

From: [Malcolm McMillan](#)
To: [SLC info](#)
Subject: Eleventh Programme of Law Reform: Consultation response
Date: 28 July 2022 18:29:03

Charles Garland
Interim Chief Executive
Scottish Law Commission

Dear Charles,

This e-mail is my response to the Commission's consultation on possible projects for the Eleventh Programme of Law Reform.

1. A Consolidation project.

I suggest that the Commission undertakes a project to consolidate an area of Scottish legislation.

Consolidation of areas of legislation may not be seen as glamorous work. But consolidation is essential. It clarifies the law, bringing together many pieces of legislative provision scattered around the statute book. Consolidation enhances access to the law, by making the law easier to find and understand. Consolidation is of practical value to legal practitioners and to the public alike. Consolidation is also a statutory remit of the Commission under the Law Commissions Act 1965.

There is regular demand for consolidation work. When the Commission consults on future work, there are invariably responses from key stakeholders seeking consolidations.

There are several pressing candidates for a consolidation exercise. Among these is one mentioned at the launch event, namely diligence. I have no strong views on which particular consolidation is identified as a priority case. I suggest that the Commission is guided on this matter by consultees' views, and selects a candidate consolidation, for discussion with the Parliamentary Counsel Office and the Scottish Government.

2. Unincorporated Associations: address outstanding points from previous Commission Report.

The Commission may wish to consider taking on a further project on the law of unincorporated associations, in order to complete the substantial work undertaken some time ago.

The Commission carried out a law reform project on unincorporated associations in view of the issues and difficulties surrounding this area of Scots law. The reasons for undertaking the project are well documented in the context of that project. The Commission published a Report on Unincorporated Associations in 2009 (Scot Law Com No 217).

This area of the law is a reserved matter under the Scotland Act 1998.

Scottish Ministers, for their interests, generally supported the Commission recommendations, noting that the lack of clarity surrounding the law on unincorporated associations in Scotland has a very real impact on charitable and third sector organisations.

A UK Government Department, the Scotland Office, carried out a consultation on the Commission recommendations, and published their response to the outcome of their consultation in 2012.

The key point is that in their response, the UK Government noted wide support for taking forward the broad principles of the Commission proposals, and stated a commitment to taking the proposals forward in a Bill in due course. It was noted however that, as a result of the Scotland Office consultation, further work was required on the proposals, to ensure that they avoid unintended consequences that may damage the interests of third parties or unincorporated associations. Detailed consideration was also required as to how the proposals interact with wider employment, tax and regulatory policies.

This work has not yet been carried out as far as I am aware. The Commission may wish to consider taking on a project to address the outstanding points identified, review any recent developments in the law, and check there is a continuing consensus amongst consultees for the reforms.

A legal form of incorporation has been introduced in Scotland, the Scottish Charities Incorporated Organisation (SCIO); this applies only to charities.

3. Commission Bills for special procedures

The Commission mention bearing in mind the suitability of Commission Bills for special law reform Parliamentary procedures.

A Commission consolidation Bill would be a potential candidate Bill for referring to the Delegated Powers and Law Reform Committee of the Scottish Parliament.

A Commission Bill on unincorporated associations may be a potential candidate for the House of Lords procedure for Law Commission Bills in the UK Parliament. It is now some time since a Bill put forward by the Scottish Commission alone went through the House of Lords procedure.

Kind regards

Malcolm McMillan

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