

Minister's update meeting with the Scottish Law Commission on 17 March 2022

Present (MS Teams):

Ash Regan, Minister for Community Safety

Lady Paton, Chair, Scottish Law Commission

Charles Garland, interim Chief Executive, Scottish Law Commission

[REDACTED] Civil Law and Legal System

Main Points of update

1. Lady Paton reiterated her appreciation that Commission bills on Moveable Transactions and on Trusts were included within the legislative programme, as both are of great benefit to the post-Covid economy. She was pleased to note that the Prescription (Scotland) Act 2018 was now fully in force.
2. Lady Paton summarised recent project work and publications:
 - On the **Homicide** project (led by Lady Paton) she noted that the Commission was delighted a one-off payment from the policy team of £45 k had been identified to enable them to undertake consultation. A procurement exercise was under way;
 - **Damages for personal injury**, (led by Lady Paton) with a discussion paper out for consultation until June 2022. Chapter 4 of the Discussion Paper addressed the issue with pleural plaques and the time-bar problem, where individuals had pleural plaques identified but did not take forward an action as they were symptomless, failing to appreciate there was a time-bar aspect until mesothelioma had developed and it was too late.
 - The report on **Cohabitation** was due in summer 2022, and then the Commissioner Kate Dowdalls would likely take forward the project on domestic abuse;
 - **Heritable Securities** second discussion paper was issued for consultation in December 2021. This is an area where it is harder to secure views from the debtors/business experience side, whereas the large lending concerns all respond with the views of creditors, however they were continuing to seek views;
 - **Aspects of Leases** bill was issued for consultation in December 2021, the Leases (Automatic Continuation etc.) (Scotland) Bill, with the report due to be published in summer 2022;
 - **Automated vehicles** joint report with the Law Commission for England and Wales was published in January 2022;

11th Programme of Law Reform

3. Lady Paton said that consultation on the 11th Programme of Law Reform would begin with an event at the McKenzie Building (a Faculty of Advocates building off the High Street) on 5 May and that the Minister would be invited. The Minister indicated she would be pleased to accept if possible (*and subsequently attended the event*). Thereafter the consultation would run until summer 2022.
4. Lady Paton advised that potential projects for the next Programme might include:

- **Digital Assets** – keen that Scotland should not fall behind, covering electronic documents, crypto assets and blockchain, smart documents. Commissioner David Bartos was engaging with the expert group.
- **Homicide of an unborn child** – this was a particular form of domestic abuse, and informed by one case in particular. However, difficult technical issues make it awkward, and the context touches on abortion, so it may not be appropriate for the Commission’s consideration.
- **Intestate succession**, an area where much work had already been done, but specifically around cohabitants with a previous family, or where they don’t live under the same roof.

Accommodation

5. Work on Parliament House was progressing with contracts etc. in place, and that there would be an on-site meeting with the architect on 24 May.

DPLRC

6. The evidence session in September 2021 went well, and the aim was to keep up good liaison, with an invitation to the Committee to visit Causewayside when the Covid situation improved.

7. Discussion took place on legislation generally. Lady Paton asked about timescales. The Minister advised that as only the legislative programme for the current year and the Programme for Government had been published. While Trusts was included in the PfG it was not yet possible to confirm a date as this was for Cabinet to decide in due course.

Law Reform bodies

8. The Commission had an online meeting with their counterparts in the New Zealand and Australian law reform bodies. In addition, they had a useful meeting with the law reform bodies from England and Wales, Northern Ireland, Jersey, Republic of Ireland. Lady Paton expected that there would be an in-person meeting with counterparts from the Law Commission for England and Wales in June 2022 in Edinburgh.

The Promise

9. Lady Paton mentioned the request regarding The Promise. The Commission considered that the work was moving too fast and may have too political an aspect to be a Commission project. The work covered the whole of child law, perhaps 44 separate pieces of legislation. At the same time, further legislation in this area was being progressed and it was not clear whether this would also form part of the overall project. The Minister noted that it was good to have a relationship where the Commission could be asked to consider a potential project and also that they could decline.

