

Scottish Law Commission

Review of Contract Law – Discussion Paper 157 - Third Party Rights in Contract.

We note the Discussion Paper (DP) describes the current common law of third party rights in Scotland and suggests adoption of a new model of third party rights, largely consistent with the English approach and replacing the existing Scottish common law rules.

Network Rail Infrastructure Limited (NR) enters into contracts governed by English law and Scots law. Some of NR's template documents (e.g. Track Access Agreements and Station Access Agreements (Scottish and English)) already contain third party rights in favour of e.g. the Office of Rail Regulation and Scottish Ministers, so this concept is already embraced in NR's template agreements. However, currently, in order to rationalise or standardise national agreements, a process of redrafting is required to deal with the different terminology and legal approach to creating or extinguishing third party rights in Scottish and English agreements.

We note the model of third party rights proposed in the DP is largely consistent with the Contracts (Rights of Third Parties) Act 1999 applicable in England and Wales. We consider that an element of 'standardisation' and 'modernisation' of terminology will be helpful for contracting parties like NR, who enter into contracts governed by Scots and English law.

NR notes the current proposals and would like to be kept informed of the direction any likely legislation is moving in.

Network Rail Infrastructure Limited
17 June 2014