

SCOTTISH LAW COMMISSION
ELEVENTH PROGRAMME OF LAW REFORM: CONSULTATION

Introduction

1. The Scottish Law Commission is seeking suggestions for suitable law reform projects for our next Programme of Law Reform, our Eleventh Programme. It will commence in 2023.
2. The Commission would greatly value any suggestions or comments that you may have. The consultation period closes on 29 July 2022.
3. The Commission's current Programme, the Tenth Programme of Law Reform (Scot Law Com No 250), was published in February 2018 and runs until the end of 2022. The Programme can be viewed on our website, at the following link: https://www.scotlawcom.gov.uk/files/5615/1922/5058/Tenth_Programme_of_Law_Reform_Scot_Law_Com_No_250.PDF.
4. We will submit a draft of the Eleventh Programme to Scottish Ministers for approval, and laying before the Scottish Parliament.

The context

5. In preparing for the Eleventh Programme, the Commission will have regard to the Scottish Government's National Performance Framework, which aims to:
 - create a more successful country
 - give opportunities to all people living in Scotland
 - increase the wellbeing of people living in Scotland
 - create sustainable and inclusive growth
 - reduce inequalities and give equal importance to economic, environmental and social progress.

6. The Commission's remit covers all of Scots law, both reserved and devolved areas of the law. Reform may be needed because the law is causing difficulties in practice, for example where the law is unfair, unclear, unduly complex or out-of-date. It may also be desirable in areas where consolidation of existing legislation, or repeal of spent legislation, would be beneficial.

Criteria for selection of topics for the Eleventh Programme

7. The selection criteria for the Eleventh Programme are as follows –

- *Importance*: The extent to which the law is unjust or out of date (for example, unfair, unclear, inaccessible, inefficient, unduly complex or outdated); and the potential benefits likely to arise from reform of the law.
- *Suitability*: Whether the issues concerned are predominantly legal rather than political; and whether there is any other body better placed to examine the topic in question.
- *Resources*: The expertise and experience of Commissioners and legal staff and, in relation to projects where there may be a substantial role for a consultant, the availability of adequate funding; and the need for a mix of projects in terms of scale and timing in order to achieve a balance of workload among Commissioners and facilitate effective management of the Programme.

The Commission will also bear in mind whether a Bill on the topic may be suitable for the special parliamentary law reform processes, in particular the procedure for certain Commission Bills in the Scottish Parliament which is described below.

Projects to be carried forward into the Eleventh Programme

8. A number of projects under the Tenth Programme will be carried forward into the Eleventh Programme in 2023. These are –

- Homicide
- Heritable securities
- Damages for personal injury
- Aspects of family law.

9. Further details of these projects can be found on our website: <http://www.scotlawcom.gov.uk/law-reform-projects/>.

10. Also, in January 2022 the Cabinet Secretary for Social Justice, Housing and Local Government made a reference to the Commission to undertake a review of tenement law in connection with compulsory owners' associations.

11. As regards law reform work with other Law Commissions, the Commission may continue to work on joint law reform projects with the Law Commission for England and Wales.

12. In considering the content of the Eleventh Programme, the Commission needs to take account of our existing workload, together with any joint law reform projects.

Projects intended for special Parliamentary processes for law reform

13. The Commission has worked for a number of years with the Scottish Government and the Scottish Parliament to improve planning for implementation of Commission Reports, and to put in place further mechanisms to improve the rate of implementation.

14. This resulted in the Scottish Parliament introducing a procedure to improve consideration of certain Commission Bills. These can now be dealt with by the Delegated Powers and Law Reform Committee. The criteria set by the Presiding Officer for such a Bill were revised in March 2021 and apply to bills whose primary purpose is to:-

“(a) simplify, modernise or improve the law to—

- (i) ensure it is fit for purpose,
- (ii) respond to developments, or address deficiencies, in the common law, or
- (iii) respond to other developments in the law;

(b) make provision which is not likely to generate substantial controversy among stakeholders.”

15. As part of our business planning and our law reform methodology, the Commission considers that it is important to take account of the procedure and to identify projects that may produce draft legislation suitable for it. We would wish to stress, however, that the procedure will not be suitable for all Commission Bills. We envisage that some Commission Bills will continue to go through the conventional Parliamentary procedures, with the lead committee being the Equalities, Human Rights and Civil Justice Committee, or the Criminal Justice Committee, or one of the other subject committees.

16. In the UK Parliament in Westminster, there is also a special procedure for certain Law Commission Bills, including Scottish Law Commission Bills, in the House of Lords. The procedure is available for uncontroversial law reform measures.

17. The Commission would be grateful for any suggestions by consultees for a law reform project for the Commission Bill process in the Scottish Parliament; and for a project addressing an issue of Scots law reserved to the UK Parliament that may be a suitable candidate for the House of Lords procedure for Commission Bills.

