

From: [REDACTED]

Sent: 10 June 2021 14:37

To: Cabinet Secretary for Finance and Economy

Cc: [REDACTED]; Swanson DA (Denise); [REDACTED]; Rennick NS (Neil)

Subject: FW: The Trusts (Scotland) Bill: The blueprint for a state-of-the-art system in Scotland

Attachments: Trusts - Minister - Briefing - Engagement - Edinburgh Tax Network - 16 June 2021.docx

Good afternoon Private Office,

After correspondence with [REDACTED], the Cabinet Secretary has agreed to pre-record a speech for the above event. I have prepared a five minute speech (attached), along with some information on the other speakers.

Kind regards,

[REDACTED]

From: [REDACTED]@gov.scot>

Sent: 04 June 2021 11:51

To: Derek Francis

Subject: The Trusts (Scotland) Bill: The blueprint for a state-of-the-art system in Scotland

Good morning,

I am writing on behalf of Ms Forbes with regard to the above event. Ms Forbes has asked me to confirm her attendance and asked if she can provide her talk virtually. Is this possible? I note that this is a hybrid-event, with some in attendance at Parliament Hall and other attending online. I would also like to advise you that Ms Forbes' talk will be between 10-15 minutes in length. Finally, are you able to confirm that there will not be a question and answer session? I did not notice any mention of this in the advertised material or previous correspondence but I wanted to check.

Kind regards,

[REDACTED]
Private Law Unit

MINISTERIAL ENGAGEMENT BRIEFING

Event Title: *The Trusts (Scotland) Bill: The blueprint for a state-of-the-art system in Scotland*

Date: *Wednesday, 16 June 2021*

Key Message	The Scottish Government recognises the importance that law reform can have on the Scottish economy, and the particular importance that reform of Scot law of trusts.
Who	Edinburgh Tax Network
What	<p>An event to mark the centenary of the Trusts (Scotland) Act 1921, the principal statute governing the law of trusts in Scotland.</p> <p>Reform of the law of trusts has gathered attention since 2014, the date the Scottish Law Commission published its recommendations for reform of trust law.</p> <p>This event aims to bring more attention to reform by bringing together the Chair of the Scottish Law Commission, the lead Commissioner chiefly responsible for the recommendations for reform, and a judge of the Court of Session to discuss law reform and the use of trusts in Scotland.</p>
Why	<p>This speaking engagement was agreed to as part of the response to previous minister correspondence (MiCase 2020-109407).</p> <p>The Scottish Law Commission made a number of recommendations for reform of Scots law of trusts in 2014, which have not, as of yet, been taken forward by the Scottish Government.</p> <p>A number of stakeholders would like to see these reforms taken forward as soon as possible, and cite the beneficial effects on the Scottish economy that these reforms could have – particularly the financial services sector. Some have been critical of the Scottish Government for not having taken forward these reforms yet.</p> <p>The attendance of the Cabinet Secretary at the event should go some way to alleviate this criticism of the Scottish Government. It will demonstrate that the Scottish Government continues to actively consider reform of trust law.</p>
Where	Pre-recorded speech
When	Wednesday 16 June 2021, 17:30-19:40

Supporting Official	[REDACTED]
Attached documents	<u>Annex A</u> : Speaking note Pages <u>Annex B</u> : Background <u>Annex C</u> : Biographies of Lady Paton, Lord Drummond Young and Lord Tyre (the other speakers).

ANNEX A

I would like to thank the Edinburgh Tax Network for the invitation to speak alongside such distinguished speakers, and to Derek Francis for organising this event. I would like to thank the speakers for an advance copy of their speech. I have heard what each has had to say about law reform in general and about the 1921 Act in particular. Lord Drummond-Young's talk sets out why the 1921 Act needs to be reformed and the economic benefits that come with this. On the other hand, Lord Tyre sets out the case for reform at the other end of the spectrum – the use of trusts in more personal relationships. Taken together, and with Lady Paton's talk about the valuable role performed by the Scottish Law Commission, I have been struck by how law reform can be used to unleash economic innovation and further economic development. This could be reform of trust law as we have discussed here this evening, or other areas of law, such as moveable transactions where the Scottish Law Commission have also made recommendations for reform.

