

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

Reviews of the principle of strict liability, and its application in complex road situations.

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

I have no idea as to whether the project suggested below is suitable for either of the above.

3. If suggesting a new project:-

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

For many years, I have been concerned by the application of the “principle” of strict liability in situations where drivers are trapped by cameras while in the wrong place at the wrong time on a level crossing.

This is quite unfair, since it has been known for decades that the nature of visual perception is such that it is inevitable that a driver will occasionally miss the relevant warning signal.

The driver is not at fault; the system is, because those in charge of it have taken no account whatsoever of the human condition.

I attach one relevant study. Please note the sentence immediately preceding the Conclusions and pay particular attention to the Appendix. Please note also that there is a wealth of research on the matter, e.g:

<http://www.visualexpert.com/Resources/inattentionalblindness.html>

and that none of it is particularly new.

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

It certainly will not increase respect for the law and it may induce some drivers to take a more dangerous route, in order to avoid a crossing. It does nothing for road/rail safety, and

it probably holding up real progress in that arena.

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

Probably the opposite of (b).

General Comments

The particular problem (Cornton No.1) has been evident since around 2001, but there seems no way of achieving a solution through any normal channel. Suggestions are welcome. I attach a typical letter of protest, and wonder whether you can explain why the writer was not believed.

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.