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**THE LAW  
COMMISSION  
PUBLISHED WORKING PAPER  
NO: 26**

Second Programme - Item XVIII (2)(a)

CRIMINAL LAW

FORGERY

4 March 1970

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THE LAW COMMISSION

Second Programme, Subject XVIII, Item (2)(a)

WORKING PAPER NO. 26

FORGERY

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THE LAW COMMISSION

SECOND PROGRAMME - SUBJECT XVIII ITEM (2)(a)

WORKING PAPER NO. 26

FORGERY

I INTRODUCTION

1. In early days it seems that forgery was a crime only in relation to royal seals, charters and writings under seal, and offences in relation to these were closely linked with treason and coinage offences. By a statute of 1562<sup>1</sup> the forging of "false and untrue charters, evidences, deeds and writings" was made criminal; but, with the exception of testaments, the statute affected only writings under seal. Neither Coke nor Hale refer to the forgery of ordinary writings as a crime. Writings not under seal were first held to be the subject of forgery in 1727, in the case of R. v. Ward.<sup>2</sup> Falsification of such writings was held to have been indictable at common law, even before the statute of Eliz. 1. However, Hawkins, writing in 1767, hesitated to include "writings of an inferior nature" as being capable of being forged, unless someone received a prejudice from the writing.<sup>3</sup> He thought that, in general, the law of forgery related to "matters of a public nature only". With the growth of commerce in the latter half of the 18th and the beginning of the 19th centuries a series of statutes was passed making the forgery of various commercial documents capital felony (usually without benefit of clergy) and forgery was one of the last crimes to remain capital. In his Pleas of the Crown, East explained forgery in the following terms:-<sup>4</sup>

"To forge, (a metaphorical expression borrowed from the occupation of the smith), means, properly speaking, no more than to make or form: but, in our law it is always taken in an evil sense; and

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1. 5 Eliz. 1, c.14.

2. (1727) 2 Ld. Raym. 1461.

3. 1 P.C. c.70, s.11.

4. East, Pleas of the Crown (1803) Vol. 2, p.852.

therefore Forgery at common law denotes a false making (which includes every alteration of or addition to a true statement), a making malo animo, of any written instrument for the purpose of fraud and deceit. This definition results from all the authorities ancient and modern taken together."

Lord Denning quoted this definition in Welham v. D.P.P.<sup>5</sup> saying "He treats the subject, I think, better than any writer before or since."

2. The Forgery Act 1861 was one of the series of codification Acts passed in that year. Much of that Act was kept alive on the passing of the Forgery Act 1913. The 1913 Act, as will be seen, is concerned with public and private documents and with certain seals and dies.

3. Forgery, in ordinary speech, has, however, a rather wider meaning than that which is attached to it by the Forgery Act 1913; it may be described as the fabrication of a false document or thing in order that it may be used as genuine. In this sense, the subject is by no means confined in the present law to the Forgery Acts 1861 and 1913. Appendix B contains a list, which is not exhaustive, of a wide variety of legislation in which offences akin to forgery have been created. This legislation defies categorization, but the most common offence is that of forging road traffic documents, contained in section 233 of the Road Traffic Act 1960.<sup>6</sup>

#### Statistical Information

4. The following statistics which are relevant to the discussion of forgery in this paper are taken from the Annual Criminal Statistics<sup>7</sup> and from the Statistics on offences relating to Motor Vehicles.<sup>8</sup> It is clear from these figures that it is as true of forgery as it is of theft to say:

"The present different maximum penalties date from times when maximum sentences were passed much more commonly than they are now." <sup>9</sup>

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5. [1961] A.C. 103, 133.

6. See Tables A and B below.

7. Criminal Statistics, England and Wales, 1968 Cmnd. 4098.

8. Return dated 24 July, 1968 of 1967 offences.

9. See footnote 9 on p.3.

TABLE A

OFFENCES UNDER THE FORGERY ACT 1913 COMPARED WITH OTHER OFFENCES (1968 STATISTICS)	
NUMBER OF PERSONS FOUND GUILTY (ALL COURTS)	
All offences	1,576,868
Traffic offences dealt with summarily	1,014,793
Stealing and breaking and entering	198,907
Malicious damage	18,687
Forgery Act offences*	2,945*
Offences under the Coinage Offences Act 1936	11
*Forgery Act offences tried by magistrates (a)	2549 (M 1729) (F 820)
tried on indictment	396 (M 335) (F 61)

(a) As to Forgery Act offences triable summarily, see Schedule I (as amended) of the Magistrates' Courts Act 1952 and section 27 of the Criminal Justice Act 1967. Detail of these offences is given in paragraph 66 below.

9. Criminal Law Revision Committee, Eighth Report, 1966 Cmd. 2977, para. 10. It is relevant in this context to note the cases of Caughie, Smith and Steward [1969] 1 W.L.R. 1700, in which the Court of Appeal upheld the sentence of four years passed upon the first appellant for possession for forged banknotes, but reduced to 18 months the sentences of the other two appellants convicted of uttering forged banknotes. For the purposes of the appeal the Court caused investigation to be made of nearly 100 cases before the Court in the previous 18 months. From this survey it was concluded that -

- (i) the Central Criminal Court tended to pass somewhat lower sentences than courts in other parts of the country;
- (ii) in these courts sentences of four years in serious cases such as Caughie were not unusual; and
- (iii) in cases of uttering one or two notes, as in the cases of Smith and Steward, the average sentence was 18 months to two years, although the period might be shorter or longer according to the circumstances of the case.

TABLE B

OFFENCES OF FORGERY AND AKIN TO FORGERY PROSECUTED UNDER THE ROAD TRAFFIC ACTS (1967 STATISTICS)		
Description of Offence	Tried by Magistrates	Tried on Indictment
Forging motor vehicle licence	10,331	54
Forging driving licence	2,584	68
Forging insurance certificate	1,888	49
Forging vehicle registration book	200*	
Altering record entries	11	4
Totals	15,014	175
*Includes cases which may have been tried on indictment but which cannot be identified from the information available.		

TABLE C

DISPOSAL OF OFFENDERS - FORGERY ACT 1913 (1968 STATISTICS) AND OFFENCES AKIN TO FORGERY UNDER ROAD TRAFFIC ACTS (1967 STATISTICS)				
		Absolute and Conditional Discharge, Probation, etc.	Fine	Custodial Sentences (including Suspended Sentences)
Assizes and Quarter Sessions	Forgery Act 1913	70	16	310
	Road Traffic Acts	18	74	83
Magistrates' Courts	Forgery Act 1913	967	836	736
	Road Traffic Acts	309	13,730	597
Totals		1,367	14,656	1,726

TABLE D

LENGTH OF SENTENCES OF IMPRISONMENT OFFENDERS UNDER FORGERY ACT 1913 DEALT WITH AT ASSIZES AND QUARTER SESSIONS (1968 STATISTICS)			
Suspended Sentences	Up to 1 year	1 to 3 years	Over 3 years
95	73	103	21

Note: None of the above sentences exceeds 10 years.



II THE PRESENT LAW OF FORGERY UNDER THE  
FORGERY ACT 1913, AT COMMON LAW AND  
UNDER THE 1830, 1861 AND OTHER ACTS

The Forgery Act 1913

5. The 1913 Act, though in its nature a consolidation Act, left alive both forgery at common law and some of the provisions of the 1830 and 1861 Acts. Its general scheme is as follows:-<sup>10</sup>

Section 1 defines forgery as "the making of a false document in order that it may be used as genuine". The section then gives examples introduced by the words "in particular" of what is meant by "falsity" of a document. The examples do not constitute a comprehensive definition of falsity<sup>11</sup> and neither this section nor the interpretation section (s.18) attempts to define what is meant by a "document".

Section 2 of the Act renders criminal the forgery of wills and other testamentary documents, deeds, bonds and banknotes which, if done with intent to defraud, attracts a maximum sentence of life imprisonment. This section also makes the forgery of valuable securities, documents of title to land or goods, powers of attorney, entries in share registers, insurance policies, charter-parties, certificates of Inland Revenue Commissioners etc., if done with intent to defraud, an offence attracting a maximum penalty of 14 years' imprisonment. The categories of documents covered by this section may be described as possessing for the most part a "private" character.

Section 3 creates three grades of offences in relation to specified categories of seals and documents of a "public" character, if forged with intent to defraud or deceive. These grades are:-

- (i) forgery of seals of State and the Royal Sign Manual; punishable by life imprisonment,

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10. The Act, together with the Coinage Offences Act 1936, is summarised with reference to its scheme of penalties in Appendix A.

11. See s.35(1) of the Criminal Justice Act 1925.

- (ii) forgery of registers of births, marriages, deaths, burials and cremations or copies thereof, or certified copies of Public Records and of wrappers or labels provided by the Revenue or Customs; punishable with imprisonment not exceeding 14 years,
- (iii) forgery of any one of a fairly lengthy list of "public" documents, registers or certificates; punishable with imprisonment not exceeding 7 years.

Section 4 contains a residual provision. It covers the forgery of all documents not specifically dealt with in any other part of the Act, and here again the two kinds of intent are reproduced; intent to defraud or deceive if the document is "public"; intent to defraud, if it is "private". But the same maximum punishment, viz. 2 years' imprisonment, is provided whether the document forged is "public" or "private". Nowhere in the Act are these terms defined.<sup>12</sup>

Section 5 deals with forgery of seals and dies, and here again the double intent is reproduced.

Section 6 deals with the offence of uttering forged documents, seals and dies. This is an offence distinct from forgery, but it attracts the same penalty as if the person uttering had himself forged the thing uttered.

Section 7 creates the offence of demanding, obtaining, etc. money, security for money or other property under, upon or by virtue of any forged instrument. The word "instrument", although undefined, may be a more restricted word than "document". The word has, however, been held to include a telegram and a request for payment of money.<sup>13</sup> The section also deals with the fraudulent use of probate and letters

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12. As to what is a "public" document - for the purposes of the law of evidence - see Sturla v. Freccia (1880) 5 App. Cas. 623, 643 and Lilley v. Pettit [1946] K.B. 401.

13. R. v. Riley [1896] 1 Q.B. 309; R. v. Cade [1914] 2 K.B. 209.

of administration obtained by use of a forged testamentary document or a false oath. The penalties under this section are imprisonment for not more than 14 years.

Sections 8-10 deal with possession of forged documents, paper or instruments for forgery, or special paper before it has been stamped and issued.

Sections 11-13 have been wholly repealed by recent legislation.<sup>14</sup>

Section 15 defines possession.

Section 16 relates to search warrants.

Section 17 deals with the form of indictment in relation to description of documents, etc, and to the laying of the specific intent required.<sup>15</sup>

Section 18 is the interpretation section.

Section 19 relates to savings.

6. The repeal policy of the 1913 Act was, like that of the Perjury Act 1911, comprehensive except that not only parts of the Forgery Act 1861, but also a number of earlier statutes dealing with offences of the type of forgery (mainly relating to marks and certifications of various kinds), were left unrepealed.

#### Forgery at common law

It is still an offence at common law to forge any writing with intent to defraud, or to utter any such writing with the like intent.<sup>16</sup>

#### The 1830 Act

The only surviving section of the 1830 Act is section 21, which allows clergymen of the Church of England to correct errors in parish registers the alteration of which would otherwise be an offence under section 36 of the 1861 Act.

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14. Criminal Law Act 1967 and the Justices of the Peace Act 1968.

15. cf. s.44 of the 1861 Act.

16. See R. v. Riley [1896] 1 Q.B. 309; R. v. Sharman (1854) Dears. 285.

## The 1861 Act

The following sections are still in force:-

Section 5 deals with making false entries in books of account kept by the Bank of England or the Bank of Ireland, with intent to defraud.

Section 6 makes it an offence for any person employed by the Bank of England or Ireland to issue a false dividend warrant.

Section 28 makes it an offence for the clerk of any court to issue a false copy of the certificate or record of the court.

Section 34 prohibits answering to bail in the name of another.

Sections 36 and 37 deal with making false entries in, or altering or destroying, registers of births, marriages and deaths.

