

Stuart McMillan, MSP
Convener
Delegated Powers and Law Reform Committee
The Scottish Parliament
Edinburgh
EH99 1SP

28 September 2023

Dear Convener

I write further to the Delegated Powers and Law Reform Committee's suggestion contained in the Stage One Report on the Moveable Transactions (Scotland) Bill, that further consultation should be undertaken where the Scottish Government is considering introducing a Bill to give effect to a Scottish Law Commission (SLC) Report, and significant time has passed since the SLC's original consultation on its proposals.

When my predecessor wrote to you on 1 March 2023, they indicated that they had asked officials to liaise with the SLC to consider the Committee's recommendation further. That work has now been completed and I set out the outcome below.

The suggested approach recognises that there are a small number of SLC Reports which remain unimplemented and there will of course be a steady flow of new Reports in the future.

In some of the areas examined there may have been little change in the landscape since the report was published. In other areas, for example, a recent judgement or unforeseen turn of events may impact on the recommendations.

For all these reasons, it was not considered that a blanket approach of a full automatic consultation would be either efficient or effective. It may create work that is not needed and add unnecessary delay to any implementation of the SLC's work.

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Instead, as and when the Scottish Government begins to consider a SLC Report in detail, it is suggested that officials from the Scottish Government and the SLC should liaise and carry out a preliminary assessment (triage) to agree what, if any, consultation is needed. The assessment would use a short framework of questions and the answers would inform the need for consultation and if there is a need, the extent and/or focus of the consultation. For example, any identified need to consult may be restricted to a particular aspect of a Report and be carried out with a limited number of stakeholders.

The questions are: -

- Was the Report published a significant amount of time ago? If so, how likely is it that the consultation views received by the SLC are still held?
- Are there any groups of people who are likely to have a view but who didn't contribute to the SLC's consultation process?
- Has the landscape around this area of the law changed since the Report was published? If so, are the changes material to any of the recommendations contained in the Report?

Where a consultation requirement is identified, the Scottish Government will undertake the necessary consultation.

I would associate myself with the comments of my predecessor when they noted that even where further consultation is undertaken it needs to be recognised that it may still not draw out all issues or concerns.

Having said that I hope the Committee is satisfied that we are taking the necessary steps to address the issue that they identified and that as we continue to move towards a position where the time lapse between the SLC publishing a Report and the Scottish Government taking forward any associated legislation is reduced that the consequential need for any further consultation should also be reduced.

I look forward to continuing to work with the Committee in their consideration of SLC Bills.

SIQBHIAN BROWN

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