The First Minister recently set out the Scottish Government's priorities in the first 100 days of this administration. The purpose is to help navigate Scotland through the pandemic while promoting recovery and enabling a choice on Scotland's future. While the focus of the Scottish Government remains on how to take Scotland safely out of the pandemic, consideration needs to be given to building a thriving economy for the future.

I have been clear that one of the Scottish Government's important roles in this is to create the best set of conditions that will allow business to take hold of the opportunities that come their way. Listening to our speakers tonight, I have heard that trust law can help to create economic opportunities but the current state of the law does not make this easy.

The Scottish Government are committed to implementing, as far as possible, the recommendations of the Scottish Law Commission. The overall position on implementation of Scottish Law Commission reports – in whole or part - to December 2018 is 84%. In just the last parliamentary session, we took forward reform of defamation law, the law of prescription and the law of third party rights in contract. Work was also well underway reforming the law on moveable transactions before the pandemic struck and that work had to be paused.

Each year there are a finite number of legislative spaces available to take forward the Scottish Government's legislative program, and decisions on what to take forward are always difficult. Earlier this year, however, the Presiding Officer of the Scottish Parliament amended the criteria for determining Scottish Law Commission bills as suitable for consideration by the Delegated Powers and Law Reform Committee., making it possible to take forward more reports so long as they meet the necessary revised criteria.

I would like to conclude by, once again, extending my thanks to the Edinburgh Tax Network for the opportunity to hear first-hand about trusts and law reform. And my thanks to the other speakers tonight for their views on law reform and the need for reform of the trust law.

This year marks the centenary of the principal Act in trust law in Scotland and it marks 7 years since the Scottish Law Commission published its recommendations for reform of that Act. I am aware that the Scottish Government has yet to formally respond to the Scottish Law Commission's recommendations. Following what has been said here tonight I will instruct officials to write to Lady Paton and the Scottish Law Commission after the Scottish Parliament's summer recess formally setting out the Scottish Government's response to the Report on Trust Law, including its intentions on any possible reform in this area.

Approx. 5 mins (130 wpm) = 635 words

ANNEX B

1. The ease with which a trust may be established explains their extensive use in Scottish commercial transactions. Trusts play a crucial part in many areas of law, including contract and general commercial law, life assurance and pensions, property law, succession and family law. The Scottish Law Commission (“the Commission”) believe that “the part played by the trust in commercial structures, in particular, means that trust law is of great economic importance. Furthermore, trusts are widely used vehicles for investment and financial planning. They are particularly significant for the Scottish economy, where financial services form a major sector.”
2. Trust law reform occupied the Commission for over a decade, concluding in August 2014 with publication of its Report on Trust Law (“the Report”). The Report contains 106 recommendations on reforming Scots law of trusts. In total, the Commission published eight Discussion Papers, two Consultation Papers and two Reports on reform of trust law between 2003 and 2014.
3. The primary statute is the (much amended) Trusts (Scotland) Act 1921 which is still in force. The content and wording of the Act are very old-fashioned since the world has obviously changed out of all recognition since 1921. The Commission believe that the current Scottish law of trusts compares unfavourably with many other jurisdictions because it is seen as “seriously outdated”. This can lead to the use of other legal systems in transactions that are essentially Scottish. Modern technology makes this possibility increasingly easy. The Commission therefore argue that reform of the law is an urgent necessity. The event to which you have been invited to speak marks the centenary in force of this Act.
4. It is against this background that the Edinburgh Tax Network have arranged the “The Trusts (Scotland) Bill: The blueprint for a state-of-the-art system in Scotland” event. The confirmed speakers are: Lady Paton (the current Chair of the Scottish Law Commission); Lord Drummond-Young (the author of the Report on Trust Law); and Lord Tyre (a judge of the Court of Session). Biographies of all these speakers can be found in the Appendices.
5. Lord Drummond-Young, who has recently retired from the Inner House of the Court of Session, was the Chair of the Scottish Law Commission when the work on trust law began and it was he himself who was the lead Commissioner reporting on possible reform. Lord Drummond-Young continued the reform work after his appointment expired, finally reporting in 2014.
6. Lord Drummond-Young has publically voiced criticism of the Scottish Government for not taking forward the Commission’s recommendations on reform of trust law in particular, and for not taking forward all of its reform projects more generally.
7. The process to decide the Programme for Government for 2021-22 is currently underway and no decisions have yet been taken on possible legislation. Nevertheless,

with the Presiding Officer's revised determination of Scottish Law Commission's bills, and on the understanding of the previous administration, officials have been working towards Introducing 7 Scottish Law Commission bills over the course of the next parliamentary session. Reform of trusts law has been provisionally designated as a candidate for Introduction in Year 2. Officials are also working towards the possibility of publishing a list of these Bills - with indicative timings - in the forthcoming Programme for Government.

