

PARLIAMENTARY BUREAU**SCOTTISH LAW COMMISSION REPORTS****Parliamentary scrutiny of Bills arising from Scottish Law Commission reports****Background**

1. The Scottish Law Commission (SLC), whilst recognising the substantial body of law enacted by the Parliament based on SLC reports, has become increasingly concerned as to the low rate of implementation of those of its reports that cover minor technical changes in the law. The SLC has lobbied the Parliament and Ministers on this issue and it is understood that the Chair of the SLC is to write to the Presiding Officer shortly to request a meeting to discuss how the situation can be improved.
2. A working group of officials from the Parliament and Government (the Law Reform Working Group) has examined the issues around the low rate of implementation and reported with recommendations of piloting a revision to Standing Orders designed to create a new avenue for parliamentary consideration of Bills stemming from SLC reports. Correspondence from the Minister for Parliamentary Business to the Presiding Officer asking that the Bureau considers this issue at its meeting on 23 March 2010 is attached at Appendix A.

Key Findings

3. The Law Reform Working Group has identified three types of 'SLC Bills':
 - Consolidation/Repeal Bills (catered for in Standing Orders, e.g. Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill)
 - major reforms incorporated in Government programme Bills, e.g. Sexual Offences (Scotland) Bill; and
 - minor technical reforms dealing with keeping the statute book in good order.
4. The third type of SLC Bill has not been introduced to any great extent under successive Governments, leading to a small backlog of unimplemented reports. This type was therefore the focus of the Law Reform Working Group's considerations. The SLC believe that, as a result of this lack of implementation, the Scottish statute book is falling behind others in terms of its good order.

Solutions

5. Among various options, the Law Reform Working Group was attracted to the option of referring SLC Bills to the Subordinate Legislation Committee for the following reasons:

- it is the only committee with experience of considering the whole breadth of Scots law;
- it has recent experience in examining law reform in considering the Interpretation and Legislative Reform (Scotland) Bill; and
- it appears to have capacity to incorporate consideration of SLC Bills within its normal workload.

Next Steps

6. As there is little evidence on the actual impact that consideration of SLC Bills would have on other committee work (due to their non-introduction to date), the Law Reform Working Group recognises that some of its considerations are based on presumptions. Therefore, rather than seeking permanent changes to Standing Orders, the Law Reform Working Group has recommended a pilot exercise in order to evaluate this impact and to establish the levels of scrutiny that will generally be required for SLC Bills.
7. The Law Reform Working Group has recommended that the Bureau be approached to give consideration to temporary changes to Standing Orders to allow the Subordinate Legislation Committee to conduct a pilot exercise on scrutinising SLC Bills and that the pilot be evaluated before the end of the current parliamentary session.

**Chamber Office
March 2010**

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17 March 2010

Dear Alex

LAW REFORM WORKING GROUP

As you are aware, last year a working group of Scottish Parliament and Scottish Government officials was set up to consider the implementation of reports of the Scottish Law Commission (SLC) and agree a possible approach or approaches to Parliamentary Scrutiny of Bills originating from SLC reports.

When the group finalised its report in January, it suggested senior officials should share its findings with you and the Bureau on the Parliament's side, and with Ministers on the Government's. Officials here have taken me and my colleagues through the issues, and I am writing now to ask your thoughts on how we can best take this forward.

In brief, the Group made recommendations that:

- Ministers are requested to introduce (following discussions with Scottish Parliament authorities) an SLC Bill in time for it to be considered during the current Session of the Parliament;
- The Parliamentary Bureau is approached with a recommendation to propose temporary changes to Standing Orders to allow the Subordinate Legislation Committee to consider that Bill at Stages 1 and 2 as a pilot exercise; and

- Finally, it recommends that the pilot exercise be evaluated in full before the dissolution of the Parliament in 2011 with a view to making any permanent changes that are deemed to be desirable as early as possible in Session 4. As part of that evaluation, the relevant Committee(s) should be asked for views on the issues raised in this report.

Time is getting short if we are to pilot a new bill process before the forthcoming election. My colleagues and I are therefore actively considering which of the existing Scottish Law Commission reports would make the best pilot.

Subject to your views, I believe it would be useful if we could bring the Law Reform Working Group Paper to the Bureau for discussion on 23 March to establish if the recommendations have the support of Bureau members.

I have copied this letter to Jamie Stone MSP, Convenor of the Subordinate Legislation Committee.

A handwritten signature in black ink that reads "Bruce Crawford". The signature is written in a cursive, slightly slanted style.

BRUCE CRAWFORD