

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NOT FOR PUBLICATION OR BROADCAST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

SCOTTISH LAW COMMISSION RECOMMENDS RIGHT OF APPEAL FOR PROSECUTION

The Scottish Law Commission today publishes its Report on *Crown Appeals*.

The Report makes a number of recommendations for changes to solemn criminal procedure (i.e. jury trials). Among them are:

- The extension of the grounds upon which the accused person may submit, at the close of the Crown case, that he has no case to answer;^A
- The introduction of a new statutory submission at the end of all of the evidence to replace the existing "common law submission";^B
- The granting to the prosecution of a right of appeal, with leave of the trial court, against rulings of no case to answer, decisions on the statutory replacement of a common law submission and certain findings relating to the admissibility of prosecution evidence.^C

The Report also includes a draft Bill which would give effect to its recommendations.

This is the first Report 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 Report addresses only the first part of the reference; the Commission aims to report upon double jeopardy in 2009 and upon the remaining aspects of the reference in 2010 or 2011.

The Commission's Chairman, Lord Drummond Young, said:

"The trial judge rightly has the power to bring the prosecution to an end where the Crown does not present sufficient evidence against the accused; but, at present, the trial judge's decision cannot be reviewed. In rare cases, this may result in a well-founded prosecution

being wrongly dismissed and the accused person not being properly held to account. We recommend, therefore, that the Crown should be able, with leave of the trial judge, to challenge a number of judicial rulings, including a ruling that there is no case to answer."

At present, a submission of no case to answer will only succeed where there is an absence of corroboration in respect of one or more essential elements of the offence. The Commission recommends that the test should be broadened to one of whether, on the prosecution evidence, a reasonable jury, properly directed, would be entitled to convict. This would allow a submission to succeed either where there was an absence of corroboration or where the case against the accused, though corroborated, was so weak that no reasonable jury would be entitled to convict.

The proposed Crown right of appeal would extend to all rulings on a submission of no case to answer, to rulings on the statutory replacement of a common law submission, and to findings by the trial judge, in the course of the trial, that an item of the prosecution evidence was inadmissible. Appeals would be permitted only with leave of the trial court. Where a Crown appeal was successful, the normal result would be a re-trial; but this would only be permitted with the authority of the appeal court, which would be refused where the appeal court considered that a new prosecution would not be in the interests of justice.

The Commission does not recommend any alteration to the existing rights of the accused to appeal against conviction or sentence. Nor does it recommend that the prosecution should have any right to challenge a verdict of acquittal delivered by the jury.

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. The Chief Executive is Malcolm McMillan.

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).

3. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO Scotland Bookshop.

^A Recommendation 1, following discussion at paragraphs 2.2-2.25.

^B Recommendation 2, following discussion at paragraphs 2.32-2.41.

^C Parts 3 and 4.