



LAW COMMISSIONS ACT 1965

*First Programme of Consolidation
and Statute Law Revision of the
Scottish Law Commission*

*Laid before Parliament
by the Secretary of State for Scotland and the Lord Advocate
under Section 3(2)
of the Law Commissions Act 1965*

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are—

The Honourable Lord Kilbrandon, LL.D., *Chairman*.

*Professor A. E. Anton, M.A., LL.B.

Mr. G. D. Fairbairn, S.S.C.

Professor J. M. Halliday.

Professor T. B. Smith, Q.C., D.C.L., LL.D.

The Secretary of the Commission is Mr. A. G. Brand, M.B.E. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh 8.

*Professor Anton was appointed to the Commission on 11th April 1966.

SCOTTISH LAW COMMISSION

TO: THE RIGHT HONOURABLE WILLIAM ROSS, M.B.E., M.P.,
Her Majesty's Secretary of State for Scotland, and

THE RIGHT HONOURABLE GORDON STOTT, Q.C.,
Her Majesty's Advocate.

Section 3(1)(d) read along with section 6(2) of the Law Commissions Act 1965 imposes on the Scottish Law Commission a duty to prepare from time to time at your request comprehensive programmes of consolidation and statute law revision.

In response to your request of 22nd September 1965, we have the honour to submit the first of these programmes together with a brief Note.

C. J. D. SHAW
Chairman

8th February, 1966

FIRST PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

I. *Consolidation of Statutes applying to Scotland only*

1. We recommend that work which has already been started on the following matters should be continued—

- (a) Housing (Scotland)
- (b) Legal Aid (Scotland)
- (c) Court of Session
- (d) Roads and Bridges (Scotland)
- (e) New Towns (Scotland)
- (f) Police (Scotland)

2. We recommend that, as soon as resources permit, work should be commenced on the following—

- (a) Lands Clauses (Scotland)
- (b) Husband and Wife (Property Rights) (Scotland)
- (c) Divorce (Scotland)
- (d) Town and Country Planning (Scotland)

II. *Consolidation of Statutes which apply to other parts of the United Kingdom as well as to Scotland.*

1. We agree with the Law Commission that the following matters in respect of which Bills are being or have been prepared, should be proceeded with—

- (a) Development of Inventions
- (b) Firearms
- (c) Fisheries (Conservation)
- (d) Forestry

- (e) Hire Purchase Advertisements
- (f) Industrial Injuries and Diseases (Old Cases)
- (g) Mines (Working Facilities and Support)
- (h) Ships (Transfer Restrictions)

2. We agree with the Law Commission that the consolidation of enactments relating to the following matters of major importance should thereafter be given high priority—

- (a) Income Tax
- (b) Estate Duty
- (c) Stamp Duty
- (d) Road Traffic Acts
- (e) Rent Acts

3. We agree with the Law Commission that, when time and resources permit, consolidation of enactments relating to the following should be proceeded with—

- (a) House of Commons Members Fund
- (b) Moneylenders and Pawnbrokers
- (c) Pensions Increase Acts

III. *Statute Law Revision*

1. *Statutes applying to Scotland only.*

Our attention has been drawn to the major exercise in statute law revision which culminated in the Statute Law Revision (Scotland) Act 1964. This Act contained some repeals of obsolete, spent, unnecessary or superseded enactments of the Parliaments of Scotland before 1707. As this work has been done on such a large scale so recently, we do not recommend that any similar exercise be carried out in the immediate future. We understand, however, that in the course of ordinary legislation, opportunity is taken to repeal any old enactments which are rendered obsolete or unnecessary, or are superseded, by the new legislation, and we recommend that this practice be continued.

2. *Statutes applying to other parts of the United Kingdom as well as to Scotland.*

We understand that the Law Commission propose a review of all statutes in chronological order with a view to recommending the repeal of all that cannot positively be shown to continue to perform a useful function. We propose to associate ourselves with this review so far as the statutory provisions apply to Scotland.

In terms of section 3(2) of the Law Commissions Act 1965 this programme was approved by the Secretary of State and the Lord Advocate on 24th May 1966.

Note by the Commission

1. At the outset of our consideration of the preparation of a programme of consolidation and statute law revision, it became clear to us that the key to the whole matter lay in the availability of parliamentary draftsmen on whom the burden of this work largely falls.