Staff

10. Lady Paton reported that staff morale was high though it was hard that a set of legal assistants had spent their year’s contract at the Commission without much face-to-face contact, though it was possible to use Causewayside because of the space available.

Next meeting

11. The next meeting would take place in September 2022 and the meeting ended at 10.35 a.m.

Minister's introductory meeting with Scottish Law Commission on 13 December 2022, T3.42 Scottish Parliament

Elena Whitham, Minister for Community Safety
Lady Paton, Chair, Scottish Law Commission
Charles Garland, interim CEO, Scottish Law Commission
[REDACTED] CLLS Private Law Unit.

Welcome and updates on projects

1. Following welcome and introductions, Lady Paton updated the Minister on a number of projects:

- The Report on **Cohabitation** (published 2 November) was well received. Scotland was ahead in this area, particularly in relation to law in England and Wales. The next aspect of family law to be examined was civil remedies for domestic abuse, part of the Eleventh Programme. The Minister noted her own background working for Scottish Women's Aid, and supported the inclusion of such a project.
- The **Homicide** project (led by Lady Paton) also featured aspect of domestic abuse, e.g. special defence in domestic abuse circumstances, perhaps more subtle approach than self-defence, but a balancing act. The law in Scotland was doing well compared with e.g. Australia and New Zealand. Baroness Helena Kennedy's working group on Misogyny and Criminal Justice in Scotland which reported in March 2022 represented a change of approach.
- The **Damages for Personal Injury** project (led by Lady Paton) would continue to the next Programme. The consultation closed in the summer, and the project team was examining matters such as the involvement of the Accountant of Court where large awards were made to children, and any effect of the existence of a health insurance scheme. The numbers of cases involving mesothelioma and asbestos were not diminishing and time bar could be an issue for those affected. Case law differs in results for pleural plaque cases. The Minister noted that she had answered a recent PQ on the subject from Marie McNair MSP (S6O-01655), and cited her personal interest.

2. The Minister said she was interested to read of the reference on **Tenement Law: compulsory owners' associations**, in connection with common repairs, particularly given her background in housing issues. In right-to-buy cases, for example, it could come as a shock to the owner to learn of the liabilities which were attached to the purchase. Lady Paton noted that as part of the project the Keeper at Registers of Scotland was providing information on burdens/clauses in title deeds.

3. It was not always possible to see where a report would lead, for example the joint project with the Law Commission for England and Wales on **Surrogacy** had

grown as it had gone along, given the great interest in many aspects of the law surrounding it and also because of the war in Ukraine which had affected many families, with a number of surrogate babies unable to leave for other countries. The lead Commissioner, Professor Gillian Black had acted as an advisor to a documentary on this subject.

Current bills

4. The Minister noted the success of the DPLRC process, and that Stage 1 of the latest bill, **Moveable Transactions**, would take place that afternoon. Lady Paton felt strongly that the measures would benefit business and in particular women in business. She considered that the consumer side could be dropped if required. It was a substantial and technical bill, and demonstrated the success of the process.

5. The Minister also noted the introduction of the **Trusts and Succession (Scotland) Bill** on 22 November. She had previous experience as a Councillor with trusts. The Chair said that trust law was old and confusing and that an update would assist the public immensely as trusts were used widely in many aspects of life (charities, local organisations etc.)

Eleventh Programme of Law Reform

6. Lady Paton noted the Commission had produced its draft Programme for the next five years (*issued just prior to the meeting*) with the list of intended projects, and would seek formal Ministerial sign-off in due course. While current projects would continue, the new projects were likely to be confirmed as: **execution of documents; limitation periods; executry law; and consolidation of nature conservation statutes**. The new projects were selected following a process of consultation and were supported by consultees. The Programme would contain some flexibility in order to factor in potential resource pressures in future years. The Minister noted that the draft looked like a good range of the projects for the Commission to undertake, and looked forward to seeing the final programme in due course.

