

Document A

From: [REDACTED]
Sent: Wednesday, October 26, 2022 5:34 PM
To: [REDACTED]
Cc: [REDACTED]; [REDACTED]; Fisher G (Graham) <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]
Subject: RE: T&S Bill - Policy Memo update required re Crown consent - SGLD comments - 26 October 2022

Thanks [REDACTED]

[REDACTED]

More generally I've finished reviewing the policy memo and have tracked some comments and suggested changes throughout. I'd be happy to discuss if helpful.

[REDACTED]

[REDACTED] | Solicitor | Constitutional & Civil Law | Scottish Government Legal Directorate | : [REDACTED]

I often work remotely. If you would like to speak to me, please contact me via Microsoft Teams.

From:[REDACTED]
Sent: 26 October 2022 17:14
To: [REDACTED]
Cc:[REDACTED]; [REDACTED]
Subject: RE: T&S Bill - Policy Memo update required re Crown consent

[REDACTED]

Thanks for providing a form of words for Crown consent paragraph in the Policy Memorandum. I have amended the paragraph to now follow the one provided by PLU below, while keeping the reason as you have suggested. I want to bring to your attention that I have said it is the SG's "expectation" that Crown consent will be required, rather than SG's "view". This is on the basis that we have not went to the King's solicitor yet and therefore more accurately reflects our position. In addition, I have identified any specific sections of the Bill that might require consent.

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: 26 October 2022 16:46
To: [REDACTED]
Cc: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]
Subject: T&S Bill - Policy Memo update required re Crown consent
Importance: High

Hi [REDACTED]

It was agreed that information on Crown consent and application will be included in accompanying documents, with information on Crown consent in the Policy Memo and information on Crown application in the Ex Notes.

The Accompanying document templates have not yet been updated to reflect the change. I note below some standard wording for both scenarios and grateful if you could add a Crown consent section to the PM. In terms of placement, I don't think there are any hard rules but the two Bills that have been introduced since the change was made, have added this section at the end.

Policy memorandum – Crown consent

Consent not needed

“Paragraph 7 of Schedule 3 to the Scotland Act 1998 requires that Crown consent be signified to the Parliament if the same Bill would need such consent were it passed by the UK Parliament. Crown consent is therefore required where a Scottish Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. As the Bill is drafted on introduction, it is the Scottish Government's view that it does not require Crown consent.”

Consent needed

“Paragraph 7 of Schedule 3 to the Scotland Act 1998 requires that Crown consent be signified to the Parliament if the same Bill would need such consent were it passed by the UK Parliament. Crown consent is therefore required where a Scottish Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. As the Bill is drafted on introduction, it is the Scottish Government's **view/expectation** that, in order to comply with Rule 9.11 of the Parliament's Standing Orders, Crown consent will be required **in relation to section(s) [X, Y, Z]**. This is because ... ”

You don't need to go into too much detail on the reasons for why consent is expected to be needed. Potential reasons for consent being required might include text along the following lines:

- The power under section 1 includes power to make provision for enforcement which could impinge on Crown interests in relation to access to land. Although we cannot at this stage say with any certainty that the power will be used to alter in a significant way the law as it applies to the Crown Estate or the Queen's personal property, the potential is there;
- The Bill introduces changes to appeal rights, giving communities a right of appeal in certain circumstances against the grant of planning permission, and restricting the circumstances in which applicants can appeal against refusal. This this would affect any applications for planning permission made in relation to Her Majesty's estates; or
- The Bill dissolves a body established by Royal Warrant, or would affect a prerogative right to appoint an officeholder.

I also note below an example section from the emergency Bill last month (the only example to date where consent is required)

Cost of Living Bill [Policy Memorandum accessible \(parliament.scot\)](#)

Crown consent

93. Paragraph 7 of schedule 3 of the Scotland Act 1998 requires that Crown consent be signified to the Parliament if the same Bill would need such consent were it

passed by the UK Parliament. Crown consent is therefore required where a Scottish Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign. As regards the Bill as introduced, it is the Scottish Government's view that, in order to comply with Rule 9.11 of the Parliament's Standing Orders, Crown consent will be required because it is considered that the provisions in the Bill affecting private residential tenancies could affect residential tenancies on the His Majesty's private estates and those on land forming part of the Scottish Crown Estate.

[REDACTED]

[REDACTED]

Parliament and Legislation Unit

Scottish Government

PLUBillProgramme@gov.scot

[REDACTED]

Document B

From: [REDACTED]

Sent: Friday, October 14, 2022 11:27 AM

To: Minister for Community Safety <MinisterCS@gov.scot>; Gollan J (Jennie) <Jennie.Gollan@gov.scot>

Cc: Cabinet Secretary for Justice and Veterans <CabSecJV@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>; DG Education & Justice <dgej@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Swanson DA (Denise) <Denise.Swanson@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Fisher G (Graham) <Graham.Fisher@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; [REDACTED] [REDACTED]; Anderson M (Michael) <Michael.Anderson@gov.scot>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Irvine A (Alison) <Alison.Irvine@gov.scot>; Communications Justice <CommunicationsJustice@gov.scot>

Subject: Trusts and Succession (Scotland) Bill - Minister - Submission - Bill pack clearance

Good morning [REDACTED],

Further to our previous correspondence, please find attached a submission on the above Bill. I have also attached the latest version of the accompanying documents.

