

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: Dr Lynsey Mitchell and Dr Elaine Webster
Organisation: Leeds Beckett University and University of Strathclyde
Address: Leeds Law School, Portland Building, Leeds Beckett University, Portland Way, Leeds LS1 3HE University of Strathclyde, Lord Hope Building, 141 St James' Road, Glasgow, G1 0LT
Email address: lynsey.mitchell@leedsbeckett.ac.uk elaine.webster@strath.ac.uk

Questions

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

Comments on Question 1

Yes. To consider legislating to enshrine the UN Convention on the Elimination of Discrimination Against Women into domestic law in Scotland, or to give effect to its provisions.

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

Yes, see above.

3. If suggesting a new project:-
 - (a) Please provide us with information about the issues with the law that you have identified:

The Scottish Government has recognised that violence against women is a blight on Scottish society and has committed to various plans to tackle and reduce this issue. The past 10 years have seen major reforms to the law regarding sexual violence in Scotland. Yet, despite significant efforts to combat violence against women, Scotland has one of the lowest conviction rates of rape in Europe and a growing rate of domestic abuse. The passing of the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017 puts an onus on the UK Government (and the devolved administrations) to work toward ratification of the Council of Europe's Preventing and Combating Violence Against Women and Domestic Violence Convention (Istanbul Convention). This Convention would place positive obligations on the UK and Scottish Governments to put in place a framework to ensure eradication of violence against women and domestic violence, and uniquely places positive obligations on states to take steps to ensure this. In anticipation of the UK's ratification of the Istanbul Convention it is suggested that the Scottish Parliament legislate to give effect to the provisions of the UN Convention on Elimination of Discrimination Against Women (CEDAW) which currently sets out a comprehensive framework of rights for women.

Research carried out in 2015 for the Centre for the Study of Human Rights Law and Strathclyde Law Clinic, as part of a global research collaboration led by the Initiative on Violence Against Women¹ found that, while references to CEDAW principles and rhetoric

¹ Centre for the Study of Human Rights Law, University of Strathclyde, 'The Legal Framework Addressing Violence Against Women in Scotland and the Influence of CEDAW' (<https://archive.carrcenter.hks.harvard>).

could already be found throughout several Scottish Government policy documents, no reference could be found to the CEDAW Optional Protocol² as a viable remedy for victims in Scotland. The UK ratified CEDAW in 1986, and acceded to the Optional Protocol in 2004, but to date there have been only 2 instances of UK groups or individuals making use of its complaints procedure.³ The UN Committee has urged the UK to initiate awareness programs and training on CEDAW as well as pushed for its implementation into domestic law citing the incorporation of the ECHR as a template for how CEDAW could improve women's rights in the UK.⁴

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

As CEDAW is not a primary source of law in Scotland its impact currently remains limited. Respondents to our research cited awareness of CEDAW in Scotland, but none considered it a helpful tool towards tackling violence against women in Scotland. While the option to make a direct complaint to the UN CEDAW Committee is available to victims and victims' organisations in Scotland, until there is greater awareness of the Convention or the ability to rely on its provisions in a domestic court, it is unlikely to prove to be a significant remedy.

We also found a marked difference in attitudes among legal professionals towards general human rights treaties, such as the ECHR (which is incorporated into domestic law), and women's rights treaties such as CEDAW (which is not incorporated into domestic law). Our research highlighted that Scottish legal professionals were unlikely to be familiar with the CEDAW provisions, and did not consider them currently helpful in addressing violence against women within the domestic legal system. Therefore, while women in other jurisdictions have made use of CEDAW to enforce rights in domestic courts, the lack of incorporation means that throughout the UK, CEDAW, and the recommendations of the Committee, can be essentially ignored.

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

The absence of CEDAW in domestic law in Scotland means that unlike in other states it is entirely invisible within the domestic court structure and therefore can offer little redress to individual women. The ability to raise proceedings in domestic courts is considered preferable to using CEDAW's individual complaints mechanism, which can be time

edu/programs/violence-against-women-initiative/vaw-research-collaborations).

² The Optional Protocol provides for the mechanism of individual and group complaints to the CEDAW Committee at the UN. The Equalities and Human Rights Commission has recently produced a brochure aimed at explaining the Optional Protocol to the public and highlighting its use to NGOs. See 'A Lever for Change: Using the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women', available at

http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/a_lever_for_change.pdf.

Engender has produced a cartoon to raise awareness of CEDAW among Scottish women. See

<https://www.youtube.com/watch?v=HPJfBqoNH7Q>.

³ *Salgado v UK* (CEDAW/C/37/D/11/2006, 22 January 2007) and *NSF v UK* (CEDAW/C/38/D/10/2005, 12 June 2007). Both were declared inadmissible; the first on grounds that the events occurred prior to the UK's accession to the OP and that the complainant had not exhausted local remedies, the second on the grounds that the complainant had not exhausted local remedies.

⁴ See concluding observations of 1999 (A/54/38/Rev.1, part two, paras. 278–318) and CEDAW Committee Concluding Observations *Fifth and Sixth Periodic Reports United Kingdom of Great Britain and Northern Ireland* Part of A/63/38 para 248 ff.

consuming and costly. In the same way that incorporation of the ECHR into the UK's domestic legal systems created wider access to rights enforcement and embedded a culture of human rights into UK and Scots law, so it is anticipated that incorporation of CEDAW would embed a culture of women's rights at the heart of the legal system.

General Comments

«InsertTextHere»

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.