

Scottish Law Commission

(SCOT. LAW COM. No. 46)

THIRD 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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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 Hunter, V.R.D., *Chairman*,
Mr. A. E. Anton, C.B.E.,
Mr. R. B. Jack,
Mr. J. P. H. Mackay, Q.C.,
Professor T. B. Smith, Q.C.

The Secretary of the Commission is Mr. J. B. Allan. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

SCOTTISH LAW COMMISSION

To The Right Honourable Ronald King Murray, Q.C., M.P.,
Her Majesty's Advocate

Section 3(1)(d) read along with section 6(2) of the Law Commissions Act 1965, as amended¹, 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 of 27 October 1974, we have the honour to submit the third of these programmes together with a brief Note.

J. O. M. HUNTER
Chairman

3 November 1977

¹The Transfer of Functions (Secretary of State and Lord Advocate) Order 1972 (S.I. 1972, No. 2002).

THIRD 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 following legislation:

- (a) Adoption;
- (b) Building legislation;
- (c) Conveyancing;
- (d) Crofting;
- (e) Prisons;
- (f) Rents;
- (g) Sheriff Courts;
- (h) Slaughterhouses;
- (i) Trusts;
- (j) Valuation and Rating;
- (k) Water.

The above list does not imply priority, nor should it be taken as representing the order in which the 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 that work should continue on the following subjects in respect of which Bills are being prepared:

- (a) Alcoholic Liquor Duties;
- (b) Capital gains;
- (c) Civil Aviation;
- (d) Commonwealth Development Corporation;
- (e) Customs and Excise (General Relief);
- (f) Customs and Excise (Management and Power);
- (g) Employment Protection (Consolidation);
- (h) Export Guarantees and Overseas Investment;
- (i) Films;
- (j) Hydrocarbon Oil;
- (k) International Monetary Fund and Banks;
- (l) Interpretation;
- (m) Prices and Charges;
- (n) Price Commission;
- (o) Refuse (Disposal);
- (p) Reserve and Auxiliary Forces;
- (q) Tobacco Duties;
- (r) Trade Unions and Employers Associations;
- (s) Trustee Savings Bank.

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 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 17 November 1977.

NOTE BY THE COMMISSION

1. The role which this Commission and the Law Commission play in the drafting of consolidation Bills is set out in detail in Chapter XIV of the *Report of the Committee on the Preparation of Legislation (Renton Report)*.¹ That chapter also explains the need for consolidation and identifies some obstacles to its progress. It concludes by recommending that the pace of consolidation should be accelerated.

2. From our experience we would stress that the rate at which consolidation proceeds depends mainly on two factors, namely (1) the availability of Parliamentary draftsmen and (2) the co-operation and assistance provided by the Government Departments which have responsibility for the particular statutes being consolidated. It is also important that the work carried out by the draftsmen and the departmental officials respectively should, so far as practicable, be planned and timed in a way which will prevent undue delays or hold-ups during the progress of a particular consolidation.

3. With regard to the first main factor we had a most welcome reinforcement in June 1975, when a draftsman on the staff of the Lord Advocate's Department was seconded to us on a part-time basis. In consequence our complement until recently was one draftsman on a full-time basis and two draftsmen on a part-time basis. At the end of March 1977 our very experienced full-time draftsman, Sir John Gibson, retired, and we would wish to take this opportunity of thanking him for the valuable service he rendered to us during the eight years he was seconded to the Commission. Unfortunately it has so far proved impossible to replace Sir John Gibson, and as a result the Commission's resources of Parliamentary draftsmen have for an indefinite period been effectively reduced to less than half those which existed prior to March 1977. There has inevitably been some interruption of work of consolidation already in progress, and for the time being we are dependent on our two part-time draftsmen for the drafting of Scotland-only consolidation measures in addition to the preparation of draft clauses and Bills in connection with our reports on law reform. Until another full-time draftsman is seconded to the Commission, the time which can be devoted to consolidation Bills will thus be considerably reduced. The Lord Advocate's Department, it should be noted, has responsibility for the Scottish provisions in consolidation Bills that apply to other parts of the United Kingdom as well as to Scotland.

4. The other main factor is assistance provided by Government Departments. While we are under a statutory duty to produce consolidation Bills in accordance with our approved programmes, we have to rely heavily on the administrators in and legal advisers to a particular Department to produce instructions for our draftsmen and to find time to comment on prints of consolidation Bills when produced. We appreciate that these persons tend often to have more pressing priorities and that consolidation has to compete with the day-to-day work of Departments, but we would emphasise that consolidation should not in consequence be treated as a secondary subject. While consolidation may sometimes appear to have few political or departmental attractions, we consider that the provision of up-to-date consolidation statutes bringing together a number of old statutes has great advantages for those working with statute law both inside and outside Government.

¹Cmnd. 6053.

5. We think it appropriate at this stage to quote the following two paragraphs from the *Report of The Committee on the Preparation of Legislation*, which, although related to the United Kingdom as a whole, have particular significance for Scotland, where statute law has often to be searched for in a conglomeration of United Kingdom, Great Britain or Scotland-only measures of different dates and where Scottish application clauses may present additional difficulties and hazards.

