

Sent: 15 May 2017 12:23

Subject: Tenth Programme consultation response form

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Do you have any suitable law reform projects to suggest?

Yes

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?

Yes

Please provide us with information about the issues with the law that you have identified:

The Contempt of Court Act 1981 requires a wholesale review in Scotland. Other jurisdictions have had a comprehensive review of contempt of court and it is essential that there is a review of this piece of common law.

Contempt of court disproportionately impacts on the lives of women and children in family courts in Scotland, which has grown significantly since 2006.

Contempt of court is significantly misunderstood by the public and the judiciary

The procedure for Contempt of Court in civil actions was taken from the Act of Adjournal 2009 and was transferred verbatim into the Act of Sederunt this has created significant issues and requires careful reconsideration.

The Contempt of Court act should be reviewed in line with modern technological developments

Please provide us with information about the impact these issues are having in practice:

The impact of Contempt of Court in the Civil Family courts has lead to substantial in justice for women and children. The change in the Family Law (Scotland) Act 2006 created an opportunity for substantial injustice to occur and lawyers and courts used Contempt of court to enforce child contact orders, which has resulted in mothers being sent to prison as Civil prisoners under the Contempt of Court Act. However the use of Contempt of Court has not resulted in any father in breach of a court order being sent to prison. I have conducted

research into " The socio-historical emergence of civil contempt of court in enforcing child contact orders in Scotland". There is significant problems and prejudice with the procedures or lack of procedures used in family courts relating to contempt of court.

Contempt of court has been a problematic law since the time of King Henry and in 1971 the Right Honourable John Ryman said of contempt " it is a difficult and technical subject which has troubled the courts greatly for many years". If it has troubled courts and policy makers it is clear it is of notable concern to the public who are punished at the hands of this law.

The previous Lord Advocate Frank Mulholland raised concerns about the use of Contempt of Court in the area of new technology in relation to Scots law. It is essential that this is fully considered and risk assessments are carried out and processes developed that are fit for purpose.

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

The benefits of the law reform is to reduce or stop human rights breaches, reduce the number of women in prison, the impact on children and young people. Ensure that the judiciary can use the law fairly and equally across all courts in Scotland, to ensure that the public are aware of what this law actually is and what constitutes contempt. It is only fair that the public are informed and that the enigmatic characteristics of this law are properly explained.

General comments: