

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS ON 7 JANUARY 2010

DISCUSSION PAPER ON ACCUMULATION OF INCOME AND LIFETIME OF PRIVATE TRUSTS (No 142)

In its continuing examination of the law of trusts the Scottish Law Commission seeks views on a number of long-standing rules of Scots law, principally the rule on the accumulation of income and the rule on the creation of successive liferents.

The accumulation rule, which limits the period for which income can be retained within the trust, dates back to the "Thellusson Act" of 1800 and has been modified and extended by a number of subsequent statutes. The Commission considers that the resulting legislation is complex, uncertain and not well understood; it can easily catch out the unwary and can prevent reasonable settlements from being made. In addition, the Commission considers that the original justification for the 1800 Act no longer holds good.

The Commission also examines rules which prevent property being tied up by the current owner for too long a period. The main rule is that which governs the creation of successive liferents. Again, this rule has a long history, but today it appears complicated, unclear and capable of producing arbitrary results. The Commission believes that it is in need of reform.

The Commission seeks views on its proposals to repeal the existing rules and to replace them with a new power for the Court of Session to alter the terms of a long-term trust if, after a minimum period of time has elapsed (say, 25 years), it is clearly expedient to do so. In order to exercise the power (which is modelled on the existing *cy-près* jurisdiction in relation to public trusts), the court would need to be persuaded that a significant change in circumstances had occurred since the trust was set up and that the alteration was justified by that change of circumstances.

Lord Drummond Young, the lead Commissioner, said: "It is essential that Scottish trust law should be suitable for contemporary conditions. The rules under consideration in the latest trust law discussion paper date from a long-gone era and are anachronistic. Many jurisdictions that once adopted similar rules have recently relaxed or abolished them. What we propose is a new system that is fit for current and future needs."

The Commission welcomes comments by 9 April 2010.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Drummond Young, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Professor George L Gretton, Patrick Layden QC TD, and Professor Hector L MacQueen. The Chief Executive is Malcolm McMillan.

2. Further information can be obtained by contacting Charles Garland, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk).

3. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO (www.tsoshop.co.uk).