

NEWSLETTER ISSUE 3 – AUGUST 2006

Welcome to the Scottish Law Commission's third Newsletter. We aim to issue a newsletter at approximately six-monthly intervals to keep those interested in our work up to date with progress on current projects and with general news about the Commission's activities.

NEW COMMISSIONER

In May we were pleased to welcome Professor George Gretton, who took up his appointment as a Commissioner on secondment from Edinburgh University. He is the lead Commissioner on our property law projects.



OUR CURRENT WORK

Introduction

Work on our Seventh Programme of Law Reform, approved by the Scottish Ministers at the beginning of last year, continues apace. The Programme sets out our main workload for the next four years and covers substantial reviews of land registration, leasehold tenure, trusts and judicial factors, as well as four new projects on succession, assignation and security over incorporeal moveables, unincorporated associations, and provocation, self-defence, coercion and necessity. Alongside the Seventh Programme, we continue to undertake reviews of specific topics at the request of the Scottish Ministers or the UK Government.

Criminal law

The Commission's discussion paper on *Rape and Other Sexual Offences* was published in January. The key issues covered in the paper were: the need to define 'consent'; the redefinition of rape to cover a wider range of sexual acts; and enhancing the protection of people who are vulnerable to sexual exploitation. More than 80 responses have been received, from a variety of organisations as well as from members of the public. The responses are being analysed with a view to formulating policy and a final Report, including draft legislation, will be submitted to the Scottish Ministers next year.



Interest

Our review of the law on **interest on debt and damages** is nearing completion. A discussion paper (No 127) which was published in January last year proposed the introduction of a statutory right to claim interest during the period when a claimant was deprived of the use of his money, whether the claim was for payment of a contractual debt, a non-contractual debt or damages. The proposals received a favourable response at consultation and a Report is being prepared for publication in the near future.

Limitation in personal injury actions

Our Discussion Paper on *Personal Injury Actions: Limitation and Prescribed Claims* was published in February and we have received a number of responses commenting on our proposals for reform of the provisions in the Prescription and Limitation (Scotland) Act 1973. We are currently working on an analysis of the responses with a view to preparing our report and draft Bill, which we are aiming to publish in the early part of 2007.

The project stems from two references from the Scottish Ministers and concerns the so-called "knowledge test" and the power of the courts to override the limitation period if it is equitable to do so. Concern had been expressed about the way the test operates, particularly in cases involving industrial diseases. The question has been raised whether the Act should be amended to specify factors to which the court should have regard in exercising its discretion. The second reference concerns claims for damages for personal injury which were extinguished as a result of prescription before 26 September 1984, when a number of amendments to the 1973 Act came into force. One of those amendments was the removal of personal injury actions from the scope of prescription. This change in the law did not affect claims which had already been extinguished. This topic was referred to us following concerns about the position of people, particularly those who had claimed to have suffered childhood abuse many years ago in various institutions in Scotland, whose claims were extinguished under the previous rules of prescription.

Property

The project on **leasehold tenure** is close to completion. A discussion paper (No 112) on *Conversion of Long Leases* was published in April 2001 proposing that leases for more than 175 years should be converted into ownership. It also sought views on whether conversion should be available for leases of shorter duration (50 years or more). A possible alternative for these leases would be to introduce some form of security of tenure. The report and draft Bill have been approved by Commissioners subject to some final adjustments of the Bill and we hope to complete our report later in the year.

Our review of the **Land Registration (Scotland) Act 1979** has continued to make progress. This project looks at the difficulties that have arisen in practice with the 1979 Act and considers the need for a conceptual framework to underpin its provisions. A discussion paper (No 125) on void and voidable titles, dealing with policy objectives of a system of registration of title, was published in 2004. A second discussion paper (DP 128) was published on 26 August 2005, and looked at the three core issues of registration, rectification and indemnity against the background of the conceptual framework set out in the first paper. A third paper, which was published on 20 December 2005, considers various other issues such as servitudes, overriding interests and the powers of the Keeper of the Register. The next step for the team is to review the policy decisions already made in light of the responses received from consultees before moving on to prepare recommendations for reform and to instruct a draft Bill.



A further project concerns the protection of purchasers buying property from insolvent sellers and the issues highlighted by the House of Lords decision in *Sharp v Thomson* 1997 SC (HL) 66. A discussion paper (No 114) was published in July 2001. One of the main proposals has largely been superseded by *Burnett's Trustees v Grainger* 2004 SC (HL) 19 where the House of Lords declined to apply *Sharp v Thomson* to ordinary personal insolvency. Some of the remaining proposals may be dealt with in the Bankruptcy and Diligence etc. (Scotland) Bill currently before the Scottish Parliament. Other proposals may be taken forward in our report on land registration. We hope to submit our report on *Sharp v Thomson* to the Scottish Ministers by the end of the year.

Succession

Work has begun on the new project on **succession** which has been started under our Seventh Programme. We last reviewed this area 15 years ago although the recommendations made then have not been implemented. The concern remains that the law does not reflect current social attitudes nor does it cater adequately for the range of family relationships which are common today. The project focuses mainly on a surviving spouse's rights on intestacy and the protection of spouses, cohabitants, children and other relatives from disinheritance. As a first step a public attitude survey was commissioned to help shape provisional proposals for reform and the team has been considering the survey results. We plan to publish a discussion paper by the end of 2006.

Trusts and judicial factors

Our wide-ranging review of the law of **trusts** continues. Four discussion papers have been published so far - on breach of trust (No 123), on apportionment of trust receipts and outgoings (No 124), on trustees and trust administration (No 126) and on variation and termination of trusts (No 129): the last was published on 15 December 2005. It sets out proposals for reform of the law relating to variation and termination of private trusts and the reorganisation of non-charitable public trusts. Other papers on beneficiaries' remedies against trustees and third parties, and the prohibition against successive accumulation of trust income, are planned. Other priorities permitting, we also aim to publish a discussion paper on judicial factors around the end of this year.

Insurance law

We are working with the Law Commission for England and Wales on a major project on **insurance law**, which has been criticised as outdated and unduly harsh to policyholders. A joint scoping paper was published earlier this year. As a result of the helpful comments submitted in response to that paper, it has been decided that the project will include topics such as misrepresentation, non-disclosure, warranties, insurable interest and unjustifiable delay. To gather further views, we intend to hold a series of seminars throughout the remainder of this year to be followed by a joint consultation paper in the summer of 2007.

ASSISTING IN THE IMPLEMENTATION OF REPORTS

In addition to the projects referred to above, we support, on request, departments who are responsible for implementing our reports. We regard this service as an important part of our function, enabling us to provide further explanation of our policy approach, if required, and to offer advice on technical aspects of implementation. We are currently closely involved in supporting Scottish Executive officials in implementation of some of the recommendations contained in our Report on *Registration of Rights in Security by Companies*. Relevant provisions have been included in the Bankruptcy and Diligence etc. (Scotland) Bill and in the Company Law Reform Bill.



COMMENTS AND FURTHER INFORMATION

If you have any comments on our current work, please contact us at info@scotlawcom.gov.uk. Further information about our current projects and our law reform publications can be found on our website at www.scotlawcom.gov.uk. The website has full text versions of nearly all our reports since 1992 and of all our discussion papers since 1997. We intend to make the text of all our publications, back to 1965, available on-line when time permits.