



## **The Law Commission and consolidation**

The commissioner responsible for our consolidation work is the Chairman. The Senior Parliamentary Counsel at the Commission has day to day responsibility for the work and makes the arrangements necessary for parliamentary counsel to carry out any project that we have agreed to take on.

Consolidation work is carried out by an experienced parliamentary counsel working closely with the department responsible for the law being consolidated. That counsel may be based at the Commission or the Office of Parliamentary Counsel or working under contract to the Commission.

Consolidation projects affecting the law of Scotland are carried out in liaison with the Scottish Law Commission.

### **Why consolidation?**

The main purpose of a consolidation project is to draw together different enactments on a topic into a single Act. The Act usually replaces provisions in different Acts (and often statutory instruments) passed over a period of years. The structure of the original law will often have become distorted over time and so requires reforming to make the cumulative effect of successive layers of legislation intelligible. The drafter is also able to remove obsolete material, modernise language (now conventionally gender-neutral) and resolve many of the minor inconsistencies and ambiguities that creep in over the years. Changes to the general law and to EU law that affect the existing legislation also need to be considered to ensure that the Bill reproduces accurately the effect of all current law.

Consolidation work can be exceptionally difficult. The drafter must be confident that a restructured or re-worded text reflects the true effect of the current law, subject only to changes of the kind permitted by the parliamentary procedure described below.

Technical substantive changes to the law are often required in order to produce a satisfactory consolidated text. If these cannot be made under that procedure, they would have to be made by or under an ordinary Act before they could be incorporated into a consolidation Bill.

### **Our approach to consolidation**

The Senior Parliamentary Counsel at the Law Commission considers any serious proposal for consolidation with a view to assessing whether the topic is suitable for consolidation. Most consolidations are significant undertakings in terms of time and resources, and larger projects can take two years or more to complete. It is essential to establish the strength of the case for consolidation, and any risks affecting the chances of successful completion, before taking a project on.

We consider there remains a need for consolidation and that this is likely to increase given the volume of legislation enacted each year. The need is often acute following repeated legislative activity on a subject over a period of several years which has not resulted in a single statutory text. Sometimes an ordinary Act can restate with amendment (and so repeal) earlier legislation on a topic, but more often Acts proceed by amending the earlier legislation on the same topic.

Consolidation was sometimes used in the past as a means of generating a usable updated text of heavily amended legislation. Modern electronic and printed sources of updated legislation now make it relatively easy to find a reliable, up-to-date “as amended” version of an Act. That is sufficient for most practical purposes, so we are unlikely to regard a topic as suitable for consolidation if the main purpose is simply to produce an “as amended” text of an Act. A worthwhile consolidation does much more than produce an updated text.

### **Topics suitable for consolidation**

The Commission welcomes suggestions for consolidation from departments or others. However there are many factors that must be considered before we could take a new project on, including:

- whether the law concerned is suitable for consolidation (for example if significant policy changes to the law are needed that can prevent us taking a project on)
- the need for consolidation (essentially, the obstacles it would remove in accessing and using existing legislation)
- the complexity and size of the project
- the cost of the work involved and the resources available to meet them
- the availability of suitable drafters
- departmental priorities (and the risk of their changing)
- the risk of changes being made to the law during the life of the project (the prospect of significant changes can prevent us taking a project on).

A consolidation always involves the department with policy responsibility for the relevant law. The department’s views and comments on the Bill and the issues that arise will always be important and they are often best placed to identify and deal with stakeholders. We now regard it as essential to be satisfied at the outset that the department will provide sufficient practical support to see a consolidation project through to completion and enactment. We now normally expect the department to make a financial contribution to our costs.

### **The Parliamentary procedure for consolidation Bills**

The Law Commissions and Parliament have established a special parliamentary procedure for a consolidation Bill. This enables the Bill to be scrutinised on a non-partisan basis without taking up much time on the floor of either House. The main parliamentary stage is the detailed consideration of the Bill by the Joint Committee on Consolidation etc Bills. If the Joint Committee is content with the Bill the other parliamentary stages are largely formal.

The procedure cannot be used for a Bill that alters the substantive effect of the law, unless the change is recommended by one or both of the Law Commissions. The purpose of any such change must be to produce a satisfactory consolidated text. For example a change might be necessary to enable the Bill to address similar points in the same language, despite variations in the original legislation. But the procedure is not designed for policy debates or for making changes that do not relate to issues arising from the consolidation process itself.

Changes recommended by the Law Commissions need to be approved by Parliament. This is almost invariably done by the Joint Committee.

## **The documents submitted to Parliament with a Consolidation Bill**

The following documents will be made available to Parliament when it is considering a consolidation Bill:

- **Drafters Notes to the Joint Committee:** These provide the Joint Committee with some background to the project, describe things the drafter has (or has not) done in consolidating the law and identify the more significant issues that have required the drafter to make a decision as to the best way of reproducing the law.
- **Table of Origins (previously known as a Table of Derivations):** This sets out where the provisions of the Bill have come from in the legislation being consolidated. Any text that does not originate in provisions repealed by the Bill will also be indicated, such as text implementing a Law Commission recommendation.
- **Table of Destinations:** This sets out where the repealed provisions have ended up in the Bill. It will also identify existing text that is not reproduced in the Bill with a brief reason (for example because it is spent).
- **A Law Commission Report relating to the Bill** will also be made and submitted to Parliament if there are any Law Commission recommendations for changes to the law being consolidated. A report recommending changes affecting the law of Scotland will be made jointly with the Scottish Law Commission.