Section 44 corresponds to section 17(2) of the 1913 Act.

## Other Statutes dealing with Forgery

There are numerous other statutes (some 40 examples are listed in Appendix B to this paper) dealing with offences of forgery or offences akin to forgery. The list is not exhaustive, but it illustrates the very wide range of present legislation dealing with forgery.

## III THE PROBLEMS

### Introduction

7. It will be apparent from a reading of the Eighth Report of the Criminal Law Revision Committee<sup>17</sup> which led to the Theft Act 1968, and from our Working Paper on Malicious Damage<sup>18</sup> that the general view, which we share, is that criminal conduct possessing the same basic features does not necessarily require to be dealt with by a large number of separate offences, each with its own penalty and each covering a particular set of circumstances. As Appendix A shows, the Forgery Act 1913,

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17. (1966) Cmnd. 2977.

18. Working Paper No. 23.

like other legislation based on the 19th century criminal law, contains precisely this type of classification, with many distinct offences and even more sub-classifications within each class. Section 2(2), for example, which creates one offence, lists no less than ten categories of documents, many having separate lists within each category. Thus section 2(2)(h) reads:-

"Any declaration, warrant, order, affidavit, affirmation, certificate, or other document required or authorised to be made by or for the purposes of the Government Annuities Act 1829, or the Government Annuities Act 1832, or by the National Debt Commissioners acting under the authority of the said Acts;"

We proceed on the basis that simplification is a major aim of this review. In addition to the problem of simplification, it seems to us, however, that the present state of the law calls for consideration of a number of other questions. Most of this paper is taken up with our provisional answers to them.

8. In paragraph 14 we summarise these questions and in paragraphs 15-67 we deal with them in detail. It may, however, be helpful to consider at this point some broad issues which arise in connection with certain of these questions. Thus, one problem concerns the definition of the word "documents", that is, the class of things which, according to the existing law, mainly form the subject of forgery. In this connection we should point out that it might be possible (as we shall later consider) to extend the categories of things that may be forged. One argument for doing so is the inherent difficulty of defining what is a document; if the category of things that can be forged were extended to cover, for example, all tangible things, the discussion about the meaning of the word "document" would take on a mainly historical interest.

9. As we have seen, most offences in the present law of forgery prescribe one or other of two mental elements, namely intent to defraud and intent to deceive. Intent to defraud is necessary in the case of all private documents, whereas intent to deceive or to defraud is sufficient in the case of most public documents. "Public" and "private" documents are not, however, defined.<sup>19</sup> In addition, the line of demarcation between the two intents is unclear.<sup>20</sup> It, therefore, seems

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19. Para. 5 above.

20. See para. 43 below.

obvious that the whole question of intent in forgery requires consideration.

10. A person is guilty of a separate offence - uttering - if, with the necessary mental element, he makes any use of the thing forged. In addition, a person who with the necessary intent demands property on a forged instrument is guilty of an offence. It is an offence unlawfully to possess some forged things, but not all things which may be forged. The problems arising from these different offences will be discussed.

11. Forging money, or "coining," is a matter which has in part been dealt with separately from forgery. The Coinage Offences Act 1936 deals with counterfeiting coin, whether English or foreign. Banknotes, whether English or foreign, are dealt with in the 1913 Act. The effect of the Counterfeit Currency (Convention) Act 1935 is to attract the provisions of the Forgery Act 1913 to currency notes issued by foreign governments. We consider below whether and, if so, how far, coining and forgery ought to be amalgamated.

12. In any reform of the criminal law, problems of jurisdiction, penalties and compensation arise and require consideration.

13. The repeal policy of a new Forgery Act depends on the extent to which it should aim at comprehensiveness, and on whether it should allow offences akin to forgery in other legislation, such as the Post Office Acts and the Road Traffic Acts, to survive.

14. Accordingly, the questions which seem to us to arise are the following:-

- A. What constitutes forgery?
- B. What can be forged under the present law?
- C. What in a new Forgery Act should be the things which may be the subject of forgery?
- D. Should there be any, and if so what, distinctions made for the purposes of punishment, between different categories of forgery?
- E. What should the mental element be?
- F. Is it necessary to retain the separate offence of "uttering"? If so, how should it be related



to forgery? Is the present nomenclature satisfactory?

- G. Should the separate offence of "demanding property etc. on a forged instrument" be retained?
- H. Should there be, in relation to forgery, an offence of unlawful possession? If so, to what should it apply?
- I. Should coinage offences be amalgamated with forgery? If so, to what extent?
- J. What jurisdictional changes need to be made?
- K. What provisions should be made for compensating victims of forgery?
- L. To what extent should an effort be made to bring within a new Forgery Act activities akin to forgery at present covered by other legislation?

A. What constitutes forgery?

15. By section 1 of the Forgery Act 1913, forgery is the making of a false document in order that it may be used as genuine. The traditional view on what constitutes falsity in a document for the purposes of forgery is exemplified by a passage in R. v. Windsor:<sup>-21</sup>

"Forgery is the false making of an instrument purporting to be that which it is not; it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced into writing."

We agree with, and adopt the conclusion of the editor of Russell on Crime,<sup>22</sup> that the Forgery Act 1913, section 1, as explained by section 35(1) of the Criminal Justice Act 1925, preserved the old position that, in order to be forged, a document must "tell a lie about itself", in the sense that it conveys a false message about its own nature. As to the falsity of documents, we think that there is no need for any change in the law. A document which does not tell a lie about itself but which contains a lying statement will, if it is used dishonestly

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21. (1865) 10 Cox C.C. 118, 123. See also Russell on Crime, 12th ed., p.1227, where this passage is cited.

22. pp.1232 to 1234.

to obtain property or a pecuniary advantage, render the maker liable under the provisions of the Theft Act 1968 relating to criminal deception or, if the document has statutory authority, under section 5 of the Perjury Act 1911.<sup>23</sup> We, therefore, see no necessity for extending the traditional concept of falsity in this context. Under the present law some difficulties have arisen from the decision in R. v. Hopkins & Collins.<sup>24</sup> In this case the appellants, who were held rightly convicted of forgery, had made false entries in books which it was their duty to keep. The entries gave a misleading impression of the books themselves in that they falsely purported to have been made on the dates they bore. The books therefore "told a lie about themselves", and thus on the generally accepted view were forgeries. But the wide language in certain passages in the court's judgment, delivered by Lord Goddard, C.J., seems to suggest that merely to enter false amounts in a cash book might be forgery. The court also raised, but did not answer, the question whether the mere dishonest omission of an entry from a book could amount to forgery. So far as the case lends any encouragement to the view that an omission can of itself amount to forgery, we do not propose to adopt it. False accounting by omission is, in any case, an offence under section 17 of the Theft Act 1968.

16. Section 1 of the 1913 Act emphasises throughout that, for a document to be forged, it must be false in a material particular. Thus, in section 1(2):-

"A document is false ... if the whole or any material part thereof purports to be made ..."

Again, section 1(2)(a) and (b) respectively contain the words:-

"... a document is false:-

- (a) if any material alteration ... has been made therein;
- (b) if the whole or some material part of it purports to be made ..."

There are similar provisions in relation to false statements in the Perjury Act 1911, which is a subject that we also have under review. Whatever may be the position in regard to perjury, we doubt whether in relation to forgery it is necessary

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23. Perjury is under review by the Law Commission.

24. (1957) 41 Cr. App. Rep. 231.

to continue to refer specifically to materiality. As a practical matter, we consider that if the alteration is immaterial, one (or both) of two defences is likely to be available, namely:

- (a) in spite of the alteration, the thing does not tell a lie about itself,
- (b) the intent required for forgery was not present. It is, of course, a matter of fact how far, if at all, the immateriality negatives intent.

17. We are satisfied that in practice the question of materiality does not arise, so that it does not appear to be needed as a safeguard for defendants. If this is right, then it is a complicating factor having no useful function. Moreover, the object of forgery is usually financial gain to the forger. If this object is achieved, the offender will, besides the offence of forgery, commit an offence of obtaining property or a pecuniary advantage by deception under sections 15 or 16 of the Theft Act 1968. In these sections, there is no requirement that the deception should have been material. Although the requirement of materiality is still present in sections 17 (false accounting) and 19 (false statements by company directors etc.) of the same Act, we would prefer to aim at consistency between a new Forgery Act and sections 15 and 16 of the 1968 Act, because in this respect the subject-matter is closely interlinked.

B. What can be forged under the present law?

18. Although we later discuss possible changes in the categories of things that can be forged, it is first necessary to consider what the word "document" means according to the present law. This question mainly arises in respect of the residual offences of forging documents created by section 4 of the Act of 1913. Sections 2 and 3 of that Act each contain a long list of "documents" of various categories and there is little difficulty in answering the question whether the document alleged to have been forged falls within any of these categories. With regard to section 4, however, there is wide divergence between the views of some of the textbook writers as to the meaning of the word "document".

- (a) Cross & Jones,<sup>25</sup> while accepting the proposition that a document is a writing, express the view

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25. Introduction to Criminal Law, 6th ed., pp. 250 et seq.

(based on the difficult decisions in R. v. Closs<sup>26</sup> and R. v. Smith<sup>27</sup>) that if the thing alleged to have been forged is intended to have utility apart from the fact that its contents convey information or record a promise it is not a document. Professor Glanville Williams<sup>28</sup> also holds this view.

- (b) Smith & Hogan<sup>29</sup> accept writing as a good synonym for document, and accept Professor Glanville Williams' view that the eliminating test should be: does the thing have utility apart from the fact that it conveys information or records a promise? However, they further suggest that the writing must be an instrument as well as a document, that is to say, a document made for the purpose of creating or modifying or terminating a right.
- (c) The editor of Kenny<sup>30</sup> adopts a different line of approach and deals most fully with the question. He suggests that a document is a writing in any form, on any material, which communicates to some person or persons a human statement whether of fact or fiction. Accordingly a purely mechanical register would be excluded; and so would a drawing or painting, as such, because it is essential that the thing forged should be capable of conveying the same message to all persons able to read it. On this view it is immaterial on what base or how the writing is made. On the basis of the views expressed in Kenny, a signature on a picture (as distinct from the picture itself) may constitute a document and R. v. Closs<sup>31</sup> should be regarded as having been wrongly decided.

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26. (1858) Dears. & B. 460 (a picture with a false signature - not a document).

27. (1858) Dears. & B. 566 (false baking-powder labels - not documents).

28. (1948) 11 M.L.R. 150-162.

29. Criminal Law, 2nd ed., pp. 440-443.

30. Outline of the Criminal Law, 19th ed., pp. 383 et seq.

31. (1858) Dears. & B. 460.

19. We have set out these views at some length, although, as will be seen, the question "what is a document?" will have less importance in the law of forgery if one of our suggested solutions were to be adopted. This is because if any tangible object or specified kinds of tangible objects were to be the subject of forgery, it would not matter whether the thing forged amounted to a document or not. The discussion of the meaning of the word "document" illustrates the difficulties to which this expression has given rise, and which, if retained, it might perpetuate.

C. What in a new Forgery Act should be the things which may be the subject of forgery?

20. As we have said, the present Act in general relates only to documents and to certain seals and dies. Other legislation is not always so limited. In revising the law, we might accept these limits and confine our efforts to reducing the number of separate offences. We believe that this is a course which we should not follow since it would involve the acceptance and perpetuation of the difficulties attaching to the definition of documents or "writings" (in so far as the latter term is the relevant test for common law forgery). The alternative course involves considering the policy underlying the existence of forgery offences. Approaching the definition of the subjects of forgery in this way, we shall examine whether, on the one hand, the categories of things capable of being forged should be widened, and to what extent, or whether, on the other hand, they should be narrowed by, for example, restricting them to specified categories of things including documents of particular kinds.