Kind regards,

[REDACTED]

[REDACTED]
Private Law Unit

Extract from Submission attached to Document B relating to Crown Consent

CROWN CONSENT

11. Reform of the general Scots private law of trusts may not have consequences in terms of its application to the monarch in their public capacity but, the Bill does have the potential to directly affect the personal property of the monarch to the extent that it may be held in trust. The Bill will apply to the Crown and it is considered that, as a consequence, Crown consent will be required. Officials will engage with the King's solicitors in advance of introduction to confirm that position. The explanatory notes will explain that the Bill applies to the Crown and the policy memorandum will indicate that it is considered that Crown consent is required for the Bill.

Document C

From: [REDACTED]

Sent: Wednesday, October 19, 2022 3:14 PM

To: First Minister <firstminister@gov.scot>; Minister for Community Safety <MinisterCS@gov.scot>; Cabinet Secretary for Justice and Veterans <CabSecJV@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>; Gollan J (Jennie) <Jennie.Gollan@gov.scot>

Cc: DG Education & Justice <dgej@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Swanson DA (Denise) <Denise.Swanson@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Fisher G (Graham) <Graham.Fisher@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; [REDACTED]; [REDACTED]; Anderson M (Michael) <Michael.Anderson@gov.scot>; Chief Parliamentary Counsel <ChiefParliamentaryCounsel@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Irvine A (Alison) <Alison.Irvine@gov.scot>; Communications Justice <CommunicationsJustice@gov.scot>

Subject: Trusts and Succession (Scotland) Bill - Submission - FM - Bill Pack clearance

Importance: High

[REDACTED]/ PO,

Further to correspondence below, please find attached the submission and accompanying documents for the Trusts and Succession (Scotland) Bill. You'll see in the submission that I have requested a response by 31 October as the Bill is timetabled to go to the Scottish Parliament on 01 November.

Kind regards,

[REDACTED]

Extract from Submission attached to Document C relating to Crown Consent

CROWN CONSENT

10. Reform of the general Scots private law of trusts may not have consequences in terms of its application to the monarch in their public capacity but, the Bill does have the potential to directly affect the personal property of the monarch to the extent that it may be held in trust. The Bill will apply to the Crown and it is considered that, as a consequence, Crown consent will be required. Officials will engage with the King's solicitors in due course to confirm that position. The explanatory notes will explain that the Bill applies to the Crown and the policy memorandum will indicate that it is considered that Crown consent is required for the Bill.

Document D

From: [REDACTED] **On Behalf Of** Minister for Community Safety
Sent: Thursday, November 10, 2022 3:46 PM
To: [REDACTED]; Minister for Community Safety <MinisterforCS@gov.scot>; Gollan J (Jennie) <Jennie.Gollan@gov.scot>
Cc: Director of Justice <DirectorofJustice@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; Swanson DA (Denise) <Denise.Swanson@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Fisher G (Graham) <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]; Anderson M (Michael) <Michael.Anderson@gov.scot>; [REDACTED]
Subject: RE: Trusts and Succession (Scotland) Bill - Agreement to Introduce

Hi [REDACTED]

Thanks. The Minister is content to send this note to the Minister for Parliamentary Business.

I'll issue it today and send to the copy list provided in the note.

Many thanks,

[REDACTED]

[REDACTED] Minister for Community Safety, Elena Whitham
The Scottish Government | 1W.11, St Andrew's House, Regent Road, Edinburgh, EH1 3DG
T: +[REDACTED] | M: [REDACTED] | E: ministerforCS@gov.scot

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From: [REDACTED]
Sent: 08 November 2022 10:23
To: Minister for Community Safety <MinisterforCS@gov.scot>; Gollan J (Jennie) <Jennie.Gollan@gov.scot>
Cc: Director of Justice <DirectorofJustice@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; Swanson DA (Denise) <Denise.Swanson@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Fisher G (Graham) <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]; Anderson M (Michael) <Michael.Anderson@gov.scot>; [REDACTED]
Subject: Trusts and Succession (Scotland) Bill - Agreement to Introduce

Good morning [REDACTED],

Please find attached a submission in the name of the Minister to be sent, if content, to the Minister for Parliamentary Business. The submission seeks agreement to introduce the Bill to Parliament on 22 November 2022 and so agreement must be received no later than 21 November to allow officials time to prepare for introduction.

Kind regards,

[REDACTED]

[REDACTED]
Private Law Unit

Extract from submission attached to Document D

Crown Consent

Reform of the general Scots private law of trusts may not have consequences in terms of its application to the monarch in their public capacity but, the Bill does have the potential to directly affect the personal property of the monarch to the extent that it may be held in trust. In the event that the monarch's estate devolves by way of intestacy, the succession provision in the Bill would also have the potential to affect the personal property of the monarch. The Bill will apply to the Crown, and it is considered that, as a consequence, Crown consent will be required. Officials will engage with the King's solicitors in due course to confirm that position. The explanatory notes explain that the Bill applies to the Crown and the policy memorandum indicates that it is considered that Crown consent is required for the Bill.

