

# Scottish Law Commission

(SCOT. LAW COM. NO. 71)

## FOURTH PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

*Laid before Parliament  
by the Lord Advocate  
under Section 3(2)  
of the Law Commissions Act 1965*

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*Ordered by The House of Commons to be printed  
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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 Maxwell, *Chairman*,  
Mr. A. E. Anton, C.B.E.,<sup>1</sup>  
Mr. R. D. D Bertram, W.S.,  
Dr. E. M. Clive,  
Mr. J. Murray, Q.C.

The Secretary of the Commission is Mr. R. Eadie. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

<sup>1</sup>Mr. Anton retired from membership of the Commission on 30 September 1982; his successor is Sheriff C. G. B. Nicholson.

## SCOTTISH LAW COMMISSION

To: The Right Honourable the Lord Mackay of Clashfern, Q.C.,  
*Her Majesty's Advocate*

Section 3(1)(d) as read with section 6(2) of the Law Commissions Act 1965, as amended<sup>1</sup>, 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, we have the honour to submit the fourth of these programmes together with a brief Note.

(Signed) PETER MAXWELL, *Chairman*

A. E. ANTON

R. D. D. BERTRAM

E. M. CLIVE

JOHN MURRAY

R. EADIE, *Secretary*

6 July 1982.

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<sup>1</sup>Transfer of Functions (Secretary of State and Lord Advocate) Order 1972 (S.I. 1972, No. 2002).



**SCOTTISH LAW COMMISSION**  
**FOURTH 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 commence on the preparation of Bills to consolidate legislation dealing with the following subjects:

- (a) Foster Care;
- (b) Criminal Procedure;
- (c) Housing;
- (d) Planning.

The order in which the items appear in the foregoing list does not necessarily represent the order in which work will proceed.

**II. Consolidation of Statutes which apply to other parts of the United Kingdom as well as to Scotland**

We agree with the Law Commission for England and Wales that work should continue on various subjects in respect of which Bills are being prepared, including in particular the following:

- (a) Car Tax;
- (b) Companies;
- (c) Medical Profession;
- (d) Pilotage;
- (e) Representation of the People;
- (f) Reserve Forces (Protection of Civil Interests);
- (g) Road Traffic Regulation;
- (h) Weights and Measures;
- (i) Value Added Tax.

**III. Statute Law Revision**

**1. *Statutes applying to Scotland only***

We will continue to examine the legislation applying only to Scotland in order to identify and propose for repeal enactments that are obsolete, superseded, spent, expired or no longer of practical utility.

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

We will continue to co-operate with the Law Commission for England and Wales in promoting the repeal of statutory provisions having application to Scotland which are obsolete, superseded, spent, expired or no longer of practical utility.

In terms of section 3(2) of the Law Commissions Act 1965, as amended, this programme was approved by the Lord Advocate on 28 July 1982.



## NOTE BY THE COMMISSION

### Consolidation

1. The need for consolidation of statute law, preferably at a more rapid pace, was recognised by the Renton Committee in 1975.<sup>1</sup> Such has been the volume of legislation enacted in the past seven years that this need has not diminished greatly, despite the considerable efforts of the two Law Commissions and their Parliamentary draftsmen and of the Departmental officials concerned with the work in this field.

2. We believe that realistic programmes of consolidation can still have a part to play in ensuring that the best use is made of the scarce manpower resources available for this work in Scotland. The present programme is a brief one. The reasons for this are first, that there are several items outstanding from previous programmes (see paragraph 5 below and the Appendix to this Note), and second, that we would not wish to impose an unreasonable burden on the resources of the Government Departments responsible for administering the legislation affected, particularly at a time when those resources will almost certainly continue to be under fairly severe pressure. In this regard, we wish to acknowledge the valuable help and co-operation which we have received in the past from the Departments concerned. Without the full assistance of Departmental administrators and lawyers it would be virtually impossible for us to fulfil this aspect of our functions satisfactorily.

