



West Lothian  
Council

**COUNCIL EXECUTIVE**

**CONSULTATION ON THE UNINCORPORATED ASSOCIATIONS AND PARTNERSHIPS  
(SCOTLAND) BILL**

**REPORT BY HEAD OF CORPORATE SERVICES**

**A. PURPOSE OF REPORT**

To advise committee that officers have been asked to respond to a consultation on the proposed reform of Scots Law on two topics: (i) non-profit making unincorporated associations and (ii) criminal liability of partnerships; to highlight the content of the proposed response and to obtain approval to submit the proposed response to the Scotland Office.

**B. RECOMMENDATION**

That the Council Executive notes the content of the proposed consultation response and approves the consultation response to be submitted to the Scotland Office.

**C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Working in partnership
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	None
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	None
<b>VII</b>	<b>Consideration at PDSP</b>	Partnership & Resources PDSP on 8 June 2012

## **VIII Other consultations**

N/A

### **D. TERMS OF REPORT**

#### **D.1 BACKGROUND**

The Scottish Law Commission published a Discussion Paper in 2008 on Unincorporated Associations. After consultation, the Scottish Law Commission concluded that the current legal regime was unsatisfactory and proposed that such associations should be able to become Scottish Associations with Legal Personality (SALPs). Office-bearers and members would then not incur personal liability by reason only of acting as an office-bearer or member.

In addition, following the 2004 fire at the Rosepark Nursing Home in Uddingston, the Scottish Law Commission reported in May 2011 on a consultation exercise on how to close a loophole in the law that currently allows a Scottish partnership to escape prosecution, if it has since been dissolved.

The introduction to the consultation is attached to this report as Appendix 1 and lists some of the types of unincorporated associations that would be affected by the proposed change in the law.

#### **D.2 RELEVANCE TO THE COUNCIL**

The consultation is of relevance to the Council for the following reasons:

- (i) the introduction of another type of organisation that can be set up to carry out non-profit making activities without its members and/or office-bearers attracting personal liability for the organisation's debts and other liabilities would be a useful option to consider for activities carried out by or on behalf of the Council; and
- (ii) the Council currently leases properties to several unincorporated associations e.g. bowling or football clubs. At present, these leases must be taken in the name of the office-bearers at the time the lease is entered into. These office-bearers are then personally liable for the obligations contained in the lease. The introduction of the proposed SALP would ensure that the assets of these office-bearers would not potentially be at risk and would also provide the Council with a single, consistent tenant regardless of any changes in office-bearers.

#### **D.3 CONSULTATION RESPONSE**

The Council has previously responded to the Scottish Law Commission's consultation and has now been invited to respond to a consultation by the Scotland Office on the same matter. The deadline for responses is Monday 2 July 2012 and responses are sought in the form of answers to 12 questions set out in Appendix 2.

The consultations that the Scottish Law Commission initiated on the two issues led to the UK Government's Scotland Office stating in a press release dated 9 May 2012 that they will seek to support a Bill on unincorporated associations and Scottish partnerships. The UK Government are now seeking consultation on their proposals to legislate on this matter.

The Council's Legal Services department have carefully considered the terms of the two reports issued by the Scottish Law Commission prior to providing the responses to the questionnaire as set out in Appendix 3.

There are no adverse implications, financial or otherwise, for the Council in taking part in this consultation and the responses to the Scotland Office being approved and recommended to Council Executive.

#### **D.4 CONSIDERATION AT PDSP**

The proposed consultation response was considered at the Partnership & Resources PDSP on 8 June 2012. The committee noted the terms of the consultation response and agreed that the report be forwarded to the Council Executive for approval.

#### **E. CONCLUSION**

There exists an opportunity for the Council to contribute to the implementation of two Scottish Law Commission reports on reserved matters of Scots Law. The Bill, if taken forward, will have the desired effect of (i) encouraging the continuance of the good work done by many unincorporated associations, whose members or office-bearers are otherwise exposed to a disproportionate level of financial and other risks that they may be unaware of and (ii) addressing the apparent loophole in the current law relating to the inability to prosecute a Scottish Partnership once it is dissolved.

#### **F. BACKGROUND REFERENCES**

Scottish Law Commission Report no. 217 – Unincorporated Associations

Scottish Law Commission Report no.224 – Criminal Liability of Partnerships

Scotland Office consultation on reforming the law on Scottish unincorporated associations and criminal liability of Scottish Partnerships

Appendices/Attachments: Appendix 1 – Introduction to Consultation; Appendix 2 – Consultation questions; Appendix 3 - Response to current consultation

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**Date of Meeting: 25 June 2012**