Document E

From: [REDACTED] **On Behalf Of** Minister for Parliamentary Business

Sent: Monday, November 21, 2022 1:14 PM

To: Minister for Community Safety <MinisterforCS@gov.scot>; Minister for Parliamentary Business <MinisterPB@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Deputy First Minister and Cabinet Secretary for Covid Recovery <DFMCSCR@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Cabinet Secretary for Justice and Veterans <CabSecJV@gov.scot>; DG Education & Justice <dgej@gov.scot>; Rennick NS (Neil) <Neil.Rennick@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; Swanson DA (Denise) <Denise.Swanson@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Fisher G (Graham) <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]; Anderson M (Michael) <Michael.Anderson@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Irvine A (Alison) <Alison.Irvine@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]

Subject: RE: Note from Ms Whitham - Trusts and Succession (Scotland) Bill - Seeking Agreement to Introduce to Parliament

PO/Minister for Community Safety,

Please find attached, a response from Mr Adam on the Trusts and Succession (Scotland) Bill.

Kind regards,
[REDACTED]

[REDACTED]

[REDACTED] to Minister for Parliamentary Business

M: [REDACTED] E: MinisterPB@gov.scot

The Scottish Government | St Andrew's House, Regent Road, EDINBURGH EH1 3DG

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Extract from submission attached to document E

Crown Consent

3. I note your current understanding that Crown Consent is expected to be required.

Document F

From: [REDACTED]

Sent: Wednesday, December 6, 2023 4:32 PM
To: Minister for Victims & Community Safety <MinisterVCS@gov.scot>
Cc: Jeanette Campbell <Jeanette.Campbell@gov.scot>; Catriona Dalrymple <Catriona.Dalrymple@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>
Subject: RE: Stage 3: Trusts and Succession (Scotland) Bill 201223

[REDACTED]

You'll have been copied into relevant submissions already, but just from completeness the Bill does require Crown consent and a submission is with the FM at the moment.

Kind regards,

[REDACTED]

From: [REDACTED] **On Behalf Of** Minister for Victims & Community Safety
Sent: Tuesday, December 5, 2023 5:40 PM
To: [REDACTED]
Cc: Minister for Victims & Community Safety <MinisterVCS@gov.scot>; Jeanette Campbell <Jeanette.Campbell@gov.scot>; Catriona Dalrymple <Catriona.Dalrymple@gov.scot>; Director of Justice <DirectorofJustice@gov.scot>; [REDACTED]; [REDACTED]; Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>
Subject: FW: Stage 3: Trusts and Succession (Scotland) Bill 201223

Hi [REDACTED]

Please see below from the Minister for Parliamentary Business. Ms Brown has 7 minutes to open and 6 minutes to close.

Would it be possible to have briefing and opening/closing speech by COP next Wednesday (13th December)? I'm not sure if that works with any deadlines for amendments.

In terms of answering their questions, I will let them know that Ms Brown will open and close the debate. In terms of Confirm that, as per our understanding, Crown Consent is required for this Bill and will therefore need to be signified on the day – can you please advise on this.

Happy to discuss.

Many thanks,

[REDACTED]

[REDACTED] Minister for Victims and Community Safety, Siobhian Brown
The Scottish Government | 1W.11, St Andrew's House, Regent Road, Edinburgh, EH1 3DG
T: [REDACTED] | M: [REDACTED] | E: ministerVCS@gov.scot

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From: [REDACTED] **On Behalf Of** Minister for Parliamentary Business

Sent: 05 December 2023 15:42

To: Minister for Victims & Community Safety <MinisterVCS@gov.scot>

Cc: Cabinet Secretary for Justice & Home Affairs <CabSecJHA@gov.scot>; Jeanette Campbell <Jeanette.Campbell@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Spads Admin <Spads_Admin@gov.scot>; Minister for Parliamentary Business <MinisterforPB@gov.scot>

Subject: Stage 3: Trusts and Succession (Scotland) Bill 201223

Hi all

Please see details for Trusts and Succession (Scotland) Bill Stage 3 scheduled for **Wednesday 20 December**.

1450-1700 Stage 3: Trusts and Succession (Scotland) Bill

The first section will cover any amendments, with votes taking place immediately following the discussion on each. Please note, timings are subject to the number of amendments received and we will send over revised timings when available.

The second section will be for general debate of the Bill and will be one hour. Your Minister will have **7** minutes to open and **6** minutes to close.

Please ensure that between now and the date of Stage 3 proceedings you:

- Confirm to us which Minister will **open and close** as soon as possible.
- Confirm that, as per our understanding, Crown Consent is required for this Bill and will therefore need to be signified on the day.
- Provide a copy of Ministers' speeches to the **Official Report** (Official.Report@scottish.parliament.uk) immediately ahead of the debate.

Thanks!