21. The essential element in forgery should, we think, be the dishonest creation in a tangible form of a thing which itself is likely to give a wrong impression of what it is to those into whose hands it may fall. The deception is all the more serious because it relates not merely to the truth of the message conveyed by the forged object, but also to the source or circumstances of its purported creation. Frequently the thing in question is some form of writing, such as a will, a banknote or a birth certificate. But it is just as easy to create a three-dimensional object that is similarly misleading as it is to create a forged writing. One example of such an

object is a solid coin. But there are other tangible things of which the same observation may be made. For example, a painting may falsely appear to be the work of a well-known artist or an objet d'art may falsely appear to be antique or the work of a celebrated craftsman. It can, therefore, be contended that just as there is an offence of forgery in making a false will and an offence of dishonesty in using that will to obtain property, so there should be an offence of forgery when any other article is fabricated which gives a misleading impression as to its source or the circumstances of its creation even though the use of such an article under a false or deceitful trade description may already constitute an offence.<sup>32</sup> If this is right, it would seem illogical to retain an offence of making a document which conveys a false impression (or "tells a lie") about itself while having no corresponding offence of creating an object other than a document which is similarly misleading. It can be contended that there is no valid difference in this respect between a cheque on which the signature is forged, a falsified roll of paper appearing to be the automatic record of a cash register (whether or not this is a forgery on the present law), the making of a painting purporting to be that of an Old Master, and the making of a piece of faked antique silver. Neither of the two last mentioned activities is at present forgery,<sup>33</sup> though if the silver is falsely hallmarked, an offence will be committed under section 2 of the Gold and Silver Wares Act 1844 (as amended).

22. It would, we think, be theoretically possible to extend the range of objects at present the subject matter of forgery to all tangible things. Whilst this solution could be regarded

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32. There is liability under the Trade Descriptions Act 1968 if a trade description is in fact false subject to the defences provided by ss. 22 and 23 of that Act. Liability for obtaining property etc. by deceit under ss. 15 and 16 of the Theft Act 1968 involves proof of dishonesty on the part of the defendant.

33. In R. v. Closs (1858) Dears. & B. 460 it was held that a painting with a false signature was not a forgery. Kenny, however, takes the view that this case was wrongly decided in that the court wrongly ignored the fact that the signature was false (see para. 18 above). Certainly it is difficult to defend a decision which distinguishes between a signature on paper and a signature on canvass. Further as a matter of policy there appears to be no valid distinction between a "forged" Vermeer which purports to be signed and one which lacks a signature.



as the logical culmination of the history of forgery offences in the law (i.e. the long process of piecemeal extension) it needs examination from the practical point of view. It can, thus, be asked whether the faking of things not at present capable of constituting the subject matter of forgery presents so great a mischief that the range of the offence should be extended so far, and whether such an extension would not encounter difficulties of such an order as might make it unworkable.

23. With these questions in mind, we think it is useful to consider how forgery-type offences are treated in some other jurisdictions. It is not, in Scotland, an offence merely to fabricate a thing.<sup>34</sup> But if the fabricated thing is uttered, an offence may be committed which comes within the framework of "practical cheating". Dr. G.H. Gordon<sup>35</sup> is of opinion that in this context falsified things in Scotland are not confined to documents, but extend to any article, provided that it is falsified in one of the ways that upon its being uttered would render it "forged" for the purpose of Scots law. These are where it is tendered as authentic, as the creation of a person other than its maker, or as being a different thing from what it actually is. So far as "uttering" is concerned the law of Scotland is, therefore, of the widest scope.

24. The American Law Institute's draft Model Penal Code confines forgery to writing. However, by section 224.1:-

"'Writing' includes printing or any other method or recording information, money, coins, tokens, stamps, seals, credit cards, badges, trade-marks, and other symbols of value, right, privilege or identification."

Thus the American formulation of the offence is more comprehensive than the present English law of forgery.<sup>36</sup> Furthermore, by section 224.2, under the heading "Simulating Objects of

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34. Unless the fabrication is itself an offence under the provisions of any statute extending to Scotland. In Scotland forgery of banknotes and bills of exchange is an offence under the Bank Notes Forgery Acts of 1801, 1805 and 1820 and under the Forgery of Foreign Bills Act 1803. The Coinage Offences Act 1936 also extends to Scotland.

35. Criminal Law, pp. 561-575, especially at pp. 569-570.

36. cf. R. v. Smith (1858) Dears. & B. 566. See footnote 27 above.

Antiquity, Rarity, Etc.", an offence is committed by anyone who -

"makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess."

25. The New Zealand Crimes Act 1961 confines forgery to documents (defined in s.263(1)), and has one offence only, with a maximum penalty of ten years' imprisonment. However, falsifications of seals, stamps, registers, certificates and coins of the realm are separate offences included within the same group of sections as forgery (ss. 263 to 281). The German Draft Penal Code of 1952 also confines forgery to documents, but includes within the definition of documents recordings and other technical devices as well as physical marks probative of fact.<sup>37</sup> This draft code also creates offences of falsifying mechanical "recordations" (i.e. tampering with recording apparatus itself) and counterfeiting money and stamped impressions. Chapter 14 of the Swedish Penal Code of 1965 is entitled "Crimes of Falsification". The main categories of things that can be falsified are documents, signatures (not necessarily on documents) coins and money generally, stamps and boundary marks.

26. The treatment of forgery of writings and simulation of objects by the American Law Institute's draft Model Penal Code leads to a consideration of a proposal to extend the range of articles which may be the subject of the forgery offence to any tangible thing, irrespective of its nature, provided that, as created or tampered with, it "tells a lie about itself". The practicability of this solution is supported by what we understand of the Scots law, subject to the important point that in Scotland the uttering offence is not one concerned with the fabrication of things but with their intentional dishonest use (i.e. use to the prejudice of the person to whom the thing is uttered). The advantage of this solution is that it eliminates, at the outset, the difficulties involved in defining categories of things susceptible of being the subject of forgery and the special problems revolving round the meaning of such residual expressions as "documents" or "writings". But it is not possible to recommend the adoption of this solution without considering the practical implications and consequences.

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37. s.304.

27. Broadly speaking, the English law of forgery and kindred offences has, up to the present, proceeded upon the basis that the fabrication of any object (by creating or tampering with it), as distinct from using it dishonestly, should only be made a criminal offence within a limited area. The boundaries of that area are not entirely clear but, apart from the residual offences relating to "documents" (see further paragraph 32 below), they may be drawn so as to include five main classes of objects. These are:-

- (a) things purporting to possess the authority of the State, for example, official seals and signatures and the documents of courts of justice, public records and certificates, permits and licences issued under statutory authority;
- (b) banknotes, coin and stamps;
- (c) valuable securities (see s.18(1) of the Forgery Act 1913);
- (d) documents of or evidencing title to property including wills and deeds;
- (e) registers and certificates of births, marriages, deaths and burials, with copies of such registers or certificates.

Of each of these classes it can be said that the bringing of a forgery into existence is so dangerous an activity that it should attract criminal sanctions, provided that the necessary mental element in the crime is present. The extension of the subject matter of forgery to all tangible things would, it can be argued, disregard the test of social danger which has, hitherto, been a criterion of the forgery offence. It may be contended, with some force, that there is no such mischief arising from the mere faking of pictures or antiques as necessitates such activity being assimilated to the forgery of banknotes or negotiable instruments.

28. A further argument against including all tangible things within the subject matter of forgery might be that to some people forgery and faking are not synonymous and that it seems natural to adhere so far as possible to concepts that accord with their accepted everyday meaning. It would, for example, be possible to argue that a mine that had been "salted"

was a forged mine, even though we think it unlikely that, if a mine had been dishonestly "salted", the culprit would be charged with forgery rather than with an offence under sections 15 or 16 of the Theft Act 1968. On the other hand, we think that most people would accept that a faked painting or objet d'art is aptly described as a forgery despite the difficulty of distinguishing between a fake and a copy or a reproduction.

29. An extension of the scope of forgery would increase the area of overlapping between "uttering" offences under a new Forgery Act and offences of dishonesty under sections 15 and 16 of the Theft Act 1968. These sections already overlap with the uttering offences under the Forgery Act whenever use is made of a forged document in order dishonestly to obtain property or a pecuniary advantage; extending the subjects of forgery to all tangible things would enable these sections to operate wherever a forged thing is dishonestly used in a "deception" offence. Deception under these sections includes deception by conduct; and knowingly to hold out a fabricated thing as genuine, nothing being said or written as to its authenticity, seems clearly to amount to conduct. When the Law Commission proceeds with the preparation of that part of the Criminal Code which will deal with specific offences, the general problem of overlapping offences will be considered with a view to their removal or reduction. In the meantime, however, we take the view that if the case for the extension of categories of things capable of being forged is made out, the fact that, in respect of things newly brought within the scope of forgery, there will be an increase of overlapping offences is not of itself a serious objection to such extension.<sup>38</sup>

30. Yet another difficulty to which an extended offence of forgery may give rise is proving in the defendant the necessary state of mind. If a man is shown to have made a false banknote or a false will, the inference may usually be drawn that his intent is dishonest, because it is not easy to think of innocent reasons for his actions. It is very different if a man makes as perfect a reproduction as he can of a Chippendale chair or a painting. It is not usually possible to draw the same inference as to his state of mind from the mere existence

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38. For a demonstration of the fact that, in certain important respects, the present Forgery Act 1913 complements the Theft Act 1968 see para. 72 below. This complementary interaction would be widened by any extension of the subjects of forgery.

of the copy. However, we think that fundamentally this kind of difficulty need be no greater than the difficulty of proving dishonesty in any case where the mere activity is on its face capable of two explanations, one innocent and the other not. It is a truism that juries and magistrates are familiar with the necessity of drawing inferences of this kind from the surrounding circumstances. It would nevertheless be far more difficult to draw inferences of dishonesty in situations in which there has been a tampering with a genuine antique or painting. Those who are concerned with the repair or restoration of such articles in the legitimate way of business should, it can be said with force, not be exposed to the risk of prosecution because their work is of such excellence as to be undetectable save to the expert.

31. Unless a further change were made in the existing law, an extension of the law of forgery to all tangible things would also exacerbate a defect in the law relating to uttering.<sup>39</sup>

As the law stands, a person who dishonestly puts into circulation a false document (i.e. one which is capable of being a forgery) "utters" the document only if it was in the first place forged, that is to say, if it was created or tampered with dishonestly and in order that it might be used as genuine. We think that this state of affairs is anomalous, in that guilt of the dishonest user of a deceptive thing depends partly on the dishonest intent of some other person with whom the defendant may have had no connection. Accordingly, whether or not any change should be made in the categories of things capable of being forged, we shall later discuss the elements which should be required for the offence of "uttering" (see paragraphs 48 to 52 below).

32. The problems to which an extension of forgery to all tangible things gives rise necessitate considering whether a more satisfactory result would be reached by defining the

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39. Assume faking antiques becomes forgery, and assume that a dealer has two fabricated antique chairs, one of which, 'A', has been made to be passed as genuine, the other, 'B', has been made honestly as a reproduction. The dealer knows these facts but passes both chairs off as genuine. As to chair 'A' he is guilty of uttering, because it was made by a forger; but as to chair 'B' he is not so guilty, because its maker was not a forger, and the dealer's dishonesty does not turn it into a forgery.

subject-matters of the offence of forgery so that they cover only articles which fall within the "social danger" test to which we have referred in paragraph 27 above. Such a solution can be supported by recalling that, in the main, the difficulty about defining the subject-matters of forgery arises from the residual offences dealt with in section 4 of the 1913 Act.

These are:-

- (1) Forgery ... with intent to defraud of any document [other than a document covered by sections 2 and 3 of the Act].
- (2) Forgery of any public document ... with intent to defraud or deceive [other than a public document covered by the same sections].

The maximum sentence for both offences is the same. It is the absence of any definition of "document" or "public document" from the Act which is troublesome. It leads to uncertainty and makes it necessary to have resort to special legislative provisions whenever it is thought necessary to bring a new class of writing within the scope of forgery.

