

SCOTTISH LAW COMMISSION
NINTH PROGRAMME OF LAW REFORM: CONSULTATION

Introduction

1. The Scottish Law Commission is seeking suggestions for suitable law reform projects to include in our next Programme of Law Reform, our Ninth Programme. The Ninth Programme will commence in 2015.
2. The Commission would greatly value any suggestions or comments that you may have. The consultation period closes on 12 September 2014.
3. The Commission's current Programme, the Eighth Programme of Law Reform (Scot Law Com No 220) was published in February 2010, and runs until the end of 2014. The Programme can be viewed on our website, at the following link: <http://www.scotlawcom.gov.uk/law-reform-projects/eighth-programme-of-law-reform/>.
4. We will submit a draft of the Ninth Programme to Scottish Ministers for approval, and laying before the Scottish Parliament.

The context

5. In preparing for the Ninth Programme, the Commission will have regard to the Scottish Government's overall purpose for Scotland: namely to focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.
6. The Commission's remit covers all of Scots law, both reserved and devolved areas of the law.
7. In the early stages of the Programme the Commission may wish to deal with a limited number of relatively small projects. As we complete our current substantial projects, we expect to have capacity for some larger projects.

Criteria for selection of topics for the Ninth Programme

8. The selection criteria for the Ninth Programme are as follows –
 - *Importance:* The extent to which the law is unsatisfactory (for example, unfair, unclear, inefficient, unduly complex or outdated); and the potential benefits likely to arise from reform of the law.
 - *Suitability:*
 - (a) Whether the issues concerned are predominantly legal rather than political; and whether there is any other body better placed to examine the topic in question; and

(b) Whether a Bill on the topic may be suitable for the special parliamentary law reform processes, in particular the new procedure in the Scottish Parliament (described below at paragraphs 15 to 17).

- *Resources:* The expertise and experience of Commissioners and legal staff and, in relation to projects where there may be a substantial role for a consultant, the availability of adequate funding; and the need for a mix of projects in terms of scale and timing in order to achieve a balance of workload among Commissioners and facilitate effective management of the Programme.

Projects to be carried forward into the Ninth Programme

9. A number of projects under the Eighth Programme will be carried forward into the Ninth Programme in 2015. These are –

- Compulsory purchase law – Discussion Paper to be published by the end of 2014;
- Moveable transactions – to be completed in 2015;
- Our continuing review of contract law; this might extend to a review of some stand-alone areas, such as the law on set-off;
- Heritable securities;
- Homicide.

10. Further details of these projects can be found on our website: <http://www.scotlawcom.gov.uk/law-reform-projects/>.

11. The Cabinet Secretary for Justice, at the request of the Justice Committee of the Scottish Parliament, has made a reference to the Commission to undertake a review of section 53 of the Title Conditions (Scotland) Act 2003.

12. The Cabinet Secretary has also announced that he intends to refer to the Commission a review of the not proven verdict.

13. As regards law reform work with other Law Commissions, a joint review of electoral law will continue in 2015 and beyond.

14. In considering the content of the Ninth Programme, the Commission needs to take account of our existing workload together with any joint projects.

Projects for special Parliamentary processes for law reform

15. The Commission has been working for some time with the Scottish Government and the Scottish Parliament to improve planning for implementation of Commission Reports, and to put in place further mechanisms to improve the rate of implementation.

16. This work resulted in the Scottish Parliament introducing new procedures to improve consideration of certain Commission Bills. These can now be dealt with by the Delegated Powers and Law Reform Committee. The criteria set by the Presiding Officer for such a Bill are as follows:-

- “(a) where there is a wide degree of consensus amongst key stakeholders about the need for reform and the approach recommended;
- (b) which does not relate directly to criminal law reform;
- (c) which does not have significant financial implications;
- (d) which does not have significant European Convention on Human Rights (ECHR) implications; and
- (e) where the Scottish Government is not planning wider work in that particular subject area.”.

See: <http://www.scottish.parliament.uk/parliamentarybusiness/BusinessBulletin/64350.aspx>.

17. As part of our business planning and our law reform methodology, the Commission considers that it is important to take account of the new procedure and to try to identify projects that will produce draft legislation suitable to go through the new procedure.

18. In the UK Parliament in Westminster, there is also a special procedure for certain Law Commission Bills, including Scottish Law Commission Bills, in the House of Lords. The procedure is available for uncontroversial law reform measures.

19. The Commission would be grateful for any suggestions by consultees for a law reform project for the law reform process in the Scottish Parliament; and for a project addressing an issue of Scots law reserved to the UK Parliament, that may be a suitable candidate for the House of Lords procedure for Commission Bills.

Conclusion

20. The Commission would be grateful for your suggestions and comments on the content of the Ninth Programme of Law Reform. In particular –

1. Do you have any law reform projects to suggest?
2. Do you have any project to suggest that would be suitable for the law reform process in the Scottish Parliament; or, in relation to reserved matters, for the House of Lords procedure for Commission Bills?

21. If suggesting a new project, the Commission would be grateful if you could also provide us with information about:

- the issues with the law that you have identified;
- the impact this is having in practice; and
- the potential benefits of law reform.

THE SCOTTISH LAW COMMISSION

MAY 2014

NOTES

1. Where possible, we would prefer electronic submission of comments. A downloadable electronic response form. Alternatively, our general email address is info@scotlawcom.gsi.gov.uk.

2. All non-electronic correspondence should be addressed to:

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140 Causewayside
Edinburgh
EH9 1PR

Tel: 0131 668 2131.

3. Please note that information about this consultation, including copies of responses, may be made available in terms of the Freedom of Information (Scotland) Act 2002. Any confidential response will be dealt with in accordance with the 2002 Act.

We may also (i) publish responses on our website (either in full or in some other way such as re-formatted or summarised); and (ii) attribute comments and publish a list of respondents' names.