[REDACTED]

[REDACTED]

[REDACTED] to Minister for Parliamentary Business

M: [REDACTED] E: MinisterforPB@gov.scot

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Document G

From: [REDACTED] **On Behalf Of** Cabinet Secretary for Justice & Home Affairs
Sent: Monday, December 11, 2023 4:23 PM
To:[REDACTED]; Cabinet Secretary for Justice & Home Affairs <CabSecJHA@gov.scot>; Minister for Victims & Community Safety <MinisterVCS@gov.scot>; Minister for Parliamentary Business <MinisterforPB@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>
Cc: DG Education & Justice <dgej@gov.scot>; Catriona Dalrymple <Catriona.Dalrymple@gov.scot>; Denise Swanson <Denise.Swanson@gov.scot>; [REDACTED]; [REDACTED]; Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; Solicitor to the Scottish Government <solicitor@gov.scot>; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; Jeanette Campbell <Jeanette.Campbell@gov.scot>
Subject: RE: Trusts and Succession (Scotland) Bill - Submission - Cabinet Secretary Justice & Home Affairs - Crown consent and opening debate

This email is for the official record and confirms a Ministerial Decision. This email must be placed in the official record (eRDM) by your team [in line with SG records management policy](#).

Many thanks [REDACTED], Ms Constance is content. Grateful if you can liaise with us the day before just to ensure we don't lose sight of this requirement.

Thanks

[REDACTED](he/him)
[REDACTED] Cabinet Secretary for Justice and Home Affairs : Angela Constance MSP
T: [REDACTED] | M: [REDACTED] | E: cabsecJHA@gov.scot
The Scottish Government | St Andrew's House, Regent Road, EDINBURGH EH1 3DG

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From: [REDACTED]
Sent: Wednesday, December 6, 2023 4:12 PM
To: Cabinet Secretary for Justice & Home Affairs <CabSecJHA@gov.scot>; Minister for Victims & Community Safety <MinisterVCS@gov.scot>; Minister for Parliamentary Business <MinisterforPB@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>
Cc: DG Education & Justice <dgej@gov.scot>; Catriona Dalrymple <Catriona.Dalrymple@gov.scot>; Denise Swanson <Denise.Swanson@gov.scot>; [REDACTED]; [REDACTED]; Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; Solicitor to the Scottish Government <solicitor@gov.scot>; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; Jeanette Campbell <Jeanette.Campbell@gov.scot>
Subject: Trusts and Succession (Scotland) Bill - Submission - Cabinet Secretary Justice & Home Affairs - Crown consent and opening debate

Good afternoon Private Office,

Please find attached a routine submission for the Cabinet Secretary seeking her agreement to open the Stage 3 Debate signifying Crown consent. A separate submission was sent to the First Minister to seek Crown consent and to which the Cabinet Secretary was copied into.

Kind regards,

[REDACTED]

[REDACTED]
Private Law Unit

Document H

From: [REDACTED]

Sent: Wednesday, November 23, 2022 4:57 PM

To: Minister for Parliamentary Business <MinisterPB@gov.scot>

Cc: [REDACTED]; [REDACTED]; Anderson M (Michael) <Michael.Anderson@gov.scot>;

[REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Fisher G

(Graham) <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]

Subject: Trusts and Succession (Scotland) Bill - summary of 3 week correspondence

Minister for Parliamentary Business,

Here is a summary of the pre-introduction correspondence between PCO and the Parliament for the Trusts and Succession (Scotland) Bill (introduced yesterday), together with copies of the relevant letters.

Kind Regards,

[REDACTED]

[REDACTED]

Parliamentary Counsel

Area 2-J South, Victoria Quay, Edinburgh EH6 6QQ

Tel: [REDACTED] (or [REDACTED] when home working)

Monday is my non working day



Extracts from documentation attached to Document H

[REDACTED]

Crown consent

32. The Bill will, by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, by default bind the Crown.

33. The general reforms to the Scots law of trusts made by Part 1 of the Bill may impact the personal property of the Sovereign to the extent that such property may be, or may come to be, held in trust. By altering the rules governing the management and operation of trusts, the Bill has potential to affect the administration of trust property in which the Crown has an interest (whether as trustee, beneficiary). The succession provisions are also capable of affecting the private interests of the Sovereign.

34. On that basis, we consider that Crown consent is required. We suggest that signification at Stage 3 should be sufficient.

Crown consent

19. I agree that, as the provisions of the Bill relating to trusts may apply to any personal property of the Sovereign held in trust, and that the succession provisions would likewise potentially apply to the private interests of the Sovereign, Crown consent will be required and may be signified at Stage 3.

Document I

From: [REDACTED] **On Behalf Of** First Minister

Sent: Friday, December 15, 2023 11:38 AM

To: [REDACTED]

Cc: [REDACTED]; [REDACTED]; Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>; [REDACTED]; [REDACTED] First Minister <FirstMinister@gov.scot>; First Minister's Policy Unit (FMPU) - Org - SG <FirstMinister'sPolicyandDeliveryUnitFMPDU-Org-SG@gov.scot>

Subject: RE: Trusts and Succession (Scotland) Bill - Seeking Crown consent

[REDACTED]

Please see attached [REDACTED] I will forward you a copy of the letter on receipt.

