

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
NOT FOR PUBLICATION OR BROADCAST  
BEFORE 0001 HOURS MONDAY 31 MARCH 2008

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### **DISCUSSION PAPER ON CROWN APPEALS**

The Commission is seeking views on possible reform of the law relating to the availability of appeals by the Crown against judicial rulings which can bring a solemn criminal case\* to an end without the verdict of a jury. The Commission's Discussion Paper on Crown Appeals, which is published today, invites responses to a number of questions relating to reform.

**The Commission invites comments on the Discussion Paper by 13 May 2008.** Following consultation the Commission will prepare a Report which it aims to publish this summer.

There are three types of ruling which are capable of bringing solemn proceedings to an end without the verdict of a jury. The first is a ruling of no case to answer, where the judge rules, at the close of the Crown evidence, that the evidence led by the prosecution is insufficient in law to justify the accused being convicted.<sup>†</sup> The second is a direction, in the course of the judge's charge to the jury, that the jury should not convict on a particular charge, or should consider only a reduced charge. Such a direction, made following a so-called "common-law submission", may be made either on the basis of insufficient evidence or on the basis that no reasonable jury, properly directed in law, could convict. The third is a ruling that an important item of prosecution evidence is inadmissible, leaving the Crown with no option but to abandon the prosecution. At present, the Crown has no means of appealing against any of these rulings.

The Discussion Paper asks whether, as a matter of general principle, the Crown should be given a right of appeal against at least some of these judicial rulings. It also seeks comments on a number of issues which would arise were any such right of appeal to be introduced, such as the stage in the trial at which the right should be exercisable, the criteria that should apply in considering any such appeal, and what the result of a successful appeal should be.

This is the first Discussion Paper to be published in terms of the reference given to the Scottish Law Commission on 20 November 2007. In that reference, the Scottish Government asked the Commission to consider the law relating to judicial rulings that can bring a solemn case to an end without the verdict of a jury, and rights of appeal against

such; the principle of double jeopardy, and whether there should be exceptions to it; and a number of aspects of the law of evidence. The Discussion Paper addresses only the first part of the reference; the Commission aims to report on double jeopardy in 2009 and upon the remaining aspects of the reference in 2010 or 2011.

## NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Drummond Young, a Court of Session judge. The other Commissioners are Professor George L Gretton, Professor Gerard Maher QC, Professor Joseph M Thomson and Colin J Tyre QC.

2. Further information can be obtained by contacting Alastair Smith, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk)).

3. The paper may also be viewed on our website at [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk) or purchased from TSO Scotland Bookshop.

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\* A solemn case is one tried on indictment before a jury, in either a sheriff court or the High Court of Justiciary.

† The ruling follows a plea of no case to answer made by the accused in terms of section 97 of the Criminal Procedure (Scotland) Act 1995.