BIOGRAPHIES

Lady Paton, Chair, Scottish Law Commission



Lady Paton was appointed as Chair of the Scottish Law Commission with effect from 1 January 2019.

Lady Paton serves as Chair on a part-time basis, for 60% of her time; and otherwise serves as a Senator of the College of Justice for the remaining 40%. Lady Paton is an appeal court judge in Scotland. Lady Paton is currently Scotland's longest-serving female judge and was the second woman ever appointed as a Senator of the College of Justice.

Having graduated MA LLB in 1974, she became an advocate at the Scottish Bar in 1977, a QC in 1990, a judge in 2000, and an appeal court judge in 2007. She is experienced in both civil and criminal law, and prosecuted crime in the High Court as an advocate-

depute (1992-1995).

Lady Paton served on the Criminal Injuries Compensation Board (1995-1999) and the Parole Board (2003-2007).

Lord Drummond Young, retired judge and former Chair of the Scottish Law Commission.



Lord Drummond Young was appointed a Senator of the College of Justice, a judge of the Court of Session and High Court of Justiciary in July 2001.

He formerly sat in the Outer House, and was appointed to the Inner House in June 2013.

On 1 January 2007, Lord Drummond Young was appointed for a five-year term as Chair of the Scottish Law Commission.

Lord Drummond Young was the lead Commissioner of the Scottish Law Commission's Report of Trusts.

Lord Drummond Young retired as a judge in March 2020.

Lord Tyre, Commercial Judge of the Court of Session



Lord Tyre was appointed as a judge of the Supreme Courts in May 2010. He is currently a commercial judge in the Court of Session.

He was educated at the University of Edinburgh, and holds a Diplome d'Etudes Supérieures from the University of Aix-Marseille.

Between 1980 and 1983, he lectured in law at Edinburgh University and was subsequently employed as a tax editor with CCH Editions Ltd, Bicester, Oxfordshire.

He became an advocate in 1987 and was appointed as a Queen's Counsel in 1998.

He served as a part-time Scottish law commissioner between 2003 and 2009. In 2007, he was elected president of the Council of Bars and Law Societies of Europe (CCBE), the representative body of the legal profession in the European Union, having previously been head of the UK delegation.

In 2010, he was awarded a CBE for services to the administration of justice in connection with his work with the CCBE.

From: [REDACTED] on behalf of Cabinet Secretary for Finance and Economy
Sent: 14 June 2021 16:00
To: [REDACTED]
Cc: Cabinet Secretary for Finance and Economy
Subject: RE: Trust Reform Bill Event 16th June 2021

Hi [REDACTED],

Cab Sec will not be attending the dinner.

Thanks,
[REDACTED]

Diary Secretary to the Cabinet Secretary for Finance and Economy – Kate Forbes
The Scottish Government | St Andrews House | Regent Road | Edinburgh | EH1
3DG | T: [REDACTED] E-mail: [REDACTED]@gov.scot

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From: [REDACTED]@gov.scot>

Sent: 14 June 2021 15:20

To: Cabinet Secretary for Finance and Economy <[REDACTED]@gov.scot>

Subject: RE: Trust Reform Bill Event 16th June 2021

P/O

[REDACTED],

Would you happen to have an answer to the question posed below? Mr Francis seems insistent on an answer.

Kind regards,

[REDACTED]

From: Derek Francis <[REDACTED]@terrafirmachambers.com>
Sent: 14 June 2021 13:26
To: James E. Drummond Young <[REDACTED]@gmail.com>; Paton A (Ann) <[REDACTED]@scotlawcom.gov.uk>; Lord Tyre <[REDACTED]@scotcourts.gov.uk>; [REDACTED]@1825.com; Cabinet Secretary for Finance and Economy <[REDACTED]@gov.scot>; [REDACTED] <[REDACTED]@terrafirmachambers.com>; '[REDACTED]@ciot.org.uk'
Subject: Re: Trust Reform Bill Event 16th June 2021

Dear James, Ann, Colin, Shone & Kate,

JAMES 30 minutes is fine.

