

Law Publishing in Scotland

Abstract: Law publishing in Scotland has seen something of a renaissance during the last 20 years. This article by Margaret Cherry is an overview of Scots law publishing from a Scottish perspective. It looks at the factors which influence publishing decisions, including market and economic considerations and the nature of Scots law itself. It also covers the principal publishers – both past and current – who have produced books on Scots law.

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Introduction

At the beginning of the twenty-first century, Scots law publishing is as strong as it has ever been. The advent of a devolved Scottish Administration in 1998 has resulted in an increase in legislation specifically for Scotland and has led to consequent changes in practice and procedure. The need for ready access to up-to-date information on new law has provided enhanced publishing opportunities and a number of new publishers have entered the arena. The previous golden age of Scots law publishing is often considered to have been the period from the 1890s up to the outbreak of World War I. Many of the titles published during that time – Gloag & Henderson, *Principles of the Law of Scotland*; Gloag & Irvine, *Law of Rights of Security, Heritable and Moveable*; Graham Stewart, *Law of Diligence*; Rankin, *Law of Leases in Scotland* – have come to be regarded as seminal works on Scots law and are still referred to today. Thereafter there was a long period of stagnation, during which little new publishing took place. There was a perception that the Scottish legal market was too small to make commercial publishing viable, and few publishers were prepared to take the financial risk.

The market for law books

The customers

In very general terms the market for law books in Scotland is about 10 per cent of that for England and Wales. As elsewhere in the UK, the legal profession is divided into two branches: solicitors and advocates (as members of the Scottish Bar are called). There are approximately 12,000 solicitors in Scotland with practising certificates and about 450 members of the Bar. Although there is a degree of specialisation among solicitors, particularly in the cities, many legal practitioners in Scotland are generalists. The student market too is significantly smaller, with only ten accredited providers of the LLB. The syllabus for law students in Scotland is broadly similar to that in the other UK jurisdictions and, as the substantive law in many core subjects is the same, students are often able to use textbooks produced for the wider UK market.

What is Scots law?

This leads on to the other major limiting factor in law publishing for Scotland – the range of subjects. Scots law is one of a handful of ‘mixed’ legal systems in the world today. It has its basis in Roman law, but also features elements of common law. The legal system of South Africa is comparable and, to a lesser extent, so are the partly codified systems of Louisiana and Quebec. Historically, Scotland had closer links with the continent of Europe than it did with England and, until the fifteenth century, Scots lawyers were educated in European countries with Roman law systems. Since the Union with England in 1707, Scotland has shared a legislature with England and Wales, but has retained a separate court system, as provided by the Act of Union: ‘the Court of Session ... do after the Union and notwithstanding thereof remain in all time coming within Scotland as it is now constituted ... and with the same authority and priviledges as before the Union’.

Gradually, however, English law began to replace Roman law as the main external source of Scots law and, with entry to the European Union, the process of assimilation and harmonisation has gathered pace. However, there remain important differences between Scots law and the law in the other jurisdictions of the UK. In very general terms, the substantive differences tend to be greater in the private law subjects, while public law is broadly similar, although often regulated by different statutes.

To take just a few examples, taxation, company law and social security law are the same throughout the UK, while land law, succession and criminal law are completely different. Other subjects have a greater or lesser Scottish element and law publishers have to decide when this is sufficient to justify a separate Scottish text. The legislative activity of the Scottish Parliament has resulted in an increased Scottish dimension in many of the devolved matters (i.e. those matters not reserved to the Westminster Parliament by the Scotland Act 1998, Sch.5). As may be seen from scanning the Table of Statutes in any recent Scots law book, much of the post-2000 legislation has been enacted by the Holyrood Parliament, which has led to a growing demand for annotated acts and guides to legislation.

Sales

Law publishing in Scotland is, therefore, constrained principally by (1) the size of the market; and (2) the limited range of suitable subjects. A side-effect of the relatively small size of the legal profession is the correspondingly small pool of potential authors. When a gap in the available legal literature has been identified and a suitable author has been found, there is then the question of sales. Total sales of 800 for a practitioner title would be exceptional, and many titles sell only 200 or 300 copies. Unit sales of student titles are rather higher and, for a core subject, life-time sales may be as high as 1,500. However, sales to students are strongly influenced by cover price, and books on Scots law are priced at a much higher level than comparable English texts. Other consequences of low unit sales are that publishers may be unwilling to take a risk and publish in specialist subjects and the gaps between editions may be greater than ideal.

Pricing

Current prices for a standard student text of, say, 300 pages are hovering around £40. Where a subject (eg administrative law) has limited Scottish content, students may choose to buy an 'English' book of greater length and at a lower price. Many very good proposals – intellectually sound, on an important subject and with a prestigious author – are rejected by publishers on the grounds that they cannot identify a market of sufficient size. This is particularly true of proposals for academic texts, which are especially price-sensitive. It is immaterial how good a book is going to be – if it is purchased by only 50 students per year, the publisher will not be able to price it at a level that is within student budgets and still recover its costs. High pricing also affects practitioner titles: many are priced well into three figures and even handbook-type books and annotated acts may be likely to cost in excess of £50.

Sponsorship

Over the years a number of trusts have made funds available for publishing ventures, on the basis that law publishing for Scotland could not be undertaken on a commercial basis. The best known and most successful is the Scottish Universities Law Institute (SULI), which was initiated in 1960 by the late Professor Sir Thomas Smith QC. It was set up to publish authoritative and definitive practitioner texts on Scots law. Today the SULI series consists of more than 20 books on key subjects published, as they have been from the beginning, by W Green. The Clark Foundation for Legal Education has also sponsored a number of law publications as part of its wider remit 'to promote and advance the legal and business education and training of Scots lawyers and students ... and thereby contribute to the development of the Scottish legal system'.

