



RESPONSE FORM

PREPARATION OF THE NINTH 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

Wildlife Law

2. Do you have any project to suggest that would be suitable for the law reform process in the Scottish Parliament; or, in relation to reserved matters, for the House of Lords procedure for Commission Bills?

Comments on Question 2

Wildlife Law

3. If suggesting a new project:-

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

It is widely agreed that the legislation on wildlife law is no longer in a fit state to be used. The Wildlife and Countryside Act 1981, which contains the main provisions on species protection, has been amended on many occasions – the fact that it contains a section 14ZC and Schedule ZA1 is a sign of its patchwork form – and more seriously now the Act exists in two very different versions for Scotland and for England and Wales. The Act must also be read in conjunction with the Conservation (Natural Habitats etc.) Regulations 1994 (themselves much amended) and other significant legislation such as the Nature Conservation (Scotland) Act 2004 and the Wildlife and Natural Environment (Scotland) Act 2011. As these more recent Acts have gone through the legislative process the need for consolidation has been raised by the Scottish Parliament and acknowledged by Ministers, but this has not been progressed.

The habitat protection measures are in a better state since the updating carried out in the Nature Conservation (Scotland) Act 2004, with the integration of provisions for European Sites, but there is still scope for a clearer and more coherent restatement of the law.

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

The appalling state of the legislation is a topic raised at almost every conference or meeting

that deals with wildlife law, by expert groups, police and lay-people. It is confusing even for those who work regularly with the 1981 Act – anecdotes have been heard of practitioners arriving at a planning enquiry with three different versions, each thought to be up-to-date. Accordingly, it is difficult to give clear and certain guidance on what is or is not permitted and the complexity of explaining the legal position gets in the way of the attempts to send clear messages about what is and is not acceptable behaviour, both for land-managers and their employees and for visitors to the countryside. The effort of trying to sort out what the law is, and the uncertainty over whether one has got it right, are further disincentives to even trying to explain the legal position. The enforcement of the law is also seriously affected because of the complexity and lack of certainty, especially for the police officers “in the field”

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

A clear and useable legislative text will provide a firm basis for providing guidance, training and publicity, as well as for enforcement, so that the law can be much more effective in practice.

General Comments

The similar position in England and Wales is now being addressed by the Law Commission, whose work would mean that a project in Scotland would have several useful reference points. Whether purely as a consolidation exercise, or taking the opportunity for more thorough recasting of the law (without challenging the existing policy framework), it appears that wildlife law is an outstanding candidate for the Commission’s attention.

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 Ninth Programme of Law Reform.