Thanks

[REDACTED]

[REDACTED]

Office of the First Minister

Scottish Government

5TH floor/St Andrews House/Regent Road

Edinburgh EH1 3DG

Tel [REDACTED]

Mobile [REDACTED]

The First Minister's box closes at 2pm, Monday to Friday. Further details, including preferences, can be found [here](#).

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From: [REDACTED] **On Behalf Of** First Minister

Sent: Monday, December 11, 2023 10:56 AM

To: [REDACTED]; First Minister <FirstMinister@gov.scot>; First Minister's Policy Unit (FMPU) - Org - SG <FirstMinister'sPolicyandDeliveryUnitFMPDU-Org-SG@gov.scot>

Cc: [REDACTED]; [REDACTED]; Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>; [REDACTED]; [REDACTED]

Subject: RE: Trusts and Succession (Scotland) Bill - Seeking Crown consent

[REDACTED]

Thank you for the undernoted, the FM is content with the recommendations and the letter has issued to the Palace this morning. Copy attached for your information.

Thanks
[REDACTED]

[REDACTED]
Office of the First Minister
Scottish Government
5TH floor/St Andrews House/Regent Road
Edinburgh EH1 3DG
Tel [REDACTED]
Mobile [REDACTED]

The First Minister's box closes at 2pm, Monday to Friday. Further details, including preferences, can be found [here](#).

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Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [REDACTED]
Sent: Thursday, December 7, 2023 7:43 AM
To: First Minister <FirstMinister@gov.scot>; First Minister's Policy Unit (FMPU) - Org - SG <FirstMinister'sPolicyandDeliveryUnitFMPDU-Org-SG@gov.scot>
Cc: [REDACTED]; [REDACTED]; Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>; [REDACTED]; [REDACTED]
Subject: RE: Trusts and Succession (Scotland) Bill - Seeking Crown consent

Good morning PO,

With apologies – I had mistakenly put the FM's name to the letter to the King's PS. I have attached an amended version to be signed by the FM's PPS.

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: Wednesday, December 6, 2023 4:05 PM
To: First Minister <FirstMinister@gov.scot>; First Minister's Policy Unit (FMPU) - Org - SG <FirstMinister'sPolicyandDeliveryUnitFMPDU-Org-SG@gov.scot>; Cabinet Secretary for Justice & Home Affairs <CabSecJHA@gov.scot>; Minister for Victims & Community Safety <MinisterVCS@gov.scot>; Minister for Parliamentary Business <MinisterforPB@gov.scot>
Cc: DG Education & Justice <dgej@gov.scot>; Catriona Dalrymple <Catriona.Dalrymple@gov.scot>; Denise Swanson <Denise.Swanson@gov.scot>; [REDACTED]; [REDACTED]; Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; Solicitor to the Scottish Government <solicitor@gov.scot>; [REDACTED]; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>; [REDACTED];

[REDACTED]; Jeanette Campbell <Jeanette.Campbell@gov.scot>

Subject: Trusts and Succession (Scotland) Bill - Seeking Crown consent

Good afternoon,

Please find attached an immediate submission for the First Minister. It is about seeking Crown consent for the above named Bill. Stage 3 is scheduled for 20 December and usually 2 weeks is given to the King's Private Secretaries etc. to clear. As I am late in getting this to the First Minister they will have slightly less time, but happy to discuss timescales if this is a problem.

Kind regards,

[REDACTED]

[REDACTED]

Private Law Unit

Document J

From: [REDACTED]

Sent: Thursday, December 14, 2023 11:24 AM

To: Graham Fisher <Graham.Fisher@gov.scot>; [REDACTED]; [REDACTED]; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>; [REDACTED]

Subject: RE: Trusts and Succession (Scotland) Bill - Submission - Possible adjustments to Jeremy Balfour's stage 2 amendments

Thank you Graham,

On Crown Consent, the Cab Sec has been teed up. I understand that PLU are speaking with the FM's office as they're a little nervous about receiving it in time, so we'll need to keep an eye on that.

Kind regards.

[REDACTED]

[REDACTED]

Private Law Unit

Best contacted by email or if you need to speak, on Teams chat

From: Graham Fisher <Graham.Fisher@gov.scot>

Sent: Thursday, December 14, 2023 10:44 AM

To: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; Jonathan Brown <Jonathan.Brown3@gov.scot>; [REDACTED]

Subject: RE: Trusts and Succession (Scotland) Bill - Submission - Possible adjustments to Jeremy Balfour's stage 2 amendments

Thanks folks,

I've added few minor suggestions in the opening and closing speeches.

Are we OK [REDACTED] on Crown Consent – is the Cab Sec coming along for that?

Kind regards,

Graham

Graham Fisher

Deputy Director, Scottish Government Legal Directorate - Constitutional & Civil law

Teams or [REDACTED]

Have you seen? - [Right First Time](#): A practical guide for public authorities in Scotland to decision-making and the law

[REDACTED]
Private Secretary to HM The King
Windsor Castle
Windsor
SL4 1NJ

<<Insert date>>

[REDACTED]

The First Minister has asked me to write to you seeking His Majesty's consent to the application of the Trusts and Succession (Scotland) Bill to the Crown.

