

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
NOT FOR PUBLICATION OR BROADCAST  
BEFORE 1000 HOURS THURSDAY 25 SEPTEMBER 2025

\*\*\*\*\*

### *A review of Scots homicide law*

The Scottish Law Commission has today published its Report on the Mental Element in Homicide (Scot Law Com No. 269) including a draft Homicide (Scotland) Bill. The Report notes criticisms which have been made of the current common-law-based Scots law governing murder and culpable homicide; refers to homicide laws in other jurisdictions; considers the advantages and disadvantages of replacing the common law with statutory provisions; and ultimately makes certain recommendations seeking to simplify, clarify and modernise the law of homicide in Scotland.

The recommendations include:

- Removing the vague and emotive concept of “wickedness” from the definition of murder, without changing the type of criminal conduct properly recognised as murder. This ensures that the language used to define Scots homicide offences is clear, accessible, and suitable for modern criminal law. The common law offence of murder is currently framed in terms of a person showing “wicked intention” or displaying “wicked recklessness” when causing the death of another.
- Requiring that murder can only be committed where a person causes the death of another person and either (i) intends to cause the death or (ii) assaults the person and behaves with an utter disregard for whether the person, or any other person, lives or dies. The proposed definition in section 1 of the draft Bill seeks to provide a clear distinction between the crimes of murder and culpable homicide and requires some form of intentional conduct on the part of the perpetrator.

- Proposing a statutory definition of culpable homicide in section 2 of the draft Bill, reflecting the current common law offence. Culpable homicide is defined as being committed where a person causes the death of another person by either (i) assaulting the person or (ii) behaving in a manner which endangers another person and with an utter disregard for the consequences.
- Clarifying that Scots homicide law does not have a doctrine of constructive malice (which automatically attributes liability for murder where the killing occurs in the course of some other crime, such as robbery) thus confirming that individuals cannot be held liable for murder in cases where they do not act with the necessary mental element for murder as set out in section 1 of the draft Bill.
- Removing the outdated and gendered defence of sexual infidelity provocation, so that such infidelity can no longer provide a basis for the partial defence of provocation. Instead, only physical violence will be deemed a provocative act that can reduce a murder conviction to one for culpable homicide. A proposed statutory definition of the defence of provocation is set out in section 5 of the draft Bill.

These recommendations seek to modernise, clarify and improve the law of homicide in Scotland; make the law more accessible and easier to understand and apply; address the various issues and difficulties with the current law that have been drawn to our attention; and ultimately ensure that Scots homicide law is fit for the 21<sup>st</sup> century.

Lady Paton, lead Commissioner on this project, said:

“It is essential that Scots homicide law is fit for purpose in the 21<sup>st</sup> century. The current law is common-law-based, with principles and definitions ascertainable only from textbooks and court decisions; governed by the vague and emotive concept of “wickedness”; and the subject of criticism from some commentators as being unclear, old-fashioned, and gendered. In response to those criticisms, the Scottish Law Commission has carried out research and has provided a Report on the Mental Element in Homicide, together with a draft Homicide (Scotland) Bill. The recommendations in the Report aim to clarify, modernise, and simplify Scots homicide law, and to make that law clear and accessible to all.”

## FURTHER INFORMATION

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chair is the Rt Hon Lady Paton, a Court of Session judge. The other Commissioners are Ann Stewart, Professor Frankie McCarthy, and Professor Gillian Black. The Chief Executive is Rachel Rayner.
2. Further information can be obtained by contacting Graham McGlashan, Scottish Law Commission, Parliament House, 11 Parliament Square, Edinburgh EH1 1RQ (Tel: 0131 244 6605; email [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk)).
3. The paper will be available on our website at <https://www.scotlawcom.gov.uk> at 10am on 25 September 2025.