

PE1691/A

Scottish Law Commission submission of 18 July 2018

I refer to your letter dated 3 July 2018 in connection with the above petition, inviting the Scottish Law Commission to provide views on the action called for in the petition.

The Commission have not carried out any work on this aspect of the 2003 Act in recent years. We have no plans in our current approved Programme of Law Reform to carry out a review of these provisions.

The Commission's previous work in this area culminated in our Report on Real Burdens (SLC No 181), published in October 2000. The Scottish Government and Scottish Parliament took the recommendations and proposed legislation forward as a Bill, with modifications including the insertion of the provision that is now section 53 (mentioned in the next paragraph), resulting in the Title Conditions (Scotland) Act 2003.

The Commission did agree to carry out a review of section 53 of the 2003 Act. That provision has been widely criticised. In 2013 the Justice Committee of the Scottish Parliament recommended that the Scottish Government refer section 53 to the Commission for a review. Scottish Ministers then referred this particular project to the Commission. It was agreed with the Scottish Government that the Commission would commence work on the section 53 review following completion of the Commission's project on moveable transactions. The Commission published a Report on Moveable Transactions in December 2017. Work then commenced on the review of section 53 of the 2003 Act. This project is well under way. In May this year, the Commission published for consultation our Discussion Paper (DP No 164) on section 53.

The Commission therefore consider that it is for the Scottish Government to consider a review of the provisions of the Title Conditions (Scotland) Act 2003 ("the 2003 Act") mentioned in the petition.