3. The new programme is, however, in our view a realistic one and we do not envisage any particular difficulty in completing it in due course, though we hasten to add that we do not regard ourselves as committed to any specific timetable for its completion. The timing of work on the items included in the programme will in fact depend upon a number of factors, including the availability of the services of our Parliamentary draftsmen (whose main priority is the drafting of clauses for proposed law reform Bills); the speed with which the Departments concerned are able, given their other commitments, to furnish instructions and comments with regard to each item; and the extent to which proposals for fresh Government legislation may emerge in the areas selected for consolidation.

4. It will be observed that the new programme contains three topics—Criminal Procedure, Housing and Planning—that were dealt with in previous programmes.<sup>2</sup> This is indicative of a problem referred to by the Renton Committee, namely that “legislation does not stand still and it inevitably happens that sooner or later after a consolidated Act on a particular matter has been produced further enactments on that matter make their appearance, thus eventually producing a state of affairs which again calls for consolidation.”<sup>3</sup> Thus, as the Committee concluded, “the need for consolidation is perpetual”. The Committee went on to say that one of the arguments in favour of the “textual” method of amending existing legislation is that it will to some extent diminish the need for consolidation.<sup>4</sup> We agree with the Committee, however,

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<sup>1</sup>*Report of the Committee on the Preparation of Legislation*, (1975) Cmnd. 6053, Chapter XIV.

<sup>2</sup>First Programme, (1966) Scot. Law Com. No. 2, items 1(a) and 2(d); Second Programme, (1973) Scot. Law Com. No. 27, item I(e).

<sup>3</sup>Cmnd. 6053, para. 14.2.

<sup>4</sup>Cmnd. 6053, para. 14.4.

that it is unlikely that the wider adoption of this method of drafting amending legislation will ever eliminate the need entirely.

5. For convenience, we have set out the progress of our work on our three previous programmes in the form of an Appendix to this Note. The present position is, briefly, that we have recently resumed work on the one remaining item in the First Programme that appears to have any real prospect of reaching the statute book in the foreseeable future (ie Court of Session); that work on the Second Programme has been completed; and that significant progress has been achieved with the Third Programme, even though (for reasons beyond our control) work has not yet begun on several items in that programme.

6. It is a matter of some regret to us that it has not as yet been possible to make further progress with Roads and Bridges and Lands Clauses (ie compulsory purchase)—two of the items outstanding from the First Programme. Unfortunately, work on these items had to be suspended some years ago because a great deal of the legislation in question needs to be re-written to an extent going beyond both the normal consolidation process and even the most flexible view of the scope of our authority to recommend amendments to legislation in connection with a consolidation. In each case, we will be unable to make further progress until there have been substantial pre-consolidation amendments to the legislation by means of appropriate Government Bills. We appreciate just how difficult it is to find a place for such Bills in a busy Parliamentary programme (even assuming that the Government can spare the resources necessary to prepare them). Nevertheless, we hope that some measure of priority can be given to this legislation in the foreseeable future.

7. Although we believe that published consolidation programmes can have an important role to play in securing the best use of scarce resources, we shall also endeavour to ensure that the arrangements for carrying out our work in this field are flexible and capable of adaptation to changing circumstances. It was with that objective in mind that we expressed ourselves willing to undertake the present programme without waiting for work on our Third programme to reach a more advanced stage of completion, and that we agreed to begin work on Foster Care in advance of inclusion of that topic in a new programme.

### **Statute Law Revision**

8. We have continued to discharge our functions with respect to statute law revision by working in co-operation with the Law Commission for England and Wales on the preparation of joint reports and relative draft Bills on a United Kingdom basis. This system of working (which we think is advantageous to both Commissions in that it results in the best and most economical use of our resources, in avoiding duplication of work and in the saving of Parliamentary time) has since 1977 resulted in the publication of two statute law revision reports<sup>1</sup> and the Statute Law (Repeals) Acts of 1978 and 1981.

