



SCOTLAND OFFICE

Reforming the law on Scottish unincorporated associations and criminal liability of Scottish partnerships: the Government's response to consultation

Response to consultation carried out by the Scotland Office.

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Reforming the Law on Scottish Unincorporated Associations and Criminal Liability of Scottish Partnerships Summary of responses

Introduction and contact details

This document is the post-consultation report for the consultation paper, **Reforming the Law on Scottish Unincorporated Associations and Criminal Liability of Scottish Partnerships**.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting Sheila Scobie at the address below:

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This report is also available on the Scotland Office website.

Background

The consultation paper **Reforming the Law on Scottish Unincorporated Associations and Criminal Liability of Scottish Partnerships** was published on 17 April. It invited comments on Scottish Law Commission proposals for the 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 sought 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 was 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”) was set out in the Annex to that consultation paper along with a Table showing the principal differences.

The consultation period closed on 9 July 2012 and this report summarises the responses, including how the consultation process influenced the further development of the proposals consulted upon.

A list of respondents is at **Annex A**.

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.

Summary of responses

1. A total of 41 responses to the consultation paper were received. Of these, 18 were from those representing the interests of unincorporated associations (either UAs or umbrella bodies), 9 were from the legal profession or those with charity law expertise, 3 were from local authorities, 3 from central government bodies, 3 were from representative bodies with an interest and 5 were from individuals.
2. In summary, there was wide support for taking forward the broad principles of the Scottish Law Commission's proposals on unincorporated associations. There was majority support for a right of relief for current office-bearers, a provision to restrict vexatious requests for documentation and for measures to restrict the automatic reversion of rights and liabilities upon losing SALP status without dissolving. There were mixed views on a number of the proposals, including the opt-out principle, lack of registration, sanctions and the prosecution of dissolved SALPs and unincorporated associations that were SALPs.
3. There was also strong support for taking forward the Commission's draft Bill on Partnerships. Although responses on this part of the consultation were light, they confirmed the results of the more extensive consultation carried out by the Commission in 2011.

Responses to specific questions

Question 1

Do you support the general approach of the Commission's proposals – attribution of separate legal personality to qualifying unincorporated associations, that separate legal personality should not be dependent on any registration requirement, that unincorporated associations should be able to opt out of becoming a SALP, and that SALPs will have limited liability although 'culpable' office-bearers and members will continue to incur personal liability for their wrongful actings?

The majority of those who responded to this question supported the general approach of the Commission's proposals. **Thirty-three responses were supportive, with only one response not supportive.** This was on the grounds that there was a risk that SALPs might provide a mechanism for avoiding appropriate regulation.

For some respondents, support was conditional on the policy being amended to provide for SALP status to be 'opt in' rather than 'opt out' or dependant on sufficient notice being provided of the change to status (covered under Question 9 below).

Responses were divided on whether it was right not to require registration: with unincorporated associations or those representing them generally of the view that registration was not desirable.

26 responses suggest that there should be no registration required in gaining SALP status (79%). **7 responses suggest that registration should be a requirement in gaining SALP status (21%).**

Reasons given for and against registration

There was a view that the advantages gained by the acquisition of SALP status should be worth the administrative burden of registration which some responses considered necessary to ensure that the interests of third parties were adequately protected. Those in support of registration believe the costs involved in setting up a registration scheme to be relative small: existing registers could be used.

There was concern that the protection for third parties through clause 4 duties may not achieve its purpose in some circumstances. Uncertainty as to the timing when separate legal personality was achieved or lost could lead to unhelpful disputes and frustrated legitimate claims by third parties. The increased legal certainty offered by registration would benefit UAs who would not face the prospect of future legal costs in a dispute about their status.

There was concern that the legal issues surrounding UAs moving in or out of legal personality required careful consideration. Those dealing with UAs (or SALPs) would need to know whether or not these organisations had legal personality: including, in relation to granting leases.

Those against registration considered that SALPs should not be placed under the burden of additional bureaucracy which might prove a deterrent to their remaining SALPs. The proposals are aimed at providing limited liability to very small voluntary organisations who may struggle with new and costly registration requirements.

Government's response

The issues raised by consultees require further consideration to ensure that there are no unintended consequences that would seriously and adversely affect the interests of either UAs or third parties dealing with them. The Government and the Scottish Law Commission will take this forward together.

Question 2

(a) What is your view on the risk of the availability of SALPs creating an incentive to avoid incorporation? Is there a case for limiting SALPs by size? If so, what should the threshold be?