The publishers

W Green

W Green has dominated law publishing in Scotland for more than a century. Founded in 1875, initially as a law bookseller, by former Court of Session officer William Green, it soon branched out into publishing. Early publications which have stood the test of time include *Juridical Review* (1889), the 'law journal of the Scottish universities', and the *Scots Law Times*, which started as a weekly 'legal newspaper' in 1893 and is now Scotland's best-selling series of law reports. In 1956 W Green became a subsidiary of Sweet & Maxwell, a relationship which continues today. The company publishes a wide range of products for the Scottish market, including law reports, loose-leaf works and a variety of textbooks for students and practitioners. It is also Scotland's only publisher of legal digital products.

T&T Clark

Another early law publisher in Scotland was T&T Clark, which was founded in 1821 by legal bookseller Thomas Clark and his nephew (also called Thomas), and which remained in the ownership of the Clark family until the mid-1970s. Although the company published some important law titles during its first century, its focus switched increasingly to theology and its legal publishing was dormant for many years, becoming active again in the 1980s. In 2000 T&T Clark's law list was acquired by Butterworths.

Butterworths

Butterworths had considered Scotland over the years (and had published a handful of Scots law titles), but had concluded that the market was too small to support a dedicated Scottish publishing programme. They were persuaded otherwise when approached by the Law Society of Scotland, in the 1980s, about co-publication of *The Laws of Scotland: Stair Memorial Encyclopaedia*. This multi-volume work was an attempt to state the entire law relating to Scotland in a series of alphabetically-arranged titles and was partially funded by a levy imposed by the Law Society on every solicitor in Scotland. It was motivated by concern that, in the absence of up-to-date Scottish texts, lawyers were referring to English books and, if developments in Scots law were not recorded, it would be continually diluted by outside (i.e. English) influences. Butterworths set up an editorial and sales office in Edinburgh and, although their primary focus in Scotland was the Encyclopaedia and its updating Service, they also developed a textbook list.

The current position

Overview

The renaissance of law publishing in Scotland in the mid-1980s coincided with Butterworths' entry into the Scottish

market. Until then their traditional rivals, Sweet & Maxwell, had faced no real competition north of the border but, after the arrival of Butterworths, there was a marked increase in activity from W Green. It consolidated its established position, building on its strong backlist and developing a number of new products. W Green remains the leading law publisher in Scotland today and is, for the time being, unassailable in terms of subscription and digital products.

The newcomers

Newcomers to the scene are, however, providing competition in textbook publishing. For large companies the high unit costs and low margins on textbooks mean that publishing them does not make much economic sense but, for a small publisher with low overheads, publishing for a niche market can be commercially viable. Recent developments in technology, such as producing proofs directly from authors' electronic files, digital printing and print on demand, have made it possible to reduce manufacturing costs without compromising quality and have gone some way to setting off the high editorial costs incurred on law books. These new companies emphasise their high editorial standards and commitment to fair pricing but, most importantly, the fact that they are independent companies based in Scotland and are making publishing decisions from a Scottish perspective.

Avizandum Publishing, established in 2002 by former employees of T&T Clark and Butterworths, is an independent company based in Edinburgh. Its initial titles were statutory compendia targeted at undergraduates, but it is moving increasingly into practitioner publishing, and is interested in developing both academic and practitioner lists. It is linked to Avizandum Bookshop, Scotland's only specialist law bookshop.

In 2004 **Dundee University Press** was launched. Its remit is to publish quality academic texts about subjects

of Scottish interest, with law identified as one of its areas of interest. To date, it has published a number of academic titles and has an ongoing series of student study guides called 'Law Essentials'.

The Butterworths name has disappeared from Scots law publishing, but its legacy continues. The initial publishing cycle of the *Stair Memorial Encyclopaedia* completed in 1996, and today the Encyclopaedia is on a 'rolling reissue' and is also available as an online service. It is published from London under the imprint of LexisNexis Butterworths, but the editorial office is still in Edinburgh. **Tottel Publishing**, a new law publisher based in England, acquired Butterworths' Scottish law list when the latter divested itself of most of its textbook publishing in 2004. Tottel has produced new editions of many of the Scottish titles but, to date, there has been little sign of any new product.

Conclusion

Today legal information requirements in Scotland are well served and there are few obvious gaps in the available legal literature on Scots law. There is a wide range of textbooks, for both students and practitioners, including statutory collections and annotated acts, as well as several series of Scottish law reports and an increasing number of online services. Every so often a publisher from outside the jurisdiction or without specialised legal publishing knowledge will publish a Scots law book, but Scots law publishing seems at its best when done by publishers with specialised knowledge of both the subject and the market. Today, as it was a century ago, Scots law publishing is dominated by W Green, but with small independent Scottish companies providing healthy competition.

Biography

Margaret Cherry has an LLB from an English university, and has worked in legal publishing for 30 years. She spent 10 years as a legal editor in Butterworths in London, working on a range of publications, and in the 1980s relocated to Edinburgh, initially as editorial manager of the *Stair Memorial Encyclopaedia* and latterly as general manager of Butterworths in Scotland. Since leaving Butterworths in 1998, she has worked as a freelance legal editor/consultant, primarily for Blackstone Press, for whom she managed a publishing project for the Law Society of Ireland. She is one of the three founders of Avizandum Publishing, for which she is publisher and managing director.

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