

PE1442/E

3 December 2012

Ms Alison Wilson
Assistant Clerk to the Public Petitions Committee
Public Petitions Committee
The Scottish Parliament
T3.40
EDINBURGH
EH99 1SP



Your ref:
Our ref: A/5/8/14

Dear Ms Wilson

CONSIDERATION OF PETITION PE1442

Calling on the Scottish Parliament to urge the Scottish Government to amend the law to provide that a person's dead body is part of their estate and in effect clearly invokes their will.

I refer to your letter dated 2 November 2012 in connection with the above petition, seeking any views that the Scottish Law Commission has on this matter.

This Commission has not carried out any work on this matter. The Commission did consider the law relating to succession in Scotland as part of our previous Programme of Law Reform. The Commission issued a Report on the matter in April 2009. The Report is available on the Commission's website, on the following link: <http://www.scotlawcom.gov.uk/publications/reports/2000-2009/>. The Report sets out the Commission's recommendations, and attaches a draft Bill which would implement these recommendations. That particular law reform project did not however cover the particular issue of the disposal of the body of a deceased person.

I should say that the Commission has not received any representations that this particular issue be reviewed as part of our Programme of Law Reform. That may be because the Scottish Government had carried out a review of the particular issue. We understand that they have analysed the responses to the recommendations of the Review Body. We understand that the conclusion was that there is a high level of agreement that the right to instruct the disposal of bodies on death should vest in the nearest relative, following the definition of that term in the Human Tissue (Scotland) Act 2006; and that in the case of a dispute about disposal of a body, this should be resolved by way of summary application to a sheriff.

Our understanding is that the Scottish Government are taking forward recommendations from their Review Group, in one tranche at a time. There may be an intention to consider the issue raised in the petition after implementation of the Certification of Death (Scotland) Act 2011 has been completed.



In these circumstances where the Scottish Government have reviewed the issue; and consulted upon it, we do not think it would be a good use of resources to undertake work by the Commissioners to enable us to express an informed view about the issues.

I do hope that you understand that the Commission, for obvious reasons, is reluctant to express views about law reform when they have not had the time, opportunity and resources to reach an informed view.

Yours sincerely

LADY CLARK OF CALTON