Conclusion

18. The Commission would be grateful for your suggestions and comments on the content of the Eleventh Programme of Law Reform. In particular –

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

19. If suggesting a new project, the Commission would be grateful if you could also provide us with information about:

- the problems and weaknesses with the law that you have identified;
- the impact this is having in practice; and
- the potential benefits of law reform.

A response form is attached below.

THE SCOTTISH LAW COMMISSION

MAY 2022

RESPONSE FORM

PREPARATION OF THE ELEVENTH PROGRAMME OF LAW REFORM

We hope that by using this form it will be easier for you to respond to the questions set out above in the consultation paper. Respondents who wish to address only some of the questions may do so. The form 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.gov.uk. Comments not on the response form may be submitted via that 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.

Name: Suzanne Law
Organisation: N/A
Address: [REDACTED]
Email address: [REDACTED]

Questions

1. Do you have any suitable law reform projects to suggest?

Family Law - Divorce

2. If suggesting a new project:-

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

Greater awareness of Domestic Abuse in the Family legislation.

Changing the way in which matrimonial assets are calculated so that anyone trying to ring-fence pré-marital assets is unable to and that any increase in profit share:earnings is taken into account. Being the main caregiver of children to the marriage leaves us economically disadvantaged. IWe lose in pension and career progression. n my case, I had to fight an economic disadvantage and spent my life savings and went into debt trying to fight my case. Because my ex sewttled ot of court on the 5th attempt at a Proof, I never got the compensation of the lost earning/.pension etc.

Currently, the 'Relevant Date' is the date of separation and that's when matrimonial assest are legally calculated.This gives the party to wants to drag out the court action for as long as possible absolutely no motivation to settle. I f it were more like English Law then the 'relevant date' would be the date of divorce. There's no appetite for early disclosure (or any at all) when a relevant date has passed. This absolutely happened to me and I experienced delay tactic after delay tactic and fell into debt trying to pay my fees. Court order after court order and still never got the truth. My ex went on to earn substantial amounts, bought more luxury cars and properties after separation yet could no settle the divorce as there was no motivation to.

Economic abuse happens post separation and if legislation doesn't try to protect us then it will continue to facilitate and perpetuate itt/ If an area of Family Law could protect against this then this would be amazing. Self-employed partners with 'clever' accountants get away with whatever they like. And a fight for 50/50 custody so that the perpetrators don't have to pay any child support. The presumed contact at all costs is not in the best interests of children and greater awareness of coercive control and the effects it has on children is so important.

Without a Family Law which enables equality then those perpetrators can do what they like. The Civil process needs to have more protection. Pst separation, court orders are not fit for purpose either as it's a case of having to try go back to court – survivors like me don't have any money to go back to court and the emotional impact is incredible.

Please also think about trying to involve lived experience when making a reform

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

Massive impact on wellbeing and children. The financial toll is incredible.

I was diagnosed with CPTSD and still suffer from nightmares after 3 and a half years of court action and on the 5th attempt at trying to get into court I did. Only because his Advocate and Lawyer withdrew from acting for him because of all the fraudulent documentation he submitted. All to try get away with paying me nothing. Under Scottish Family Law, I left with no home, car or anything. He stayed in his pre-marital home now worth £800,000.

Poverty Action Scotland has much data on single parent families and getting divorced surely doesn't have to be so devastating when having spent so long trying to leave an abusive marriage.

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

Improved financial independence for Mums (or males if they are affected). Much less impact emotionally – and less chance of developing CPTSD like I have.

Removing the loopholes would help victims/survivors to believe in the justice system. Legislation must be made robust to enforce full disclosure as there is absolutely no incentive for early settlement or any disclosure at all for self-employed. (See an article "Form that Misses the Mark" Law Society of Scotland by Bilal Shabbir.)

In Family Court, even if you go for Due Diligence/Commission of evidence to prove that a haver does have documentation and didn't submit it when the spec. of docs. was handed to them, the stress and costs to take it to the next level to find them in contempt of court is SO much more money and psychologically crippling. It just isn't workable after coming out of an abusive marriage and trying to be strong for young children.

3. Do you consider that your suggested law reform project 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?

I don't know. Sorry.

Any Other Comment

A fairer system and less mental health and financial hardship at the end of the process. The majority of cases which end up in court are those who have left an abusive relationship. Many people like me never went through the criminal court as years of abuse makes us scared to

make a decision and also, it can take years to realise that it was actually domestic abuse as we are made to doubt ourselves.

The sheer impact that a Law which is outdated and court process which ultimately has no power has severely impacted my mental health. I now attend trauma-therapy as the realisation that there was no protection for me was immeasurable and completely astonishing.

Law reform to offer protection, give perpetrators the appetite to settle and be honest and then not use the Family Court as another way to drag you through court and exhaust even more money would make a tremendous difference

Domestic abuse does not stop when a relationship ends and the legal system and children are the only real weapons to use to emotional cripple and financially drain someone.

Thank you for taking the time to review my input.

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 Eleventh Programme of Law Reform.