As you will be aware, the consent of His Majesty must be obtained where a Bill for and Act of the Scottish Parliament affects directly, indirectly, or by implication, the Royal prerogative, the hereditary revenues of the Crown, or the personal property or interests of the Sovereign. The Trusts and Succession (Scotland) Bill contains provisions that may affect these.

Background

I am writing to alert you to the Trusts and Succession (Scotland) Bill ("the Bill"), which was introduced to the Scottish Parliament on 22 November 2022 and completed stage 2 on 14 November 2023. I attach a copy of the Bill as introduced together with copies of the accompanying documents.

The Bill is being taken forward as part of a wider programme of implementation by the Scottish Government of Scottish Law Commission ("SLC") reports. The Bill will implement the SLC's recommendations in its Report on Trust Law, published in 2014,¹ together with three substantive provisions on the Scots law of succession (one an SLC recommendation from a different report; two others are amendments concerning the time limit in which a court application may be made for financial provision by a surviving cohabitant on the death of their partner and preventing an unlawful killer being appointed as executor of their victim's estate). It is the end result of a significant reform project undertaken by the SLC.

¹ https://www.scotlawcom.gov.uk/files/4014/0904/0426/Report_on_Trust_Law_SLC_239.pdf

As you will be aware, in terms of the standing orders of the Scottish Parliament, the consent of His Majesty (“Crown consent”) must be obtained where a Bill for an Act of the Scottish Parliament affects directly, indirectly or by implication, the prerogative, hereditary revenues or the personal property or interests of the Crown.

The Bill principally relates to the administration and management of trusts. In particular, it covers the powers and duties of trustees, the powers of the courts in trust matters, and miscellaneous other issues in trust law. There is also one substantive provision on the order of intestate succession. An overview of the Bill is contained in the Annex below.

Unlike the Trusts (Scotland) Act 1921 and much of the existing trust law it replaces, the Bill will, by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, by default bind the Crown. This is a change in position by comparison with the 1921 Act, but not uncommon for contemporary Acts of the Scottish Parliament.

In line with general Scottish Government policy, the proposed position is that the Crown would be subject to regulatory requirements of the Bill on the same basis as others. The clearest impact the Bill could have on the Crown would appear to be in relation to the private estates of the Sovereign. Such property may be held in trust where the Sovereign may feasibly be a truster, trustee or beneficiary under a trust. The succession provisions may also be capable of affecting the private interests of the Sovereign. There aren’t any offence provisions which require to be dis-applied from the Crown, nor powers of entry onto Crown land. The explanatory notes to the Bill indicate that the Bill applies to the Crown.

As the general reforms to Scots trust law made by the Bill would appear to have potential to directly affect the personal property of the Sovereign to the extent that it may be held in trust, and the private interests of the Sovereign may also be affected by the succession provisions, Crown consent would appear to be required.

We should be most grateful if you would confirm that the Trusts and Succession (Scotland) Bill, to the extent that it affects the Crown, is acceptable to His Majesty and to signify Crown consent to the Bill. It would be appreciated if you were able to reply by 19 December 2023. Should His Majesty be content with the proposals, consent will be signified to Parliament at the start of Stage 3, which is currently expected to be held on 20 December of this year.

I am copying this letter and the Bill to the King’s Solicitor in Scotland.

Signature
Principal Private Secretary

The Trusts and Succession (Scotland) Bill – Overview at Introduction

The majority of the current statutory framework relating to trust law is found in the Trusts (Scotland) Act 1921. In modern practice the powers and duties adopted in trust deeds differ markedly from the default provisions in the 1921 Act. The 1921 Act is dated, and has been heavily amended, impairing accessibility.

The overall policy aim of the Bill is to reform the Scots law of trusts so that it is clear, coherent and able to respond appropriately to modern conditions, bringing together existing trusts legislation into a single statute and expressing it in modern statutory language.

A summary of the key reforms made by the Bill is as follows. The Bill -

- replaces the common law grounds for the removal of trustees with new statutory provisions that provide a trustee may be removed by the court, co-trustees or beneficiaries in relevant circumstances;
- restates the statutory provisions that govern the appointment, resignation, removal and discharge of trustees and decision-making by trustees; introduces a scheme to clarify the law on the duty of trustees to provide information to beneficiaries and others;
- clarifies the law on trustee delegation and nominees;
- replaces the statutory and common law power of the court to authorise advances of capital with a new provision by which trustees have power to advance up to the whole of a beneficiary's prospective share in the capital or income of the trust fund in relevant circumstances;
- creates a new statutory power to allow for the removal of ex officio trustees from trust deeds;
- provides a default provision that confers on trustees in their dealings with the trust property power to exercise all of the powers of administration and management that a natural person of full age and capacity would have in respect of his or her own property;
- confers on courts a new power to appoint new trustees, grant additional administrative and managerial powers in relation to the trust property on trustees, remedy defects in the exercise of trustees' fiduciary powers, and alter trust purposes to take account of a material change of circumstances that has occurred since the trust was set up, normally only exercisable once 25 years has elapsed since the creation of the trust;
- clarifies the law on breach of trust;
- expressly provides for private purpose trusts (non-charitable and non-public trusts that do not have defined persons as beneficiaries but rather exist to achieve defined purposes, frequently of a philanthropic or business nature); and,
- reforms the powers of the courts to create a comprehensive set of remedies that deals with problems in the administration of trusts, for the liability of trustees in the

expenses of litigation, and restates and improves the legislation governing applications for the variation of trust purposes.

