
MINUTES OF MEETING BETWEEN THE LAW COMMISSION, THE SOCIETY OF LEGAL SCHOLARS, THE SOCIO-LEGAL STUDIES ASSOCIATION AND THE ASSOCIATION OF LAW TEACHERS ON 15 DECEMBER 2008

- 1.1 Those present at the meeting: the Commissioners – Sir Terence Etherton (Chairman), Elizabeth Cooke, Jeremy Horder, Kenneth Parker, David Hertzell, the Chief Executive – William Arnold, Robin Dormer (Parliamentary Counsel), Vindelyn Smith-Hillman (Economic Adviser) and Tom De Vecchi. From the Associations, Professor Fiona Cownie (President, SLS), Professor Stephen Bailey (Hon Secretary, SLS), Professor Lucy Vickers (Subject Sections Secretary, SLS), Daniel Monk (SLSA), Hugo Derijke (ALT).

The work of the Commission

- 1.2 Commissioners outlined the progress of current and past projects and the useful contributions that had been made by the subject associations and their members.¹

Impact Assessments

- 1.3 The Economic Adviser, Vindelyn Smith-Hillman, who was attending her first meeting, explained her background in economics academia and discussed the increasing role of impact assessments in the work of the Law Commission. She explained that the intention was to integrate the discipline of impact assessments into Law Commission projects, with the aim of ensuring that the Law Commission was delivering the fullest range of benefits that it possibly could. She thought that her arrival at the Law Commission as the Tenth Programme of Reform was starting had been beneficial as it had meant she could be involved with a number of projects from their inception. More generally, she and her team were working on a project, which was seeking to place a value on the existence of credible law. If successful, this could have application across the full range of Law Commission work.

¹ For project updates please see our website <http://www.lawcom.gov.uk/projects.htm> and our newsletter http://www.lawcom.gov.uk/docs/newsletter_spring_2008.pdf.

Criminal codification

- 1.4 The Chairman summarised the status of a number of ideas for projects focussing on codification. Pressure for the codification of criminal law was likely to continue, and he expected there might be scope for significant collaboration between Government departments, the Law Commission and academic associations on this front. More particularly, the Chairman mentioned there might be a forthcoming project (perhaps involving the National Archives) which could have the aim of associating all secondary legislation with the relevant primary legislation in the Statute Law Database. This project was still at a very early scoping stage and in due course the academic associations would be invited to comment on the form this project should take, should the project come to fruition.

Changes in the Law Commission's relationship with Government

- 1.5 The Chairman outlined a number of structural changes in the relationship between the Law Commission and the Government, which he expected would assist the work of the Commission and the implementation of its Reports in the future. Some of these changes had already occurred, such as the reorganisation of the DCA into the MoJ, placing the Law Commission under the Democracy, Constitution and Law Directorate of the MoJ. Others were just coming to fruition: such as the new Parliamentary procedure for Bills arising from the Law Commission which were seen as uncontroversial; and the move of the work of the Ministerial Committee for the Law Commission to the Cabinet's Constitution Committee.
- 1.6 Further changes were expected to arise from the Constitutional Renewal Bill. These would give effect to the Lord Chancellor's two undertakings to Parliament in March 2008. These were to legislate to place a duty on himself to report annually to Parliament on the status of all unimplemented Law Commission reports and to create a statutory basis for the Protocol governing relations between the Law Commission and Government. The Bill had not been mentioned in the Queen's Speech but the Law Commission understood the Government remained committed to it.
- 1.7 Finally, the Chief Executive reported progress on the Law Commission's relationship with the Welsh Government and Assembly. The Chairman and Chief Executive had visited Wales in July 2008 to meet the Permanent Secretary to the Welsh Assembly, and the Parliamentary draftsman responsible for Welsh Assembly work. Welsh interest and support was currently focussed on two projects in particular: Renting Homes and Adult Social Care. The Chief Executive said he expected opportunities to arise in the future for Welsh sponsorship of projects, and perhaps even references to examine Wales-specific law reform issues.

How the subject associations can assist the Law Commission

- 1.8 Attendees from the academic associations raised issues of assistance and collaboration throughout the meeting as the Commissioners summarised the work under each of their remits.

