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The Hon Lord Drummond Young
Chairman
Scottish Law Commission
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4/1/4/4

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Dear Lord Drummond Young,

On behalf of the Scottish Government, I would like to thank you for providing your Report on Unincorporated Associations.

The substance of the Report relates to matters which are currently reserved to Westminster, notably by virtue of section C1 of Schedule 5 to the Scotland Act 1998 insofar as it concerns the creation, operation, regulation and dissolution of types of business association, other than charities. Pending any adjustment to that legislation, the implementation of any recommendations would be beyond the competence of the Scottish Parliament and would require to be taken forward by the UK Government.

However, as I have said in relation to previous reports, these matters have a bearing on the central purpose of the Scottish Government - to create a more successful country where all of Scotland can flourish through increasing sustainable economic growth. Setting the right legal framework is central to promoting a flourishing charitable and third sector in Scotland, and I believe your recommendations can play a key part in helping ensure the current situation is improved.

The lack of clarity surrounding the law of unincorporated associations in Scotland has a very real impact on charitable and third sector organisations. For a volunteer trustee who has devoted much of their time and energies to serving the needs of members and communities through such organisations, to then find themselves personally pursued by creditors or litigants, can prove devastating. These situations, though thankfully rare, are nonetheless a cause of very deep concern and the perceived risks can make the recruitment and retention of office bearers, trustees and members very difficult.

So I am very grateful to the SLC for reviewing the law of unincorporated associations, and for the contributions to your work from across the third sector. I am copying this letter to Rt Hon Jim Murphy, Secretary of State for Scotland and Angela Smith, Minister for the Third Sector in the UK Government's Office of the Third Sector, and would welcome their thoughts on how best your recommendations might be taken forward to remedy what your report describes as the "difficulties and injustices" resulting from the current legal framework.

As your Report acknowledges, the Scottish Government is already taking forward legislative reform to address these difficulties for unincorporated charities, through the development of secondary legislation to implement a new legal form of incorporation. Our ambition for Scottish Charitable Incorporated Organisation (SCIO) is to provide a simpler yet robust alternative to the charitable company form, thereby removing the dual registration and regulation to which charitable companies are subject, whilst offering the benefits of legal personality and limited liability in a well-governed form in which funders, lenders and the public can have confidence. I am grateful for the Commission's input to the SCIOs Working Group, and we will want to ensure that we take this work forward in step with any UK action to implement your recommendations for unincorporated associations more generally.

Your sincerely



Fergus Ewing