2. We were informed by the Scottish Parliamentary Draftsman in the Lord Advocate's Department that in the past the scarcity of draftsmen had made it very difficult to make satisfactory progress with work of this nature on purely Scottish legislation, as it could be done only when draftsmen could be spared from their duties (a) on ordinary Government Programme Bills and (b) on the Scottish aspect of consolidation measures relating to other parts of the United Kingdom as well as to Scotland. Since shortly before the setting up of this Commission, however, it has been found possible to allocate one draftsman to work on consolidation of enactments relating to Scotland only, and it has now also been possible to obtain the services of another draftsman on a part-time basis for the same purpose. We understand that work on the consolidation of enactments applying to other parts of the United Kingdom as well as to Scotland will, so far as the enactments apply to Scotland, be carried out by other draftsmen in the Lord Advocate's Department, and in this field there will continue to be competition for the available resources between consolidation work and work on ordinary Government Programme Bills.

3. We recognise that these arrangements constitute a considerable advance over the previous position with regard to the availability of draftsmen for consolidation work, and should lead to some speeding up of the process of consolidation. At the same time, however, in preparing our programme so far as relating to purely Scottish legislation we have kept clearly in mind that we must have regard not only to what ought to be done, but also to what can be done with the resources available. Accordingly we have not sought to include a long list of subjects with which the draftsmen could not reasonably cope in the immediate or not too distant future. We are also aware that in certain cases the draftsmen will require considerable assistance from the lawyers and officials of the Government Departments concerned with the particular enactments being consolidated, and we must emphasise that the rate of progress towards completion of any programme of consolidation will depend on the availability of the draftsmen and of these lawyers and officials to carry out this work.

4. In deciding on the matters to be included in our programme, we have taken into consideration suggestions we have received from Government departments, from the legal profession, and from other bodies and individuals; we have taken note of work which has already been done in connection with the preparation of particular consolidating Bills, and we have considered what difficulties are being caused to the legal and other professions as well as to the public generally by the present situation in which ascertainment of the law on any particular matter requires reference to a number of statutes. We have also kept in mind the possibility of further legislation on any particular topic in the

immediate or reasonably near future. This consideration has led to the exclusion of two topics—"Local Government" and "Public Health"—which might otherwise have found a place in the programme. With regard to "Local Government", we understand that reorganisation of local government finance is at present proceeding and that reorganisation of the structure of local government is also a possibility, and in these circumstances it does not seem worth while embarking at this stage on a full-scale consolidation of the Local Government Acts. In considering the subject of "public health", which would also be affected by changes in local government structure, we have noted the Government's intention to review the legislation relating to infectious diseases which is an important part of public health legislation as a whole, and have come to the conclusion that, in these circumstances, consolidation of the public health enactments would, at this stage, be premature.

5. Our programme includes not only matters which will give rise to a large amount of work and to large consolidating Bills, but also to matters in respect of which the amount of work and the size of the Bills will be considerably less; this, in our view, will enable the best use to be made of the available time both of the draftsmen and of Parliament itself.

6. We are conscious that some of the enactments included in this programme may, on investigation, require amendment at the same time as, or before, consolidation, but in general we have not been deterred from including them in the programme on that account. If consolidation of a particular series of enactments is desirable, we would hope that any amendment required could be accomplished by consolidation under the procedure laid down in the Consolidation of Enactments (Procedure) Act 1949 (which provides a means for making minor and technical amendments in a consolidation Bill), by a "consolidation with amendments" Bill possibly given the same facilities as were accorded to the Local Government (Scotland) Act 1947 and, more recently, to the Highways Act 1959, or by the passing of an amending Bill prior to the presentation of the consolidation Bill.

7. We have interpreted the request we have received to prepare a comprehensive programme of consolidation and statute law revision as imposing on us the duty, not only to produce this First Programme, but also to prepare further programmes from time to time so as to take into account changing circumstances which may affect the priorities originally recommended by us. We propose, therefore, to keep the matter of consolidation of our law constantly under review, and, having regard to changing circumstances and, in particular, to progress made with the matters in our First Programme, to submit further programmes to follow, to supplement, or to take the place of that Programme.

8. We appreciate that several of the matters we have included in our Programme will inevitably involve a great deal of work for the Government Departments concerned (e.g. Income Tax and Estate Duty), but our view is that consolidation in these spheres is so urgently needed that work should be started as soon as possible even if the production of a consolidation Bill takes a long time. The longer a start is delayed the more difficult the work is likely to become.

9. In deciding what enactments applying to other parts of the United Kingdom as well as to Scotland should be included in this Programme we have been in consultation with the Law Commission, and we shall continue to consult that

Commission with regard to future consolidation proposals. In this connection we would like to make it clear that in including certain subjects—for example, the Rent Acts—in this part of the Programme, it is not our intention to exclude the possibility of consolidating the enactments, so far as they apply to Scotland, in one Act applying to Scotland only. We consider that it will become clear only in the course of work on these subjects whether or not a separate consolidation Act applying to Scotland only is desirable.