- 1.9 In the context of criminal law work, Daniel Monk asked how easy it had been to get academic involvement; and whether in each case the team had gone through the subject associations or direct to existing contacts. Professor Horder commented that the process used had depended on the urgency of the assistance needed. For example, on the Corporate Criminal Responsibility project it had not been clear who might assist, and so the team had enquired through the associations. On other occasions, however, familiar and reliable sources had been used where help was needed at short notice. The Bribery project had been greatly assisted by Professors Sullivan and Aldridge (of University College London and Queen Mary & Westfield College respectively).
- 1.10 Professor Vickers asked what academic involvement was to be expected in the Intestacy project (run by the Property, Family and Trusts team). Professor Cooke suggested that an SLS/SLSA seminar near the time of publication of the Consultation Paper would be of great use.
- 1.11 Professor Cownie suggested that the Adult Social Care project was another area where significant academic expertise existed which could be of use to the Law Commission. Kenneth Parker recalled that collaboration with academia on the Public Law team's Remedies project had been very successful. He expected that his team's contacts with academics in the area of Adult Social Care would prove very useful; a group was yet to be put together but he was aware of individuals who would wish to be involved.
- 1.12 Finally, in the context of empirical research and impact assessments, Hugo Derijke asked how much involvement was expected from academia, and how environmental and social impacts would be assessed by the new team of economists. Vindelyn Smith-Hillman said that an impact assessment group was being formed, and a network built. She added that meetings had been held with the Socio-Legal Users' Forum about how to get access to relevant information.
- 1.13 On a related theme, Daniel Monk asked what role there was for qualitative research and how it could contribute to impact assessments. He added that this was an ongoing issue in discussions at the SLSA on obtaining funding for research. Vindelyn Smith-Hillman explained that her team was keen not to restrict itself to quantitative research. David Hertzell mentioned that there were some areas where quantitative research had been very useful (such as the Insurance Contract Law project) but qualitative research had also been particularly valuable in the work on consumer law. It was agreed that a dialogue on these matters with the SLSA should be started.

Consolidation: request for an update on the Law Commission's plans

- 1.14 Robin Dormer outlined progress on the consolidation programme by beginning with two general points. First, changes over the last 20 – 30 years in the way legislation was drafted meant that there was less need for consolidation. Increasingly, where amendment occurred, this was achieved by textual amendment rather than by new standalone legislation. With the development of electronic databases and the rapid updating of published sources of legislation the current version of the text was therefore more accessible than it used to be. This thereby largely removed the need to consolidate simply to produce an updated text.

- 1.15 Consolidation was now most useful in three cases: where there was new free-standing material, where successive textual amendments had unbalanced the original text, and where there was a particular need in an area to modernise language. Secondly, there was often no point in consolidating in an area where sands were shifting; that is, where there was continuing major legislative activity. The great increase in legislative activity in recent times had reduced the number of areas, which were sufficiently stable for satisfactory consolidation.
- 1.16 However, despite these limitations, Robin Dormer explained that there were four major areas of continued progress. First, the work on Charities legislation was on track and a consultation draft was expected to be available by the summer of 2009. Secondly, private pension law was undergoing a massive consolidation. Robin Dormer indicated that progress was being made but suggested there might not be any legislation until at least 2010. Thirdly, a small consolidation on the Health Service Commissioner for England was in the later stages of preparation. Finally, work on Representation of the People was currently suspended at the request of the Ministry of Justice. One outstanding issue in relation to that was the one raised by *Hirst v UK*, namely the voting rights of prisoners, which would need to be resolved before any consolidation could be completed.

Other Business

- 1.17 Professor Bailey expressed an interest in receiving the minutes of the meeting and drew the assembled company's attention to the SLS website, on which there was a link to the Law Commission website and an archive of minutes of previous meetings.²
- 1.18 Professor Cownie also highlighted that 2009 was the SLS's centenary year, and the SLS would be holding its Annual Conference on 7-10 September 2009 at Keele University.

Timing of the next meeting

- 1.19 It was agreed that the next meeting would be scheduled for December 2009.

Law Commission

15 January 2009

² www.legalscholars.ac.uk.