ALL I've said to Ann and Colin that 30 to 40 mins is OK, but I have the impression that they will do 30. Kate Forbes is doing 10 - 15. Shona from Aberdeen Standard is doing 10 to 15. This is less time critical than most of our events because we can't have drinks and canapes after it.

JAMES I see you'll have notes to circulate and I'm more than happy with that. JAMES, ANN & COLIN, I take it it's OK to share your notes and/or PowerPoint in advance of or after the event. Could you please confirm? ETN has always taken the view that people bury their faces in notes if they get them at/before the event and we make them available only afterwards. CIOT, however (perhaps because it's (even) more geeky), distributes them in advance - and as they're heavily involved in promotion, if not branding, we may do that.

KATE, if you have anything you're happy for us to circulate, doubtless you will provide it to my Practice Manager, [REDACTED] and [REDACTED] at CIOT at or about the time when you do your recording tomorrow.

James has sent me a paper which he gave to the Law Commission in 2019 and which I attach. Some of the Scottish and English Law Commissioners intend to join us, if not on the day, when the event is posted. All good.

Derek Francis
TAX COUNSEL

Derek Francis, LL.B., CTA (Fellow), Advocate, Barrister, Chartered Tax Advisor,
Terra Firma Chambers
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Practice Manager

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On Mon, May 17, 2021 at 2:57 PM Derek Francis
[REDACTED]@terrafirmachambers.com>
wrote:

Dear Ann (and Malcolm), James, Colin and Kate (per [REDACTED]),

I attach a Word document which sets out my thoughts on talk titles and bullet points. From the correspondence I've had, I've been able to compile something which I hope will provide each of you with at least an impression of the sort of area the others are minded to cover. I don't presume to choose your title or bullets if there are others you would prefer - but I must get the publicity/ invitations out now and shall have to use these if I haven't heard from you by close of business on Wednesday 19th.

We still don't know for sure that Kate Forbes will be the Scottish Government speaker, but I copy this to her office.

Which, if any of you, intend to use PowerPoint? Could I ask you, please to send the slide pack to [REDACTED] (to whom I've copied this) and to me no later than close of business on the 15th June. Let us know if you want printed notes to accompany what you say and we shall arrange for them to be provided. Are you content that PDF copies of these and any slide-pack be circulated to attendees after the event?

For obvious reasons, I have left it to [REDACTED] (and the Cabinet Secretary for Finance) to provide whatever is judge appropriate by way of title and any elaboration. Might this be summarised as 'The View from the Scottish Government'? It seems entirely appropriate that Kate Forbes should be left with a free hand to respond as she judges fit.

It's all change on the sponsor front and I am now in advanced discussion with Turcan Connell. If you have any comment on the above or attached, I should be grateful to have it by Wednesday - preferably sooner.

Best wishes,
Derek

Derek Francis
TAX COUNSEL
Chairman Edinburgh Tax Network & Chartered Institute of Taxation Edinburgh & Lothian Branch
Derek Francis, LL.B., CTA (Fellow), Advocate, Barrister, Chartered Tax Advisor, Terra Firma Chambers
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Practice Manager
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Deputy Clerks
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Riaghaltas na h-Alba
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Ceit Fhoirbheis BPA

Cabinet Secretary for Finance
Kate Forbes

T : 0300 244 4000
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Derek Francis
[REDACTED]@terrafirmachambers.com

Our Reference: 202000109407

Your Reference: Edinburgh Tax Network & Chartered Institute of Taxation, Edinburgh
Branch: Scottish Law Commission Trust Law Reform Project:

6 January 2021

Dear Mr Francis,

Thank you for your email of 27 October 2020 inviting the Cabinet Secretary for Finance to speak at your event on the Scottish Law Commission's recommendations for reform of Scots law of trusts. Trusts play a crucial part in many areas of law, including contract and general commercial law, life assurance and pensions, property law, succession and family law, and the Cabinet Secretary recognises their significance for the Scottish economy.

The Cabinet Secretary would like to accept your invitation to speak at the event in June or July. Please contact [REDACTED], Ms Forbes' Diary Secretary, at CabSecFinance@gov.scot to agree a mutually convenient date.

Yours sincerely,



[REDACTED]
Private Secretary

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