

PE1412/D

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Ms Anne Peat
Clerk, Public Petitions Committee
Scottish Parliament
Edinburgh
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30 March 2012

Dear Ms Peat,

CONSIDERATION OF PETITION PE1412

Thank you for your letter of 8 March, 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. The Committee asked *“given that the issue of bonds of caution was included in the Scottish Law Commission’s 2009 report “due to an overwhelming demand that the topic be examined”, will the Scottish Government confirm that the abolition of bonds of caution is one of the topics that is being considered for separate progress and confirm when a decision will be taken on this”* and you requested a response by 5 April.

To begin with the contextual background, the Committee is right that the Commission stated that, despite reservations about separating it from a more general review of the law on executries and the administration of estates, it had examined this topic in this project because there was „overwhelming demand“ to do so. Indeed, the Commission then went on to say that, having carried out that examination, amongst those who commented on this issue the „overwhelming response“ was supportive of terminating the requirement for a bond of caution. To complete the picture, however, it should perhaps also be noted that our understanding is that some reservations were expressed about this idea. There was some notable support for the continuation of the current approach and there were also suggestions that the current approach might be replaced with something else, rather than simply repealed. So even this issue is not one on which there is authoritative consensus about the right approach.

That said, I can confirm that we are looking at all the recommendations in the 2009 report – including recommendation 66, that an executor-dative should no longer be required to obtain caution – to assess which, if any, could be progressed separately. As part of that, one question that we need to resolve is whether, rather than dealing with recommendation 66 in

isolation, it may make sense to consider the group of recommendations under *Executors and Bonds of Caution* as a distinct package. We also need to consider whether there are other recommendations or groups of recommendations which, e.g. because of their nature and their significance, might be amenable to separate consideration. The timescale for the conclusion of this work will depend on the progress of our dialogue with stakeholders, as well as the need to take forward other projects.

To avoid potential misunderstandings, I should probably say that, even if it is concluded that it would be feasible and desirable to deconstruct the Commission's recommendations into separate packages – e.g. perhaps the administration of an estate as one, and entitlement from an estate as another – giving effect to any of those recommendations seems certain to require primary rather than secondary legislation. This is because, whereas the existing primary legislation specifically empowers Ministers to make secondary legislation as regards financial thresholds affecting prior rights and small estates (to which I made reference in my previous letter), it does not generally empower Ministers to make wider changes to the law on succession.

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

Yours sincerely

Paul Allen