



Scottish Law Commission

promoting law reform

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

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BEFORE 0001 HOURS WEDNESDAY 23 MAY 2012

JUDGES AND JURIES TO HEAR OF ACCUSED'S RECORD

As the law stands, the prosecution in Scotland cannot rely upon previous convictions to help prove their case against an accused person. If an accused, charged with murder, has been convicted of a number of other murders, the jury will not know this when considering their verdict. Other jurisdictions – most notably England and Wales – have rules which allow such evidence. Should Scots law be changed?

According to the Scottish Law Commission in their Report on *Similar Fact Evidence and the Moorov Doctrine*, which is published today, the answer is "yes". The Commission concludes that the present rules restricting the use of evidence that the accused has acted in a similar way on other occasions – including evidence that he or she has committed similar crimes – lack both logic and coherence. The Commission recommends that the law recognise that such evidence can be highly relevant to the question of guilt or innocence. The Report argues that all relevant evidence – including evidence of similar previous convictions – should, in principle, be admissible. Included with the Report is a draft Bill which would give effect to the Commission's recommendations by replacing the present law with a clear and coherent statutory framework for the admission of all relevant evidence in criminal proceedings.

The project on *Similar Fact Evidence and the Moorov Doctrine* is the third and final project undertaken under a reference received from Scottish Ministers in November 2007. The recommendations of the first project, *Crown Appeals*, were implemented in the Criminal Justice and Licensing (Scotland) Act 2010. The recommendations of the second report, *Double Jeopardy*, led to the enactment of the Double Jeopardy (Scotland) Act 2011

Patrick Layden QC, the lead Commissioner on the project, said:

"Evidence of how the accused has acted on another occasion is relevant to whether he has acted in a similar way in relation to the offence with which he is charged. It does not become irrelevant because he has been convicted on that other occasion. This Report, if implemented, will ensure that the jury can consider all relevant information."

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Commissioners are Laura J Dunlop QC, Patrick Layden QC TD, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting Patrick Layden, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 662 5222, Fax: 0131 662 4900, email: info@scotlawcom.gsi.gov.uk).
3. The paper may also be viewed on our website at <http://www.scotlawcom.gov.uk/> or purchased from TSO (<http://www.tsoshop.co.uk/>).