



Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS 10 SEPTEMBER 2003

PUBLICATION OF DRAFT CRIMINAL CODE FOR SCOTLAND

Today (10 September 2003) sees the publication by the Scottish Law Commission of a draft criminal code for Scotland, with a commentary on the provisions of the draft code. Both the code and commentary are the work of a group of Scottish law professors – Professor Eric Clive CBE (Edinburgh University), Professor Pamela Ferguson (Dundee University), Professor Christopher Gane (Aberdeen University) and Professor Alexander McCall Smith (Edinburgh University). Professor Sir Gerald Gordon also took part in the discussions in their later stages.

The statutory functions of the Scottish Law Commission include consideration of the desirability of codification of areas of the law and the Scottish Law Commission has decided to publish the work of the group with a view to stimulating discussion of the topic.

At present much of the criminal law of Scotland is contained in common law form – that is to say, it is derived from a large number of decided court cases and from books, of respected authority, written in earlier centuries.

The draft code is designed to replace the common law crimes and also a number of statutory offences in the same fields as those crimes. The code does not include special statutory offences related to particular fields of activity which are extensively regulated. It does not, for example, include road traffic offences or drug offences (both of which are in any event reserved matters). In effect it puts the general principles of criminal liability and the common law crimes into statutory form and includes a small number of related statutory offences.

The code does not set out to restate the existing law exactly as it is, but instead seeks to preserve the main features and rules of the existing law while removing what was seen by the group as anomalies, defects and inconsistencies. The substantive criminal law as set in the code is recognisably the core Scottish criminal law which has stood the test of time, but is stated in an improved and updated form.

The code takes the form of a draft Bill for the Scottish Parliament. Every attempt has been made to draft it in a simple and intelligible way.

Scotland is unusual in not having its basic criminal law set out in statutory form. Most countries have a criminal code. The provision of a core criminal code for England and Wales is favoured by the United Kingdom government.

At this stage the Scottish Law Commission has not formed any view on whether the group's work should be used as the basis for enacting a criminal code for Scotland. The Commission merely invites comments on the general question whether the basic criminal law in Scotland should be put into a code and also on the merits of the group's own approach and suggested provisions.

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 Honourable Lord Eassie. The other Commissioners are currently Professor Gerard Maher, Professor Kenneth G C Reid and Professor Joseph M Thomson.

2. Further information can be obtained by contacting Miss Jane L McLeod, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, e-mail: info@scotlawcom.gov.uk). Representatives of the group responsible for the draft code may be contacted as follows -

Professor Eric Clive	-	0131 650 9588 or 0131 552 2875
Professor Pamela Ferguson	-	01382 345189 or 01738 636784
Professor Christopher Gane	-	01224 272440 or 0197 556 3266.

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