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Progress on implementation of the Scottish Law Commission reports in reserved areas of Scots law

Firstly, I would like to take this opportunity to introduce myself, as I have recently taken over from Lord McNally as Minister responsible for law reform and the Law Commission. I look forward to continuing a positive and constructive relationship between our organisations.

The work of the Law Commissions in improving, simplifying and updating the law is highly regarded by the Government. The development of better law is one of this Department's main concerns and the Commissions have a great deal of experience and expertise to contribute.

I am writing to update you on progress made by the Government in implementing the recommendations of the Scottish Law Commission (in partnership with the Law Commission for England and Wales, or otherwise) pertaining to reserved areas of Scots law, in fulfilment of both my predecessor and Lord Drummond Young's agreement last year to do so. I apologise for the significant delay in this update but hope you will find the information helpful nonetheless.

Good progress has been made across a number of areas and I am pleased to outline developments as follows:

Partnership Law (2003)

This report was a joint Law Commission and Scottish Law Commission report on the law relating to partnerships, including the law specifically relating to limited partnerships. The report recommended the weaving together of the law on general and limited partnerships, with changes to general partnership law and to the law specifically relating to limited partnerships. Under the current law a partnership in England and Wales is not a legal entity separate from its members. There is therefore no separate legal person that can enter contracts and hold property; and a

partnership is automatically dissolved on any change of partner (although the remaining partners can agree to continue in partnership).

Reforms were recommended to the law specifically relating to limited partnerships, which are widely used for venture capital funds. A general partner manages the business, while the limited partner is not involved in management and has limited liability. The recommendations clarify and modernise the law on limited partnerships, which has been little changed since its introduction in 1907.

In 2006, the then Government announced after consultation that it would not implement the Law Commission's recommendations in relation to general partnerships, but that it did intend (broadly speaking) to implement those specifically relating to limited partnerships. The Legislative Reform (Limited Partnerships) Order 2009, which implements two of those recommendations, came into force on 1 October 2009. The Government plans to address the remaining recommendations as and when resources and priorities allow.

Unfair Terms in Contracts (2005)

This report attempts to clarify two pieces of UK legislation on unfair contract terms which are confusing and contain inconsistent and overlapping provisions. The Department of Business, Innovation and Skills (BIS), who are leading on the implementation of this report, has asked the Law Commission to review this report in order for recommendations to be taken forward as part of their consumer law reform programme, which will create a Consumer Bill of Rights.

The Law Commission published an issues paper for consultation, which closed on 25 October 2012. Through the issues paper, the Law Commission made some new recommendations on how the price and main subject matter exemptions under the Unfair Terms in Consumer Contracts Regulations should be interpreted, and reviewed the recommendations in the original 2005 report. The final report will be presented to BIS in early 2013.

Consumer Remedies for Faulty Goods (2009)

This report proposes to clarify the remedies available to consumers who purchase goods which "do not conform to the contract" by setting a normal 30 day period within which consumers may obtain a full refund. This is a relatively complex area of law; presently, UK consumers have a right to a full refund, provided they act within a "reasonable time". However, how long the right to reject lasts is unclear and this report aims to clarify this anomaly. Other recommendations in the report are a number of amendments to clarify when a consumer may pursue a refund outside the 30 day refund period, what proportion of the original cost should be reimbursed and with whom the burden of proof should lie with.

The report is also being considered in the context of the forthcoming Consumer Bill of Rights and the Government is considering which of the Law Commissions' proposals could be included in the Bill. BIS has recently carried out a public consultation that closed on 5 October and will develop the final policy after considering responses received.

Consumer Insurance Law, Pre-contract Disclosure and Misrepresentation (2009)

This joint report by both Law Commissions addresses the issue of what a consumer must tell an insurer before taking out insurance. The Government accepted the recommendations of the report and introduced the associated Consumer Insurance (Disclosure and Representations) Bill in November 2011. The Bill gained Royal Assent in March 2012 and its provisions are due to be commenced from 6 April 2013.

Unincorporated Associations (2009)

This report aims to attribute legal personality to associations where they meet certain statutory criteria and through this provide limited liability so that members are not held personally liable for actions for which they are not individually responsible. The Scottish Law Commission's proposals consulted upon this year on unincorporated associations indicated that there was a strong support for the broad thrust of measures. It helped establish that the current proposals require further detailed work to ensure that it avoided any unintended consequences that could damage either the interests of third parties or unincorporated associations such as Scottish Associations with Legal Personalities. I understand that the Scottish Law Commission agrees that this additional work is necessary before legislation can be brought forward. The intention is to proceed with this work as time allows, with the aim of bringing forward a Bill for a future session in the UK Parliament.

Criminal liability of partnerships

This was a short-term project on an issue of partnership law that was not considered in the 2003 report; the criminal liability of partnerships and, in particular, preventing the avoidance of such liability.

Following recommendations made in December 2011 by the Scottish Law Commission, the Scotland Office is working to introduce the Partnerships (Prosecutions) (Scotland) Bill. The principle intention of this reform is to address the loophole in Scots Law that allows partnership to escape prosecutions for potentially serious offences by dissolving.

Statute Law Repeals (2012)

This report identified whole Acts, covering a wide range of both devolved and reserved matters that are either obsolete or no longer of any practical use. The report now forms the basis of the nineteenth Statute Law Repeals Bill, which was successfully published in draft in April 2012 following extensive consultation and has now been introduced into Parliament.

Consumer Redress for Misleading and Aggressive Practices (2012)

This report considers the redress available to consumers who have been the victims of misleading or aggressive practices by traders. The report is also being considered as part of the development of a Consumer Bill of Rights. In line with this, it is currently being revised by BIS to include the Government response to the report's public consultation.

I hope this update is useful, but please do not hesitate to ask if you need further information or clarification of any of the points raised. I look forward to working closely with the Scottish Law Commission in progressing these, and in future other, important and much needed law reforms.

I am copying this letter to the Chairman of the Law Commission for England and Wales, the Secretary of State for Scotland and the Advocate General.

A handwritten signature in black ink, appearing to read 'Helen Grant', written in a cursive style.

HELEN GRANT