33. To provide a definition of a "document" for the purposes of forgery is not, of itself, a hard task. We have mentioned the American Law Institute's definition and have referred to the definition given in the New Zealand Crimes Act 1961, section 263, viz. "document means any paper, parchment or other material used for writing or printing, marked with matter capable of being read; but does not include any trade mark on any goods or any inscription on stone or metal or other like material".<sup>39A</sup> It is not an objection to such definitions as the latter that they do not cover seals, coins or stamps because the fabrication of such articles can be, and is, dealt with in other sections of the relevant legislation. The advantages which such definitions possess are the elimination of residual categories - the retention of which by section 4 is a main vice of the 1913 Act - and the avoidance of the need for extension of the classes of writings by ad hoc legislation. But all-embracing definitions of documents within the scope of forgery can be said to ignore the social danger test; on the one hand they may exclude from forgery things like faked paintings (e.g. s.263 of the New Zealand Act cited above)

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39A. s.268 of the Criminal Code of Canada has a similar definition.



which can be regarded as socially dangerous; on the other hand they include within forgery the fabrication of types of documents which may present no important social danger.

34. It seems more difficult, however, to provide a useful definition of "public" documents, a matter on which authority provides little help (the decided cases do not relate to forgery but to the admissibility of "public documents" in evidence). The difficulty of this task can be exemplified by contrasting a certificate of employment in the civil service purporting to be signed by a public official and a similar certificate of other employment purporting to be signed by an officer of a large company. A similar example is furnished by contrasting a forged surveyor's certificate relating to a British ship (s.3(3)(k) of the 1913 Act) (if made with intent to defraud or deceive) with a forged surveyor's certificate required under a local authority's contract (a residual offence caught by s.4(1) of the 1913 Act, if made with intent to defraud). Although it may well be true that there are some kinds of "public documents" which fall within the area of social danger, so that their mere fabrication should be an offence, there are other kinds, the mere making of which is neither more nor less dangerous than the fabrication of documents more naturally described as "private". So far as the present law endeavours to deal with the "public-private" differentiation (which relates primarily to the mental element involved in forgery) it does so by listing a category of things in considerable detail and particularity (see ss. 2 and 3 of the 1913 Act), adding to them by ad hoc provision as necessity arises.<sup>40</sup> The problems of defining documents and public documents are thus avoided but at the expense of over-particularisation at the outset and consequently deliberate amplification thereafter. Both these processes are, we think, better avoided. But this can only be accomplished, short of extending the scope of forgery to cover all tangible things (the disadvantages of which we have indicated), by settling an inclusive list of things as the possible subjects of forgery.

35. In compiling such a comprehensive list, it should, in the first place, be possible to avoid any definition of public

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40. Such ad hoc legislation may take the form either of attracting the 1913 Act to new types of documents, e.g. Civil Aviation (Eurocontrol) Act 1962 s.6(5), or of creating new specific offences, e.g. the Road Traffic Act forgery offences.

documents or any distinction between them and private documents, as such, since the acceptance of our later proposals as to a uniform maximum penalty and as to the mental element in forgery (i.e. the replacement of intent to defraud and intent to deceive by "dishonestly") would obviate the need for such differences of definition. In the second place, for the reasons we have mentioned, one would eschew the inclusion of residual categories of things. Taking these two factors into account, therefore, the basis of compiling a list would be the application of the social danger test, first, to the category of things at present covered by the forgery legislation and, secondly, to the categories of things which are not at present covered.

36. It is suggested that a useful approach to the compilation of such a list would be to take first those specific categories of things which at present fall within the scope of forgery, whether under the Acts of 1861 and 1913 or under legislation of the kind exemplified in Appendix II. It may well be that this process would result in the retention of most of these categories in the suggested list. Having proceeded thus far, the second step would be to consider whether there are categories of things at present outside the scope of forgery which, on the application of the social danger test, should be brought within it. This problem seems to us to arise most acutely in relation to such things as signatures on paintings, paintings themselves, antiques and automatic recordings.

37. Assuming that such a comprehensive list could thus be produced it would, we think, be essential to reduce its length by applying a broad basis of classification (on the lines suggested in paragraph 27 above) which would, for example, bring into one class all records and certificates, permits and licences kept or issued under statutory authority. In this way it should be possible not only to eliminate many of the different specific categories which are listed separately, for example, in sections 2 and 3 of the 1913 Act, but also to avoid the creation of new and further forgery offences in new legislation.

38. We have presented for consideration a number of alternative solutions to the problem - what things should be the subject of forgery? Our basic assumptions have been:-

- (a) that it is desirable to reduce the prolixity of sections 2, 3 and 5 of the Forgery Act 1913 and subsequent statutory offences of

and akin to forgery, in relation to specified categories of things;

- (b) that it is essential to avoid residual categories, such as those prescribed by section 4 of the Forgery Act 1913;
- (c) that it is possible and preferable to avoid the definition of "documents" and of "public documents".

With these aims in mind the alternative solutions so proposed are:-

- (i) the extension of forgery to all tangible things; or
- (ii) the limitation of the subject-matters of forgery to a comprehensive list compiled on the basis of applying the social danger test to all types of things which may be fabricated, reduced by a process of classification to a small number of headings; or
- (iii) which we think least desirable, to limit the subject-matters of forgery to "documents" widely defined and specifically including certain things such as automatic recordings, even though not strictly "documents", as fall within the social danger test.

At this stage we give no indication, save as in (iii) above, of any preference we ourselves hold and our purpose is to invite the views and opinions of those to whom this Working Paper is addressed.

D. Should there be an aggravated offence of forgery?

39. We put forward for consideration the view that there should be only one basic offence of forgery,<sup>41</sup> for which we would tentatively suggest a maximum sentence of 10 years' imprisonment on trial on indictment. This is the same maximum penalty as is laid down for theft<sup>42</sup> and obtaining property by deception.<sup>43</sup>

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41. For its definition see para. 75 below.

42. Theft Act 1968, s.7.

43. ibid. s.15.

40. We have considered, and rejected, a number of possible aggravated offences. It would not be difficult to single out certain means employed for effecting forgery to attract an exceptionally high penalty. The use of the more elaborate means for counterfeiting banknotes, such as engraving plates, is an obvious example. Again (but with more difficulty), we might distinguish as far as punishment is concerned between "public" and "private" forgeries. For example, it might be thought right to make it a more serious offence to forge a banknote than to forge a deed. At present, however, these offences carry the same maximum penalty, i.e. life imprisonment. In the present context, we do not think the test of potential consequences provides a valid criterion for distinguishing between aggravated and less serious offences; this is because the purpose of forgery is almost invariably some pecuniary gain to the forger or loss to his victim and if either of these purposes is achieved, it will be possible to convict and sentence the forger for another offence in addition to the forgery. We are supported in our rejection of an aggravated offence of forgery by the statistics, to which we drew attention at the beginning of this paper;<sup>44</sup> they do not disclose any need to complicate the law in this way. They do not suggest that the proper punishment of forgery is likely to be hampered by the lack of power in the court to impose a sentence of greater duration than we have tentatively suggested.

E. The mental element in forgery

41. There are, in relation to the mental element in forgery, two questions to be answered. The first is "What is the mental element in relation to the making of the thing?". The second question is "What is the mental element as regards the maker's ulterior intent?".

42. The first question does not, we think, pose any problem. Although the 1913 Act uses no expression relevant to the mental element required for the act of forgery, we think it clear that such an act must be intentional.

43. The second question requires more detailed consideration. The existing law, as we have said, requires one of two distinct

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44. See para. 4, Table D above. The sentencing pattern over the years 1965 to 1967 is similar. In no case was any sentence of over 10 years imposed.

states of mind for the ulterior intent in forgery, namely "intent to defraud" or "intent to deceive".<sup>45</sup> Generally speaking, the former expression is used in relation to documents of a "private" character, and the latter in relation to documents of a "public" character. It is easy to state that the two expressions of intent connote two distinct states of mind. It is far less easy to determine precisely where the distinction lies. It is possible to expand the classic dictum of Buckley J., in Re London and Globe Finance Corporation Ltd.<sup>46</sup> to take account of the glosses put on it by Lord Radcliffe in Welham v. D.P.P.<sup>47</sup> so that it reads thus:-

"To deceive is, I apprehend, to induce a man to believe that a thing is true which is false [or that a thing is false which is true], and which the person practising the deceit knows or believes to be false [or as to which he is reckless, not caring whether it is true or false]. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury [or contrary to his duty]. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."

Thus, at first sight, the distinction appears to be between causing a state of mind and inducing a course of action. However, Lord Denning in the Welham case remarked -

"while I can see that there may on occasion be a distinction between these two intents [to defraud and to deceive], I find it extremely difficult to say where one intent ends and the other begins." 48

The distinction continues to cause the courts difficulty from time to time.<sup>49</sup> Academic writers have also found the distinction difficult and unsatisfactory.<sup>50</sup>

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45. The expressions cover not only an intent of the forger himself to deceive or defraud but also an intent that others shall deceive or defraud with the forgery. We have covered this in the summarised proposals, para. 75 C1.

46. [1903] 1 Ch. 728, 732.

47. [1961] A.C. 103, 125 to 128.

48. At 131.

49. See R. v. Moon (1968) 52 Cr. App. Rep. 12.

50. See, for example, Russell on Crime, 12th ed., by J.W.C. Turner, pp. 1243 to 1255.

44. The difficulties relating to the proper meanings to be attached to "intent to defraud" and "intent to deceive" in forgery lead us to suggest that the word "dishonestly" can be appropriately used to define the mental element concerning the purpose or intent of the maker regarding the thing he fabricates. We are assisted in this proposal by the distaste which the Criminal Law Revision Committee expressed for the word "fraudulently" in their Report which led to the Theft Act 1968<sup>51</sup> (this makes no use of this expression, but throughout uses "dishonestly"). We later discuss (see paragraph 46 below) the question of defining "dishonestly". For the moment we suggest that the abandonment of "intent to deceive" will mean that cases of falsification of things where dishonesty is not involved, such as practical joking or conjuring, will clearly not constitute forgery. We appreciate, of course, that there may be classes of articles, such as counterfeit coin and banknotes or the equipment for making them, the mere existence of which is socially dangerous. But we think that the necessary protection to society in such cases can be afforded by prohibiting their possession (see paragraphs 56 and 60 below). We now consider the adequacy of the word "dishonestly" in relation to forgery offences.

45. There are two difficulties inherent in the use of the word "dishonestly" without amplification in relation to forgery. The first of these difficulties is that the word is not necessarily precisely equivalent to "with intent to defraud". Professor J.C. Smith, in his commentary on the Theft Act 1968,<sup>52</sup> has reviewed the authorities and has concluded that it has not always been but ought indeed to be so construed. We also hold this view. The second difficulty is whether the word "fraudulently" and the expression "with intent to defraud" are always to be construed in the wide sense as laid down in Welham.<sup>53</sup> We consider that in relation to forgery, both these

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51. (1966) Cmnd. 2977, para. 39.

52. The Law of Theft, paras. 149 to 174, especially at paras. 166 and 167.

53. In R. v. Manners-Astley [1967] 3 All E.R. 899, for example, the defendant displayed on a broken-down motor car a licence issued for another vehicle, in order not to be bothered by police enquiries. He was charged with fraudulent use of the licence under s.17(1) of the Vehicles (Excise) Act 1962. The Court of Appeal, Criminal Division, held, quashing the conviction, that "fraudulently" in relation to using in the 1962 Act had a more restricted meaning than "with intent to defraud" in relation to forgery and uttering in the Forgery Act 1913. But this case concerned the "fraudulent" use of a genuine article. Our proposals relate to dishonesty in the making of a false article and do not, therefore, affect that decision.



expressions should be construed in the same sense and, subject to the question of definition discussed in the next paragraph, there is, in this context, no perceptible difference between them.

