

RESPONSE FORM

PREPARATION OF THE TENTH PROGRAMME OF LAW REFORM

We hope that by using this form it will be easier for you to respond to the questions set out in the consultation paper. Respondents who wish to address only some of the questions may do so. The form reproduces the questions as set out in the paper and allows you to enter comments in a box after each one. At the end of the form, there is also space for any general comments you may have.

Please note that information about this consultation paper, 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.

In order to access any box for comments, press the shortcut key F11 and it will take you to the next box you wish to enter text into. If you are commenting on only one or two of the questions, continue using F11 until you arrive at the box you wish to access. To return to a previous box press Ctrl+Page Up or press Ctrl+Home to return to the beginning of the form.

Please save the completed response form to your own system as a Word document and send it as an email attachment to info@scotlawcom.gsi.gov.uk. Comments not on the response form may be submitted via said email address or by using the [general comments form](#) on our website. If you prefer you can send comments by post to the Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR.

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Questions

1. Do you have any suitable law reform projects to suggest?

Comments on Question 1

Abolition of landlord's hypothec

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

Comments on Question 2

Abolition of landlord's hypothec – Commission Bill process in Scottish Parliament

3. If suggesting a new project:-

- (a) Please provide us with information about the issues with the law that you have identified:

Section 208 of the Bankruptcy and Diligence etc (Scotland) Act 2007 abolished the diligence of sequestration for rent but left hypothec in place. Unfortunately, Section 208 raises many issues as to the true effect of hypothec, including as to the ranking which it confers within various insolvency regimes.

- (b) Please provide us with information about the impact this is having in practice:

Section 208 has created problems for administrators and liquidators in terms of the ranking which hypothec confers on landlords. I have given seminars to insolvency practitioners since 2009 and they are all concerned as to how to treat hypothec.

- (c) Please provide us with information about the potential benefits of law reform:

Abolition would remove the uncertainties and would be better than reform. Hypothec is an outdated right from a bygone era.

General Comments

I have written a detailed paper on hypothec which forms the basis of presentations delivered to insolvency practitioners. I would be happy to share this paper with the Commissioners so as to express in more detail the issues of law and practice.

Thank you for taking the time to respond to this consultation paper. Your suggestions and comments are appreciated and will be taken into consideration when preparing our Tenth Programme of Law Reform.