

THE SCOTTISH LAW COMMISSION
(Scot. Law Com. No. 27).

Second Programme
of Consolidation
and Statute Law Revision

*Laid before Parliament
by the Secretary of State for Scotland and the Lord Advocate
under Section 3(2)
of the Law Commissions Act 1965*

EDINBURGH
HER MAJESTY'S STATIONERY OFFICE
1973

The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Honourable Lord Hunter, *Chairman*,
Professor A. E. Anton,
Professor J. M. Halliday, C.B.E.,
Professor T. B. Smith, Q.C.,
Mr. Ewan Stewart, M.C., Q.C.

The Secretary of the Commission is Mr. J. B. Allan. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh EH8 9BD.

SCOTTISH LAW COMMISSION

TO: THE RIGHT HONOURABLE GORDON CAMPBELL, M.C., M.P.,
Her Majesty's Secretary of State for Scotland, and

THE RIGHT HONOURABLE NORMAN WYLIE, V.R.D., Q.C., M.P.,
Her Majesty's Advocate.

Section 3(1)(d) read along with section 6(2) of the Law Commissions Act 1965 imposes on the Scottish Law Commission a duty to prepare from time to time at your request comprehensive programmes of consolidation and statute law revision.

In response to your request of 25th February 1971, we have the honour to submit the second of these programmes.

27th October 1972

J. O. M. HUNTER,
Chairman of the Scottish Law Commission

SCOTTISH LAW COMMISSION

SECOND PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

I. CONSOLIDATION OF STATUTES APPLYING TO SCOTLAND ONLY

We recommend that as soon as resources permit, work should be commenced on the following legislation the order of which does not indicate any particular priority.

- (a) Education (Scotland) Acts;
- (b) Enactments relating to the functions of the Scottish Electricity Boards;
- (c) National Health Service (Scotland) Acts;
- (d) Enactments relating to Solicitors in Scotland;
- (e) Enactments relating to criminal procedure in Scotland;
- (f) The Criminal Law Amendment Acts.

II. CONSOLIDATION OF STATUTES WHICH APPLY TO OTHER PARTS OF THE UNITED KINGDOM AS WELL AS TO SCOTLAND

We agree with the Law Commission that the consolidation of the legislation on the following subjects is desirable:

- (a) Companies;
- (b) Capital Gains Tax;
- (c) Electricity (apart from the functions of the Scottish Electricity Boards);
- (d) Merchant Shipping.

III. STATUTE LAW REVISION

1. *Statutes applying to Scotland.*

Although a major exercise in statute law revision was carried out in 1964, we propose to continue our review of Scottish Acts in the light of the extended remit which allows for the repeal of enactments which are no longer of practical utility.

2. *Statutes applying to other parts of the United Kingdom as well as Scotland.*

The Law Commission in their Second Programme have committed themselves to a review of all the statutes partly in chronological order and partly by subject matter and we propose to continue to associate ourselves with this review so far as the Scottish interest in these statutes is concerned.

Note by the Commission

1. In our First Programme of Consolidation and Statute Law Revision¹ we stated in paragraph 1 that “the key to the whole matter lay in the availability of Parliamentary draftsmen on whom the burden of this work largely falls”.

2. Since we published that programme the number of Scottish Parliamentary draftsmen available for the work of consolidating enactments relating to Scotland has not increased; but both the full-time and part-time draftsmen assigned to us are located in Edinburgh. These draftsmen are employed in the preparation not only of consolidation bills but also of other legislation of a purely Scottish nature. We would state that priority must normally be given to drafting clauses to be appended to Reports by the Commission which contain recommendations for reforming the law, or to implement Reports previously submitted without appended clauses, although this may result in a slowing down of the consolidation process.

3. In submitting this second programme we think it may be useful to set out how the work on the subjects listed in our first consolidation programme has progressed.

4. With regard to Acts applying to Scotland only, the following consolidating Acts have been passed:

- (a) Housing (Scotland) Act 1966
- (b) Legal Aid (Scotland) Act 1967
- (c) Police (Scotland) Act 1967
- (d) New Towns (Scotland) Act 1968
- (e) Housing (Financial Provisions) (Scotland) Act 1968
- (f) Rents (Scotland) Act 1971
- (g) Town and Country Planning (Scotland) Act 1972

5. Work on consolidation of enactments relating to the Court of Session has been abandoned because in the course of preparing the Bill it was found that amendment far beyond the scope of that allowed in a consolidation Bill was required.

