

Malcolm McMillan  
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Our Ref RWS/EW  
Your Ref A/6/9/12  
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Dear Mr McMillan

I was very pleased to receive your letter of 22 May 2014 inviting suggested topics or areas of law that may be suitable for inclusion in the Scottish Law Commission's Ninth Programme of Law Reform.

One area that I believe would benefit from SLC consideration is, that of land attachment/ diligence relating to the family home. This proposal has the support of Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism.

As you are aware, land attachment and residual attachment are diligences introduced by Part 4 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (the 2007 Act) but have not yet been commenced. As you will recall, these provisions were developed to replace adjudication for debt, which is an old diligence in need of modernisation.

Indeed, as far back as 1978 the Scottish Law Commission sought views on adjudication for debt in their discussion paper 'Adjudication for Debt and Related Matters'. A further discussion paper 'Diligence against Land' was produced in 1999. Both papers indicated agreement that adjudication for debt should be abolished.

Although a number of provisions from the 2007 Act have been commenced, a number of factors have meant that others have not yet been brought into force. This includes land attachment and residual attachment. You will be aware, that concerns have been expressed by some stakeholders that land attachment as



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drafted in the 2007 Act, effectively turns an unsecured debt into a security and that where attachment relates to a dwellinghouse, vulnerable debtors or other persons could face the threat or indeed the reality of homelessness for a relatively small sum (£3,000 or such other sum as prescribed by regulations).

Concerns regarding homelessness are significant and potentially more relevant than ever in the current economic climate. The Scottish Government recognises the responsibility it has to take action, where it can, to help Scottish people particularly in times of economic difficulty. That is why the First Minister gave a commitment to exempt a debtor's main dwellinghouse from land attachment and to review what could be done to avoid unnecessary homelessness through bankruptcy (or trust deeds).

Sharing the concern that people in Scotland could become homeless for a small amount of debt, the Scottish Government is not persuaded that the provisions for land attachment as they appear in the 2007 Act strike the right balance between the interests of debtors and creditors and has not yet implemented the land attachment measures. It is for this reason that I think this provision could be revisited and further consideration given to the issues particularly in the current climate with a view to developing perhaps a more balanced provision which whilst offering protecting to debtors, enables creditors to recover debt owed where appropriate.

Of course, any decisions taken regarding land attachment will rest with Ministers and will be subject to legislative priorities and the availability of Parliamentary time. However, I trust that my suggestion for land attachment/ diligences relating to the family home will be given due consideration for inclusion in the Ninth Programme for Law Reform.

Your sincerely

Agreed and signed on behalf of  
Rosemary Winter-Scott  
The Accountant in Bankruptcy