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<sup>1</sup>(1978) Scot. Law Com. No. 48 (Cmnd. 7189); (1980) Scot. Law Com. No. 63 (Cmnd. 8089).

9. Work is now proceeding on the preparation of a further joint report on statute law revision. In the present exercise, it is our intention to direct a greater part of our effort than in previous joint operations in this field towards dealing with matters of more direct concern to Scotland.

## APPENDIX:

### PROGRESS OF WORK ON PREVIOUS CONSOLIDATION PROGRAMMES

#### Scotland-only Consolidations

(a) *First Programme*<sup>1</sup>

Work on the items contained in the First Programme has, with three exceptions, been completed or overtaken by subsequent events. The exceptions are Court of Session, Roads and Bridges (Scotland) and Lands Clauses (Scotland).

Work on the consolidation of the enactments relating to the Court of Session, which was originally abandoned over ten years ago, has recently been resumed. Preliminary consultation has now been carried out on the basis of a first print of a Bill, and comments and advice are awaited from a number of those consulted.

Work on Roads and Bridges and Lands Clauses has been in abeyance for some years. It will not be possible to make further progress until fairly large-scale pre-consolidation amendments have been made to the legislation affected by means of appropriate Government Bills.

(b) *Second Programme*<sup>2</sup>

Work on the Commission's Second Programme has been completed.

(c) *Third Programme*<sup>3</sup>

Work on three of the items in this Programme (Adoption, Slaughterhouses and Water) has been completed. The position with regard to the remaining eight items is as follows:

- (1) *Building legislation*: the Commission has agreed that work on this consolidation should be deferred in view of the fact that the principal Act (the Building (Scotland) Act 1959) has been reprinted, with amendments, in *Statutes in Force*.
- (2) *Rents*: the necessary instructions have been received from the Scottish Office, and a draftsman has begun work on the preparation of a draft consolidation Bill.
- (3) *Other items*: an indication has yet to be given by the Scottish Office as to when instructions may be received with regard to the other six items in the programme. It is hoped, however, that instructions regarding at least one of the items will be received in the fairly near future.

#### United Kingdom and Great Britain Consolidations

The following consolidation Acts which apply to other parts of the United Kingdom as well as to Scotland have been passed since publication of the Commission's Third Programme, viz:

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<sup>1</sup>(1966) Scot. Law Com. No. 2.

<sup>2</sup>(1973) Scot. Law Com. No. 27.

<sup>3</sup>(1978) Scot. Law. Com. No. 46.

Commonwealth Development Corporation Act 1978  
Refuse Disposal (Amenity) Act 1978  
Employment Protection (Consolidation) Act 1978  
Export Guarantees and Overseas Investment Act 1978  
Interpretation Act 1978  
Oaths Act 1978  
Agricultural Statistics Act 1979  
Alcoholic Liquor Duties Act 1979  
Capital Gains Tax Act 1979  
Customs and Excise Duties (General Reliefs) Act 1979  
Customs and Excise Management Act 1979  
Exchange Equalisation Account Act 1979  
Excise Duties (Surcharges or Rebates) Act 1979  
Hydrocarbon Oil Duties Act 1979  
International Monetary Fund Act 1979  
Matches and Mechanical Lighters Duties Act 1979  
Tobacco Products Duty Act 1979  
Wages Councils Act 1979  
Sale of Goods Act 1979  
Reserve Forces Act 1980  
Overseas Development and Co-operation Act 1980  
Animal Health Act 1981  
Film Levy Finance Act 1981  
Judicial Pensions Act 1981  
National Film Finance Corporation Act 1981  
Public Passenger Vehicles Act 1981  
Betting and Gaming Duties Act 1981  
Broadcasting Act 1981  
New Towns Act 1981  
Trustee Savings Banks Act 1981  
Agricultural Training Board Act 1982  
Civil Aviation Act 1982  
Industrial Training Act 1982

