

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS ON 23 FEBRUARY 2011

YES, YOU HAVE A CONTRACT – BUT WHAT DOES IT MEAN?

Contracts are the lifeblood of commerce, both for businesses and consumers. They come in a wide variety of forms: some are in writing, some oral; some are made between just two parties, some between many parties; some are intended to regulate a single, simple transaction such as buying a pint of milk, while others, like a PFI contract to build a new school or hospital, are drafted to last for many years. In any of these contracts, though especially in the commercial field, doubts or disputes may arise about what a particular contractual term means, and so the rules which determine how these doubts or disputes are to be settled are very important.

In the first Discussion Paper published in its Review of Contract Law in light of the Draft Common Frame of Reference (DCFR), the Scottish Law Commission seeks views on a proposed new scheme of interpretation of contracts in Scotland. The DCFR, published in 2009, is a contemporary statement of contract law based on comparative research on best practice from across the European Union. It therefore provides a measure against which Scots law can be reviewed, and problems with the current law remedied. The Commission has also spoken to a wide range of those who have an interest in questions of contractual interpretation, including legal advisers, judges and business people from across the country and from the private and public sectors, in both large and small organisations. All of their views have been highly useful in preparing proposals for reform.

The Commission previously considered the topic of Interpretation some time ago, publishing its (unimplemented) Report on Interpretation in Private Law (RIPL) in 1997. The Commission has returned to this topic in light of the publication of the DCFR and also in light of recent important decisions from the courts on the topic.

The Discussion Paper gives a detailed exposition of the current Scots law on interpretation, suggesting that while the law has developed in some respects in the direction of RIPL's recommendations, it is still uncertain and unsettled in important respects. As interpretation is of crucial importance for legal practitioners, particularly in the commercial field, and plays a significant role in the Scottish economy, the Commission suggests that the current law would benefit from review and reform.

Professor Hector MacQueen, the lead Commissioner for this project, said: “The courts have developed the law’s approach to interpretation of contracts in recent years but their direction of travel has not always been clear or consistent. This results in unhelpful uncertainties for business people and their advisers in particular. Our proposals would lead to a clear and up-to-date law in line with developments in other parts of the world.”

The Discussion Paper is available on the Commission’s website at <http://www.scotlawcom.gov.uk/> and comments on the proposals are sought by 20 May 2011.

As this topic is one which is regularly the subject of court proceedings, there are frequent relevant decisions. The Discussion Paper has sought to take account of material available as at the end of January 2011, but court decisions and other relevant items which come to our attention will be mentioned on the contract law project page on our website (which may be viewed at <http://www.scotlawcom.gov.uk/law-reform-projects/contract-law/>). The page also allows comments to be left by interested readers, and the Commission welcomes any such comments or suggestions.

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 Drummond Young, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Professor George L Gretton, Patrick Layden QC TD, and Professor Hector L MacQueen. The Chief Executive is Malcolm McMillan.

2. Further information can be obtained by contacting Charles Garland, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gsi.gov.uk).

3. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO (www.tsoshop.co.uk).