

Minister for Community Safety and Legal Affairs
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Lady Clark of Calton
Chairman
Scottish Law Commission
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31 August 2013

Dear Lady Clark,

MINISTERIAL REFERENCE: SECTION 53 OF THE TITLE CONDITIONS (SCOTLAND) ACT 2003

Following discussion between our respective officials, I write to invite the Commission to undertake a review of certain aspects of property law. I propose the following formal terms of reference:

“To review section 53 of the Title Conditions (Scotland) Act 2003 in the context of part 4 of that Act and make any appropriate recommendations for reform.”

This issue has arisen following the Justice Committee’s Inquiry into the effectiveness of the 2003 Act. As part of the remit of the inquiry: “the Committee agreed to seek views on whether the provisions in the 2003 Act create a barrier to switching property factors and whether it offers sufficient recourse for those dissatisfied with the services of land-owning maintenance companies. The Committee also sought views on experiences of the options available under the 2003 Act to vary or remove existing real burdens. Finally, it considered the practical operation of section 53 of the Act which relates to enforcement rights in relation to real burdens”.

The Committee noted a degree of concern about the operation of section 53 of the Act. It also noted that there was no consensus as to how these issues should be addressed.

As you will be aware, the 2003 Act is based on a report by the Commission. However, section 53 was not part of the Commission’s draft Bill but was added at a later stage.

I am conscious that the Commission already has a full programme of work under the Eighth Programme of Law Reform, and that acceptance of a reference will mean adjustment of timescales for delivery of other projects. The Eighth Programme runs until the end of 2014

so I recognise that work on this reference would most likely commence early in the Ninth Programme.

I am grateful to you and your fellow Commissioners for agreeing to take on this additional task. I shall continue to keep in touch, through your Chief Executive's regular reports, with progress on the Commission's substantial programme of work.

I would be grateful for your confirmation that you are content with the proposed terms of reference.

Yours



ROSEANNA CUNNINGHAM