(b) Is there any case for requiring SALPs of a certain size to register – if so, which register would be appropriate or would a new register be needed, what would the criteria for registration be, and what would be the sanction for not registering?

The majority opinion is that there is not a case for limiting SALPs by size. Many respondents suggest that the **imposition of a threshold would be overly complicated**. There was a view that most companies will wish to remain incorporated because of the benefits of doing so (international recognition, established case law).

Of those who answered question 2(a) (21 responses), **a majority of 15 respondents (71%)** advocated that there should be **no limit on size for an SALP**. Reasons given for this were:

- Introduction of a threshold could result in inadvertent non-compliance with the law. It would be challenging for qualifying unincorporated associations to know when they had exceeded a threshold and if the threshold was open to interpretation. Thresholds would require more sophisticated accounting and reporting arrangements and a better knowledge of the law than associations typically have.
- The benefits of a straightforward system of attribution of legal personality for the core constituency of small, non-profit, non-charity groups is worth the risks of perhaps creating a disincentive to incorporation.
- Many respondents commented on the fact that it would be difficult to identify an appropriate threshold and that it would be costly and time-consuming to measure whether the threshold had been reached.
- Some organisations near the threshold could move between unincorporated and SALP status repeatedly. One example given was if the limit was £50,000 and a small charity is left with £450,000 in a will, where does that SALP stand?

Six respondents consider that there is a case for limiting SALPs by size. One consultee argued that a financial threshold would be appropriate to ensure that only small organisations are caught: though this was contingent on extending SALP status to small clubs that are unincorporated but are profit-making (such as golf clubs).

Suggestions as to what the threshold should be if there was to be a size limit on which organisations could become SALPs are:

- limited to any organisations with an annual turnover of under £50,000/per annum plus that value of assets. The measurements could be taken over three years to avoid sudden peaks and troughs.
- A definition similar to that of SMEs as provided by the European Commission and the Companies Act 2006, based on the number of employees and the turnover of the association.

Most respondents (86%) who addressed **question 2(b)** suggest that it would **be undesirable to have a threshold above which SALPs** needed to register as SALPs. However, there were 21 respondents who declined to answer the question. In some cases there were some who advocated that there should be registration for all SALPs regardless of size (see question 1 above) and that it would cause less confusion to impose a registration requirement on all SALPs rather than just some.

With regards to the respondents who advocated a threshold, suggestions as to what that threshold should be were : if the SALP owns heritable property or has a turnover in excess of £100,000 (an alternative suggestion was £250,000).

Government's response

The Government accepts that there would be considerable difficulties with introducing a threshold, given the current 'opt out' model. The matter will be considered further in conjunction with the issue of registration.

Question 3

Should there be any sanction, criminal or otherwise, where an association wrongly holds itself out as a SALP? If yes, what penalty would be appropriate?

15 (58%) respondents who answered this question considered that there **should be sanctions** in place for wrongly holding out as an SALP.

Of these, 3 respondents thought there should be some sort of **financial sanction** and 7 that there should be **concurrent liability on office-bearers** as a penalty for wrongly holding out as an SALP.

The reason for preferring that the office bearers have concurrent personal liability as a penalty was that any form of criminal sanction is seen as being unnecessarily harsh bearing in mind that it will be mostly simply an error on behalf of an organisation in mistakenly believing it is an SALP.

Most agreed that there should be no penalty for mistakenly holding out as an SALP through simple error and ignorance of status. Some comments referred to the fact that sanctions are already in place in general for fraud if an unincorporated association presents itself as an SALP. Thus additional criminal sanctions were unnecessary.

Some respondents make the point that if there is no register for SALPs then it will be difficult to establish whether an organisation is a SALP or not. Registration would prevent any dubiety as to their status.

Government's response

The Government will consider, with the Scottish Law Commission, how far existing sanctions might capture SALPs and what sort of sanction might therefore be appropriate (if any), including where the SALP has been in error or through ignorance of status.

Question 4

Should current office-bearers and managers have a right of relief against those in post at the time of a breach of the clause 4 duty? Or should this be left to the constitution?

The vast majority of respondents to this question stated that they agreed that current office bearers and managers **should have a right of relief** against those in post at the time of a breach of the clause 4 duty – 23 respondents (85%).

Only one respondent disagreed with this. This appears to be due to concerns they have with clause 4 in general and the possibility that those involved with SALPs will find themselves inadvertently in breach, due to lack of information.

