

REFORM OF THE NON-FATAL OFFENCES AGAINST THE PERSON

THE LAW COMMISSION

In 1993 the Law Commission published a Report, *Legislating the Criminal Code: Offences Against the Person and General Principles* (Law Com No. 218). It included a Criminal Law Bill which would implement their proposals in respect of non-fatal offences against the person (as well as defining *mens rea* and reforming the general defences). The Bill would have repealed ss 18, 20 and 47 on the basis that:

- the language of the Act is so complicated, obscure and old-fashioned;
- the structure of the three sections is so complicated and technical;
- that mistakes by lawyers and complete unintelligibility to the layman were eventually bound to result.

According to the Law Commission, the obscurity of the law results not only in additional expense as it impedes the efficient discharge of business in the criminal courts, but also in injustice. However, the Bill was not enacted.

THE GOVERNMENT'S RESPONSE

In February 1998 the Home Office issued a Consultation Document, *Violence: Reforming the Offences Against the Person Act 1861* together with a draft Offences Against the Person Bill. It made the following points:

- In 1996 there were 83,000 court cases involving non-fatal offences. It is therefore particularly important that the law governing such behaviour should be robust, clear and well understood.
- Unclear or uncertain criminal law risks creating injustice and unfairness to individuals as well as making the work of the police and courts far more difficult and time-consuming.
- The Government's aim is that the proposed new offences should enable violence to be dealt with effectively by the courts and that the law should be set out in clear terms and in plain, modern language.
- The primary purpose of the reforms is to replace the outdated offences with a rational and coherent set of new offences. It is not the Government's intention to fundamentally alter the scope or operation of the law. It does not intend to make the law tougher or more lenient, but to make it clearer and easier to use.

The Government proposed a hierarchy of offences which reflect those proposed by the Law Commission and also the Criminal Law Revision Committee in its Fourteenth Report (Cmnd 7844) of 1980. They are: intentionally causing serious injury (clause 1), recklessly causing serious injury (clause 2), intentionally or recklessly causing injury (clause 3) and assault (clause 4). The differences are as follows:

Present offences	Proposed new offences	Definitions	Maximum penalty
Wounding or causing GBH with intent (s18)	A person is guilty of an offence if he intentionally causes serious injury to another.	'Injury' means physical injury or mental injury. Physical injury includes anything caused by disease and includes pain, unconsciousness and any other impairment of a person's physical condition. Mental injury includes anything caused by disease and includes any impairment of a person's mental health.	Life imprisonment
Wounding or inflicting GBH (s20)	A person is guilty of an offence if he recklessly causes serious injury to another.	'Injury' means the same as above but does not include anything caused by disease.	Seven years on indictment or six months and/or a fine summarily
Assault occasioning ABH (s47)	A person is guilty of an offence if he intentionally or recklessly causes injury to another.	'Injury' means the same as above but does not include anything caused by disease.	Five years on indictment or six months and/or a fine summarily
Common law assault and battery (s39 Criminal Justice Act 1988)	A person is guilty of an offence if (a) he intentionally or recklessly applies force to or causes an impact on the body of another, or (b) he intentionally or recklessly causes the other to believe that any such force or impact is imminent. No such offence is committed if the force or impact, not being intended or likely to cause injury, is in the circumstances such as is generally acceptable in the ordinary conduct of daily life and the defendant does not know or believe that it is in fact unacceptable to the other person.		Six months and or a fine not exceeding level 5 on the standard scale (currently £5,000)

The *mens rea*, or 'fault terms' which the Law Commission prefers, are defined in clause 14 as follows:

- A person acts **intentionally** with respect to a result if (a) it is his purpose to cause it, or (b) although it is not his purpose to cause it, he knows that it would occur in the ordinary course of events if he were to succeed in his purpose of causing some other result.
- A person acts **recklessly** with respect to a result if he is aware of a risk that it will occur and it is unreasonable to take that risk having regard to the circumstances as he knows or believes them to be.