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Ref: 7726

Dear Lady Clark

8th

May 2014

PROGRESS ON IMPLEMENTATION OF THE SCOTTISH LAW COMMISSION REPORTS IN RESERVED AREAS OF SCOTTISH LAW

I am writing to update you on progress that has been made 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.

I am issuing this update to coincide with the fourth annual report to Parliament on the implementation of the Law Commission proposals under section 3A of the Law Commissions Act 1965 as amended by the section 1 of the Law Commission Act 2009. The report was published on 8 May.

I am pleased to report that the joint report on consumer insurance law which covered disclosure to the insurer by a consumer before taking out insurance is now complete. The Consumer Insurance (Disclosure and Representations) Act 2012 distinguishes between reasonable and careless misrepresentations for which the insurer must pay all or some of the claim depending on the nature of the mistake and deliberate or reckless misrepresentations, for which the insurer may refuse to fulfil the claim. The Act came into force in April 2013.

Furthermore, the Statute Law (Repeals) Act 2013 came into force on 31 January 2013. It repeals 817 whole Acts and part repeals 50 other Acts. The repeals relate to statutes dating from 1322 to 2010, and include parts of the Criminal Justice Act 1988, Finance Act 2003 and Taxation (International and other Provisions) Act 2010.

An update on projects you are jointly working on with the Law Commission is set out below.

Consumer Redress for Misleading and Aggressive Practices

Misleading and aggressive commercial practices are a major problem for consumers. Consumers have to rely on private law rights if they want to take action but the Law Commission review found current private law in this area to be fragmented, complex and unclear and recommended that consumers should have a new legal right of redress against traders who carry out misleading or aggressive practices. Consumers would be entitled to a refund or a discount on the price and damages may be available if the unfair practice caused additional loss. On 6 August 2013 we announced that the key proposals made in this report would be implemented and are consulting on draft regulations.

Unfair Terms in Contracts and Consumer Remedies for Faulty Goods

At the beginning of this year the Consumer Rights Bill was introduced which brings together, improves and updates consumer law. Part 2 of the Bill includes a provision to deal with charges which are tucked into the small print of consumer contracts and allows the court to assess them for fairness.

The Bill also includes a clause to allow the consumer to escape a contract after one failed repair or replacement.

Third Parties (Rights against Insurers)

The Third Parties (Rights against Insurers) Act 2010 is intended to streamline and improve the procedures under which a person with a claim against an insolvent but insured wrongdoer can claim against the insurer. In particular, it will allow the claimant to proceed against the insurer directly without first establishing the liability of the insolvent person. The 2013 Implementation Report indicated that the Government was working towards implementation of the 2010 Act but has provisionally concluded that it would have to be amended before it could be commenced. We have subsequently announced that amendments to the 2010 Act will be introduced when Parliamentary time allows.

Cooperative and Community Benefit Societies

The Co-operative and Community Benefit Societies Bill aims to reproduce the effect of the current legislation while putting the law into a more logical, accessible, clear and modern form. The consolidation removes spent and obsolete provisions, and brings together amendments and additions to the Industrial and Provident Societies Act 1965. The Co-operative and Community Benefit Societies Bill was introduced into the House of Lords in December 2013. We are aiming for the Bill to be enacted before the end of the current session of Parliament

Partnership Law

You may recall that the recommendations sought to reform the law of general partnerships and clarify and modernise the law on limited partnerships. Two recommendations relating to limited partnerships were implemented by way of the Legislative Reform (Limited Partnerships) Order 2009, namely making a certificate of registration conclusive evidence that a limited partnership has been formed at the date shown on the certificate and requiring all new limited partnerships to include "Limited Partnership", "LP" or equivalent at the end of their names. In discussion with your offices we have confirmed that we do not intend to implement the remainder of the proposals in England and Wales but this leaves it open for you to implement in Scotland as you consider appropriate.

Level crossings

This joint project examined the legal framework governing level crossings to allow for better regulation and co-operation between those with duties at level crossings, thereby

reducing risk. In September 2013 the Law Commissions published a report, draft Bill and draft Health and Safety Regulations. We are currently considering our response to the report, which we hope to make by the end of September 2014.

I stand ready to provide any further clarification on any of the above, so please do not hesitate to make contact.

I am copying this letter to the Chairman of the Law Commission for England and Wales, Lord Justice Lloyd Jones, the Secretary of State for Scotland and the Advocate General. I am also placing a copy of this letter in the library of both Houses of Parliament.

Your sincerely

EDWARD FAULKS

Edward Faulks