

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.

Name:

Caroline Clark

Organisation:

Burness Paull LLP

Address:

Aurora Building, 120 Bothwell Street, Glasgow, G2 7JL

Email address:

caroline.clark@burnesspaull.com

Questions

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

Comments on Question 1

- (1) Clarification of the law of retention and set-off.
- (2) Bond of Caution for court expenses.

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

n/a

3. If suggesting a new project:-

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

(1) Clarification of the law of retention and set-off. The law is confusing and the legislation dates back to the Compensation Act 1592.

(2) Bond of Caution for court expenses. The court rules provide the option of a Bond of Caution for court expenses but no insurer will issue a bond for this purpose.

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

(1) See 3. (a) (1)

(2) We were recently obliged to obtain a Bond of Caution for court expenses in terms of an interlocutor, but no insurer would issue. The alternative is consignment of funds which we eventually went with. The Bond of Caution process can be complex and in practice it seems there is little point in having the option in the court rules at all when in practice one cannot be obtained.

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

(1) Clarification and updating of the law to make it less complicated and fit for purpose would be welcomed.

(2) Bond of Caution for court expenses – in our experience this is very difficult, indeed probably impossible, to obtain. Having consignment of funds as the only option would be preferable as, practically speaking, this is in reality the sole possibility.

General Comments

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.