46. Dishonesty in the Theft Act 1968 (where the word is used without qualification) cannot be limited to intention to cause economic loss, because, on the occasions where intention to cause economic loss is the required mental element, this intention has specifically been spelt out.<sup>54</sup> Consequently, the scope of dishonesty is not altogether certain, even though, as a practical matter, we think that the tribunal of fact will have no difficulty in deciding, on any given set of facts, whether the defendant acted dishonestly or not. In Welham's case<sup>55</sup> the defendant had uttered forged hire-purchase agreements upon which finance companies had advanced money to his firm. His defence was that he intended to use the documents to make it appear to the authorities that the finance companies were not avoiding the credit restrictions then in force, or in other words, to induce the authorities to do something that they would not have done or to omit to do something that they would have done, but for the deception. But it was held that such an intention constituted "intent to defraud" within the meaning of section 4(1) of the 1913 Act. We wish to make it clear that dishonesty for the purposes of the law of forgery ought to bear the wider meaning which it bears as the law now stands as the result of Welham, namely to include intention to prejudice rights or obstruct duties and recklessness<sup>56</sup> in regard to the creation of the risk of such prejudice or obstruction.

47. We conclude this section of the paper by suggesting how the suggested mental element might be applied to the offence of forging a road traffic document which is by far the most common forgery offence at the present time. By section 233 of the Road Traffic Act 1960:-

"(2) A person shall be guilty of an offence who, with intent to deceive, -

(a) forges or alters ... a document or any other thing to which this section applies, or

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54. Theft Act 1968, ss. 17, 20 and 21 with s.34(2)(a).

55. [1961] A.C. 103.

56. See R. v. Sinclair & Ors. [1968] 3 All E.R. 241.

- (b) makes ... any document or other thing so closely resembling a document or other thing to which this section applies as to be calculated to deceive."

It seems to us that the part of the section we have cited will work equally well if the word "dishonestly", in the sense that we have discussed above, is substituted for the expression "with intent to deceive". It is true that some persons who at present in theory commit offences under this section will no longer be liable at all. For example, a man who fabricates a driving licence, not in order to drive but to impress his friends, would be guilty under section 233 but not under our **proposed** definition. It may be thought that the operation of the Road Traffic Acts is not thereby weakened. On the other hand, forgery of a licence with a view to producing it to the police for any purpose designed to avoid enquiries about possible contraventions of the Road Traffic legislation will, we think, clearly be "dishonest", so that the effect of the relevant part of the section (whether or not it remains in the Road Traffic legislation or is covered by a general provision in a new Forgery Act) will be for practical purposes unchanged.

F. & G. Uttering and demanding money etc. on a forged instrument

48. We think it right to consider together sections 6 (uttering) and 7 (demanding) of the Act of 1913, because they have the common feature that they render criminal the fraudulent use of forgeries, whether or not the user was the maker of the forged thing. We deal here with four problems:-

- (a) whether it is necessary to have any offence of making use of a forgery and, if so, whether there should, as at present, be two separate offences, i.e. uttering and demanding;
- (b) whether any offence or offences of making use of forgery should depend on the pre-existence of an offence of forgery, as at present;
- (c) the mental element in making use of a forgery;
- (d) whether the word "uttering" needs to be brought up to date.

(a) Should making use of a forgery be an offence;  
one offence or two?

49. It seems to us in principle right that a person who knowingly or recklessly puts into circulation a forgery for a dishonest purpose commits an offence. As we have already mentioned<sup>57</sup> Scots law gives paramount place to this offence to the exclusion of forgery itself. The offences created by section 7(a) and the first offence created by section 7(b) seem to us, however, to be no more than particular instances of uttering. Section 7(a) has the additional disadvantage of creating confusion because of the use of the word "document" instead of the word "instrument", which appears in other places in the Act<sup>58</sup> and which appears to bear a meaning not significantly different from the word "document".<sup>59</sup> Although section 7 has in the past clearly afforded some procedural advantages in cases of a less serious nature,<sup>60</sup> we think it unnecessary to retain it having regard to the remainder of our proposals.

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57. para. 23 above.

58. s.7 reads as follows:-

"Every person shall be guilty ... who, with intent to defraud, demands ... any money ... or other property ...

- (a) under, upon or by virtue of any forged instrument whatsoever, knowing the same to be forged, or
- (b) under, upon or by virtue of any probate or letters of administration, knowing the will, testament, codicil or testamentary writing on which such probate or letter of administration shall have been obtained to have been forged, or knowing such probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit."

The second limb of the offence under (b), which depends on knowledge in the defendant that probate has been obtained by a false oath, seems to be related more to perjury than to forgery, and we propose to give it further consideration in our review of Perjury.

59. See the cases cited in Halsbury's Statutes, 3rd ed., vol. 8, p. 265, notes.

60. Uttering is now triable at Quarter Sessions if forgery of the document uttered would have been so triable, but it is only triable summarily in limited classes of cases (see Schedule I Magistrates' Courts Act 1952 as amended by s.27 of the Criminal Justice Act 1967). On the other hand, the "demanding" offence under s.7 is triable at Quarter Sessions if the value of the property demanded or the money does not exceed £100 and, with the same financial limit, is triable summarily with the accused's consent by virtue of s.19 of the Magistrates' Courts Act 1952. Thus small cheque frauds and the like may be proceeded against under s.7 and tried in a magistrates' court. Under the proposals we make in para. 75D below, all forgery offences will be triable at Quarter Sessions and, in addition, will be triable summarily with the accused's consent.

(b) How should uttering be treated in relation to forgery?

50. It would be possible, while retaining the concept of "uttering", to make it an instance of forgery, as has been done in the American Law Institute's draft Model Penal Code.<sup>61</sup> The New York State Penal Law extends the offence of forgery by making it an offence to utter or possess a forged instrument with the necessary intent.<sup>62</sup> We think, however, that uttering (to some extent) and possession are concepts which require treatment separate from forgery itself. As we mentioned in paragraph 31, we find illogical the present rule whereby a conviction for uttering depends on whether the thing uttered was forged, in the sense that the maker committed an offence of forgery, rather than on whether that thing is put into circulation by the utterer in order to be used as genuine, irrespective of the honesty or dishonesty of the maker. Accordingly, we propose that uttering should be the dishonest putting into circulation of an article capable of being the subject of forgery which in fact "tells a lie about itself", coupled with the necessary mental element as to this quality. This change in the law is, in our view, desirable whether or not the range of things that can form the subject of forgery is altered in any of the ways that we have discussed.

(c) The mental element in uttering

51. The offence of uttering under the present law involves three matters in respect of which the mental element is relevant. These are the act of uttering, the knowledge of the falsity of the thing uttered and the intent involved in the action of uttering. As to the mental element in relation to the first of these matters, we think that this should require intention or recklessness; as to the mental element in relation to the second, this should be knowledge or recklessness. As to the mental element relating to the third (i.e. the intent involved in the action of uttering), we think that this should be dishonesty in the sense which we have discussed in relation to forgery in paragraphs 45 and 46 above.

(d) The word "uttering"

52. It remains to consider whether any change in name is desirable for the offence of uttering. The word "uttering" is

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61. s. 224.1.

62. ss. 170.20 and 170.25.

of considerable antiquity when used in relation to forgery.<sup>63</sup> It has, however, a somewhat archaic ring, and we doubt whether it is a word the implications of which are wholly familiar to the public. It is defined in section 6(2) of the 1913 Act as follows:-

"A person utters ... who ... uses, offers, publishes, delivers, disposes of, tenders in payment or in exchange, exposes for sale or exchange, exchanges, tenders in evidence, or puts off the said forged document ..."

The New Zealand Crimes Act 1961 has retained the word "uttering", but has a far simpler definition, namely:-

"using, dealing with or acting upon."<sup>64</sup>

We propose an even simpler course, which is to describe the offence as dishonestly using a thing which tells a lie about itself. R. v. Harris<sup>65</sup> gives some support to the view that, even in section 6(2), "uses" is the paramount word. We go further, and think that the word will do duty for all the other expressions in section 6, which, in any case, have the unsatisfactory feature that they may **restrict** the meaning of the primary concept of using.

#### H. Unlawful possession

53. It is evident, from those sections of the 1913 Act which prohibit unlawful possession of certain articles<sup>66</sup> and from other sections in the Coinage Offences Act 1936 which relate mainly to possession of counterfeit coin, that the existing law selects certain articles of which possession needs to be prohibited in the public interest. In the present review, we think that we should consider three main problems:-

- (a) the definition of, and the mental element in relation to possession;
- (b) whether the range of articles, the possession of which will be prohibited, ought to be restricted or not, and
- (c) the question of lawful authority and excuse.

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63. There is a reference in the Shorter Oxford Dictionary to its use in 1602.

64. s. 266, cf. s.5(3) of the Coinage Offences Act 1936.

65. [1966] 1 Q.B. 184, 195.

66. ss. 8, 9 and 10.

(a) The definition of and the mental element  
in possession

54. Section 15 of the 1913 Act defines possession for the purposes of the Act as follows:-

"Where the having any document, seal or die in the custody of any person is in this Act expressed to be an offence, a person shall be deemed to have a document, seal or die in his custody or possession if he -

- (a) has it in his personal custody or possession;  
or
- (b) knowingly and wilfully has it in the actual custody or possession of any other person, or in any building, lodging, apartment, field or other place, whether open or enclosed, and whether occupied by himself or not.

It is immaterial whether the document, matter or thing is had in such custody, possession or place for the use of such person or for the use or benefit of another person."

We think it right that possession should have a wide meaning for the purposes of the law of forgery, and that for this reason it should be defined in terms of control, so as to cover cases where the article possessed is hidden in someone else's property or is held by another on behalf of the person having control over it. We doubt if it is necessary to use the elaborate language of section 15. We suggest that possession for the purposes of forgery could be satisfactorily defined in terms of control whether involving actual custody or not.

55. While it is clear that possession must be defined, because of the difficulties in analysing it which have arisen both in the civil and in the criminal law,<sup>67</sup> we think that a simple and comprehensive definition such as we have suggested is free from danger if it is a prerequisite of criminality that the fact of possession must be accompanied by mens rea. We take the view that all offences of possession of forged articles should continue to be offences requiring mens rea in the traditional sense, as indeed they are at present.<sup>68</sup>  
In the present context this means:-

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67. For an example in the field of criminal law, see Warner v. Commissioners of Police for the Metropolis [1968] 2 W.L.R. 1303 H.L.

68. See R. v. Harran (1969) Crim. L.R. 662.

- (a) knowledge or recklessness<sup>69</sup> as to possession. Thus, if a man possesses a box containing (for example) a forged document, he can be said to possess the document only if he knows that it is in the box or is reckless as to whether it is or not;
- (b) knowledge or recklessness<sup>69</sup> as to the nature of the thing possessed; in the example given above, he must know that the document is a forgery or be reckless as to the risk that it may be.

(b) Should the range of articles be restricted?

56. The underlying policy of the present law appears to draw a distinction between possession of such things as forged banknotes, on the one hand, and forged receipts, on the other. Given the necessary mental element, possession of the former is an offence, whereas, notwithstanding the existence of that element, possession of the latter is not. The basis of this distinction is clearly the application of the social danger test. If, for the future, the subjects of forgery are to be determined by a social danger test, whatever its extent, the question arises whether, given the necessary mental element, possession of any forged thing within that range should constitute an offence. We think that this would carry the law too far and that, in this context, the underlying policy of drawing a line between those things the mere existence of which constitutes a grave danger (such as forged banknotes) and other things of lesser danger, is sound and should be adhered to.

57. The 1913 Act lists the articles possession of which constitutes an offence. These are far more limited than those things which may be the subject of forgery. Thus the list indicates what articles in the 1913 Act were thought to fall within a "grave danger" test. Apart from forged banknotes (s.8(1)) and materials and implements for making them (s.9(c), (d) and (e)), the other articles covered are:-

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69. We would define recklessness as existing when a person knows that there is a risk of his being in possession of the relevant thing and where, having regard to the known nature and danger of that risk he acts unreasonably in taking the risk.

- (a) forged dies for marking plate (s.8(2)(a));
- (b) forged stamps or dies as defined by the Stamp Duties Management Act 1891;
- (c) forged Revenue wrappers and labels (s.8(2)(c));
- (d) paper resembling the special paper used for making banknotes and Treasury bills and Revenue paper - paper to be used for any purpose connected with the public revenue (s.13(1)) and tools for making such paper or for making marks on it, as well as any paper on which such marks have been made (s.9(b));
- (e) equipment for forging stock, annuity and debenture certificates and the like (s.9(c));
- (f) special paper for making Treasury bills or Revenue paper before the paper has been stamped, signed and issued for public use, and dies for making such paper (s.10).

