

Scottish Target Shooting

A Federation representing: Scottish Clay Target Association, Scottish Pistol Association,
Scottish Rifle Association, Scottish Small Bore Rifle Association

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28 June 2012

Law Reform Consultation
Room 8/2
Scotland Office
Dover House
London SW1A 2AU

Dear Sir / Madam

Response to Proposals to Reform the Law on Scottish Unincorporated Associations and Criminal Liability of Scottish Partnerships

This letter is issued by the Scottish Target Shooting Federation, known as “Scottish Target Shooting” or “STS”, in response to the Scotland Office’s consultation entitled “Reforming the Law on Scottish Unincorporated Associations and Criminal Liability of Scottish Partnerships”.

By way of background, STS is the overall voice for target shooting in Scotland. STS comprises the four Scottish National Governing Bodies (NGBs) for target shooting, namely the Scottish Clay Target Association, the Scottish Pistol Association, the Scottish Rifle Association and the Scottish Smallbore Rifle Association. Each of the four NGBs runs its own affairs, but STS is the central link between the NGBs on matters which affect all of the shooting bodies and bodies such as **sportscotland**, the Commonwealth Games Council for Scotland, local authorities and government agencies, as well as UK national shooting bodies such as British Shooting, the British International Clay Target Shooting Federation, the Muzzle Loaders Association of Great Britain, the National Rifle Association and the National Smallbore Rifle Association. STS is responsible for the selection of teams to compete at the Commonwealth Championships, together with the nomination of athletes for participation in the Commonwealth Youth Games and the Commonwealth Games.

STS’s responses to the Scotland Office’s consultation are set out below.

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 Scottish association with legal personality (“**SALP**”), and
- that SALPs will have limited liability although “culpable” office bearers and members will continue to incur personal liability for their wrongful actings?

STS’s response:

Yes, STS are strongly supportive of the general approach of the Commission’s proposals, subject to STS’s comments in this letter.

Question 2/

Question 2



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- (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?

STS's response:

STS do not consider that the availability of SALPs will give rise to any significant incentive to avoid incorporation.

STS do not consider that there is a case for limiting SALPs by size.

- (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?

STS's response:

No - STS do not consider there is a case for requiring SALPs of a certain size to register.

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?

STS's response:

No - STS consider this would be inappropriate in relation to SALPs.

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?

STS's response:

Yes, in principle the STS agree that there should be a right of relief, and that this should not be left to the SALP's constitution - but NB please see our comments below in relation to clause 4 of the draft Bill, which we consider problematic for a number of reasons.

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?

STS's response:

Yes, to both parts to the question - but NB please see our comments immediately below.

STS/



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STS consider that a SALP should specifically not be obliged to make any information available to any person (including the information referred to in clause 4(3) of the draft Bill) except where that person has good reason to require that information. STS consider that the proposals for clause 4 have lost sight of the fact that many SALPs are (quite rightly and properly) private organisations, so the imposition of a requirement to comply with what is tantamount to a “freedom of information” request from a third party is wholly inappropriate.

STS wish to emphasise that where a third party genuinely has “good reason” to request this information, there should be no objection to its disclosure. Examples of a good reason would include (i) where a third party intends to enter into a contract with a SALP and wishes to clarify that the SALP does indeed exist, or (ii) where a third party wishes to raise legal proceedings against a SALP for negligence or breach of contract, in which case it would obviously not be appropriate for the SALP to evade legal proceedings by declining to provide basic information such as an address at which court documents could be served. It may also be that a SALP has obligations under separate legislation to disclose certain information (e.g. in relation to charitable status?) and in principle STS do not object to that.

STS are however strongly opposed to a general obligation on SALPs to disclose information on office bearers, because such disclosure would constitute an unnecessary risk to the personal security of office bearers of the SALP and their families.

For example, if an individual is an office bearer in a target shooting club, there is a very strong possibility that the individual is a shooter, and therefore stores firearms at their home address and/or has access to a club’s firearms. It would therefore be possible for criminals (i) to seek the names of a club’s office bearers (with the SALP being powerless to refuse under the draft Bill as presently drafted), (ii) to locate the office bearers’ home addresses e.g. by checking the voters’ roll and (iii) to burgle or rob the premises concerned (or worse).

STS’s view is that a SALP should be able to exercise its judgement as to whether or not a person has good reason to know anything about the SALP. If that person does not have a good reason to receive the information referred to in the draft Bill, then the SALP should be entitled to refuse to provide it.

Whilst the personal security of individuals arising from their use or ownership of firearms might be viewed as a specific issue for STS and its affiliated bodies, STS also wish to point out that there may be other clubs and associations which would properly have grounds for concern about general disclosure of information. This might apply where the activities of those clubs and associations might, whilst being legitimate, be controversial, e.g. in relation to political or religious matters.

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?

STS’s response: /



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STS's response:

Yes - STS consider it would be desirable to restrict the automatic reversion of rights and liabilities upon losing SALP status without dissolving. STS consider that both alternatives suggested in the consultation paper should be employed, i.e. (i) loss of SALP status should have no effect if it is regained within a certain period (which STS consider should be at least a year, e.g. to allow any problems with the association's constitution to be dealt with at the association's next Annual General Meeting), and (ii) there should be no loss of SALP status merely because the SALP ceases to have its official address in Scotland and/or ceases to be managed wholly or mainly in Scotland (which could easily happen if some of the key office bearers were to spend time working outside Scotland).

- (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?

STS's response:

STS consider this is probably unnecessary and could perhaps be left to the SALP's constitution. If this becomes an issue in practice, amending legislation could be considered at a later date.

Question 7

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

STS's response:

No, for the reasons set out in paragraph 55 of the consultation paper.

