

Autumn 2022

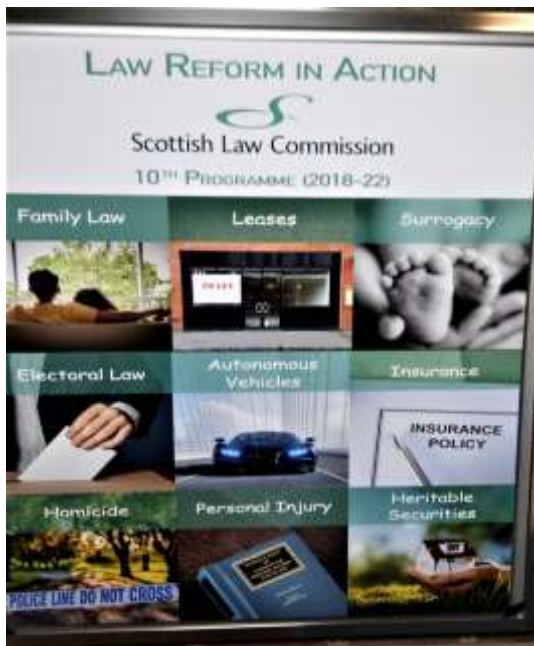
e-bulletin

Keeping you up to date with Scottish Law Commission news and consultations

Welcome

Welcome to the SLC's regular bulletin. We aim to keep you informed about what we have been up to and what we have coming up.

Our current law reform projects are listed opposite. Some are mentioned later in this Bulletin. For further information on any particular project please click on the link.



Scottish Law Commission projects:

- [Heritable securities](#)
- [Compulsory owners' associations \(tenements\)](#)
- [Aspects of the law of leases](#)
- [Homicide](#)
- [Aspects of family law](#)
- [Damages for personal injury](#)

Joint project with the Law Commission of England and Wales:

- [Surrogacy](#)

Statute law work

- [Consolidation of statutes](#)
- [Statute law repeals](#)

Current Programme of Law Reform

- [10th Programme](#)

News

Staff news

Our legal assistants who were with us from 2021 to 2022 left us at the end of August. We thank them for their contributions to our project work and to the corporate life of the Commission.

We're pleased to welcome our four new legal assistants, who'll be with us until August next year:



From left to right: Shy Zvouloun, Nic Vetta, Laura Beattie and Val Pyataev.

11th Programme of Law Reform

We held a consultation over the summer for our next Programme of Law Reform. We invited suggestions about areas of Scots law which are felt in need of reform, perhaps because they are causing difficulties in practice through being unfair, unclear, unduly complex or out-of-date.

Our thanks to all those who responded. We are currently in the process of putting together our 11th Programme which will cover the five year period from the start of 2023 to the end of 2027.

Recent publications

Cohabitation

We published our Report on [Cohabitation](#) and draft Bill on 2 November. The Report contains recommendations for reform of the law of financial provision on cessation of a cohabiting relationship (the current law is in sections 25 to 28 of the Family Law (Scotland) Act 2006). Recommendations include: modernising the definition of “cohabitant”; providing guidance to the court on how to determine a claim for financial provision, by requiring the court to make orders that are justified on the application of guiding principles and reasonable having regard to the resources of the cohabitants; widening the range of orders available to the court; allowing the court to accept a late claim on special cause shown; and allowing cohabitants to agree to extend the one year time limit for making a claim to allow them to negotiate a settlement.

These reforms, if implemented, will result in a clearer, more principled and more modern framework for determining a claim, thereby encouraging fairer outcomes for separating cohabitants.

Lead Commissioner Kate Dowdalls KC discusses these reforms further on BBC Radio 4 [Law in Action](#). Kate will continue to address conferences and seminars with stakeholders in Scotland and further afield over the coming months to raise awareness of the recommendations for reform.