Similar offences exist in other legislation, particularly the Post Office Acts and Road Traffic Acts. There are three broad categories of articles possession of which is prohibited, viz.:-

- (i) forged things, such as banknotes and Road Traffic documents and the like;
- (ii) things designed to be used for forgery, such as tools and dies;
- (iii) genuine articles which can be used in the making of forged articles, such as special paper for making Treasury bills.

58. A broadly comparable treatment of possession offences is discernible under the provisions of the Coinage Offences Act 1936 (see further as to questions arising on this Act paragraphs 63 to 65 below). The main classes of such offences are:-

- (a) possession of false or counterfeit coin with intent to utter (s.5(3) and (4));<sup>70</sup>
- (b) possession of filings or clippings of coin (s.3(2));
- (c) possession of coining implements (s.9(1) to (3)).

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70. cf. s.8(1) Forgery Act 1913 under which intent to utter is not an element of the offence of possessing a forged banknote.



Cases (a) and (c) would seem to satisfy the test of "grave danger". Whether case (b) is important under present conditions may be open to question.

59. It is suggested that for the purposes of a new Forgery Act, the determination of those articles the possession of which (with the necessary mental element) should constitute an offence can best be made by taking the broad categories of articles indicated in paragraphs 57 and 58 and by answering the question, in relation to each of these categories, what articles are so gravely dangerous from the social aspect as to necessitate their being brought within the scope of the possession offence? For example,

- (i) The test of "grave danger" could justify the selection of such forged articles as bank and currency notes, official stamps, seals and dies, stock, share and debenture certificates and Road Traffic documents to form the subject of possession offences.
- (ii) The test of "grave danger" when applied to things to be used for forging articles could justify a restriction of such things to those required for forging the articles in category (i) when the things were "designed" for that purpose in the sense that they had been wholly or partially adapted for use in forgery.
- (iii) The test of "grave danger" when applied to ordinarily innocuous things intended to be used for forging would lead to an even greater restriction than in category (ii). Speaking broadly, forgers need pen, ink and paper. But although they intend to use these things for forgery, it would, we think, be impossible to make their mere possession an offence. An additional test would be required so that the possession offence would be committed only if there were some particular characteristic of the particular thing (e.g. special paper used for banknotes or some

adaptation for use in forgery) which indicated the purpose for which it was possessed.

Should it be expedient to amalgamate the Coinage Offences Act 1936 with the new Forgery Act, it is believed that there would be little difficulty in following the scheme suggested for possession offences in forgery.

60. We would welcome the views of the readers of this paper, in the light of our proposals, on the question whether the present range of articles the possession, making or use of which is prohibited under the Forgery Act 1913, the Coinage Offences Act 1936 or any other legislation including that listed in Appendix B, is too wide or too narrow.<sup>71</sup>

(c) Lawful authority and excuse

61. Sections 8 to 10 of the 1913 Act prohibit possession of the articles there listed -

"... without lawful authority or excuse, the proof whereof shall lie on the accused ..."

Certain sections of the Coinage Offences Act 1936 make the same provision, but other sections deal with the matter differently. Thus, by section 3(2), for example, it is an offence unlawfully to have possession of clippings, etc., from gold or silver coin knowing their origin. It will clearly be desirable to lay down that lawful authority and excuse should be dealt with in the same way for all these offences. We favour the formulation of the 1913 Act. We do not, however, propose to canvass here the precise meaning of the words "without lawful authority or excuse", because they are already under consideration by the Working Party which is considering the General Principles of the Criminal Law.<sup>72</sup> At this stage, therefore, we assume for the purposes of this paper that the words in question will bear the meaning which judicial interpretation has so far assigned to them. In this connection the recent case, R. v. Wuyts,<sup>73</sup> is of interest. The appellant was convicted of possessing forged banknotes, knowing them to

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71. It may be, for example, that the specially watermarked paper provided by the Land Registry ought to be added to the list.

72. See the Law Commission's Working Paper No. 17.

73. [1969] 3 W.L.R. 1.

be forged, contrary to section 8(1) of the Forgery Act. The Court of Appeal held that, if a person was able to prove on a balance of probabilities<sup>74</sup> that he retained possession of such notes solely in order to give them to the police to assist in the prosecution of the person previously in possession, even though he did not hand them in at the first opportunity, this constituted lawful excuse because it was consistent with the citizen's common law duty. This matter had not been left to the jury and the appellant's conviction on this count was therefore quashed.

62. The Forgery Act 1913 creates, in addition to the offences of uttering and of possession, the offences of making, using, receiving or undertaking certain activities such as engraving, articles for the purposes of forgery (see ss. 9 and 10). We doubt whether, assuming a satisfactory definition of possession and a satisfactory list of things to be the subject of possession offences, it is necessary to preserve these special additional offences. Similarly, the Coinage Offences Act 1936 creates special offences of receiving, buying, selling, importing or exporting counterfeit coin, and making or mending coining implements. Assuming the amalgamation of the Coinage Offences Act 1936 with the Forgery Act 1913, we also for the same reasons doubt the need for such special offences. On these matters we are anxious to receive views and comments.

I. The Coinage Offences Act 1936 and the Forgery Act 1913

63. Forgery of banknotes is dealt with in the Forgery Act 1913 which does not extend to Scotland, where, as we understand it, banknote forgery is dealt with by statutes of 1801, 1805 and 1820.<sup>75</sup> Forged foreign currency notes are dealt with by the Counterfeit Currency (Convention) Act 1935 which applies to them, in England, those provisions of the 1913 Act which deal with banknotes, and, in Scotland, the provisions of the Bank Notes (Forgery) Act of 1805. The counterfeiting of all current coin, is, however, solely dealt with by the Coinage Offences Act 1936, which is of United Kingdom application.

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74. s.8(1) of the 1913 Act provides that the proof of lawful authority or excuse lies upon the accused. Whether there should be a burden of proof upon the accused in such cases is under consideration by the Criminal Law Revision Committee.

75. These Acts were repealed in their application to England and Northern Ireland by the Forgery Act 1913.

It is of some importance to recall that the Forgery Act 1913 was an Act to consolidate, simplify and amend the law relating to forgery and kindred offences, whereas the Coinage Offences Act 1936 was a purely consolidating Act. Although by process of statutory extensions of definition (e.g. the re-definition of the expression "silver coin" used in the 1936 Act, so as to include cupro-nickel coins and coins of other metals and mixtures of metals as may be specified by proclamation<sup>76</sup>) the 1936 Act has been, to some extent, brought into line with modern conditions, we believe that its provisions are in need of review and simplification. Of recent years, however, coinage offences have appeared to be of little importance; the advent of the decimal currency may well be changing this position so that it becomes expedient to consider how, in the context of a new Forgery Act, the 1936 Act should be dealt with.

64. Apart from the complications arising from the application of the 1936 Act to Scotland as well as to England and Northern Ireland, we would propose that all coinage offences should be taken into the scope of the new Forgery Act. It seems to us that the offences of forgery, using and possession which we have proposed would adequately, applied to coin, deal with the main activities which the 1936 Act was designed to combat. All those offences which are specifically designated as "misdemeanours" in the 1936 Act are triable summarily with the consent of the accused<sup>77</sup> and although the 1936 Act, as does the Forgery Act 1913, provides for maximum sentences of life or 14 years' imprisonment for many offences, we believe that the maximum penalty of 10 years' imprisonment, which we tentatively suggest, should be as adequate for counterfeiters of coin as for forgers of banknotes. Subject to the points discussed in the next paragraph, we would, therefore, favour covering coinage offences in a new Forgery Act.

65. But unless the new Act were to have United Kingdom application the adoption of this last suggestion would produce the anomaly that coinage offences would be dealt with under separate legislation for Scotland and the maximum penalties for such offences would exceed those which we have tentatively suggested for the Forgery Act. This would clearly be undesirable.

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76. See Coinage Act 1936 s.5(1) and Decimal Currency Act 1967 ss. 2(3), 3(4) and Schedule 2.

77. See s.19 with Schedule I of the Magistrates' Courts Act 1952 as amended.

It may further be contended that since the Coinage Act 1936 is primarily concerned with protecting a common United Kingdom coinage against the activities of counterfeiters, such offences should continue to be dealt with by an Act of United Kingdom application. We welcome comments on the treatment of coinage offences in the context of our general proposals.

J. & K. Jurisdiction and Compensation

66. At present, most offences of forgery are triable only on indictment (some only at Assizes). There are, however, notable exceptions; these are, first, offences under section 2(2) (a) of the 1913 Act of forging documents authorising, requesting or evidencing the payment of money on the delivery or transfer of goods where the sum or value does not exceed £100; secondly, offences under section 7 of that Act, i.e. demanding etc., on a forged instrument with the same financial limit; thirdly, offences of forgery under section 4 of the Act; and fourthly, offences of uttering documents, the forging of which would be triable summarily. Certain offences of possession, making and using may also be tried summarily, and there is one purely summary offence (uttering defaced coin) under section 4(3) of the Coinage Offences Act 1936.<sup>78</sup> We propose that all the offences created by a new Act should be indictable offences which Quarter Sessions<sup>79</sup> should have jurisdiction to try, and that they should all be triable summarily with the accused's consent.

67. We have considered the alternative of proposing that some offences should be triable summarily or on indictment, with different penalties ("hybrid" offences) and also the possibility of proposing some purely summary offences. On the whole, we prefer to use the enabling provisions of section 19 and Schedule I of the Magistrates' Courts Act 1952 rather than to propose creating "hybrid" offences. In the first place, the former procedure gives a right to the defendant to elect trial on indictment when the prosecution has instituted summary proceedings and we think this desirable. Secondly, the general powers of magistrates to impose a fine of up to £400 or to imprison for not more than six months do not seem excessive

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78. In addition, all the misdemeanours created by the Coinage Offences Act 1936 are triable summarily with the accused's consent.

79. If the recommendations of the Royal Commission on Assizes and Quarter Sessions (Cmd. 4153) come to be implemented, the appropriate courts would be the circuit courts.

for any offence that we have proposed. Thirdly, the provisions of sections 28 and 29 of the Act of 1952 enabling the magistrates to commit for sentence would be available in those cases where the gravity of the offence or character and antecedents of the offender are such that the appropriate penalty would be in excess of their jurisdiction.<sup>80</sup> There seems, therefore little advantage in creating "hybrid" offences if the object is not in part to limit the sentencing powers of magistrates. The fear has been expressed that to give the accused the right to insist on trial on indictment may tend to overload the higher courts; but the statistics in Table A above so far as they relate to the forgery offences to which section 19 of the 1952 Act applies do not bear out this fear.

68. The proposal that all offences of forgery should be triable summarily may at first sight seem a little startling, since those so triable at present are limited (see paragraph 66 above). The most obvious reason for recommending a change lies in our proposed reduction of the long list of existing substantive offences of forgery to one basic offence; we suggest, in paragraph 75 below, that the maximum penalty should be the same as for criminal deception (which is triable summarily). The advantage of making available summary trial is the flexibility which this affords. As Tables A and C indicate, no more than 350-odd cases of forgery are tried annually on indictment, out of which some 200 offenders suffer custodial sentences. It is, therefore, not unlikely that some at least of the offenders so tried might appropriately have been dealt with by magistrates.

69. We make no proposals about compensation, nor indeed do we examine the subject, because the Advisory Council on the Penal System, under the chairmanship of Lord Justice Widgery, is considering the whole matter.

#### L. Repeal Policy

70. As we remarked in our paper on Malicious Damage,<sup>81</sup> we are convinced that there is no need to duplicate general offences by provisions in statutes regulating particular activities. Such duplication may complicate penalties, create jurisdictional problems, clutter up the Statute Book and (at worst) render persons free from blame liable to conviction in circumstances

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80. The "circumstances of the offence" (i.e. gravity) is not a factor in committal for sentence under s.29.