Three respondents considered that the decision to have a right of relief should be left up to the constitution and 1 respondent suggested that this should be a contractual not regulatory matter.

There were various respondents, both those representing UAs and the legal profession, who are concerned about clause 4 of the draft Bill.

The concern is that it is unrealistic to expect that office-bearers and managers of UAs will have sufficient awareness of their clause 4 obligations and will find themselves inadvertently in breach, thereby incurring concurrent personal liability. This sanction is considered by some to be more damaging than incurring a fine by way of criminal sanction. It is suggested that a small-scale criminal offence (such as breach of clause 4 duties) would be unlikely to be prosecuted and so third parties would think twice about taking action; whereas a sanction of losing limited liability is more likely to be effective in securing compliance as it could be more expensive and personally damaging.

It is considered that this is particularly burdensome a sanction for persons who voluntarily undertake a management role within an association, particularly in the context of an 'opt out' model. One suggestion is that third party interests could be adequately catered for by drawing on the Commission's proposals in its review of trust law for the treatment of the liability of trustees to third parties.

Government's response

The Government notes the support for a right of relief and the strongly expressed concerns of consultees about the sanction that is to apply to breach of clause 4 obligations. With the Scottish Law Commission, we will consider these points further.

Question 5

Should the Bill include provision that will avoid multiple or vexatious requests for a SALP's documentation? Should a reasonable interval between requests be specified?

There was unanimous agreement that there should be a period of reasonable interval between requests for SALP documentation. Suggestions as to how long this interval should be were varied. Some people agreed that 28 days (the suggestion in the consultation document) was a reasonable amount of time between any two requests for documentation. There were some concerned that an interval of 28 days is actually too short and that there were some small organisations who only met quarterly. Other suggestions for intervals included 3 months, 6 months and 56 days.

Some people suggested that there should be an undefined interval of time between requests and that a vexatious request should be defined by the organisation itself.

A few consultees were concerned about the likelihood that having to provide names of office bearers would lead to issues about security. This was with reference to shooting clubs and rifle clubs and a concern that availability of office bearers names could encourage criminal activity with unforeseen and tragic outcomes.

If organisations were to put this documentation on a website or put in a public place then the occurrence of these vexatious requests would be rare. **Many respondents considered that putting documentation up online was a good way of deterring these types of requests.**

Additionally there were those who suggested that if registration were a requirement of becoming a SALP then this would negate the need for having to provide documentation as it would be provided when registering.

Government's response

The Government notes the support for a 'reasonable interval' between requests for SALP documentation and will consider further the appropriate interval. We suggest that the decision on whether to deter multiple requests through use of online documentation is for the SALP to consider but certainly agree that this seems a sensible option for those SALPs with the opportunity to do so.

We note the concerns expressed about security and would clearly want to avoid any consequences that would put the public at risk. These comments were made in context of shooting clubs. However, points about security and anonymity of individual office bearers may have relevance to other types of club also. These considerations also have to be balanced with rights of persons dealing with them and scope to 'opt out' should those involved with such clubs consider that anonymity is more important than limited liability. We

are grateful these points have been raised and will consider them further along with the Scottish Law Commission.

Question 6

(a) Is it necessary or desirable to restrict the automatic reversion of rights and liabilities upon losing SALP status without dissolving, so as to prevent inadvertent loss of assets or a breach of contractual terms or statutory licences? If so, on what basis should that be done?

(b) Is it necessary to provide that a planned loss of SALP status cannot be proceeded with unless efforts have been made to transfer assets and liabilities to the office-bearers, etc. or the membership have been made aware of the consequences of not doing so?

Most respondents who addressed these questions **are in favour** of both proposals.

16 out of 24 respondents thought that there should be measures in place to restrict the automatic reversion of rights and liabilities upon losing SALP status without dissolving (Q6a). Views were mixed on the method by which this should be achieved with slightly more respondents voicing that they would be in favour of the method whereby loss of SALP status has no effect if it is regained within a certain period.

There were 7 respondents who considered it unnecessary that there should be provision made in the bill to restrict any reversion of rights and liabilities upon losing SALP status. Reasons for this included:

- Having automatic reversion of rights back to office-bearers after loss of SALP status would provide certainty to any third party where it may not be clear if the association had lost its SALP status intentionally or inadvertently.
- Measures to restrict reversion of rights for a period of time would be unnecessary if there was sufficient awareness raised concerning the responsibilities of SALPs outlining their guidelines and eligibility of status.
- Additionally some respondents posited that it would be unnecessary as inadvertently losing SALP status through failure to adhere to criteria such as having an official address in Scotland and management ceasing to be wholly or mainly carried on in Scotland, would be very rare.)

