

19 December 2014

Hon Kate Doust MLC
Chair
Standing Committee on Uniform Legislation
and Statutes Review
Parliament House
Perth
Western Australia 6000



Your ref:
Our ref:

Dear Ms. Doust,

**REVIEW OF THE STATUTE BOOK IN SCOTLAND:
STATUTE LAW REPEALS AND CONSOLIDATIONS**

I refer to the recent request on behalf of the Standing Committee on Uniform Legislation and Statutes Review for an account of the work of the Scottish Law Commission on statute law repeals and consolidations.

I attach a note describing our work in these areas and how we go about these functions. This has been prepared by Mrs Susan Sutherland, solicitor, who has great experience of these matters at our Commission.

I hope that you find this note of assistance. Please let me know if you have any further questions or if we can assist in any other way.

With best wishes,
Yours sincerely,
Paul J. Giller

LORD PENTLAND

REVIEWING THE STATUTE BOOK

THE ROLE OF THE SCOTTISH LAW COMMISSION

About the Scottish Law Commission

1. Scottish Law Commission (“the SLC”) was established by the Law Commissions Act 1965 to promote the reform of the law of Scotland.
2. In carrying out its statutory duties, the SLC operates independently of the Government of the day. It cannot be required to exercise its functions in any particular manner, nor can it be directed to make recommendations to suit political expediency. The SLC has a commitment to law that is simple, accessible and cost-effective.

The Commission’s statutory duty in relation to reviewing legislation

3. Under section 3(1) of the Law Commissions Act 1965 the SLC has a statutory duty to keep under review all the law of Scotland with a view to its systematic development and reform. This includes the repeal of obsolete and unnecessary enactments and the reduction of the number of separate enactments.

STATUTE LAW REPEALS WORK AT THE SLC

4. The SLC has a small team (known as the “statute law repeals or SLR team”) which works on repeals of obsolete or otherwise unnecessary legislation. Its purpose is to modernise and simplify the statute book, reduce its size and save the time of lawyers and others who use it. This in turn helps to avoid unnecessary legal and research costs.
5. The SLC SLR team works very closely with the SLR team at the Law Commission for England and Wales in London. Since the setting up of the Commissions in 1965, the Law Commission has taken the lead in the repeal projects and in the preparation of joint Reports and Repeals Bills. The SLC team assists in this process, consulting with Scottish consultees on proposed repeals which relate to Scotland.

6. The SLC SLR team also identifies possible Scottish repeals on the basis that they are no longer of practical utility. The team also considers suggestions from others, including the Scottish Government, as to provisions that might be suitable for repeal.

7. The methodology used in approaching the SLC work is generally that described in the note provided by the Law Commission for England and Wales.

Focus on primary legislation

8. As explained in the note by the Law Commission for England and Wales team, the focus of the SLR work is on primary legislation, namely Acts that have been passed by the UK Parliament or, less frequently, by the Scottish Parliament.

Agreement of the Scottish Parliament

9. The Repeals Bills prepared by the Commissions have all been implemented by the UK Parliament. Since devolution and the establishment of the Scottish Parliament in 1999, any repeals included in a UK Repeals Bill which are within the legislative competence of the Scottish Parliament under the Scotland Act 1998 require the agreement of that Parliament to be implemented by the UK Parliament.

The importance of consultation

10. Thorough, focussed consultation on the legislation proposed for repeal is crucial. The purpose of consulting is to establish whether the provision proposed for repeal really is no longer of practical utility. In order to establish this, the team consults the Scottish Government, local government, representative bodies in Scotland, such as the Law Society of Scotland and the Faculty of Advocates (the Scottish Bar) and relevant bodies according to the subject matter of the proposed repeals, individuals and anyone else who appears to have a relevant interest. Every consultation is published on the Commission's website for public comment. The length of the consultation period is appropriate to the complexity of the legislation. Typically the consultation on each topic takes about 3 months.