81. Working Paper No.23.

in which they could not have been convicted under the general law.<sup>82</sup> This policy of large scale repeal is not new; it was, for example, adopted in the Perjury Act 1911 as well as in the Forgery Act 1913. While it was not successful on those occasions in preventing offences akin to perjury and forgery from appearing in the legislation that followed (and Appendix B demonstrates this fact in the case of forgery), it may be that the prospect of codification presents a more favourable climate for success. The latest example of a large scale repeal is to be found in Schedule 3 of the Theft Act 1968, as a result of which some 70 provisions creating offences of larceny or akin to larceny have disappeared. The policy of that Act has clearly been to ensure that offences of theft and obtaining by deception are for the future to be found in the Theft Act 1968 and nowhere else. An exception was, however, made in the case of the Post Office, which (though the Post Office Acts have been brought into line with the Theft Act by Schedule 2 of that Act) retains its own code of theft offences. It may be that the same course is desirable in the case of Post Office offences of forgery.

71. Another problem which relates to the scope of repeal policy arises from the application, both to England and Scotland, of specific offences under regulatory legislation. This can be best illustrated in the context of forgery by reference to the offences under section 233 of the Road Traffic Act 1960. If these offences were brought within the scope of a new Forgery Act so that section 233 were repealed, this repeal would have to be limited to England and Wales. Parliament dealt with similar problems which arose in relation to the Theft Act 1968 by excluding Scotland from the repeal of, for example, section 217 of the Road Traffic Act. The same problem arises in relation to many other statutory offences including some of those listed in Appendix B. We would welcome observations on these matters from Government Departments and others concerned with regulatory legislation.

72. Any large scale repeal policy which might be followed cannot eliminate all overlapping. The most recent example of an offence-creating statute which we would not wish our review to affect is the Trade Descriptions Act 1968. The primary aim

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82. cf. R. v. Cummerson [1968] 2 Q.B. 534 C.A.; held that the offence of making a false statement for the purpose of obtaining an insurance certificate created by s.235 of the Road Traffic Act 1960 is an offence of strict liability.

of this Act is to punish false or misleading information about goods, so that a false trade description need not be, and usually is not, also forgery under the existing law. Further, offences under the 1968 Act are (subject to the statutory defences of "no negligence") offences of strict liability<sup>83</sup> whereas forgery requires dishonesty. An area of overlap exists between the Acts of 1913 and 1968 but only in the case of the dishonest trader. An antique dealer who sells a faked antique, which he knows to be faked and which he describes as genuine is guilty of an offence under section 1 of the 1968 Act, and if he authenticates the article by means of a forged certificate purporting to be that of an independent expert, he also commits an offence under the 1913 Act. If the area of forgery were widened to include all tangible things, the same dealer would be guilty of the offence of forgery or using, if he made or sold a faked antique (i.e. one that told a lie about itself by reason only of its appearance), whether or not he could be regarded as having applied a false trade description to that article within the provisions of the 1968 Act. There is a disparity of maximum sentences (which we propose to retain) between false trade descriptions and forgery. Conviction on indictment under the 1968 Act carries a maximum of two years, while we have suggested 10 years for forgery. We think that this disparity is of less importance than might at first sight appear; first, because the 1968 Act offences are not, in principle, offences of dishonesty, whereas forgery offences are; and secondly, under both pieces of legislation, minor cases are likely to be tried by magistrates. Though magistrates have no power to imprison under the 1968 Act, they may impose a maximum fine of £400, which is the same as for forgery under our proposals.

73. We have earlier discussed the question of overlapping offences between the Forgery Act 1913 or its replacement and the Theft Act 1968 (see paragraph 29 above). We think, however, that it should be pointed out that there are certain respects in which the Act of 1913 complements the provisions of the Act of 1968. The first situation where this occurs is when a person "with intent to defraud" or "with intent to defraud or deceive" forges a document or other thing within the 1913 Act but proceeds no further with his dishonest intentions. As long as the law of attempts remains as at present, his conduct will not fall under the relevant sections of the Theft Act as an attempted

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83. See Footnote 32 at p.19 above.



offence, yet he will commit an offence under the 1913 Act. The second case in which the 1913 Act complements the 1968 Act is when a forger dishonestly falsifies such documents as accounts, valuable securities and wills. He commits no offence under sections 17 and 20 of the Theft Act unless he possesses the prescribed mental element for the appropriate offence, viz. "with a view to gain for himself or another in respect of money or property or with intent to cause loss to another in that respect".<sup>84</sup> But he will commit an offence under the Forgery Act 1913 since the mental element for culpability is more generally described as "with intent to defraud", the wider ambit of which has been discussed above.

#### IV PROVISIONAL PROPOSALS

74. We propose to deal with the present subject in the same way as suggested in our recent paper on Malicious Damage,<sup>85</sup> i.e. by putting forward, after due consultation, a draft Bill of a comprehensive character which we hope may be enacted in advance of the proposed criminal code. The Bill would provide for the repeal of the remaining sections of the Forgery Acts 1830 and 1861 and the Forgery Act 1913. Subject to the questions discussed in paragraphs 63-65 above, it would supersede those parts of the Coinage Offences Act 1936 that our new offences would cover<sup>86</sup> and would include, in re-enacted form, such parts of the 1936 Act as may be necessary to retain and as are not covered by our other proposals. In addition, subject to consideration of the questions discussed in paragraphs 70-71 above, we would propose repeal of all the other statutory provisions, of which examples are given in Appendix B, that create offences of and akin to forgery. We also think that common law forgery should be abolished.

75. On the assumption that the proposed new Forgery Act would not supersede the Coinage Offences Act 1936 (see further paragraph 76 below) our provisional proposals may be summarised under the following headings:-

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84. See ss. 17 and 20 with s.34(2)(a) of the Theft Act 1968.

85. Working Paper No. 23.

86. See para. 75 below.

A. Substantive Offences

Subject to the existence of the necessary mental element (as to which see C below) conduct falling within the following definitions should constitute an offence:-

1. Forgery - that is making or tampering with a thing capable of being the subject-matter of forgery (see B below) in such a way that it tells a lie about itself (paragraphs 15-17).
2. Using anything capable of being forged, which tells a lie about itself (paragraphs 50-52).
3. Possessing anything within a limited range of those articles capable of being forged, and in fact forged, without lawful authority or excuse (paragraphs 54 and 61).
4. Possessing anything within a limited range of articles which, although ordinarily innocuous, are capable of being used for forgery, e.g. forging tools, certain dies and special paper or paper bearing special marks, without lawful authority or excuse (paragraph 62).

B. The Subject-matter of Forgery Act Offences

1. Forgery. The subjects of forgery should be defined in the new Act and should comprise those things the fabrication of which falls within the test of social danger. This definition of the subjects of forgery could take one of three forms - it could be:-
  - (a) any tangible thing, upon the assumption that anything which tells a lie about itself is socially dangerous; or
  - (b) anything within a narrower list of things compiled with reference to a stricter test of social danger, or
  - (c) anything falling within a wide definition of documents, together with such other things as automatic recordings as ought to be covered by the law, (paragraph 38).

2. Using. The subject-matter of the using offences should cover the same range as the subjects of forgery (paragraph 52).
3. Possession. The subject-matter of possession offences should be more limited than the range of the subjects of forgery. Their scope should be determined by the application of the test of "grave danger" (see paragraphs 59 and 60).
4. Possession of things for forging. The subject-matter of these offences should be within a limited range to be determined by listing the types of articles falling within the "grave danger" test (see paragraph 62).

C. The Mental Element

1. Forgery. The mental element should be intention as to the making of the forged thing and dishonesty in relation to the purpose of making, which should be defined as intent that the forged thing should be used as genuine in order to prejudice rights or obstruct duties or to create the risk of such obstruction or prejudice (see paragraph 46).
2. Using. The mental element should be intention or recklessness as to the act of using together with knowledge or recklessness as to the falsity of the thing used, (i.e. that it tells a lie about itself) and dishonesty as to the purpose of using (see paragraph 51). Whether or not the maker of the thing was guilty of forgery should no longer be a relevant question (see paragraph 31).
3. & 4. Possessing Forged Articles and Things for use in Forgery. The mental element should be knowledge or recklessness as to the character of the thing possessed, i.e. that it tells a lie about itself or that it is a thing capable of being used for forgery (paragraph 54).

D. Jurisdiction

All the offences under the new Act should be offences which Quarter Sessions should have jurisdiction to try. They should also be triable summarily with the consent of the accused (paragraphs 66-68).

E. Penalties

We tentatively suggest the following maximum sentences of imprisonment:-

For forgery and using	10 years
For unlawful possession	5 years

Because of the way in which we have proposed that the offences should be triable summarily, the maximum fine in all cases on trial by magistrates would be £400 (paragraphs 66-68).

F. Repeal Policy

1. Subject to 2 below we would propose to repeal all enacted provisions which provide for forgery or kindred offences. There may have to be some limitations upon the implementation of this policy, and we invite comments from those concerned (paragraph 70).
2. We tentatively propose to include in the repeals such provisions as are of United Kingdom application, at least so far as offences within England and Wales are concerned. We also invite comments upon this proposal (paragraph 71).

G. Miscellaneous Matters

The 1861 and 1913 Acts deal with a number of miscellaneous matters including power to fine (s.12 of the 1913 Act), the issue of search warrants (s.16 of the 1913 Act) and proof of intent (s.44 of the 1861 Act and s.17(2) of the 1913 Act). In relation to these matters:-

1. there is no need to retain any special provision for fines upon conviction on indictment, because there is a general power to fine instead of imposing a sentence of imprisonment (s.10, Criminal Law Act 1967);
2. a provision dealing with powers to search will be necessary and we would broadly propose to follow section 26 of the Theft Act in its powers of search as being appropriate for forged articles and tools of forgery;
3. having regard to our proposals on the mental element in forgery, we think that the retention of the provisions of the Acts of 1861 and 1913 dealing with intent to defraud particular persons would become unnecessary (paragraph 7).

## V FORGERY AND COINAGE OFFENCES

76. We invite comment and observations upon the questions discussed in paragraphs 63-65 of this paper concerning the possible incorporation of coinage offences into a new Forgery Act. If it were decided to adopt this solution, we feel that no great difficulty would be encountered in extending the proposals recommended in paragraph 75 to coinage offences. It would, however, be necessary to consider whether there are some aspects of these offences e.g.: defacing and clipping coins, which would require special treatment.

## VI SOME IMPORTANT QUESTIONS

77. In addition to inviting comments generally on this paper, we end by drawing attention to some special points, in the form of questions, on which answers would be particularly welcome. They are as follows:-

- (1) Are we correct in our view that the words false "in a material particular" serve no useful purpose in the definition of forgery? (paragraphs 16 and 17).
- (2) What things should be capable of forming the subject of forgery? This is perhaps the most important question in framing a new Forgery Act. We have reached no concluded view but have suggested three possible answers i.e.:
  - (a) all tangible things;
  - (b) things on a list compiled by reference to the application of a "social danger" test appropriate in modern conditions;
  - (c) things limited to documents broadly defined and extended to cover such other things as ought to be the subject of the forgery offence.(paragraphs 20-38).
- (3) We propose that there should be only one offence of forgery and no aggravated offences (paragraphs 39-40). Is this proposal acceptable?