6. We have decided not to proceed with consolidation of the Lands Clauses Acts in the meantime because existing difficulties cannot be removed either by straightforward consolidation or by consolidation with amendments recommended by us. Our examination of these enactments is continuing with a view to identifying which provisions may need particular amendment.

7. With regard to the subject of Roads and Bridges, a considerable amount of preliminary work has been done in the Scottish Development Department. The existing legislation on the subject is intricate and is scattered among a large

¹(1966) Scot. Law Com. No. 2

number of inadequately related Acts, some of which are very out of date in their style terminology and detail e.g. the Roads and Bridges Act 1878 and the Burgh Police Act 1892, and this means that a substantial degree of re-writing, as distinct from ordinary consolidation, will be required. Since such re-writing would not be consistent with what we are permitted to do either under the Consolidation of Enactments (Procedure) Act 1949 or within the narrow limits of our authority to recommend for inclusion in a consolidation bill provisions that amount to a change of law, we have decided not to proceed with the preparation of a draft bill to consolidate the Roads and Bridges legislation.

8. The two remaining items on our First Programme are Husband and Wife (Property Rights) (Scotland) and Divorce (Scotland). In the case of the former, we are at present engaged in studying what reforms may be required in Family Law and our studies would cover property rights on divorce. Any changes in the framework of our divorce law is bound to affect our conclusions on this topic. In the case of the latter, two Private Member's Bills to reform the Scots Law of Divorce have failed to pass into law. The one introduced by Mr. Robert Hughes was withdrawn owing to lack of Parliamentary time. As long as it is left to Private Members to promote any legislation to reform our divorce law we cannot be certain that reform will be achieved. It seems advisable to postpone consolidation of these enactments until sufficient time has been allowed for the promotion and passing of any future Bill.

9. The following consolidation Acts which apply to other parts of the United Kingdom as well as to Scotland have been passed:

- Plant Health Act 1967
- Forestry Act 1967
- Development of Inventions Act 1967
- Air Corporations Act 1967
- Industrial Injuries and Diseases (Old Cases) Act 1967
- Advertisements (Hire-Purchase) Act 1967
- Road Traffic Regulation Act 1967
- Sea Fisheries (Shellfish) Act 1967
- Sea Fish (Conservation) Act 1967
- Provisional Collection of Taxes Act 1968
- Capital Allowances Act 1968
- Courts-Martial (Appeals) Act 1968
- Criminal Appeal Act 1968
- Export Guarantees Act 1968
- Firearms Act 1968
- Customs Duties (Dumping and Subsidies) Act 1969
- Trustee Savings Bank Act 1969
- Taxes Management Act 1970
- Income and Corporation Taxes Act 1970
- Sea Fish Industry Act 1970
- Guardianship of Minors Act 1971 (extends to Scotland so far as it amends the Maintenance Orders Act 1950)
- Hydrocarbon Oil (Customs and Excise) Act 1971
- Coinage Act 1971
- National Savings Bank Act 1971

Attachment of Earnings Act 1971 (section 20(2), which relates to the Maintenance Orders Act 1950 extends to Scotland)
Vehicles (Excise) Act 1971
Prevention of Oil Pollution Act 1971
Tribunals and Inquiries Act 1971
Local Employment Act 1972
Summer Time Act 1972
Road Traffic Act 1972
Betting and Gaming Duties Act 1972
Contract of Employment Act 1972
National Debt Act 1972
Poisons Act 1972.

10. It will be noted that some of the enactments consolidated are not included in our programme. This is partly because some work had already been done on some subjects before our First Programme was published, and also because it is sometimes possible for a draftsman to produce comparatively simple consolidation Bills in intervals in his other work e.g. when he has produced a major draft consolidation Bill on which he is awaiting comments from his supporting officials.

11. Work has been suspended on draft Bills to consolidate enactments relating to Clean Air and on enactments relating to Friendly Societies because of the pressure of current legislation. Work on the consolidation of Estate Duty legislation will not proceed until a decision is taken on the proposals made in the Government's Green Paper¹ entitled *Taxation of Capital on Death: A possible Inheritance Tax in place of Estate Duty*.