Termination of commercial leases

We published our [Report on Aspects of Leases: Termination](#) at the start of October. The Report recommends the replacement of the existing common law doctrine of tacit relocation, so far as relating to commercial leases, with a new statutory code of automatic continuation. This will provide landlords and tenants with a clear and accessible set of rules about how to bring a lease to an end upon its termination date and the circumstances in which the lease will continue automatically beyond that date if no action is taken to bring it to an end.

Homicide – public opinion research

Following on from our [Discussion Paper on the Mental Element in Homicide](#) published in May 2021 we have recently commissioned some research to better understand the Scottish public's views on the current Scots law of homicide and perceptions of some of the key elements of our review of this area of the law.

After a procurement exercise, Britain Thinks were appointed to conduct this research on our behalf. The research is qualitative in nature and was conducted with a small sample of people (36 in number) broadly representative of the Scottish population both online in a number of focus groups and in 4 one-to-one telephone interviews.

We await a final report of research findings from Britain Thinks and this will be used to inform our policy development over the coming months as we work towards publication of our own report and final recommendations by the end of 2023.

Tenement law: compulsory owners' associations

During September and October we ran an international comparative law webinar series looking at lessons which could be learned for our project from different aspects of tenement law in six different jurisdictions:

- 1) Dr Lu Xu spoke about the lessons that can be learned from the introduction of commonhold tenure in England.
- 2) Professor Cathy Sherry discussed the Australian law of strata title and considered when the powers of owners' association go too far.
- 3) The third webinar looked at how the law in a number of European countries deals with enforcing payments that are due for tenement maintenance and improvements: Professors Sergio Nasarre Aznar, Magda Habdas, Sandra Passinhas and Vincent Sagaert discussed the law of Spain, Poland, Portugal and Belgium.

Recordings of the webinars are available to watch here: [Scottish Law Commission - YouTube](#) and slides are available here: [Scottish Law Commission :: Tenement law: compulsory owners' associations \(scotlawcom.gov.uk\)](#).

Implementation

Moveable Transactions (Scotland) Bill

The Moveable Transactions (Scotland) Bill, based on a Commission report from 2017, was introduced into the Scottish Parliament on 25 May 2022. An SLC panel comprising Lady Paton (SLC Chair) and Professors George Gretton and Andrew Steven (former SLC lead Commissioners on the moveable transactions project) gave evidence at Stage 1 to the Delegated Powers and Law Reform Committee on 27 September 2022. Their views can be read here: <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/DPLR-27-09-2022?meeting=13904&iob=126002>.

The bill aims to bring significant advances in the way businesses and individuals can use their moveable property (ie property other than land and buildings) to access finance. For example, a business may have tangible assets such as stock (eg whisky casks), equipment or vehicles; it may also have intangible assets such as patents or other intellectual property. These assets could be used to secure a loan, rather like a house being used for mortgage finance. Currently Scots law is badly outdated and unduly restrictive, which inhibits economic growth by making it harder for entrepreneurs to get the finance they need. The Bill will provide a new statutory scheme fit for modern conditions.

The Bill can be found on the Scottish Parliament's website here: <https://www.parliament.scot/bills-and-laws/bills/moveable-transactions-scotland-bill/overview>.

Our work on Moveable Transactions can be found here: <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/completed-projects/security-over-corporeal-and-incorporeal-moveable-property/>.

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[The Trusts and Succession \(Scotland\) Bill has just been introduced into the Scottish Parliament \(on 22 November\). This will implement our Report on Trust Law, details of which can be found \[here\]\(#\).](#)

Further information

Further information about the Commission and our law reform work can be found on our website at www.scotlawcom.gov.uk. The website has full text versions of all of our reports and discussion papers as well as other material.

Please note our email address: info@scotlawcom.gov.uk

Follow us on Twitter for regular updates and information: [@scotlawcom](https://twitter.com/scotlawcom).

To see videos about the Commission and our work: <https://www.youtube.com/channel/UCMHecvTB9TgJE8G7t8RpYRA>.

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