(1810).	The whole Act.
25	An Act to extend and amend the terms and provisions of an Act of the 39th and 40th years of His present Majesty for the better preservation of timber in the New Forest in the county of Southampton, and for ascertaining the boundaries of the said forest, and of the lands of the Crown within the same.	
30	50 Geo. 3. c. cccviii (1810).	The whole Act, so far as unrepealed.
35	An Act for disafforesting the forest of South, otherwise East Bere otherwise Bier, in the county of Southampton, and for inclosing the open commonable lands within the said forest.	
40	52 Geo. 3. c. 71 (1812).	The whole Act, so far as unrepealed.
45	52 Geo. 3. c. 72 (1812).	The whole Act, so far as unrepealed.
50	52 Geo. 3. c. clxxi (1812).	The whole Act, so far as unrepealed.
55	An Act for disafforesting the forest of Parkhurst in the county of Southampton, and for inclosing the open commonable lands within the said forest.	

Wild Creatures and Forest Laws

Statute, etc.	Title, short title or subject	Extent of repeal
53 Geo. 3. c. 158 (1813).	An Act for vesting in His Majesty certain parts of Windsor Forest in the county of Berks; and for inclosing the open commonable lands within the said forest.	The whole Act, except sections 75 to 79 and 89. 5
55 Geo. 3. c. 122 (1815).	An Act to amend an Act of the 53rd year of His present Majesty, for vesting in His Majesty certain parts of Windsor Forest, in the county of Berks; and for inclosing the open commonable lands within the said forest.	The whole Act. 10 15
55 Geo. 3. c. 138 (1815).	An Act for vesting in His Majesty certain parts of the forest of Exmoor in the counties of Somerset and Devon; and for inclosing the said forest.	The whole Act, so far as unrepealed. 20
55 Geo. 3. c. 190 (1815).	An Act to amend an Act made in the 48th year of His present Majesty, to improve the land revenue of the Crown, so far as relates to the Great Forest of Brecknock in the county of Brecknock; and for vesting in His Majesty certain parts of the said forest; and for inclosing the said forest.	The whole Act, so far as unrepealed. 25 30
56 Geo. 3. c. 132 (1816).	An Act for enlarging the time for making the award respecting His Majesty's allotments under an Act of the 53rd year of His present Majesty, for inclosing Windsor Forest; and for extending the provisions of the said Act.	The whole Act. 40 45
58 Geo. 3. c. 99 (1818).	An Act for altering and amending an Act made in the 55th year of His present Majesty, to amend an Act made in the 48th year of His present Majesty, to improve the land revenue of the Crown, so far as relates to the	The whole Act. 50

Wild Creatures and Forest Laws

Statute, etc.	Title, short title or subject	Extent of repeal
5	Great Forest of Brecknock, in the county of Brecknock; and for vesting in His Majesty certain parts of the said forest; and for inclosing the said forest.	
10 58 Geo. 3. c. 100 (1818).	An Act for vesting in His Majesty certain parts of the Hayes of Birkland and Billhagh, and of certain commonable lands and open uninclosed grounds in the township of Edwinstowe, within the forest of Sherwood, in the county of Nottingham.	The whole Act.
15 20 59 Geo. 3. c. 86 (1819).	An Act for regulating the exercise of the right of common of pasture in the New Forest, in the county of Southampton, for repealing certain parts of two Acts passed in the 39th and 40th and the 52nd years of His present Majesty; and for the better collection and recovery of the gale rents in the forest of Dean, in the county of Gloucester.	Sections 1 to 6.
25 30 35 1 & 2 Geo. 4. c. 52 (1821).	An Act to improve the land revenues of the Crown, and of His Majesty's Duchy of Lancaster, and for making provisions and regulations for the better management thereof.	Sections 12 and 13.
40 45 5 Geo. 4. c. 99 (1824).	An Act for dividing, allotting and inclosing that portion of the forest of Whittlewood called Hasleborough Walk in the parish of Whitfield and liberties or precincts of Silston otherwise Silverston otherwise Silveston Burnham in the county of Northampton, and of the open fields of Silston otherwise Silverston otherwise Silveston Burnham aforesaid.	The whole Act.
50		

