

The Hon Lady Clark of Calton QC  
Chairman  
Scottish Law Commission  
140 Causewayside  
Edinburgh  
EH9 1PR



30 July 2013

Dear Lady Clark

On behalf of the Scottish Government, I would like to thank you for providing the Scottish Law Commission's Report on Prescription and Title to Moveable Property (Scot Law Com No 228). I apologise for the delay for sending the Commission this initial response to the Report.

We are grateful to the Commission for its careful consideration of the issues. We recognise that the matters raised in the Report are important for a range of stakeholders, and I consider that the Commission's Report provides a strong basis for taking forward a review and reform of the law on prescription and title to moveable property. I note that the current law in Scotland is unclear and that other jurisdictions, including England, do have legislation in this area.

I note that the Commission has engaged widely with interested parties, and that there is general consensus that the law in this area should be reviewed, although there are differences in the detail of how this should be done.

I understand that the seminar for cultural organisations, organised by the Culture Division and supported by the Scottish Law Commission, was of great benefit, and I thank you for your engagement with this. The seminar offered an excellent opportunity to highlight the two main situations which would be covered by the recommendations, particularly Rule Two, which is particularly relevant to cultural organisations.

The Government's main observations on the proposals are, firstly, under Rule One, in the situation where an item bought in good faith would become the property of the purchaser after 20 years, we note that the period of 20 years was selected to give protection to the person possessing the object in good faith, but also offer protection to the true owner should the object turn out to have been stolen.

It is most helpful that a number of the recommendations in the report have achieved a level of consensus among stakeholders, with consultees being generally in support. However, there are several issues which will require further work. I note in particular that there is some debate about the proposal for a 50 year rule, after which the holder of lent or deposited property would acquire ownership if the owner cannot be traced, and that there is support, particularly within the cultural sector, for a shorter period.

We also consider that engagement more widely with members of the public may elicit further views on issues, for example, there may be views about whether or not an item purchased in good faith should become the purchaser's property after 20 years. We are aware that this issue was raised by persons involved in common good issues, but after the Commission's consultation closed. We consider, therefore, that should the recommendations in the report be taken forward, there would be a need for further SG consultation.

Overall, however, I am of the view that legislation in this area would bring clarity and economic benefit. We have considered whether it is possible to carry out further consultation, but have concluded that given the cross cutting nature of the issues which have been raised it is not possible to allocate resources at this time. We consider that it would be of benefit to modernise this area of the law, and will continue to consider ways in which this could be taken forward, although there are no particular opportunities to do so in the short term.

Yours



**ROSEANNA CUNNINGHAM**