

From: Thom I (Iain) [<mailto:Iain.Thom@parliament.scot>]
Sent: 31 July 2017 18:16
To: SLC info
Subject: consultation response

Dear SLC,

Please find appended below a response to the consultation on your Tenth Programme of Law Reform from the Scottish Green MSPs.

Iain

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

Yes. A selection of projects is described briefly below.

Improvements to common property (e.g. in tenements)

The SLC completed its major project on property law reform in the early 2000s culminating in legislation which included the Tenements (Scotland) Act 2004. Over a third of Scotland's households live in tenements and therefore may benefit from these legislative improvements because they have a stake in common property.

Tenements have distinctive roots in Scotland's history and represent an opportunity for high-quality housing at high enough densities for good access to public amenities, community cohesion and low carbon technologies such as district heating or heat storage. But we also know that over half of homes in Scotland have disrepair to critical elements.

Green MSPs believe there may be improvements in law that would build on the SLC's previous work and help homeowners to improve their common property. Any law reform project should attempt to improve not just a collective system of property maintenance but explore how to improve collective ability of homeowners to improve their property, and in particular address any challenges to improved building sustainability – e.g. cavity wall insulation, retrospective fitting of district heating, etc. We would welcome an exploration of whether a new form of tenure which creates a collective body to own the common elements would be beneficial.

Harbours and ports

Harbours and ports are often historic and while modern regulations govern many aspects of their functioning there may be value in exploring a programme of reform to modernise the legislation. Harbour revision orders, for example, have not followed the changes to the rest of the development consenting regime under the Town and Country Planning regime. The Land Reform Review Group identified trust ports as an important form of community land ownership.

Public ownership of natural resources (minerals)

Mineral rights can be owned separately from the surface of the land. However gold and silver, oil and gas, and coal are held in the national interest. Given the finite nature of minerals we believe there is a need for a national survey of key minerals and a national strategy for their conservation. In line with this approach we believe there is an argument for a greater level of mineral right nationalisation and note The Mineral Development Act (Northern Ireland) 1969 nationalised all mineral rights in Northern Ireland. There are potentially wide ranging implications for such land reform to be explored.

Common land and common good

Scotland's law in relation to common good is recognised as confusing and out of date. We support action to improve this with the aim of reversing the decline in Scotland's common good heritage and putting the remaining assets to the benefit of the community. After discussions with Patrick Harvie MSP in 2015/16 the previous Scottish Government indicated their intention to refer the issue of Common Land to the new Scottish Land Commission when established, and for this review to include common good land.^[1]

We would like to highlight that there may be a role for the SLC in tandem with the Scottish Land Commission and any action that the Scottish Parliament may take on a shorter timescale. The Local Government and Communities Committee will consider the issue soon and SGP members will encourage it to coordinate as appropriate.

Defamation

We welcome the work already carried out on defamation and look forward to its publication this year. The Scottish Green Party's 2016 Holyrood Manifesto said, "*We also support reform to the law of defamation in Scotland to ensure adequate protections for citizen bloggers, artists and civil society who inform and enrich our culture and debates.*"

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?

Yes. After discussions with Patrick Harvie MSP in 2015/16 the Scottish Government agreed to refer the repeal of the Division of Commonties Act 1695 to the SLC.^[2] A subsequent written question answer from Andy Wightman confirmed that this has happened.^[3] Green MSPs continue to support work to repeal this Act.

Iain Thom
Head of Research and Strategy
Green MSPs
The Scottish Parliament
Edinburgh EH99 1SP
Email: iain.thom@scottish.parliament.uk
Direct Dial: 0131 348 6361

^[1] <https://news.gov.scot/news/common-land-to-be-reviewed>

^[2] <https://news.gov.scot/news/common-land-to-be-reviewed>

^[3]