

**PE1412/A**

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Ms Anne Peat  
Clerk, Public Petitions Committee  
Scottish Parliament  
Edinburgh  
EH99 1SP



6 January 2012

Dear Ms Peat,

## **CONSIDERATION OF PETITION PE1412**

Thank you for your letter of 5 December, regarding the petition by Bill McDowell calling on the Scottish Parliament to urge the Scottish Government to amend the law of succession to end the requirement for a bond of caution by an executor-dative when seeking confirmation of any intestate estate. You asked for a response by 12 January to two particular questions.

### 1. What is the timeframe for the formal consultation on succession law?

The Scottish Government has recently undertaken an exercise – involving statistical analysis, consultation and subordinate legislation – on financial thresholds in succession law, with a particular focus on intestate estates and prior rights. Scottish Statutory Instruments 2011/435 and 2011/436 are due to come into force on 1 February.

Going forward and informed by a significant report from the Scottish Law Commission, the Scottish Government remains committed to formal public consultation on the fundamentals of succession law. It is hoped that it will be possible to progress to that stage towards the end of this year or early next year, though this will be dependent on other pressures.

### 2. Will you now give separate consideration to the abolition of the requirement for bonds of caution? If not, please provide reasons.

The Scottish Law Commission produced a package of recommendations for fundamental, once-in-a-generation reform of succession law. This package raises issues of a challenging and potentially contentious nature. Preparatory dialogue has confirmed that some stakeholders have real concerns about important aspects of this package. Formal public consultation will be required in order to inform the way forward.

As mentioned above, ahead of that consultation exercise and any reforms which may flow from it, the Scottish Government last month laid two Scottish Statutory Instruments to ensure that the existing framework of succession law is maintained as effectively as possible. Moreover, although the Commission cautioned against it, the Scottish Government is considering whether it would be feasible and, if so, desirable to deconstruct the Commission's package of recommendations in order to progress selected elements separately. Though no conclusions have yet been reached in that regard, it is important to note that few of the recommendations are entirely self-contained and straightforward. With specific regard to bonds of caution, for example:

- the petitioner himself rejects aspects of the Commission's recommendations (e.g. he disagrees with recommendation 78(1), which argues that the generality of the reforms, including the abolition of bonds of caution, should apply only in relation to deaths occurring on or after the date on which the implementing legislation is commenced);
- there are wider issues to take into account. As was indicated in the Scottish Government's initial response to the Commission and in response to Parliamentary Question S3W-32618, requirements for bonds of caution exist in a number of areas of legislation and it would seem prudent to ensure that action in one area does not have unforeseen, detrimental consequences in others.

I hope that this information is of assistance to the Committee.

Yours sincerely

**Paul Allen**