7. Lady Paton noted that the suggestion of a project on **execution of documents** in the programme consultation had received great support. Although execution in counterpart was the first Act to result from the DPLRC process of considering certain Commission Bills (Legal Writings (Counterparts and Delivery) (Scotland) Act 2015), there was scope to update particularly given the changes required by covid lockdown.

Accommodation

8. The Commission was moving from its current offices at 140 Causewayside for Parliament House. Charles Garland advised that the Causewayside building (belonging to the Scottish Ministers) had sold, there had been great interest in the sale and he understood the price to be high. The sale was still subject to approval

and due process. Lady Paton and Charles had paid a recent site visit to Parliament House, and were pleased with how the new accommodation was looking. The Minister accepted in principle an invitation from Lady Paton to visit the new premises in due course, perhaps during the summer, and a formal invitation will follow in due course.

Staff

9. Lady Paton noted that there were current vacancies for project manager solicitor posts, and it was hoped these would be filled shortly. In addition, the office manager was retiring and would be missed.

Wider Law Reform

10. The Minister asked about the Commission's links with the wider law reform community. Lady Paton spoke of the strong links with the Law Commission England and Wales, and their joint work. She noted the resurgence of the Northern Ireland Commission, which had been in abeyance.

11. Lady Paton and Charles planned to attend the Commonwealth Association of Law Reform Agencies' (CALRAs) conference in Goa, India in March 2023. The conference is aligned with the 23rd Commonwealth Law Conference which brings together legal practitioners from Commonwealth countries including lawyers, judges and legal academics.

Next meeting

12. The next update meeting would take place in around six months, to be arranged in due course.

Scottish Law Commission - Note of update meeting 22 September 2022

Minister for Community Safety
Lady Paton, Chair, Scottish Law Commission
Charles Garland, interim CEO, Scottish Law Commission
[REDACTED] CLLS Private Law unit

1. Lady Paton provided an update on the Commission's work since the previous meeting in March 2022. She thanked the Minister for her support on the Moveable Transactions bill. There had been an informal session with the DPLRC on 13 September with the formal session now taking place on 27 September (having been postponed due to the death of HM The Queen). She also welcomed the news that the Trusts and Succession bill would follow, and reported that Lord Drummond Young (previous Commissioner who was lead Commissioner for the trusts project) was similarly delighted. The 2 bills together would make a major contribution to regeneration of the economy post-Covid.

2. Lady Paton gave a brief indication of current projects:

- On Homicide, the tender for the public opinion work was won by Britain Thinks, and they were undertaking qualitative interviews in October. In the meantime the team was continuing work and the draft paper would be available in early 2023.
- The Cohabitation project was at the final stages of peer review, and the team was beginning work on the next part of the project, civil remedies for domestic abuse.
- The leases project would report in September or October, at final stages of peer review.
- On the Tenements project, the lead Commissioner had attended the DPLRC on 1 September, and the team had met stakeholders and the advisory group. It was a tricky project.
- The lead Commissioner of the Surrogacy Project (Prof Gillian Black) met the Law Commission recently in London (undertaking duties as Linlithgow Pursuivant at the late Queen's funeral).
- Damages for personal injury consultation had a good response rate of 33. Stuart McMillan MSP is particularly interested in this project.
- The joint project on Automated Vehicles had reported and there may be a UKG bill in 2025.

3. The members of the DPLRC visited the Commission at Causewayside in May 2022. Members of the Law Commission of England and Wales visited in June 2022. They are now working to the Fourteenth Programme of Law Reform.

4. On the Eleventh Programme, the consultation produced 38 useful contributions. They included a number in the area of family law, property law and tenements, criminal law including sexual offences cases, digital offences.