Wild Creatures and Forest Laws

Statute, etc.	Title, short title or subject	Extent of repeal
6 Geo. 4. c. 132 (1825).	An Act for dividing, allotting, and inclosing the forest of Salcey, in the counties of Northampton and Buckingham; and of certain lands in the parish of Hartwell in the said county of Northampton.	The whole Act. 5
9 Geo. 4. c. 69.	The Night Poaching Act 1828.	In section 2, the words from "or for any person" to the words "free chase thereon". 10
10 Geo. 4. c. 50.	The Crown Lands Act 1829.	The whole Act, so far as 15 unrepealed.
1 & 2 Will. 4. c. 32.	The Game Act 1831.	In section 8 the words "of any lord or owner of any forest, chase or warren". Section 9 from "nor the 20 rights" where first occurring onwards. In section 31 the words "or upon any of His Majesty's forests, parks, chases or 25 warrens," and the words from "or for the warden" to "warren" where next occurring. In section 32 the words "or 30 in any of His Majesty's forests, parks, chases or warrens". Section 33. In section 35 the words 35 from "nor to any person" to "free chase," where last occurring. In section 36 the words "or 40 in any of His Majesty's forests, parks, chases or warrens", the words from "for any officer" to "warren or," and the words "forest, park, chase or 45 warren," where last occurring.
6 & 7 Will. 4. c. 3 (1836).	An Act for vesting the office of constable of the castle of St. Briavel's in the First Commissioner of His Majesty's Woods, Forests, Land Revenues, Works and Buildings; and for vesting the office of keeper of the forest of Dean in the	The whole Act. 50 55

Wild Creatures and Forest Laws

Statute, etc.	Title, short title or subject	Extent of repeal
5	county of Gloucester in the Commissioners of His Majesty's Woods, Forests, Land Revenues, Works and Buildings.	
1 & 2 Vict. c. 42.	The Dean Forest (Encroachments) Act 1838.	The whole Act, so far as unrepealed.
10 5 & 6 Vict. c. 65.	The Dean Forest Act 1842.	The whole Act.
7 & 8 Vict. c. 13 (1844).	An Act to extend until the 1st day of January 1845, and to the end of the then next session of Parliament the time within which conveyances may be made on behalf of the Crown of and disputes settled with regard to encroachments in the forest of Dean.	The whole Act.
15		
20	An Act to authorise Her Majesty to issue a Commission to inquire into and report upon rights or claims over the New Forest in the county of Southampton and Waltham Forest in the county of Essex.	The whole Act.
12 & 13 Vict. c. 81 (1849).		
25	An Act for disafforesting the forest of Hainault in the county of Essex.	The whole Act, so far as unrepealed.
14 & 15 Vict. c. 43 (1851).	The New Forest Act 1851.	The whole Act, so far as unrepealed.
35	The Whichwood Disafforesting Act 1853.	The whole Act, so far as unrepealed.
14 & 15 Vict. c. 76.	The Whittlewood Disafforesting Act 1853.	The whole Act, so far as unrepealed.
16 & 17 Vict. c. 36.	An Act for the settlement of claims upon and over the New Forest.	The whole Act.
40	An Act for disafforesting the forest of Woolmer.	The whole Act, so far as unrepealed.
17 & 18 Vict. c. 42.	The Whichwood Disafforesting Amendment Act 1856.	The whole Act.
40	The Hainault Forest (Allotment of Commons) Act 1858.	The whole Act.
17 & 18 Vict. c. 49 (1854).	An Act to make further provision for the management of Her Majesty's forest of Dean, and of the mines and quarries therein and in the hundred of Saint Briavel's in the county of Gloucester.	Section 25.
18 & 19 Vict. c. 46 (1855).		
45		
19 & 20 Vict. c. 32.		
21 & 22 Vict. c. 37.		
50		
24 & 25 Vict. c. 40 (1861).		
55		

Wild Creatures and Forest Laws

Statute, etc.	Title, short title or subject	Extent of repeal
29 & 30 Vict. c. 70 (1866).	An Act to extend the provisions for the inclosure, exchange and improvement of land in certain portions of the forest of Dean called Walmore Common and the Bearce Common, and for authorising allotments in lieu of the forestal rights of Her Majesty in and over such commons.	The whole Act, so far as unrepealed. 5
33 & 34 Vict. c. viii.	The Abbot's Wood (Dean Forest) Act 1870.	The whole Act, except section 9. 15
34 & 35 Vict. c. 93.	The Epping Forest Act 1871.	The whole Act. 10
35 & 36 Vict. c. 95.	The Epping Forest Amendment Act 1872.	The whole Act. 20
36 Vict. c. 5.	The Epping Forest Act 1873.	The whole Act.
38 Vict. c. 6.	The Epping Forest Act 1875.	The whole Act.
40 & 41 Vict. c. cxxi.	The New Forest Act 1877.	Section 5. In section 9, the words from the beginning to "winter heyning", where first occurring, and the words from "If default" onwards. 25 Sections 10 to 12. 30 In section 23(4) the words "purprestures" and "purpresture". 30
46 & 47 Vict. c. lxxxvi.	The New Forest Highways Act 1883.	The whole Act.
46 & 47 Vict. c. lxxxvii.	The East and West Dean (Highways) Act 1883.	The whole Act. 35
2 Edw. 7. c. cxviii.	The New Forest (Sale of Lands for Public Purposes) Act 1902.	The whole Act.
6 Edw. 7. c. cxix.	The Dean Forest Act 1906.	Section 1. 40
5 & 6 Eliz. 2. c. 56.	The Housing Act 1957.	Section 102.
8 & 9 Eliz. 2. c. 36.	The Game Laws (Amendment) Act 1960.	In section 2(1) the words "or section thirty-three". 45 Section 5(2).
9 & 10 Eliz. 2. c. 55.	The Crown Estate Act 1961.	In Schedule 2, paragraph 2(a).

