

Cabinet Secretary for Social Justice, Housing and
Local Government
Rùnaire a' Chaibineit airson Ceartas Sòisealta,
Taigheadas, agus Riaghladh Ionadail
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The Rt Hon Lady Paton
Scottish Law Commission
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10 January 2022

Dear Lady Paton,

Further to discussion between my officials and your office, I now write, under section 3(1)(e) of the Law Commissions Act 1965, to invite the Scottish Law Commission to report on the following matter:

“To review the law of the tenement in Scotland, including the Tenements (Scotland) Act 2004, and make recommendations for reform to implement recommendation 2 (establishing compulsory owners’ associations) of the Final Recommendations Report dated 4 June 2019 of the Working Group on Maintenance of Tenement Scheme Property.

Your recommendations should include proposals on the establishment, formation and operation of compulsory owners’ associations and the rights and responsibilities to be imposed on them, including, insofar as you consider appropriate and desirable, such rights and responsibilities in relation to recommendations 1 (building inspections) and 3 (establishment of building reserve funds) of the Report.”

For the avoidance of doubt, the specific matters mentioned above should not be seen to restrict your consideration of the rights and responsibilities which should fall to compulsory owners’ associations. However, I do not expect your report to cover the substantive content of either recommendation 1 or 3 of the Report.

You will be aware of the Government’s commitment to decarbonising heating and energy use in our homes as part of reaching our net zero emissions target. This is something on which we will be taking forward work, but I would be grateful if you would keep in mind, when considering the rights and responsibilities of compulsory owners’ associations, the feasibility of the associations being given powers to carry out energy efficiency and heating improvements in tenement buildings.

Similarly, we may want to explore the option of giving compulsory owners' associations rights and responsibilities in respect of fire safety matters pertaining to tenement buildings and I would be grateful if you would also keep this in mind in your work.

I appreciate that the impact of the Covid-19 pandemic now makes the Working Group's introductory timetable in respect of this aspect of their Report all but unachievable. I am also conscious that the Commission already has a full programme of work under the Tenth Programme of Law Reform and that commencement of work on this project will be required to fit around existing work in relation to the Heritable Securities project. I would however seek to have the Commission's report, together with a draft Bill if appropriate and practicable, on this matter by Spring 2026.

It would be useful if your project team would continue to liaise with my officials as work on this project progresses.

I am grateful to you and your fellow Commissioners for agreeing to take on this additional work, and look forward to confirmation that you are content with the proposed terms of the reference.

Yours sincerely,



SHONA ROBISON

SCOTTISH LAW COMMISSION TENEMENT MAINTENANCE LAW REFORM PROJECT

DRAFT TIMETABLE PROVIDED BY SCOTTISH LAW COMMISSION

Timings are subject to change as the project develops

January 2022 – March 2022 Begin preliminary work on collating the legal issues which arise from the Working Group Report. Set up an advisory group and consider other methods and avenues for stakeholder engagement. (We have already begun some general research.)

April 2022 – September 2023 Detailed research on legal issues including consideration of human rights issues and a review of how owners' associations or similar are dealt with in countries with legal systems comparable to Scotland. Draft a consultation paper to set out the findings of our research and seek views on options for legislative reform. Our work here will be carried out in consultation with our advisory group and other stakeholders and will be subject to scrutiny and approval by all Commissioners.

October 2023 – January 2024 Approximately 3-month consultation period, during which we will carry out public engagement activity to maximise stakeholder response rate to the consultation.

February 2024 – January 2025 Analysis of consultation responses and further research as necessary culminating in the preparation of a policy paper for scrutiny and approval by all Commissioners.

February 2025 – April 2026 Prepare a final recommendations Report including, if appropriate, working with Parliamentary Counsel's Office to produce a draft a Bill which, if taken forward, would give legal effect to the recommendations. This will include a period of approximately six weeks for stakeholder consultation on the terms of any draft Bill. The terms of any Report and draft Bill would also be subject to scrutiny and approval by all Commissioners.

Spring 2026 Submission of our Report to Scottish Ministers.