- (4) Is it right that, in relation to forgery, the word "dishonestly" should be construed in a wide sense, so as to include intention to prejudice rights or obstruct duties and recklessness in regard to such prejudice or obstruction? (paragraphs 41-47).
- (5) Is our proposal to eliminate the offence of demanding etc. on a forged instrument acceptable? (paragraph 49).
- (6) Is the proposed alteration in the law of uttering (whereby the guilt of the utterer will cease to depend on the commission of an offence of forgery by the maker of the thing uttered) desirable? (paragraph 50).
- (7) Is the word "using" that we favour a better word than "uttering"? (paragraph 51).
- (8) What is the proper extent of the range of articles unlawful possession of which ought to be an offence? (paragraphs 56-60).
- (9) What is the proper extent of the range of articles, themselves innocuous, which can be used for forgery, the possession of which ought to be an offence? (paragraphs 59 (iii) and 62).
- (10) Would it be right to deal, as far as possible, with coinage offences within a new law of forgery? (paragraphs 63-65).
- (11) Should all the offences proposed under the new Act be triable summarily, as we have suggested, by virtue of the application of section 19 of the Magistrates' Courts Act 1952, or should some, and, if so, which of them be "hybrid" offences? Again, should there be some purely summary offences? If so, how should they be distinguished from the equivalent indictable offences? (paragraphs 67-68).
- (12) Is our large-scale repeal policy, as explained in paragraphs 70-73, acceptable? If so, should any, and, if so, which forgery type

offences in legislation such as the  
Road Traffic and Post Office Acts,  
survive a new Forgery Act?

APPENDIX A

OFFENCES UNDER THE FORGERY ACT 1913,  
THE COINAGE OFFENCES ACT 1936  
AND CERTAIN OTHER LEGISLATION,  
CLASSIFIED WITH REFERENCE  
TO THE MAXIMUM PENALTY

LIFE IMPRISONMENT

Forgery Act 1913

- s.2 - forgery, with intent to defraud, of  
wills and other testamentary documents  
deeds and bonds  
banknotes
- s.3 - forgery, with intent to defraud or deceive, of  
documents bearing certain seals including the  
Great Seal
- s.5 - forgery, with intent to defraud or deceive, of  
various public seals
- s.6 - uttering of  
any of the documents or seals listed above

Coinage Offences Act 1936

- s.1(1)(a) - counterfeiting  
gold and silver coin
- s.2 - gilding, silvering, filing and altering  
coin so as to make it resemble gold or silver  
coin
- s.5(5) - uttering  
coin resembling gold or silver coin after  
previous conviction
- s.6 - buying or selling  
gold or silver coin for a lower value than  
its denomination
- s.9 - making, mending or possessing  
tools for counterfeiting gold and silver coin



- s.10 - conveying out of the Mint  
coining implements  
coin or bullion

IMPRISONMENT FOR 14 YEARS

Forgery Act 1913

- s.2(2) - forgery, with intent to defraud, of  
valuable securities  
documents of title to land or goods  
stock and share transfers and registers  
insurance policies  
charter-parties  
declarations, warrants etc. made for the purposes  
of the Government Annuities Acts 1829 and 1832  
certificates of the Commissioners of Inland Revenue  
certificates etc. made under the Slave Trade Acts
- s.3(2) - forgery, with intent to defraud or deceive, of  
registers and records of births, deaths,  
marriages, burials etc.  
Inland Revenue and Customs wrappers and labels
- s.5(2) - forgery, with intent to defraud or deceive, of  
seals of register offices, burial boards, land  
title registries
- s.6 - uttering  
any of the documents or seals listed above
- s.7 - demanding, with intent to defraud,  
property on a forged instrument
- s.8 - possessing  
forged banknotes, dies for marking plate, stamps  
or dies as defined in the Stamp Duties Management  
Act 1891, Inland Revenue and Customs wrappers  
and labels

Coinage Offences Act 1936

- s.3 - impairing  
gold or silver coin
- s.7 - importing and exporting (exporting also triable  
summarily)  
counterfeit coin

IMPRISONMENT FOR 7 YEARS

Forgery Act 1913

- s.3(3) - forgery, with intent to defraud or deceive, of  
court documents of sundry kinds  
certificates and similar documents relating  
to marriage  
documents such as register books and  
certificates under Part I of the Merchant  
Shipping Act 1894 [see also the Act of  
1894 itself, where there are similar  
provisions]  
Customs permits and certificates
- s.5(3) and (5) - forgery, with intent to defraud or deceive, of  
court seals  
stamps and dies under the Local Stamp Act 1869
- s.6 - uttering  
any of the documents or seals listed above
- s.8(3) - possessing  
forged stamps and dies under the Local  
Stamp Act 1869
- s.9 - making or possessing  
special paper for making banknotes etc. and  
Revenue paper; and tools and materials  
for making them  
engraving  
marks resembling marks on banknotes and  
documents of title to stocks and shares  
using or possessing  
plates etc. on which such marks are  
engraved  
paper on which such marks are printed

Coinage Offences Act 1936

- s.1(1)(b) - counterfeiting  
copper coin
- s.3(2) - possessing  
filings or clippings from gold or silver coin
- s.6(1)(b) - buying or selling  
counterfeit copper coin for a lower value  
than its denomination
- s.9(3) - making, mending or possessing  
tools for making counterfeit copper coin

IMPRISONMENT FOR 5 YEARS

Coinage Offences Act 1936

- s.5(4) - possessing with intent to utter (also triable summarily)  
three or more counterfeit gold or silver coins

IMPRISONMENT FOR 2 YEARS

Forgery Act 1913

- s.4(1) - forgery, with intent to defraud, of  
any document not specified in other sections  
of the Act
- s.4(2) - forgery, with intent to defraud or deceive, of  
any public document not specified in other  
sections of the Act
- s.7 - uttering  
any document
- s.10 - purchasing, receiving and possessing  
certain special paper before it has been stamped,  
signed and issued  
dies for making such paper

Coinage Offences Act 1936

- s.5(2) - uttering (also triable summarily)  
counterfeit gold and silver coin and at the time  
possessing any other such coin, or uttering  
more than once within a period of 10 days

Road Traffic Act 1960 (as amended)

- s.233 - forgery with intent to deceive, using or possessing  
sundry documents under the Act [if tried summarily,  
4 months' imprisonment, or fine of £100, or both].

Criminal Justice Act 1925

- s.36 - forgery of  
passports

IMPRISONMENT FOR 1 YEAR

Coinage Offences Act 1936 (all the offences in this list are also triable summarily)

- s.4 - defacing  
current coin
- s.5(1) - uttering  
counterfeit current coin
- s.5(4) - possessing with intent to utter  
3 or more counterfeit copper coins
- s.5(6) - uttering as current coin  
coins or medals of less value than that current  
coin
- s.8 - making, possessing and selling  
medals resembling gold or silver coin

FINE OF 40 SHILLINGS ON SUMMARY CONVICTION

Coinage Offences Act 1936

- s.4(3) - uttering  
defaced coin

## APPENDIX B

### EXAMPLES OF OFFENCES OF FORGERY AND AKIN TO FORGERY IN SUNDRY LEGISLATION WITH MAXIMUM PENALTIES

<u>Nature of legislation</u>	<u>Maximum penalty</u>
<u>Registration of births, marriages and deaths</u>	
<u>Non-Parochial Registers Act 1840</u>	
s.8 (as amended) - wilful injury to or forgery of registers of births, deaths, marriages etc.	7 years
<u>Burial Act 1857</u>	
s.15 (as amended) - destruction or forgery of burial registers	7 years
<u>Births and Deaths Registration Act 1953</u>	
s.37 - forgery or falsification of certificates etc.	£10
<u>Professional rolls and registers</u>	
forgery and falsification under:-	
<u>Midwives Act 1951</u> , s.2(7)	12 months
<u>Pharmacy Act 1954</u> , s.18	12 months
<u>Pharmacy Act 1954</u> , s.20(2)	£100 fine
<u>Medical Act 1956</u> , s.41(9)	12 months
<u>Dentists Act 1957</u> , s.16(7)	12 months
<u>Nurses Act 1957</u> , s.29	£100 fine
<u>Documents of title</u>	
<u>L.C.C. (Finance Consolidation) Act 1912</u>	
s.39 - making false entries of stock	14 years
s.40 - making etc. false dividend warrants	7 years
<u>Land Registration Act 1925</u>	
ss. 115 to 117 - alterations of documents, registers, certificates etc.	2 years or £500 fine (indictment); 3 months and £100 fine (summary)
<u>Public revenue</u>	
<u>Stamp Duties Management Act 1891</u>	
s.13 (as amended) - a large number of offences relating to forgery or fraud in relation to stamps	14 years
<u>Customs and Excise Act 1952</u>	
s.302(a) - counterfeiting customs documents etc.	2 years and £500 fine

## Personal status

### Criminal Justice Act 1925

s.36 - forgery of passports 2 years and fine  
s.38(1) - making or using imitation £20  
currency or banknotes

### Law of Property Act 1925

s.183 - falsification of pedigree 2 years or fine

### Commonwealth Immigrants Act 1962

s.4(3) - alteration of documents in 6 months and £100  
relation to immigration fine (summary)

## Courts and Litigation

### Evidence Act 1845

s.4 - falsely printing copies of Acts 7 years  
of Parliament

### Documentary Evidence Act 1868

s.4 - printing any subordinate 5 years  
legislation purporting to be  
printed by the government printer

### Documentary Evidence Act 1882

s.3 - offence similar to the offence 7 years  
under the 1868 Act

### Evidence (Colonial Statutes) Act 1907

s.1(2) - a similar offence in relation 12 months  
to colonial legislation

### County Courts Act 1959

ss.186(2) and 188 - forging County s.186(2) - two  
Court summons or process years (indictment);  
six months and £50  
fine (summary)  
s.188 - 7 years

## Posts and telegraphs

### Submarine Telegraph Act 1885

s.8(4) - forging declarations 3 months (summary)  
under the Act

### Post Office Protection Act 1884

s.11 - forgery of telegrams 12 months (indict-  
ment); £100 fine  
(summary)

### Post Office Act 1953

s.23 - forgery of money orders 14 years  
s.63 - forgery of stamps £20

## Merchant shipping

### Merchant Shipping Act 1894

numerous offences relating  
to documents under the Act, viz.:-  
s.66 - register books etc. 7 years  
s.104 - certificates of competency 2 years (indictment)  
6 months & £100  
fine (summary)  
s.121 - agreements with crew as s.104

s.130 - certificate of discharge	as s.104
s.154 - forging documents for the purpose of obtaining money in a seaman's savings bank	5 years (indictment); 6 months (summary)
s.180 - forging documents for the purpose of obtaining the property of deceased seaman	as s.154
s.282 - certificates of survey, etc.	as s.104
s.695(4) - Stamps on shipping documents	7 years
s.722 - Board of Trade marks	as s.104

Precious metal

Plate Assay (Sheffield and Birmingham) Act 1772

s.14 - forging hallmarks	14 years
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Gold & Silver Wares Act 1844

s.2 (as amended) - similar to above	14 years
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Road Traffic

Road Traffic Act 1960

s.233 - forgery of motor documents	2 years (indictment); 4 months & £100 fine (summary)
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s.234 - falsification of records	as above
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Road Traffic Regulation Act 1967

s.86 - parking tickets	as above
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Transport Act 1968

s.83 - consignment notes etc.	2 years (indictment); £200 (summary)
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Note: The list of Road Traffic offences of forgery and akin to forgery is not exhaustive. Only the most important examples have been selected.

Miscellaneous

Servants' Characters Act 1792

s.4 - forging or using a forged certificate of character	£20 (summary)
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Seamens and Soldiers False Characters Act 1906

s.1 - forging or uttering certificate of service or discharge of seaman or soldier	1 month/£20
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Official Secrets Act 1920

s.1(1)(c) - forgery and use or possession of forged official passes etc.	2 years
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Agricultural Produce (Grading & Marking) Act 1928

s.2(3)(as amended) - grade designation marks	2 years & fine (indictment); 3 months and £100 fine (summary)
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Companies Act 1948

s.328(1)(i) & (k) - destroying etc.  
company books

2 years (indict-  
ment); 12 months  
(summary)

s.329 - similar to above

2 years

Mines & Quarries Act 1954

s.161(1) - certificates under the Act

2 years & £200  
fine (indictment);  
3 months & £100  
fine (summary)

Trade Descriptions Act 1968

s.1 - making a false trade description  
(see text, paragraph 46)

2 years (indict-  
ment); £400 fine  
(summary)

Firearms Act 1968

s.3(5) - falsifying a certificate

3 years & £200  
(indictment);  
6 months & £200  
(summary)