



Scottish Law Commission

promoting law reform

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Honouring performance, not breach?

In the final phase of its review of contract law, the Scottish Law Commission today publishes a Discussion Paper on remedies for breach of contract. It considers the tools that are available when a contract is not carried out as agreed, and compares them with those available in other European legal systems. The focus is on performing the contract as agreed, and as much as possible keeping the parties working together for solutions to disputes, rather than ending up in court or terminating their contract altogether.

The Discussion Paper looks at ways in which this area of the law could be made clearer and more comprehensible, with a particular focus on reforming outdated language so that individuals and businesses better understand their options if a contract goes wrong. Some remedies are designed to be used without going to court, so it is particularly important that they are accessible and easy to understand for those who enter into contracts.

The Discussion Paper also suggests ways of removing practical doubts and difficulties that have arisen in Scots law, and invites views on whether new remedies should be introduced in some areas to address perceived gaps and difficulties in the present law such as the problem of transferred loss, the so-called “black hole” in the Scots law of contract damages.

Professor Hector MacQueen, the Commissioner leading the contract law review, said:

“Our objective here is the simplification and modernisation of the law so that it is readily understood and as easily applied as possible, whether by contracting parties themselves, their legal advisers, or the courts. We look forward to receiving views on our suggestions from a wide range of stakeholders in order to develop final proposals for publication in 2018.”

The consultation closes on 6 October 2017, and the Commission hopes to report on the subject in early 2018.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Pentland, a Court of Session judge. The other Commissioners are Caroline Drummond, David Johnston QC, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.
2. Further information can be obtained by contacting Graham Crombie, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email info@scotlawcom.gsi.gov.uk).
3. The paper may be viewed on our website at <http://www.scotlawcom.gov.uk>.