

Reforming the Law on Scottish Unincorporated Associations and Criminal Liability of Scottish Partnerships Consultation Paper

Introduction

This paper sets out for consultation proposed reform of Scots law on two topics: non-profit making unincorporated associations and criminal liability of partnerships.

Proposals for reforming the law on unincorporated associations in Scotland were set out in a Scottish Law Commission Report and draft Bill of 2009¹ (in this paper the "2009 Report" and "2009 draft Bill"). The proposals attribute legal personality to associations where they meet certain statutory criteria.

The paper also seeks views on reform of the law on criminal liability of dissolved Scottish partnerships and their partners in line with provisions in a Scottish Law Commission Report and draft Bill of 2011² (in this paper the "2011 Report" and "2011 draft Bill"). The principal intention is to address a loophole in Scots law that allows Scottish partnerships to escape prosecution for potentially serious offences by dissolving.

Both the 2009 and 2011 Reports and the respective draft Bills are available at www.scotlawcom.gov.uk. A combined Bill (the "proposed Bill") is set out in the Annex to this paper along with a Table showing the principal differences.

The consultation is aimed at unincorporated associations (including voluntary, community and sports associations) and business partnerships (general and limited, though not LLPs), and those with an interest or expertise in these aspects of Scots law.

Those with a particular interest in unincorporated associations can find the Commission's proposals at page 6.

Those with a particular interest in partnerships can find the Commission's proposals at page 25.

In 2008, the Scottish Law Commission issued a Discussion Paper on unincorporated associations³ and invited views on the options for policy reform in this area. Consultation meetings with key Scottish stakeholders with an interest were also held. However, given the length of time since the Commission's consultation and changes to the law affecting the sector since,

¹ Scottish Law Commission (2009). *Report on unincorporated associations*, Edinburgh, Scottish Law Commission (Scot Law Com No 217), 83pp.

² Scottish Law Commission (2011). *Report on criminal liability of partnerships*, Edinburgh, Scottish Law Commission (Scot Law Com No 224), 25pp.

³ Scottish Law Commission (2008). *Discussion paper on unincorporated associations*, Edinburgh, Scottish Law Commission (Discussion paper No 140), 94pp.

it is important for the UK Government to seek confirmation of support for these proposals from those who responded to the earlier consultation – and others who may not have had or taken the opportunity to give their views previously.

There are also some specific questions arising from the 2009 draft Bill that the UK Government has decided it should take views on. This is not to question the essential policy on attributing legal personality to unincorporated associations that the Commission has arrived at. Rather our aim is to refine and fill in the necessary detail to the proposals so that the resulting provisions will successfully effect the change intended.

We also identify where and explain why we have departed from the precise form of the 2009 and 2011 draft Bills.

The 2009 Report proposes that the Bill should only apply to unincorporated associations which have an official address and the management of which is carried out wholly or mainly in Scotland.

Whilst it is recognised that such unincorporated associations may also carry out activities elsewhere than Scotland, the UK Government consider that as these proposals flow from a Report recommending changes to Scots law, it is appropriate to confine extent in this way.

As both topics relate to the reserved matter of Business Associations (within the meaning of Head C1 of Schedule 5 to the Scotland Act) it is for the United Kingdom Parliament to legislate to implement the Commission's proposals.

The Commission has indicated that it supports the consultation process and will continue to work with the UK Government to finalise a Bill that it is hoped will come before Parliament within its current term.

The 2009 Report includes an assessment of the impacts of the Commission's proposals. This Impact Assessment indicates that there are significant benefits for unincorporated associations in attaining legal personality set against minimal costs. The consultation, however, seeks to add to the evidence on the extent and quantification of costs and benefits to those affected by the proposed changes. A full Impact Assessment will be developed should the UK Government decide to take forward the proposals.

On partnerships, the Commission consulted in 2011 and we seek only to confirm that the final proposals in the Bill effectively achieve the outcome in a way that consultees would support.

Please note that the proposals in this paper on unincorporated associations will apply only to associations that are both located and managed in Scotland. The proposals on partnerships will only apply to Scottish partnerships.