
MINUTES OF MEETING BETWEEN THE LAW COMMISSION, THE SOCIETY OF LEGAL SCHOLARS, THE SOCIO-LEGAL STUDIES ASSOCIATION AND THE ASSOCIATION OF LAW TEACHERS ON 31 JANUARY 2008

- 1.1 Those present at the meeting: the Commissioners – Sir Terence Etherton (Chairman), Stuart Bridge, Jeremy Horder, Kenneth Parker, David Hertzell, the Chief Executive – William Arnold, Robin Dormer (Parliamentary Counsel), and Hafsa Masood. From the Associations, Professor Sarah Worthington (President, SLS), Professor Stephen Bailey (Hon Secretary, SLS), Lucy Vickers (Subject Sections Secretary, SLS), Daniel Monk (SLSA), Amanda Fancourt (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. Robin Dormer explained that the Commission was also responsible for the consolidation programme and outlined the progress of ongoing projects.¹
- 1.3 Subject associations were informed that the Commission is currently awaiting the Lord Chancellor's approval of the Tenth Programme of Reform, which should formally commence on 1 April 2008. The Chairman regretted that he could not tell members much more at this stage. He did however indicate that the Commission was proposing to focus on the simplification rather than the codification of the criminal law in the forthcoming programme.

How the subject associations can assist the Law Commission

- 1.4 Professor Worthington noted that the SLS had been invited to make suggestions for the Tenth Programme of Reform. She commented that there was inevitably an element of politics involved in deciding which projects to take forward and wondered what the SLS could do to raise the profile of issues. The Chairman emphasised that the Commission was an independent body but accepted that there was little point in continuing a project in the absence of departmental interest or support. It was therefore important to whip up interest in issues so that they registered on the departmental horizon.

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_winter_2007.pdf.

- 1.5 There was some discussion of how the subject associations could further assist the Commission during the consultation process. Professor Worthington commented that it was not always possible for SLS subject sections to offer an agreed response to consultations. Stuart Bridge explained that an institutional response to controversial and mainstream projects such as Cohabitation and Termination of Tenancies for Tenant Default was not expected. There were other ways the subject associations could contribute. For example, at the post-consultation stage of the Tenancies project a meeting was arranged through the subject sections, which proved very useful. It was agreed that the Commission would be sent an up-to-date schedule of subject session convenors.
- 1.6 It was suggested that the SLS could also usefully identify academics that could be consulted where there were no obvious candidates. David Hertzell indicated that this would be particularly helpful with the project on Consumer Contracts and Faulty Goods. Jeremy Horder added that it would also be helpful if associations could provide the Commission with information about visiting lecturers and professors who have an interest or expertise in Commission projects. This is a group that can be of great assistance but is often difficult to reach. Mr Monk offered to provide information about SLSA members with relevant inter-disciplinary expertise.
- 1.7 It was agreed that association members ought to be kept up-to-date on the Commission's work. The Chairman pointed out that the Commission produces a newsletter three times a year, which provides a summary of what the Commission is working on and how projects are progressing. Professor Worthington suggested that a link to the Commission's newsletter could be included in the SLS's newsletter.
- 1.8 Finally, the Chairman highlighted the importance of empirical research to the Commission's work and suggested that this was an area in which the Associations and Commission could usefully engage. Association members were informed that the Commission had recently employed an economist and might, in due course, be in a position to carry out formal impact assessments itself. It was pointed out that although departments are under an obligation to carry out impact assessments in respect of all new proposed legislation, an adverse impact assessment can kill off a project, and generally speaking, a project is more likely to be implemented if an impact assessment had already been carried out. It was also noted that departmental impact assessments tend to be fairly standardised and not particularly sophisticated. Kenneth Parker commented that the impact assessments he had scrutinised in his capacity as a Deputy Judge in the High Court would have benefited from a stronger empirical grounding and input from academics. The Chairman also emphasised the link between empirical research and impact assessments and commented that this was something on which the Associations and Commission could put in some joint thought.

Other Business

- 1.9 The Chairman outlined the progress that had been made towards improving the acceptance and implementation rate of Commission reports:

- 1.10 The current leader of the Lords, Baroness Cathy Ashton, was seeking approval for a new streamlined procedure in the House of Lords for Commission recommendations, which would essentially involve the Committee stage being taken off the floor of the House. Provided there was no objection from her Cabinet colleagues this proposal was due to be put before the Procedural Committee for approval towards the end of February. Were the procedure to be approved, the Commission might be encouraged to take on more technical projects that it has tended to shy away from in the past.
- 1.11 As part of the Government initiative on Constitutional Renewal, Jack Straw had agreed to promote within Government a package of reforms which would:
- (1) Oblige the Lord Chancellor to lay before Parliament an annual report on progress on outstanding Law Commission recommendations,
 - (2) Give statutory backing to the protocols that govern the Commission's relationship with Government departments, and
 - (3) Give the Ministerial Committee on the Law Commission Cabinet committee status.
- 1.12 There was some discussion about the Commission's engagement with the Welsh Government. Professor Bailey pointed out that the Welsh Assembly had recently committed to taking forward the Commission's recommendations in the report on Renting Homes, despite the fact that the English Government had not yet made clear its intentions. He suggested that it might be worth nurturing this further. The Chairman agreed that the Commission, which was after all the Law Commission for England and *Wales*, could do more to engage with the Welsh Assembly. This was especially important now with devolution in Wales and the Welsh Assembly's growing confidence.

Timing of the next meeting

- 1.13 It was agreed that the next meeting would be scheduled earlier, between September and December 2008.

Law Commission

4 February 2008