



Ministry
of Justice

The Right Honourable
Sir Oliver Heald QC MP
Minister of State for Justice

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

11th January 2017

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. The update is later than usual this year due to the impact of both the EU referendum and the resultant machinery of Government changes

I am issuing this update to coincide with the sixth 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 in January 2017.

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

Insurance Contract Law – Business Disclosure, Warranties and Insurers' Remedies for Fraudulent Claims and Late payment

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 majority of the Commission's recommendations to improve insurance contract law were implemented through the Insurance Act 2015, except for those on late payment, as these were considered too controversial for the special Law Commission Bill procedure. The Insurance Act received Royal Assent on 12 February 2015 and came into force on 12 August 2016.

On new measures for tackling late payment we committed to continue to work with key stakeholders to introduce them at the next legislative opportunity. New legal requirements have therefore been included in the Enterprise Bill, which is currently before Parliament. The late payments clause will introduce into all contracts of insurance, a legal requirement to pay claims within a reasonable time and entitle policyholders to damages when they are paid late.

Consumer Rights: Unfair Terms in Contracts

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. All the recommendations in the report were adopted and were implemented in the Consumer Rights Act which came into force on 1 October 2015.

Consumer Rights: Consumer Remedies for Faulty Goods

UK consumers have a legal right to reject faulty goods. This provides them with the right to a refund if they act within a reasonable time. We accepted the Law Commission's recommendation for a clear time limit of 30 days with provision for a shorter period for certain items such as perishable goods. We also accepted the recommendation that consumers should be entitled to escape a contract after one failed repair or one failed replacement. These recommendations were both included in the Consumer Rights Act and so also came into force on 1 October last year.

Third Parties (Rights against Insurers)

The Third Parties (Rights against Insurers) Act 2010 replaces 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. The 2014-2015 implementation report stated that some of the necessary amendments would be made through the Insurance Act 2015 and that the Ministry of Justice was working with the Law Commission to draft regulations to effect the remainder. Those regulations were made on 28 April 2016. The 2010 Act as amended by the Insurance Act 2015 and the regulations was brought fully into force on 1 August 2016.

Regulation of Healthcare Professionals

This was a joint project with the Scottish and Northern Ireland Law Commissions and set out proposals for a new single legal framework for the regulation of professionals. We published our response on 29 January 2015, noting the need for further work on refining the Law Commissions' proposals to achieve priorities of better regulation, autonomy and cost-effectiveness while maintaining a clear focus on public protection.

We intend to consult on how these priorities can be taken forward while taking full account of the Law Commissions' important work on simplification and consistency, and building on the Professional Standards Authority for Health and Social Care's paper 'Rethinking Regulation' published in August 2015. We will present proposals that give the regulators the flexibility they need to respond to new challenges in the future without the need for further primary legislation.

Recognising the need for some immediate legislative reform, we also intend to commence a programme of secondary legislation (subject to Parliamentary time) to reform the regulators' rule making process and the way that the larger regulators deal with concerns about their registrants. This will improve accountability and make the system more efficient and effective.

Measures have already been taken so that people can continue to be confident they are receiving high quality care, such as making improvements to the way doctors, nurses and midwives are investigated when there are concerns about their ability to treat patients safely. We also provided support for the Health and Social Care (Safety and Quality Act) 2015, to implement the Law Commissions' recommendations to ensure all regulatory bodies and the Professional Standards Authority have the consistent overarching objective of promoting public protection and that regulatory bodies have regard to this objective in fitness to practise proceedings.

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, the Right Honourable Lord Justice (Sir David) Bean, the Secretary of State for Scotland and the Advocate General. I am also placing a copy of this letter in the library of Parliament.

John Smith,
Oliver Heald

Sir Oliver Heald QC MP



