



Ministry  
of Justice

**Lord Faulks QC**

Minister of State for Justice  
102 Petty France  
London SW1H 9AJ

T 020 3334 3555

F 020 3334 3669

E [general.queries@justice.gsi.gov.uk](mailto:general.queries@justice.gsi.gov.uk)

[www.gov.uk/moj](http://www.gov.uk/moj)

The Hon Lord Pentland  
Chairman, Scottish Law Commission  
140 Causewayside  
Edinburgh  
EH9 1PR

12 March 2015

*Dear Lord Pentland*

**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 fifth 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 5 March.

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

**Consumer Redress for Misleading and Aggressive Practices**

The Law Commissions report 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 if the unfair practice caused additional loss. We accepted the great majority of the Law Commission's recommendations. These were included in the Consumer Protection (Amendment) Regulations 2014 which came into force on 1 October 2014.

**Cooperative and Community Benefit Societies**

The legislation on societies had become complicated and technical. The consolidation contained in the Co-operative and Community Benefit Societies Act 2014 removes spent and obsolete provisions and brings together amendments and additions to the Industrial and Provident Societies Act 1965.

## **Insurance Contract Law**

The Law Commission made recommendations for reform to the law of disclosure in business insurance, insurance warranties, insurers' remedies for fraudulent claims, and damages for late payment.

The Insurance Act 2015 reflects the Commissions' recommendations, except for the clause relating to late payment which was considered too controversial for the special Law Commission Bill procedure. We have said that we will continue to work with the Law Commissions and key stakeholders on this issue with a view to introducing reform at the next legislative opportunity.

## **Consumer Rights: Unfair Terms in Contracts and Consumer Remedies for Faulty Goods**

In March 2013, the Commissions published an updated report on unfair terms in contracts. It recommended that the courts should not interfere with prices which are transparent and prominent; however, where charges are tucked into small print, the courts should have the power to assess them for fairness. We have adopted all the recommendations in the report and they have been included in Part 2 of the Consumer Rights Bill 2014 which is expected to receive Royal Assent shortly.

UK consumers have a legal right to reject faulty goods. This provides consumers with the right to a refund if they act within a reasonable time. Following the recommendations of the Law Commissions we have accepted the need for a clear time limit of 30 days with provision for a shorter period for certain items such as perishable goods and this was included in Part 1, Chapter 2 of the draft Consumer Rights Bill 2014. We have also accepted the recommendation that consumers should be entitled to escape a contract after one failed repair or one failed replacement. This recommendation is also included in the Consumer Rights Bill 2014.

## **Third Parties (Rights against Insurers)**

The Third Parties (Rights against Insurers) Act 2010 when brought into force, will replace legislation from 1930, streamlining and improving the procedures under which a person with a claim against an insolvent but insured wrongdoer can claim against the insurer. Some of the necessary amendments were included in Part 6 and Schedule 2 to the Insurance Act 2015. The amendments included the creation of a regulation-making power to alter the circumstances in which the 2010 Act applies. We are continuing to work closely with the Commission to draft the regulations with a view to commencing the 2010 Act as amended by the Insurance Act 2015 and the proposed regulations as soon as is reasonably possible.

## **Level Crossings**

The report made recommendations to modernise, simplify and clarify the law to make the framework more coherent, accessible and up-to-date. We provided a final response to the Law Commissions' report in October 2014. We accepted both the case for reform and a majority of the recommendations but noted a number of areas where we believe additional policy and legal consideration is required as outlined in the Government's Level Crossing Reform Action Plan.

## **Regulation of Healthcare Professionals**

This was a joint project with the Scottish and Northern Ireland Law Commissions and sets out proposals for a new single legal framework for the regulation of professionals. We published our response on 29 January and intend to legislate to implement the Law Commissions' recommendations at the earliest possible opportunity. In the meantime we are making changes in a small number of priority areas where the professional regulators are hampered whilst carrying out their public protection responsibilities. We are also

supporting a Private Members Bill sponsored by Jeremy Lefroy MP which will go some way towards implementing two of the Commission's recommendations.

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 the House of Commons and of the House of Lords.

*Yours sincerely*

*Edward Faulks*

**EDWARD FAULKS**