A clear **majority (18 out of 24 responses)** favour the option whereby it is **necessary to provide that a planned loss of SALP status cannot be proceeded with unless efforts have been made to transfer assets and liabilities to the office bearers**. Additionally most respondents were supportive of measures to ensure that members were also made aware of the consequences of the intention to lose SALP status.

Those who did not agree, did so because:

- This sort of transaction should be covered by the SALP's constitution.

- Requirement to “make efforts” is meaningless because those efforts might come to nothing.
- It is more straightforward and less burdensome to allow the legislation to regulate what should happen rather than require the officebearers to effect the transfer of assets and liabilities.

Government’s response

The Government notes the support for these proposals.

Question 7

(a) Should provision be made in the proposed Bill to enable the prosecution of dissolved SALPs?

(b) If yes, against whom should fines resulting from the prosecution be enforceable?

(c) Are there any alternatives, such as making an application to court to enable a prosecution to proceed?

Consultees were split on this proposal with 11 against provisions to enable the prosecution of dissolved SALPs and 10 for provisions. 20 respondents did not address this question.

Those who argue that there **should be provisions** available to enable the prosecution of dissolved SALPs put forward the following points:

- It would be wrong for a body to evade prosecution by dissolution.
- If provision is thought necessary for partnerships and legislated for, the same should be done for SALPs.
- Although culpable office bearers should also be held responsible, this might not be possible in all circumstances.

Those who argued that there **should be no provisions** to enable the prosecution of dissolved SALPs put forward the following points:

- There would be difficulty as to who should be made to pay the fine.
- In the event of a dissolved SALP being prosecuted almost inevitably there will be no assets from which to recover any fine. So no practical utility in the prosecution of the dissolved SALP unless provision is made for recovery of the fine from the office bearers in place at the time of the dissolution.
- It should be culpable individuals only who can be prosecuted.
- Unnecessary to have a SALP prosecuted separately as rights and obligations would pass onto office-bearers regardless.
- It is unfair that in the case of SALPs which are charities that beneficiaries should be 'robbed' if fines should be taken from assets.
- making individual office bearers liable to pay fines after dissolution goes against the principle of limited liability while the SALP is still in existence.

In relation to who should be responsible for fines resulting from prosecution (Q7b), there were a variety of answers. 7 respondents advocate that fines should be taken from culpable office bearers, 3 respondents advocate that fines should be taken from SALP assets and 1 respondent advocated that office-bearers should be jointly and severally liable.

1 respondent put forward the alternative suggestion that the dissolution of an SALP could be suspended for a period of two years for the purpose of potential criminal liability.

Government's response

The Government notes the arguments for and against being able to prosecute a SALP that has dissolved and, with the Scottish Law Commission, will consider this matter further.

Question 8

(a) Do you consider that it should be possible to prosecute unincorporated associations which have lost SALP status for common law crimes committed by it when it was a SALP?

(b) If so, do you consider that any fines arising out of that prosecution should be enforceable against office bearers, managers or members, and what should the extent of their liability be?

Of the 17 responses to this question, around half were in favour of being able to prosecute unincorporated associations which had lost SALP status for common law crimes committed by it when it was a SALP. Reasons for supporting this proposal were:

- Consistency with Bill's provisions in respect of civil liabilities (clause 11)
- To ensure prosecution can be enabled in circumstances where the offence is clearly a 'corporate' rather than personal offence. (It should be noted that some respondents did not accept the need for such a major shift in law relating to criminal offences – see below)
- The need to avoid SALPs wilfully changing their status to avoid prosecution
- That there should be no material difference between a SALP and UA (it is likely that respondents assumed that the circumstances that would apply to SALPs and UAs in handling such cases would be identical).

Those opposing the proposal point to the significance of a radical change to the principle of criminal law in Scotland that a common law crime cannot be committed unless the accused can be proven to have the appropriate *mens rea*. It is suggested that insufficient justification has been given for moving away from current practice that sees those personally liable being prosecuted.

A further view is that the courts already have the authority to investigate who should be held personally responsible for a common law crime. In relation to this, it is suggested that, whilst it is right that the culpable persons are prosecuted, it should be possible for the UAs assets to be accessed to meet the penalty for such crimes.

