

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
NOT FOR PUBLICATION OR BROADCAST  
BEFORE 0001 HOURS 15 JULY 2016

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WHERE TWO'S A PARTY AND THREE'S A CROWD,  
YOU SOMETIMES WANT A CROWD

Scots law has traditionally allowed the parties to a contract to create rights under their contract for others (who are called “third parties”, to mark out the distinction between them and the contracting parties). The process goes by the Latin name of *jus quaesitum tertio*. By contrast, English and Welsh law, and many other common law systems, did not permit this, on the basis that strangers to a contract should not have rights under it.

In recent years, however, a number of those jurisdictions have passed legislation allowing third-party rights to be created, and they do so in ways which point up the deficiencies in the long-standing Scottish common law rules. The last major development in Scots law came from a House of Lords decision in 1920, and the resulting rules have not kept pace with contemporary demands. We are therefore today recommending that the common law be replaced by a modern, updated statute which would put Scotland back on the map in this area.

Why might third-party rights be useful? Commercially, there are many situations, including that of a company entering into a contract with a service provider such as an IT contractor. If something goes wrong, the company will have remedies under the contract (and our project does not change that situation). But if the company is part of a group, and the problem is experienced by one of the other companies in the group, then that company has an obvious interest in being able to enforce contractual rights even though it wasn't a party to the contract. Our reforms will allow this to be provided for in the contracting parties' contract, if they so choose. There will be no obligation to use the new law.

The benefits go well beyond the commercial sphere too. A cohabiting couple seeking to buy their first home may wish to enter into an agreement between themselves as to their respective shares in the house if they were later to split up (since cohabitants do not have the same rights as married couples or civil partners). But if, as is increasingly likely, they rely on family or friends to meet the deposit, their agreement can also set out the rights of whoever contributes financially. The new legislation will provide a quick and efficient way of securing those rights, leading to practical benefits for all concerned.

**Professor Hector MacQueen**, the lead Commissioner for this project, said: "The common law in this area has been notoriously difficult to state and clearly out of line with current business and social needs. This reform should bring the Scots law up to at least the highest modern standards in the area and, we hope, a bit beyond that too."

The Report is published today and is available on our website. Its full title is Review of Contract Law – Report on Third Party Rights (SLC No 245). It follows the publication in March 2014 of our Discussion Paper (DP No 157), which is available at [http://www.scotlawcom.gov.uk/index.php/download\\_file/view/1257/129/](http://www.scotlawcom.gov.uk/index.php/download_file/view/1257/129/). A Business and Regulatory Impact Assessment (or BRIA) is also available on our website.

## 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 Charles Garland, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131; email [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk)).
3. The paper may be viewed on our website at <http://www.scotlawcom.gov.uk>.