

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS WEDNESDAY 11 MAY 2011

PROSECUTING PARTNERSHIPS AND PARTNERS

The Scottish Law Commission proposes that it should be possible to prosecute partnerships which have been dissolved, and asks whether it should be made easier to prosecute individual partners for offences committed by a partnership.

After the fatal fire at the Rosepark nursing home in 2004, the Crown attempted to prosecute the partnership that ran the home for health and safety offences. The High Court held that since the partnership had been dissolved, it no longer had any legal existence and could not be prosecuted.

In its Discussion Paper on *Criminal Liability of Partnerships*, published on 11 May, the Scottish Law Commission considers ways of preventing the prosecution of a partnership from being frustrated by its dissolution. It also examines the circumstances in which individual partners may be held criminally liable for offences committed by a partnership, and asks whether legislation should be introduced to make it easier to prosecute partners as individuals. The Commission seeks the views of interested organisations and members of the public by 12 August, before producing its final report later in the year.

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

"Where there is evidence that a partnership has committed an offence, it should be possible to prosecute that partnership, and make the partners liable for any fines. A partnership and its partners should not be able to avoid liability just by being dissolved. Our Discussion Paper explores ways to prevent this. We also consider whether it should be made easier to prosecute individual partners for offences committed by the partnership, providing an added incentive for partners to ensure that their partnerships comply with the law."

While the present project was prompted by the failure of the attempted prosecutions following the Rosepark fire, the Commission emphasises that it is concerned with reforming the law for the future. The Discussion Paper is not concerned with the facts of the Rosepark fire, and the Commission expresses no view as to the merits of the attempted prosecution of those involved.

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 Laura J Dunlop QC, Patrick Layden QC TD, and Professor Hector L MacQueen. 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.gsi.gov.uk).
3. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO (www.tsoshop.co.uk).