11. Once the consultation is complete, the Law Commission and the Scottish Law Commission publish a joint report recommending the repeal of every Act that they are able to confirm is obsolete. The report explains in some detail the reasons for this recommendation. Each report contains a draft Statute Law (Repeals) Bill to

give effect to the repeal proposals. The reports are laid before the UK Parliament as Command Papers. The reports are also laid before the Scottish Parliament.

12. Once the Repeals Bill has been introduced in the UK Parliament, the SLC team attends the UK Parliament Committee considering the Repeals Bill and assists in giving evidence to the Committee in relation to the Scottish repeals.

The Scottish Law Commission has the trust of the UK Parliament

13. The independence of the Scottish Law Commission in the performance of its statutory functions means that the UK Parliament, when considering Repeals Bills prepared by the Law Commission and the Scottish Law Commission, knows that the repeal proposals are legally sound and have not been influenced in any way by the vagaries of political consideration or expediency. As with the Law Commission in London, the Scottish Law Commission has no axe to grind in proposing reform. This trust has been built up since the establishment of the Commissions in 1965, resulting in the passage of each of the 19 UK SLR Bills prepared jointly by the Law Commission and Scottish Law Commission.

The UK Parliament's fast-track procedure for SLR Bills

14. As explained in the note by the Law Commission for England and Wales, Repeals Bills enjoy a fast-track route into and through the UK Parliament. The practical advantage is that these Bills do not have to compete with other Government Bills for Parliamentary time. It is possible for Parliament to amend an SLR Bill (whether to drop a repeal or to make a correction to the drafting), but that happens only rarely.

15. The UK Ministry of Justice has responsibility for SLR Bills in both Houses. They are usually introduced in the House of Lords within a matter of months, sometimes weeks, of their being produced by the Commission. They follow the same Parliamentary procedure as consolidation Bills. Accordingly, after the Second Reading stage in the House of Lords, SLR Bills are considered by the Joint Committee on Consolidation Bills, a Committee appointed by both Houses to consider consolidation Bills and SLR Bills. The Committee considers each SLR Bill in detail and takes evidence from members of the SLR teams of both the Law Commission and the Scottish Law Commission, although the Head of the SLR team in the Law Commission takes the lead in outlining the repeals and answering

questions from members of the Committee. The Scottish team deal with any questions relating to the Scottish only repeals. Following Committee Stage, the Bill then returns to the House of Lords for the remaining stages. The House of Commons stages are usually taken together some weeks later, before the Bill goes for Royal Assent.

Our Implementation Record

16. The Commission has a 100% success rate in the implementation of its SLR work. All 19 of its draft Bills produced since 1965 have been enacted, between them repealing more than 3000 whole Acts and part-repealing thousands of other Acts. The most recent Bill became the Statute Law (Repeals) Act 2013 which repealed more than 800 whole Acts including 31 Tax Acts and old pensions legislation.

CONSOLIDATION WORK AT THE SLC

Nature of consolidation

17. As mentioned in the note by the Law Commission, a consolidation Bill draws together different enactments on the same subject to produce a single statutory text while preserving the effect of the current law. The single text usually replaces provisions in a number of different Acts or secondary legislation.

18. The Scottish Law Commission also undertakes consolidation work as part of its statutory functions. Some consolidation work is done jointly with the Law Commission for England and Wales while other consolidation projects are dealt with by the Scottish Law Commission as they relate to Scottish legislation. We recommended a consolidation of the legislation relating to salmon and freshwater fisheries in Scotland and the Bill was enacted by the Scottish Parliament in the Salmon and Freshwater Fisheries (Scotland) Act 2003. More recently we have completed work on a Bill to consolidate the legislation on Bankruptcy in Scotland. The draft Bill has been submitted to the Accountant in Bankruptcy and the Bill is being considered by the Scottish Government. The Bill would be implemented by the Scottish Parliament.

Scottish Law Commission
SLR Team
December 2014