

1. Bitcoins (Reserved – probably! ‘Coinage, legal tender and bank notes’)

Member of Faculty suggests criminalisation; refers to association with malign activity.

Already, criminalisation appears ill-advised. Regulation very limited, however. Japan has made bitcoin exchanges comply with anti-money laundering legislation and also officially authorised it as a payment method. Theory that once regulatory framework clarifies, business should follow. There was a ‘Digital Currencies Call for Information’ issued by the Treasury in November 2014.¹ Seems to have gone quiet. Any opportunities for Scotland?

See articles The Telegraph 17 April 2017; Economist 3 June 2017 (attached).

Caselaw? Very limited.

Skatteverket v Hedqvist (C-264/14) European Court of Justice (Fifth Chamber), 22 October 2015; [2016] STC 372.

Whether transactions to exchange traditional currency for bitcoins exempt from VAT. Not a commodity – only virtual existence. Amounts to supply of service for consideration. Was it covered by an exemption under Art 135 of Principal VAT Directive (2006/112)? Yes – 135(1)(e), covering currency transactions. Exemption fits with purpose underlying exemptions for financial transactions, viz. difficulty in determining taxable amount and amount of VAT deductible.

2. Drones (Reserved – probably! ‘Regulation of aviation and air transport’)

Member of Faculty suggests examination of legal issues surrounding drones.

Limited and inadequate regulation to date.

Queen’s Speech 2016 promised regulation of ‘autonomous transport’; associated government briefing said there would be ‘new rules to bring safe commercial and personal drone flight for households and businesses a step closer’. Queen’s Speech 2017 made no mention. Dropped? Or possible that intention remains via secondary legislation?

Presumably in furtherance of the 2016 commitment, there was a DfT consultation,² which closed on 15 March 2017. No mention of Scotland in it. One proposal was to introduce a registration scheme, probably in the ‘near future’. Ireland introduced such a scheme, in December 2015.³ Could Scotland do this for itself? Section 30 Order? Opportunities re filming, delivery to remote areas?⁴

Some references:

The aerial gaze: regulating domestic drones in the UK. Lachlan Urquhart.

Comps. & Law 2013, 24(1), 33-35.

See articles The Telegraph, 18 April 2016; The Economist, 10 June 2017 (attached)

¹ <https://www.gov.uk/government/consultations/digital-currencies-call-for-information>

² <https://www.gov.uk/government/consultations/benefits-of-drones-to-the-uk-economy>

³ <https://www.iaa.ie/general-aviation/drones/drone-registration>

⁴ <http://www.scotsman.com/news/long-distance-drone-flights-to-boost-business-in-scotland-s-remotest-places-1-4239807>

3. Adoption – Devolved. Criticisms by Sheriff Principal Pyle.

4. Emails from individual advocates, A and B:

A - I have had a couple of cases recently which have thrown up (relatively) interesting issues, either where there may be some uncertainty in the law (whether the ex turpi causa principle refers to strict liability offences) or, where the law may need to be overhauled (the crime of perjury, where I understand there has only been one prosecution in the last five years).

However, I am not sure whether either of these topics would be of sufficient interest.

The big issue in Scots criminal law over the last couple of years has been corroboration. Lord Bonomy's post-corroboration safeguards group looked at the safeguards that could be put in place if it was no longer required, but the matter has been kicked into the long grass, though the LA said recently that the issue might have to be reconsidered.

There are also interesting side issues, such as the extent to which the CoC Act should be extended to enable proper research on jurors' understanding, and what can be done to ensure they are participating properly/fully in the process. A topic - 'Juries in Scotland' could also cover whether there is a need for written reasons, jury numbers and diversity, the need for juries in complex cases (which arose recently in the long-running Glasgow fraud case) and the old three verdicts chestnut.

In the current climate, this might be deemed a bit too 'political' for the SLC.

Another possibility is confidentiality/privilege. Having had the books out recently in various cases, it seems to me that this area is perhaps a bit on the undeveloped side in Scotland. There is a chapter in Walkers, a wee bit in Macphail, but precious little else. By contrast, there are numerous textbooks in England, not to mention a very recent and comprehensive CoA authority.

Unfortunately, I am unavailable on 3 July.

B - I am writing in response to your email of last Friday asking for input from members about the Scottish Law Commission's next programme of law reform. I worked as a Legal Assistant at the Law Commission from 2002-2003 and during that time I wrote a scoping paper on the possible ways the law of murder and defences could be reformed in Scots criminal law. This was based in part on my PhD thesis. The law in other jurisdictions has developed considerably since then and some of these reforms contain helpful insights. I have published on this general topic and my suggestion is that the law in this area could benefit from the careful analysis of the SLC.

I have also been monitoring developments at the level of the law of evidence. My suspicion is that there are subtle changes underway now that the full potential of human rights principles are being realised in Scots law. My sense is that this is another area that could benefit from consideration.