“14.1. We have received from many sources evidence to the effect that much of the difficulty encountered by users of the statute law arises from the fact that the provisions relating to a given matter are to be found not in a self-contained Act but in a series of Acts piled one upon another at different dates, so that the investigation of a particular problem requires simultaneous reference to a number of separate Acts, probably scattered among a number of separate annual volumes. Often some of these Acts deal primarily with matters other than the one in question.

14.2. These difficulties have not been by any means ignored and for many years efforts have been made to tackle the problem by “consolidation”—that is, by rewriting the scattered provisions on a given matter in the form of a single Act. Unfortunately however 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. So the need for consolidation is perpetual.”

6. We have received a number of useful suggestions from a few sources including, in addition to Government Departments, the Law Society of Scotland, but we would welcome the assistance of others such as professional and other bodies and academic lawyers as well as members of the public in identifying areas of legislation which they consider should be consolidated. Our initial approach to Scottish Departments resulted in five candidates for consolidation being suggested. We made further efforts this year to increase the number of candidates for consolidation and we are now in a position to recommend the consolidation of the legislation relating to eleven separate subjects.

7. Opportunities sometimes occur for work to be done on the consolidation of enactments not listed in an existing Programme. For example, due to amending or new legislation on a particular subject being introduced current work on a consolidation Bill may have to be deferred. On such occasions we ask the draftsman to undertake other consolidation if the instructions are already available or can be made available at reasonably short notice, and sometimes it may be expedient to undertake such work in advance of a Programme and so avoid delay. At present work has been proceeding in this way on the consolidation of legislation relating to Adoption. We have included this as an item in this Third Programme.

8. Since the publication of our Second Programme¹ the following consolidation Acts applying to Scotland only have been passed:

Criminal Procedure (Scotland) Act 1975
Sexual Offences (Scotland) Act 1976

¹(1973) Scot. Law Com. No. 27.

9. The position on the four remaining items of that Programme is as follows:
- (a) *Education (Scotland) Acts*—Work on the consolidation of this legislation has proceeded and in January 1977 the draftsman produced an up-to-date print of the Bill. This print of the Bill has for some time been under consideration by the Department concerned, but it is hoped that it may be introduced in the current session.
 - (b) *Enactments relating to the functions of the Scottish Electricity Boards*—Consolidation of these enactments has reached the stage of a final print of a Bill, which should be ready for the current Parliamentary Session.
 - (c) *National Health Service (Scotland) Acts*—Work has been proceeding on the consolidation of this legislation, and we are doing our utmost to have a Bill ready for the current Parliamentary Session.
 - (d) *Enactments relating to Solicitors in Scotland*—The consolidation of this legislation was postponed until the enactment of the Solicitors (Scotland) Act 1976. Following the receipt of instructions in October 1976 initial progress was being made towards a first print of a Bill until work was interrupted in consequence of the retirement of our full-time draftsman.

10. The following consolidation Acts which apply to other parts of the United Kingdom as well as to Scotland have been passed:

Independent Broadcasting Act 1973
Powers of Criminal Courts Act 1973
Friendly Societies Act 1974
Insurance Companies Act 1974
Supply Powers Act 1975
Social Security Act 1975
Industrial Injuries and Diseases (Old Cases) Act 1975
Social Security (Consequential Provisions) Act 1975
House of Commons Disqualification Act 1975
Ministers of Crown Act 1975
Ministerial and Other Salaries Act 1975
Export Guarantees Act 1975
Iron and Steel Act 1975
Airport Authority Act 1975
Recess Elections Act 1975
Restrictive Practices Court Act 1976
Restrictive Trade Practices Act 1976
Lotteries and Amusement Act 1976
Police Pensions Act 1976
Resale Prices Act 1976
Supplementary Benefits Act 1976
British Airways Board Act 1977

11. The process of consolidation can be slowed down by the presence in the Statute Book of obsolescent law which clearly relates to the subject matter to be consolidated but is of dubious meaning and uncertain practical utility. We would like to draw attention to a very useful procedure which has been used in previous consolidation Bills, for example the Police (Scotland) Act 1967, and which was recently adopted by the draftsman when framing the Repeal

Schedule to the Resale Prices Bill which received the Royal Assent on 26 October 1976. The Repeal Schedule identified separately spent as opposed to replaced provisions. The repeal of spent provisions would not normally be effected in a consolidation Bill but would await a Statute Law (Repeals) Bill. However, it is thought that in suitable cases consolidation and statute law revision can go forward hand in hand, and we would favour more use of this procedure as and when the opportunity permits.

Statute Law Revision

12. It is the responsibility of the Law Commission and ourselves to simplify and improve the Statute Book by means of statute law revision. As explained in our Second Programme, so long as repeals of Scottish enactments can be accommodated in United Kingdom Bills the balance of convenience and advantage is in favour of our operating jointly with the Law Commission. This method of working has since 1973 resulted in the production of four Statute Law Revision Reports and the enactment of the Statute Law (Repeals) Acts of 1974, 1975, 1976 and 1977.

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