

11 May 2011



Your ref: «Yourref»
Our ref: L/1/9/1

Dear Consultee,

CRIMINAL LIABILITY OF PARTNERSHIPS

I enclose for your consideration a copy of our Discussion Paper on the Criminal Liability of Partnerships, which has been published today.

The Discussion Paper considers ways of preventing the prosecution of a partnership from being frustrated by its dissolution. It also examines the circumstances in which individual partners may be held criminally liable for offences committed by a partnership, and asks whether legislation should be introduced to make it easier to prosecute partners as individuals.

The function of the Scottish Law Commission is to recommend ways of simplifying, updating and improving Scots law. The outcome of any law reform project is the submission to the Scottish Ministers – or the UK Government where the area of law in question is a matter for the Westminster Parliament – of a report setting out in detail our recommendations for reform. We usually append a draft Bill which offers a basis for any legislation implementing our recommendations.

In order to ensure that our recommendations, if implemented, would result in law which is just, principled, responsive and easy to understand, it is critical for the Commission to engage in a thorough and open process of consultation. We therefore welcome the views of as many people as possible, whether from an academic perspective or based on practical experience of the area under review.

Our usual approach to consultation – and to a law reform project in general – involves the preparation of an initial discussion paper. This sets out the current law on the topic in question, describes and analyses any problems with it, details possible options for change and seeks to elicit views from consultees on the preliminary proposals made. Discussion papers are circulated to those identified as having an interest in the topic and are also published on our website (www.scotlawcom.gov.uk). News releases are also issued to draw attention to the consultation. Once the deadline for responding has passed, a careful analysis of all responses is carried out. The proposals in the discussion paper are measured against the public response and this can lead to a period of further thought and research before final decisions are made and a report published.

Accordingly, we invite your views on any or all of the proposals in this discussion paper. Even if you agree with our proposals but do not wish to make any further comments, a brief note to that effect would be most helpful as an indication that our proposals are on the right lines. It would be



helpful if, wherever possible, comments were sent electronically. An electronic response form is available on the Commission's website at: <http://www.scotlawcom.gov.uk/publications/discussion-papers-and-consultative-memoranda/2010-present/>. The MS word form has a questionnaire format which allows you to comment – briefly or at length – on any of the paper's proposals which interest you. The form can be downloaded and emailed to us at info@scotlawcom.gov.uk, as can comments composed in other formats. Please note that the consultation process for this project will conclude on **12 August 2011**; accordingly, we would be grateful if comments were submitted by then.

We draw to your attention that, in accordance with our Publication Scheme, (i) responses to this paper will be made available to third parties on request in paper form once the responses have been considered at a Commission meeting unless a respondent has asked for a response to be treated as confidential or the Commission considers that a response should be treated as confidential; (ii) subject to the following, any summary of responses to this paper will be made available to third parties on request in paper form once it has been considered at a Commission meeting: any summary will not be made available in relation to projects where the subject matter is considered by Commissioners to be of a sensitive nature; any summary being made available will not include reference to any response where either the respondent has asked for the response to be treated as confidential or the Commission considers that the response should be treated as confidential. Any request for information which is not available under the Commission's Publication Scheme will be determined in accordance with the Freedom of Information (Scotland) Act 2002.

Also, please note that some or all responses to this paper and the names of those who submitted them may be referred to and/or quoted in the final report following from this consultation or in other Commission publication. The names of all respondents to this paper will be listed in the final report unless the respondent specifically asks that, or the Commission considers that, the response or name, or any part of the response, should be treated as confidential.

Finally, should you wish to offer any comments on the way in which we conduct our consultation exercises, we would be pleased to hear from you.

Yours faithfully,

MALCOLM McMILLAN
Chief Executive