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

STS's response:

(Not applicable – STS do not consider it should be possible to prosecute dissolved SALPs.)

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

STS's response:

(Not applicable – STS do not consider it should be possible to prosecute dissolved SALPs.)

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?

STS's response:

No, for the reasons referred to in paragraphs 61, 62 and 64 of the consultation paper.

- (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?

STS's response:/



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STS's response: /

(Not applicable – STS consider it should not be possible to prosecute an unincorporated association which has lost SALP status for common law crimes committed by it when it was a SALP.)

Question 9

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

STS's response:

It is not clear why there is any need for associations and clubs to prepare, if the intention is to make separate legal personality automatic as section 1 of proposed Act does. Small voluntary clubs and associations need protection. Many will have valid constitutive documents which meet the terms of the Act and so will be protected from the date the Act comes into force. Those who do not, will no doubt be alerted by publicity as to the steps to take and once taken, they will have protection. There does not seem to STS to be any need for any time limit."

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?

STS's response:

No – please see our response to Question 11 below. Certain elements of clause 4 of the draft Bill would place a huge and unnecessary burden of red tape on SALPs.

Question 11

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

STS's response:

Yes. Whilst STS are comfortable with the qualifying criteria set out in clause 1(2) of the draft Bill, STS are concerned about the breadth of clause 4 of the draft Bill, which STS consider would place an undue and entirely unnecessary administrative burden on SALPs, as follows:

- (a) ***Clause 4 requires a SALP to set out its name and official address on any document sent or published by it or on its behalf, including documents that are sent or published electronically. In STS's view, this is entirely inappropriate for organisations which - in contrast to a company or limited partnership - are very informal. As drafted, clause 4 would require (for example) every email exchanged between the committee members of a club to bear the name and official address of the club. This is quite unrealistic, since such email exchanges would probably be very informal in nature, and the senders and recipients of such correspondence would know the identify of the SALP anyway. It is also unclear what benefits would actually be gained by doing this. If the desire is that (for example) a third party contracting with the SALP should be able to ascertain that the SALP exists, along with the SALP's official address for notices, then this could be achieved instead by the disclosure referred to in clause 4(4) - on which we have commented separately above, and to which STS would have no objection if a disclosure is requested for a good reason.***



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(b)/

(b) STS are also concerned about the drafting of clause 4(7) of the draft Bill. Clause 4(7) states that if an office bearer fails to ensure compliance with any aspect of section 4, then the office bearer is liable concurrently with the SALP for any obligation undertaken in the course of the SALP's activities while the failure subsisted. This raises a number of issues, such as:

- If the SALP enters into a contract with Party Number 1, and during the course of that contract the SALP fails to properly respond to a request for information from Party Number 2, why should the office bearer become concurrently liable to Party Number 1 merely because of a shortcoming in the SALP's dealings with Party Number 2?
- As noted above, STS are concerned about the highly prescriptive requirement that every document issued by or on behalf of a SALP must state the SALP's name and official address. If the SALP failed to comply with that requirement (which STS consider should be omitted from the legislation), what is the meaning of the phrase "while the failure subsisted"? (Please see the last line of clause 4(7).) How long does a failure "subsist" where an email or letter is sent without the SALP's name and official address, and that email or letter is never withdrawn or corrected? Does the failure subsist forever?
- The potential consequences for individual office bearers of clause 4(7) are also potentially draconian, for what are essentially minor administrative matters. For example, if a club secretary failed to keep a copy of the constitution at the SALP's official address but instead kept it at his or her workplace, or took it elsewhere to consider possible amendments to the wording, why should the club secretary or indeed any other office bearer become personally liable on a contract entered into by the SALP, merely because there was a technical breach of the requirement to keep a copy of the club's constitution at the official address?
- In our view, clause 4 needs to be comprehensively reconsidered and redrafted, for the reasons given in this letter.

Separately:

- In clause 3(5) of the draft Bill, should "proposition" read "principle"?
- Does clause 5 of the draft Bill confer a statutory right on members of a SALP to transfer a right in property to the SALP, irrespective of the position under the relevant deeds? For example, clauses 6(1)(b) and (c) envisage that the property rights that could be transferred would include a lease or an assignation of a lease in favour of the SALP. Does clause 5 entitle the members to assign the association's interest as tenant under a lease to the SALP, notwithstanding a contractual prohibition on assignation of the lease? Either way, this should be made clear.
- In clause 12 of the draft Bill, it is stated that the "official address" is the address in Scotland at which service of any document relating in any way to the SALP will be effective. As noted above in our response to Question 5, STS have concerns about disclosing details of individuals to third parties, for reasons of personal security and public safety. Given that in most cases, a target shooting club's official address would be the home of one of the office bearers, the disclosure of the official address is potentially problematic. It seems to STS that what is most important here is that a third party should not be genuinely disadvantaged by not knowing the SALP's address, e.g. where the third party wishes to enter into a contract with the SALP or to raise proceedings against the SALP (for example because of a contractual or delictual claim). In such circumstances, STS wonder if the requirement for an official address could be satisfied by having an address for service of legal documentation and/or for land registration purposes. This could be achieved e.g. by giving the address of the SALP as "care of" a national sporting body, or perhaps a firm of solicitors or accountants. The national sporting/



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sporting body or solicitors / accountants would then be able to accept service of essential notices. STS consider this would be workable, provided that the official address could be re-defined so that it would be valid for legal notices, though not necessarily for each and every item of correspondence (since the national sporting body or firm of solicitors / accountants would not be the party best placed to deal e.g. with membership enquiries or minor items of day-to-day correspondence).

Question 12

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

STS's response:

STS make no submission in response to this question.

Yours faithfully

Mike Barlow
Honorary Secretary

For and on behalf of Scottish Target Shooting



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