APPENDIX 2

EXPLANATORY NOTE ON THE DRAFT BILL

1. *Paragraph (1) (a) of Clause 1* abolishes any prerogative right of Her Majesty to wild creatures including the right to royal fish, that is, whales and sturgeons but not the right to swans which are royal fowl. The paragraph also abolishes any prerogative right to set aside land or water for the breeding, support or taking of wild creatures.

2. Paragraph (1) (a) is the foundation for the repeal of some of the scheduled enactments relating to the forests which regulated the exercise of some of the prerogative rights described above, and of chapter 13 of the medieval statute of uncertain date concerning the King's prerogative which is a declaration of the common law that the Sovereign shall have whales and sturgeons taken in the sea or elsewhere within the realm.

3. The reference in paragraph (1) (a) to setting aside water is needed in order to abolish the prerogative right of "defending" rivers (see paragraph 4 below) which in a restricted form survived the enactment in 1297 of article 16 of the Confirmation of Magna Carta. This article was repealed by the Statute Law (Repeals) Act 1969.

4. The repealed article 16 of the Confirmation of Magna Carta (1297) provided that no rivers were to be defended (that is, preserved) if not defended in the time of Henry II. This article was dealing with the sport of fowling, that is, the taking of wild birds in sport by means of hawks and falcons. The Crown claimed a preferential right to this form of sport along the banks of certain rivers and these "preserved" rivers were said to be "in defence".

5. *Paragraph (1) (b) of Clause 1* formally abolishes any franchises of forest, free chase, park or free warren. These are franchises granted by the Crown to subjects. These franchises have become obsolete and have long since ceased to protect the sporting rights of landowners who have come to regard these rights as incident to their ownership of the soil.

6. A franchise of forest or free chase is the right granted to a subject of preserving beasts of the forest or chase, within his own or another's land, which need not be enclosed with a fence, with the right of hunting them thereon, protected from other persons, including (in the case of another's land) the owner of the soil. A legal park differed from a chase in being confined to land of the grantee, which must also be enclosed with a wall

or paling ; and although it became known as a franchise, it may have begun as no more than a royal licence needed only in the neighbourhood of royal forests.

7. Free warren was originally granted for the preservation of fowls and beasts of warren, and gave the grantee the exclusive right to kill fowls and beasts of warren, as well as a property in such animals within the limits of the warren. Commonly confined to the land of the grantee, warren might sometimes be claimed in the land of another to the exclusion of the owner.

8. *Subsection (2) of clause 1* abrogates the forest law except in so far as it relates to the appointment and functions of the verderers.

9. A forest was land not necessarily belonging to the King, but preserved by him for his hunting. It was subject to his will by special laws known as the forest law, and this was enforced by a special forest organisation. The Norman and Angevin Kings tended to expand the areas used as forests to the detriment of their subjects living in or using the forests, and it was to restrict this tendency and to mitigate the severity of the forest law that the Charter of the Forest was granted and that much subsequent legislation about forests was passed.

10. The forest organisation was already in a state of decay at the end of the sixteenth century³ but when Charles I was in financial difficulties an attempt was made to revive it in the earlier part of the seventeenth century⁴. Juries were threatened and intimidated and the Crown procured a large number of fines and amercements for offences which by that time had largely been forgotten, and large tracts of country which had long been free from forest laws became afforested.

11. These proceedings were the occasion for an Act of the Long Parliament, namely, the Act of 1640 which is proposed for repeal by the draft Bill. This Act finally fixed the boundaries of the forests as those which were existing in the twentieth year of James I's reign. No place at which a forest court had not been held for sixty years preceding the first year of Charles I's reign was to be accounted forest.

12. After this show of enforcement early in the seventeenth century and a parade of formalities after the Restoration the forest laws effectively ceased to exist. By the end of the seventeenth century the forests had come to be valued not so much for sport as for their timber. No rights to timber whether enjoyed by the Crown or by a subject would be impaired by the draft Bill.

³ Preface to Manwood's *Forest Laws* (1598 Edn.).

⁴ Holdsworth, *History of English Law*, i. 105.

13. The sporting rights which the forest jurisdiction had protected had, in the course of the sixteenth, seventeenth and eighteenth centuries, ceased to be the monopoly of the King and come to be the privilege of the landed gentry for which they secured protection by the Game Laws.