13. In common with the Law Commission we have decided not to proceed with the topic of Stamp Duty in view of the pressure for repeal or overhaul of the relevant enactments.

14. In deciding on the enactments which should be included in our second programme we have consulted Government Departments, representative organs of the legal profession and other bodies and individuals. In particular, in relation to enactments applying to other parts of the United Kingdom as well as to Scotland, we have been in close touch with the Law Commission, so that such enactments, if selected, will appear in the programme of each Commission.

15. The main object of consolidation of enactments is to make it easier to ascertain the law on particular subjects, by substituting one statute for a number of statutes to which reference would otherwise have to be made. There are a few cases in which the choice of subjects is comparatively easy—where for example, an amending Act has been passed recently and the statute law on the subject is scattered throughout a number of other Acts which are clearly ripe for the consolidation process. In other cases, however, where the law is similarly scattered but where reform or amendment is not yet enacted but known to be contemplated, it is not easy to decide whether to proceed with consolidation at once or to wait for the reforming legislation. There are, for example, a number of Acts (e.g. those relating to public health) which might be thought to be

¹(1972) Cmnd. 4930

ready for the consolidation process, but which we have decided to omit from our programme in the meantime in view of the proposed legislation on local government.

16. Consolidation of enactments is a process that cannot be hurried. It required considerable skill and care on the part of the Parliamentary draftsman and of those members of the legal and administrative branches of the Government Departments who have to assist the draftsman with his work. It is not always easy to arrange that the draftsman and the departmental lawyers and officials concerned with a particular group of statutes are all available for the consolidation work at the same time.

17. Sometimes, as we have indicated above, the work of consolidating a series of statutes brings to light the need for amendment of the law rather than straightforward consolidation which is simply re-enacting in one Act all that has already been enacted on the subject in previous Acts. If the amount of amendment required is very large it may be desirable to have an amending Bill which can then be followed by a consolidation Bill, and for a smaller amount of amendment it may be convenient to produce a Bill which amends and consolidates at the same time; but in both these cases the Bill will have to go through the whole Parliamentary process and take up much Parliamentary time.

Statute Law Revision

18. In the Statute Law (Repeals) Acts of 1969 and 1971 we collaborated with our English colleagues in respect of our interest in United Kingdom enactments and an opportunity was simultaneously taken to insert some purely Scottish repeals in both these Bills. Similarly we collaborated over a small Scottish element in the Wild Creatures and Forest Laws Act 1971 which proceeded because of its content as a Law Reform Bill. This process of collaboration has continued and a further Statute Law (Repeals) Bill has been prepared which contains an increased proportion of purely Scottish repeals. A Joint Report¹ with this Bill appended has been submitted by both Law Commissions to their respective Ministers.

19. The feature of the recent statute law revision Bills was that they were not limited, as in the past, to repeals of enactments which were obsolete, spent, superseded, expired or unnecessary but additionally they repealed enactments which, while they could not be held to fall into any of the old statute law revision categories, yet were no longer of practical utility. This wider ambit naturally increases the area of discussion and consequently also the time required for consideration of candidates for inclusion in a statute law revision Bill—the more so as not all those who have been consulted have yet come to terms with the opportunities for revision presented by the wider ambit.

20. On the subject of collaboration with the Law Commission it should be pointed out that our present system of working is advantageous to both Commissions in that it results in the best and most economical use of our resources, in avoidance of some duplication of work and in the saving of Parliamentary time. This does not mean that a Scottish Bill on Statute Law Revision will never be attempted, but, for as long as our repeals of Scottish enactments

¹(1972) Scot. Law Com. No. 26; Law Com. No. 49

can be accommodated in United Kingdom Bills, the balance of convenience and advantage is in favour of operating jointly with the Law Commission.

21. Accordingly, apart from such statute law revision as may be undertaken in ordinary programme Bills, it is intended to continue to review the Statute Book partly in chronological order and partly by subject matter.

HER MAJESTY'S STATIONERY OFFICE

Government Bookshops

49 High Holborn, London WC1V 6HB
13a Castle Street, Edinburgh EH2 3AR
109 St Mary Street, Cardiff CF1 1JW
Brazenose Street, Manchester M60 8AS
50 Fairfax Street, Bristol BS1 3DE
258 Broad Street, Birmingham B1 2HE
80 Chichester Street, Belfast BT1 4JY

*Government publications are also available
through booksellers*