The one substantive Bill provision on the Scots law of intestate succession implements a recommendation from the SLC's Report on Succession (2009)² and was consulted on by the Scottish Government in 2015. The law on intestate succession provides a default position in cases where an individual dies without leaving a will. Currently any surviving siblings and parents of the deceased outrank a surviving spouse/civil partner in terms of their entitlement to the net intestate estate. The Bill will amend the order of intestate succession so that a surviving spouse/civil partner's entitlement will rank second in line, behind only surviving children of the deceased. This change reflects the contemporary perception of a spouse or civil partner as a key member of the deceased's family.

The Bill also contains provision to put beyond doubt the intended legislative effect of section 2 of the Succession (Scotland) Act 2016 (the effect of divorce/dissolution/annulment on special destinations) following a concern that has been raised about a possible interpretation of that provision that runs counter to the stated policy intention.

Amendments to the Bill at Stage 2

On 14 November 2023, at Stage 2, 55 amendments were made to the Bill. The Official Report of the proceedings can be accessed [here](#) and a copy of the Bill as amended can be accessed [here](#) and includes two further substantive provisions principally concerning succession law, outlined above.

² <https://www.scotlawcom.gov.uk/files/7112/7989/7451/rep215.pdf>

First Minister

TRUSTS AND SUCCESSION (SCOTLAND) BILL - CROWN CONSENT

PRIORITY AND PURPOSE

1. **Immediate.** To send a letter for the First Minister's office to send to the Private Secretary to His Majesty the King, seeking the King's consent to the provisions of the Trusts and Succession (Scotland) Bill. Officials would be grateful if the letter could be issued as soon as possible.

RECOMMENDATION

2. That the First Minister agrees to send a letter to the Private Office of His Majesty the King seeking the King's consent to the provisions of the Trusts and Succession (Scotland) Bill.

CONTEXT

3. The Bill was introduced to Parliament on 23 November 2023. Parliament has agreed to the general principles of the Bill at Stage One and it has passed Stage Two. Crown consent has to be signified at the start of Stage Three. The date for Stage 3 is expected to be 20 December 2023.

4. In order to ensure that Crown Consent is secured in good time, I would be grateful if the letter and accompanying documents could be issued as soon as possible. We are seeking a response by 19 December 2023.

BACKGROUND TO THE BILL

5. The Bill implements the Scottish Law Commission's ("SLC") *Report on Trust Law*, which was published in 2014, and takes forward all of the substantive recommendations for reform contained in its report.

6. Given the versatility of the trust as a legal institution, the overall policy aim of the Bill is to reform the Scots law of trusts so that it is clear, coherent and able to respond appropriately to modern conditions, bringing together existing trusts legislation into a single statute and expressing it in modern statutory language.

7. In general, the Bill covers the powers and duties of trustees, the powers of the courts in trust matters, miscellaneous other issues in trust law. The Bill contains three substantive provisions on succession law:

- on the order of intestate succession;
- an amendment which extends the time limit for making a court application for financial provision by a cohabitant on the death of their partner; and,
- an amendment which prevents an unlawful killer being appointed as executor of their victim's estate.

REQUIREMENT FOR CROWN CONSENT

8. It is a requirement that Crown consent is obtained for any Bill which affects directly, indirectly or by implication, the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Crown. The Trusts and Succession (Scotland) Bill contains provisions that may do so.

PROVISIONS AFFECTING THE HEREDITARY REVENUES OF THE CROWN

9. Reform of the general Scots private law of trusts may not have consequences in terms of its application to the monarch in their public capacity but, the Bill does have the potential to directly affect the personal property of the monarch to the extent that it may be held in trust. The Bill will apply to the Crown and it is considered that, as a consequence, Crown consent will be required.

10. While we cannot say as a matter of fact that His Majesty is a trustee of beneficiary of a Scots trust, it is certainly possible that either this is the case or that the situation could arise.

BUTE HOUSE AGREEMENT IMPLICATIONS

11. In light of both the Bute House Agreement and the amendments protocol which supports that agreement, there has been early and good engagement with the Green Party portfolio lead, who is supportive of both the measures in this Bill and the timings for concluding the Bill's passage. There are no specific Bute House Agreement implications in connection with seeking expedited Crown consent, itself.

FINANCIAL AND LEGAL CONSIDERATIONS

There are no financial considerations in seeking Crown consent.