A couple of respondents proposed alternative remedies for circumstances where the SALP may have engineered a loss of SALP status to evade prosecution by providing either for a) an offence of "attempt to defeat the ends of justice" or b) a criteria of wilful default/negligence on the part of an individual to make it possible to pursue them instead of the defunct SALP.

Respondents were broadly in agreement that where officebearers, managers or members were personally at fault in their capacity as officebearers, etc. the

finances should be payable by them. However, it was considered appropriate that the assets of the former SALP should be able to be drawn upon in circumstances where it was clearly a 'corporate' crime. Fines imposed upon the UA should not be enforceable against office-bearers, managers or members on the basis that at the time of the crime committed by the SALPs these individuals would have had the protection of limited liability.

There was also a view that the constitution could be used to establish whether fines should be enforceable against office-bearers, etc..

Government's response

The Government notes the arguments for and against this proposal and accepts that it is a finely weighted case. However, we consider it is important to ensure that no unintended loophole is created by providing SALP status to UAs that may lead to evasion of prosecution akin to the Balmer case. We will consider the matter further, in conjunction with the Scottish Law Commission.

Question 9

What length of time is needed for associations to prepare themselves to become SALPs?

25 consultees addressed this question and reflected a range of views on how long would be needed for associations to prepare themselves – from 3 months to 2 years, with the majority favouring 1 year. Key points raised were:

- At least one year should be allowed so that the matter can be considered at the associations' AGMs.
- UAs need the protection of limited liability immediately and, given that most associations already meet the conditions required for SALP status, there doesn't need to be any preparatory period.
- Many organisations will be completely unaware of the change and it would be unreasonable to expect them to become compliant immediately. There is a need for an education/information programme to assist with this.

For those favouring registration, it was proposed SALP status could be assumed immediately following registration.

One respondent suggested that there could be immediate attribution of SALP status but then a 5 year 'bedding in' period.

Government's response

Clearly, there is a balance to be struck between providing the protection of limited liability as quickly as possible so UAs can benefit against ensuring UAs are well-informed of their responsibilities and thus do not inadvertently breach the obligations the Bill imposes on them.

The Government will consider the matter further, but is inclined to consider that a 1 year period is a sensible period of time to ensure appropriate awareness-raising.

Question 10

Does the draft Impact Assessment adequately capture the costs and benefits of the proposals? If not, can you provide information from which a better assessment can be made?

Are there any costs or benefits that have been overlooked?

This question received a limited response with only 11 consultees able to comment. In general, those who did respond considered that the benefits of the proposals clearly outweighed the costs. Additional points made:

There needed to be acknowledgement of the costs that umbrella groups and others who support UAs would incur in providing support and information.

There was concern that the IA did not acknowledge the fact that UAs were run voluntarily and that the non-monetised costs of volunteers time were not reflected.

The costs assumed in the IA for preparing a constitution were understated: if assisted by a lawyer, the amount was likely to be around £2-3K. Other respondents considered that the costs incurred would be minimal because most associations would already have a compliant constitution.

Those who supported registration pointed out the resource implications for regulators.

Government's response

The Government is grateful for the useful input from consultees to this question which will help the refinement of the Impact Assessment assumptions/costs.

Question 11

Are there any other issues arising from the proposals we should be aware of?

Respondents raised a number of points in response to this question, which included drafting suggestions and a number of legal and policy points which will be considered further in finalising the Bill. A general view was that wider consideration should be given to the interaction of the proposals with employment-related issues (including pensions, TUPE), banking and financial arrangements, tax and insurance. Consideration should also be given to other regulatory regimes under which UAs may currently be administered, such as the Care Inspectorate and charity law. A view was also expressed that the benefits of SALPs should be UK wide.

Government's response

The Government is grateful for the useful input from consultees to this question which will assist with our further consideration of the Scottish Law Commission proposals.

Question 12

Are you supportive of the Commission’s proposals on criminal liability of partnerships as set out in the draft Bill?

No response expressed opposition to the generality of the proposals. Of those who responded to this question, 11 consultees were wholly supportive of the Commission’s proposals while 1 expressed some concern in relation to specific provisions in the Bill.

