



Law Society
of Scotland

Written Evidence

Call for views on post-legislative scrutiny

April 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the United Kingdom and Scottish Governments, Parliaments, wider stakeholders and our membership.

Our Rural Affairs sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament's Rural Economy and Connectivity Committee's call for views on post-legislative scrutiny.¹ We have the following comments to put forward for consideration.

General comments

We welcome the undertaking of post-legislative scrutiny by the Scottish Parliament's Rural Economy and Connectivity Committee. Post-legislative scrutiny provides an opportunity to consider whether established pieces of legislation are working effectively, and if not, to consider how improvements may be made.

We consider that there is an increasing fragmentation of the law which applies in a rural context. The requirement to look at numerous statutes to ascertain the legal position on a particular matter does not serve the interests of accessibility. Codification and, where necessary, clarification of the law in these areas would significantly improve the current situation.

It should be noted that some of the acts proposed for post-legislative scrutiny may require amendment as a result of the United Kingdom's withdrawal from the EU. In particular, the Aquaculture and Fisheries (Scotland) Act 2007, Transport and Works (Scotland) Act 2007 and Marine (Scotland) Act 2010 contain references to EU directives or institutions. There may be merit in considering these acts for post-legislative scrutiny as amendment will be required.

¹ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/107671.aspx>

Agricultural Holdings (Scotland) Act 2003

We do not consider that the Agricultural Holdings (Scotland) Act 2003 would benefit from legislative scrutiny at the present time.

There has been extensive amendments to the Act to date, most recently by the Land Reform (Scotland) Act 2016. Some amendments to the Act are not yet in force. The Act will therefore not be able to be fully reviewed as the practical effects and impact of a number of sections will not be able to be considered.

The recent report *Testing of the Rent Review System*² critiques provisions about rent review incorporated into both the Agricultural Holdings (Scotland) Act 1991 and the 2003 Act by the Land Reform (Scotland) Act 2016. The aim of this project was “to test, analyse and make recommendations on the functionality and application of the new rent review system introduced under Part 10, Chapter 5 of the Land Reform (Scotland) Act 2016.”³ This aspect of the law has therefore already been subject to considerable scrutiny.

Furthermore, the Supreme Court’s decision in *Salvesen v Riddell*⁴, which considered the compatibility of section 72 of the Agricultural Holdings (Scotland) Act 2003 with the European Convention of Human Rights⁵, gave rise to the Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014. This is an example of further amendments which have already been made to the Act.

In all the circumstances, we do not consider that there would be merit in post-legislative scrutiny of the Agricultural Holdings (Scotland) Act 2003.

Crofting Reform etc Act 2007 and Crofting Reform (Scotland) Act 2010

We note that crofting law is currently subject to consultation and review by the Scottish Government. The Government committed in its Programme for Scotland for 2017-2018⁶ to consult on and develop proposals to reform crofting law. Consultation was carried out in Autumn 2017 and the analysis results published in March 2018.⁷

As highlighted above, there is considerable fragmentation of the law in this area. The law is not accessible to the public at large due to the need to look at numerous statutes to ascertain the legal position on any particular matter. It is difficult to ascertain the exact nature of the law. Codification and clarification of the law would be beneficial.

² The Scottish Government, *Testing of the Rent Review System Report and Recommendations*: <http://www.gov.scot/Resource/0053/00530676.pdf>

³ *Ibid.*, para 1.1.2.

⁴ [2013] UKSC 22.

⁵ European Convention on Human Rights 1950 Protocol 1 art.1

⁶ <https://beta.gov.scot/publications/nation-ambition-governments-programme-scotland-2017-18/>

⁷ <https://consult.gov.scot/agriculture-and-rural-communities/crofting-consultation-2017/results/croftingconsultation2017analysis.pdf>



We would welcome review in this area of law. We do however appreciate that there may be merit in excluding these acts from post-legislative scrutiny given that work is already ongoing to consider new crofting legislation.

For further information, please contact:

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