14. The only part of the old forest administration which now survives with any active existence (and under the draft Bill this part would continue) consists of the verderers in the New Forest and the Forest of Dean. These verderers are the only group of forest officials to have kept both their titles and some of their functions from the earliest times until the present day. It must be emphasised that the foregoing relates to the old forest organisation and not to the new statutory offices such as that of the verderers of Epping Forest for whom provision is made by a modern statute.

15. When an area was declared to be relieved of the forest law it became disafforested, and was then subject to the ordinary law of the country apart from any special Acts that might have applied to it. The abolition of the forest law would automatically disafforest any surviving forest. The only surviving forests (that is, the only forests which have not been disafforested) are Windsor Forest, the New Forest and the Forest of Dean.

16. The first limb of *subsection (3) of clause 1* provides that any right of common originating in the forest law shall be free of restriction by reason of the fence month or the winter heyning or any payment in place of it. This restriction was designed for the protection of the deer. Rights of common could not be exercised during "the fence month" which was the fawning season so that the deer could have quiet during that time; and in some forests there was also a winter close time called the winter heyning when the pasture was scanty and reserved for the deer.

17. The second limb (beginning with the words "but the foregoing provision") of *subsection (3) of clause 1* makes it clear that despite the lifting of the restriction to which rights of common are subject by reason of the forest law those rights are still liable to be suspended or excluded or to be limited or restricted by or under any enactment for the time being in force. For example, in pursuance of statutory powers rights of common might be excluded as respects land used for building a road or suspended during a temporary enclosure for the purpose of cultivation and the improvement of grazing; or byelaws made under a statute may impose limits on the number of animals that may be depastured.

18. *Subsection (4) of clause 1* repeals the scheduled enactments which are discussed below (see paragraph 26).

19. *Subsection (5) of clause 1* provides that except as provided by subsection (3) above no existing right of common or pannage originating in the forest law shall be affected by the provisions of the draft Bill.

20. A right of common is a right, which one or more persons may have, to take or use some portion of the natural produce of another's land. Examples of rights of common are the right of feeding cattle, horses, sheep or other animals on the land of another; the right of digging turves or peat out of another's soil; and the right of taking from another's land the wood necessary for the sustenance of the commoner's house or agriculture.

21. There is in most forests a right to turn out swine during a limited period to feed on the beech mast and acorns. This is known as a right of pannage.

22. *Subsection (6) of clause 1* provides that verderers in the Forest of Dean shall continue to be elected and hold office as at the passing of the draft Bill into law. As indicated above (see paragraph 14) the old forest organisation has atrophied except for the verderers in the New Forest and the Forest of Dean. In the case of the New Forest the constitution and election of the verderers are governed by statute. In the case of the Forest of Dean there is an enactment which requires the election of verderers, but no enactment governing the mode of election which is regulated by custom.

23. The saving in the case of the Dean verderers is necessary by reason of the proposed repeal of the enactment which (among other things) requires the election of verderers. No such saving is necessary in the case of the verderers in the New Forest because the enactments governing their constitution and election are being left untouched.

24. *Subsection (7) of clause 1* saves the right to appoint gamekeepers conferred by section 13 of an Act of 1821 (1 & 2 Geo. 4 c. 52 which is proposed for repeal) on purchasers of forestal or other rights from the Duchy of Lancaster.

25. *Clause 2* contains the short title and specifies what provisions of the draft Bill are applicable, respectively, to Scotland and Northern Ireland. The provisions in the draft Bill which relate to Northern Ireland will have to be enacted at Westminster because the Government of Ireland Act 1920 prevents the Northern Ireland Parliament from legislating about the Crown or Crown property.

THE SCHEDULE

26. The draft Bill would repeal the scheduled enactments to the extent specified in the third column. All these enactments fall into one or other of the following broad categories, namely—

- (a) Enactments whose proposed repeal is consequential on the abolition of the prerogative right to wild creatures and the forest law. These include chapter 13 of the medieval statute of uncertain date concerning the King's prerogative, and enactments designed to regulate or mitigate the severity of the forest law which was made in early times a means of oppression.
- (b) Enactments which are no longer of practical utility or are spent in their operation. Examples are chapter 6 of 34 Edw. 1 (1306), An Ordinance of the Forest, which provided for accepting compositions in respect of forest offences committed before 1306; and section 9 of the Dean Forest Act 1667 which remitted offences against the forest law committed before 1668. Other examples of spent enactments are those which disafforested various areas from time to time but which (because the repeal of an enactment does not affect its previous operation or any rights or obligations acquired or incurred under it) will continue to have effect as title deeds.
- (c) Enactments which in consequence of other repeals proposed by the draft Bill would no longer be necessary.

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