Consultees made the following comments:

- that partners assumed into changed membership partnerships since the commission of the offence should not be held personally liable for the criminal offending of the original partnership or be liable to have fines imposed in respect of criminal offences by the original partnership recoverable from their personal assets;
- It was suggested that the reference to an “enactment” making it possible to prosecute individuals should instead be to “an enactment or rule of law” since we might otherwise be taken to be excluding art and part liability at common law;
- a concern was expressed that the draft Bill seeks to make evidence of the commission of criminal offences by the partnership (a separate legal persona) admissible evidence against an individual partner in a way which seemed to that consultee to be contrary to the guidance provided by the court in *Transco* in which criticism of the “aggregation” or “accumulation” approach to proof of a charge is expressed. It was suggested that that partnership law should be placed on solid footing;
- Suggest a rule that partnership not only continues but remains same legal person unless and until formal dissolution (to remove uncertainty of when a change would have the effect of resulting in a new partnership ref clauses 16(3) and 17);

Government’s response

The Government notes and welcomes the very broad support for the Commission’s proposals and is grateful for the useful input from consultees to this question which has assisted in finalising the Partnerships (Prosecution)(Scotland) Bill.

In relation to the concern expressed about imposition of personal criminal liability in the change of membership scenario, the Government notes that there is no provision in the draft Bill which would render it competent to prosecute individuals who were not members of the partnership at the time of the offence. The Government agrees that it would be wrong in principle to impose criminal liability on anyone other than the offender.

The Bill does, however, provide for the prosecution of the partnership as it exists at the time when the prosecution is brought. The general law is that a fine imposed upon a partnership may be enforced as if it were an extract registered decree for payment of a debt by the firm. This means it may be enforced against the assets of any partner at the time that the fine is imposed, with that partner having a right of relief against his or her fellow partners. In this context, the potential liability of a partner to pay a fine is just like any other civil liability and it is open to joining partners to seek indemnities from former partners with regard to liabilities incurred prior to joining the partnership. In practice, where the partnership has not been dissolved, any fine will simply be paid from the assets of the partnership, in the same way that a debt might be.

On the proposal that evidence of the commission of criminal offences by the partnership be admissible evidence against an individual partner, it was suggested by one consultee that this might be contrary to the guidance provided by the High Court in *Transco*. The Government notes, however, that this proposal is not directed at securing the aggregation of mens rea which was at issue in *Transco*. Rather, the proposal is that it should not be necessary to prosecute the partnership (dissolved or otherwise) in order to prosecute a culpable individual. In such a circumstance (as with similar existing statutory provisions such as sections 36 or 37 of the Health and Safety at Work etc Act 1974), it would not be possible to pursue a prosecution of the individual without being able to prove, as a matter of fact in the course of that prosecution, that the partnership committed the offence.

Conclusion and next steps

1. The Government intends introducing shortly a Bill to take forward the Scottish Law Commission proposals on criminal liability of partnerships.
2. There is wide support for taking forward the broad principles of the Scottish Law Commission's proposals on unincorporated associations and the Government is committed to taking them forward in a Bill in due course. However, the consultation has very helpfully established that the current proposals require further work to ensure that we avoid any unintended consequences that could damage either the interests of third parties or unincorporated associations (as SALPs). A number of matters relating to how the proposals interact with wider employment, tax and regulatory policies have also been raised with us and these require more detailed consideration which it is important to take time over. The Commission agrees that this additional work is necessary before legislation can be brought forward.
3. The intention is to proceed with this work, as time allows, with the aim of bringing forward a Bill for a future session of the UK Parliament.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Association of Accounting Technicians

Charity Law Research, Dundee University

Crown Office and Procurator Fiscal Service

DLA Piper (for the Scottish Golf Union)

East Ayrshire Council

Faculty of Advocates

Forth Cruising Club

GCMA Scotland

Grove Park Feuars Association

Hodge Solicitors

ICAS

Individual

Individual

Individual

Individual

Individual

Individual (ex-Sheriff)

Judges of the Court of Session

Keeper of the Registers of Scotland

Land Registry

Law Society of Scotland

Lochaber Yacht Club

Midlothian Voluntary Action

Morton Fraser

North Lanarkshire Council

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Royal Northern Yacht Club

Royal Scottish Motor Yacht Club

Royal Yachting Association (RYA)

RYA (West Scotland)

Scottish Council for Voluntary Organisations

Scottish Engineering

Scottish Episcopal Church

Scottish Grant Makers

Scottish Parent Teaching Council

Scottish Sports Association

Scottish Target Shooting

The Charity Law Association

Toward Sailing Club

Turcan Connell

Voluntary Arts Scotland

West Lothian Council

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