Accommodation

5. Lady Paton reported that the work at Parliament House was ongoing and very impressive, with entry being likely in spring 2023. Meanwhile the Commission worked on a hybrid working pattern. The four new legal assistants had settled in well.

RSR and Budget

6. The Minister noted that officials would share as much detail as possible when this was known more clearly, and were to meet the CEO to discuss further. She advised that the block grant envelope had been decided before the inflation changes and the historically high pay deals. There would be no effect on the current year's budget, however, it made sense to align the programme with the possible resource available and there was an opportunity to be flexible as the 5 years of the spending review and of the programme coincided.

7. Lady Paton said that it sounded possible to put forward say, three proposals reflecting different resources to assist so that by the time those proposals were being fully considered, the financial position might be clearer. The Minister was grateful for the Commission's willingness to take account of these considerations in their planning. It would be useful as there was a funding gap going forward, and hard to judge what decisions the new UK government would make. Lady Paton noted that the Law Commission was also facing similar issues regarding the change of government in its work under the Fourteenth Programme.

8. In light of the timetable for the Eleventh Programme it was agreed that the next update meeting should take place in 4 rather than 6 months, and in person if possible.

Scottish Law Commission – update meeting with Minister for Community Safety on 22 September 2021 – 11 a.m.

Present (online):

Minister for Community Safety

Lady Paton, Chair

Charles Garland, interim Chief Executive

[REDACTED] Private Law Unit

1. The Chair provided an update on the Commission's work. Key points:
 - Timetables had slipped slightly as a result of WFH, however, staff morale was high and some in-person events were possible in the summer
 - The Commission would move to Parliament House by the end of 2022, Charles was the contact point
 - Planning for a 4 jurisdictions conference (online) - England, Ireland, Wales and Jersey.
 - Professor Gillian Black was at family law conference in the spring. Joint work with LCEW was well in hand in the areas of surrogacy and of automated vehicles. Surrogacy covered delicate policy decisions on legal parenthood.
 - Recent publications were the Discussion Paper on the mental element in homicide, and the third Discussion Paper on autonomous vehicles.
 - Personal injury timetable had slipped slightly due to pandemic and staff, however the recent advisory group meetings were good and they were keen to issue the discussion paper.
 - Cohabitation report and draft bill expected in the first half of 2022
2. The homicide project she leads was considering delicate matters of social policy, such as the murder of an abusive partner, and the wider questions of provocation, of self-defence in rape, rough sex defence. At present consideration was restricted to women only.
3. Lady Paton advised that the Commission was happy to accept a reference on tenement property and common repairs, which she considered a much needed area of reform.
4. She was delighted regarding the Defamation (Scotland) Act, and also that the legislative programme included Moveable Transactions, which was so important to the economy in enabling finance to be raised via intellectual property.
5. On trusts, she considered the Cab Sec for Finance and Economy pre-recorded message at the trusts conference to be very astute. The Commission was still looking for implementation of Prescription, and had noted a possible further reference on succession law matters.

6. The Minister noted the inclusion of Moveable Transactions, which she had campaigned for personally, and while she regretted it had not been a year 5 bill, she welcomed its inclusion and that it was likely to be introduced in November by an Economy minister.

7. The Minister noted that she was keen for Trusts to be taken forward, now in the PfG, it was not however possible to say what year this would be. On succession, the SG was taking forward miscellaneous issues and a reference may possibly be made to the Commission in the future.

8. On prescription, the Minister advised that there was no timetable yet, but this would be updated when available. ACTION POINT ~(MUST HAVE BEEN DONE AT AN UPDATE MEETING WITH CHARLES)

9. The Minister was pleased to note that Lady Paton would be at the DPLRC the following week. Lady Paton said she was delighted about the broader criteria and [REDACTED] had been in touch to keep the new Committee advised about the work done by the Commission.

(meeting closed at 11.30 a.m.)