12. Under paragraph 7 of Schedule 3 to the Scotland Act 1998, any Bill which requires the consent of the Crown cannot be passed by the Scottish Parliament until that consent has been signified to the Parliament.

QUALITY ASSURANCE

13. This Submission has been approved by Denise Swanson, Deputy Director, Civil Law and Legal System.

RECOMMENDATION

14. I recommend that you:

- Send the letter at **Annex A** to the Private Secretary to His Majesty The King, enclosing 3 copies of the Bill as mended and one copy each of the Policy Memorandum and the revised Explanatory Notes.
- Issue copies of the letter, enclosing one copy of the Bill each, to Crown Estate Commissioners, to Crown Estate Scotland and to the King's Solicitors in Scotland (Details for issuing correspondence are contained in Annex B).

[REDACTED]
06 December 2023

Copy List:	For	For	For Information
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	Action	Comments	Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Justice and Home Affairs			X		
Minister for Victims and Community Safety			X		
Minister for Parliamentary Business			X		
DG Education and Justice Catriona Dalrymple, Director Denise Swanson, Deputy Director [REDACTED] [REDACTED] Graham Fisher, SGLD [REDACTED] Solicitor to the Scottish Government [REDACTED] [REDACTED] Jonathan Brown, PCO [REDACTED] [REDACTED] Jeanette Campbell, Spad					

**PRESCRIPTION (SCOTLAND) BILL
CROWN CONSENT**

Arrangements for issuing letter

1. The letter to the Private Secretary to Her Majesty The Queen should be sent accompanied by 3 copies of the Bill as amended, and a copy of the Explanatory Notes and of the Policy Memorandum to:

[REDACTED]
Private Secretary to HM The King
Windsor Castle
Windsor
SL4 1NJ

2. Copy of the letter, each with a copy of the Bill and a copy of the Explanatory Notes and of the Policy Memorandum to:

[REDACTED]
Solicitor to HM The Queen in Scotland
Morton Fraser LLP
Quartermile Two
2 Lister Square
EDINBURGH
EH3 9GL

[REDACTED]
General Counsel and Company Secretary
Crown Estate Commissioners
1 St James's Market,
London,
SW1Y 4AH

[REDACTED]
Chief Executive
Crown Estate Scotland
Quartermile Two
2nd Floor
2 Lister Square
Edinburgh
EH3 9GL

From: [REDACTED]
Civil Law and Legal System; Private Law
06 December 2023

Cabinet Secretary for Justice and Home Affairs

TRUSTS AND SUCCESSION (SCOTLAND) BILL

STAGE 3 DEBATE – SIGNIFICATION OF CROWN CONSENT

Priority and Purpose

1. Routine. To ask you to signify Crown consent to the Trusts and Succession (Scotland) Bill at the start of the Stage 3 debate on the Bill, which is scheduled for 20 December 2023.

Recommendation

2. That you agree to signify Crown consent at Stage 3 of the Trusts and Succession (Scotland) Bill.

Background

3. Crown consent to the Trusts and Succession (Scotland) Bill is currently being confirmed with the King's Private Secretary. According to the Scottish Parliament's Standing Orders, a Cabinet Secretary should signify Crown consent.

4. The wording in **Annex A** is the standard wording used for all significations of Crown consent. At the start of the Stage 3 general debate the order of proceedings will be as follows:

- Presiding Officer will call upon you to signify Crown consent to the Bill.
- The wording in **Annex A** should be read verbatim.
- The Minister for Victims and Community Safety will then open the debate.

Quality Assurance

5. This Submission has been approved by Denise Swanson, Deputy Director, Civil Law and Legal System.

Conclusion and Next Steps

6. If the Cabinet Secretary agrees to signify Crown consent officials will you're your Private Office up-to-date with the debate's starting time.

[REDACTED]
06 December 2023

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Victims and Community Safety Minister for Parliamentary Business Lord Advocate			X		X X
DG Education and Justice Catriona Dalrymple, Director Denise Swanson, Deputy Director [REDACTED] [REDACTED] Graham Fisher, SGLD, [REDACTED] Solicitor to the SG [REDACTED] [REDACTED] Jonathan Brown, PCO [REDACTED] [REDACTED] Jeanette Campbell, Spad					

TRUSTS AND SUCCESSION (SCOTLAND) BILL

STAGE 3 DEBATE – SIGNIFICATION OF CROWN CONSENT

WORDING TO BE USED AT START OF STAGE 3 DEBATE

For the purposes of Rule 9.11 of the Standing Orders, I wish to advise the Parliament that His Majesty, having been informed of the purport of the Trusts and Succession (Scotland) Bill, has consented to place His Prerogative and interests, so far as they are affected by the Bill, at the disposal of the Parliament for the purposes of the Bill.



BUCKINGHAM PALACE

18th December, 2023.

Dear Chris,

Thank you for your letter of 11th December to [REDACTED] regarding the Trusts and Succession (Scotland) Bill. I can confirm that His Majesty is content to place his interest at the disposal of the Scottish Parliament for the purposes of this Bill.

Yours sincerely,

[REDACTED]

[REDACTED]

Christopher Mackie, Esq.

