

CONSUMER INSURANCE LAW REFORM

BRIEFING NOTE 3

The Parliamentary procedure for uncontroversial Law Commission bills

The procedure

- 1.1 The new procedure does not “fast-track” Law Commission bills through Parliament. It does, however, make the introduction of such measures - and thus ultimately implementation - more likely.
- 1.2 The differences between the procedure and the normal process for a Law Commission bill are underlined in the table below. It will be seen that the only differences occur in the House of Lords. In particular, the second reading debate and committee stages take place in committee rather than requiring time to be found on the floor of the House:

New procedure for uncontroversial Law Commission bills	Normal procedure for a Law Commission bill
HOUSE OF LORDS	
Introduction and First Reading in House of Lords	Introduction and First Reading in House of Lords
Second Reading debate <u>in Committee</u> , followed by formal motion for Second Reading on floor of the House	Second Reading debate <u>on the floor of the House</u> , followed by formal motion for Second Reading
<u>Special Public Bill Committee</u>	<u>Grand Committee or Committee of the Whole House</u>
Report	Report
Third Reading	Third Reading
HOUSE OF COMMONS	
(Introduction on same day as Third Reading in House of Lords)	(Introduction on same day as Third Reading in House of Lords)
Second Reading debate in Committee, followed by formal motion for Second Reading on floor of the House (HoC Standing Order 59)	Second Reading debate in Committee, followed by formal motion for Second Reading on floor of the House (HoC Standing Order 59)
Committee	Committee
Report and Third Reading	Report and Third Reading

1.3 There are three further important aspects of the procedure:

- (1) It may only be used for bills which are “uncontroversial”. In 2008 the House of Lords Procedure Committee gave the following pledge and it is likely that this approach will continue to apply:

Before introduction of any bill, there will be full consultation within the usual channels to determine whether or not it is suitable for these procedures. If in the course of proceedings on the bill it becomes clear, for example during debate on second reading, that it does after all contain controversial provisions, the new procedures will be halted and it will then be for the Government business managers to decide whether or not to proceed with the bill under the normal procedures applying to any other public bill.

- (2) It may only be used to consider one bill at a time.
- (3) It may be used to consider bills produced by either the English Law Commission or the Scottish Law Commission - or those which have been jointly produced such as the Consumer Insurance (Disclosure and Representations) Bill.

Background

2.1 The English and Scottish Law Commissions were established by the Law Commissions Act 1965. Under the Act their duty is:

to take and keep under review all the law with which they are respectively concerned with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law.

2.2 There has long been concern regarding the implementation rate for Law Commission reports. Previous initiatives to improve the rate, such as the Jellicoe Procedure, have had limited impact. In 1997 the Law Commission set out what it saw as the argument for a new procedure:

The Law Commission's recommendations are the subject of extensive consultation before they are included in a final report. The Law Commission starts a law reform project by investigating the law and the deficiencies in it. This involves informal pre-consultation with Government departments and users of the law in question. Then the Commission issues a consultation paper summarising the present law, its defects, the relevant law of other jurisdictions, some options for reform and the Commission's own provisional recommendations. The paper is published by The Stationery Office and copies are sent to representatives of users and other persons thought likely to be interested to respond (including the judiciary, practising lawyers, academics, Government bodies and professional organisations). The responses to the consultation are analysed and a final report published, accompanied by a draft bill prepared by Parliamentary Counsel attached to the Commission. The Law Commission does not undertake formal

consultation on its final report, but its final recommendations are based on the options put forward in the consultation document. From start to finish the entire process may take three or more years.

Since the recommendations for reform will have been the subject of extensive scrutiny before legislative proposals are introduced into Parliament, bills based on Law Commission recommendations are in general, in the Law Commission's submission, appropriate for some streamlined Parliamentary procedure.

2.3 In 2008 the House of Lords Procedure Committee reported that:

Since 1991 some 54 Law Commission reports with bills have been published. Most have been implemented, normally by incorporating them into relevant Government bills, as and when opportunities arise within the Government's legislative programme. However, such opportunities are limited, and as a result the rate of implementation has not kept pace with the production of reports. Eight reports, which have been accepted by Government, are still awaiting implementation; Government responses to another 12 reports are pending.

2.4 The Procedure Committee recommended that a new procedure proposed by the then Leader of the House of Lords, Baroness Ashton, should be adopted, initially for a trial involving two bills. This recommendation was approved by the House of Lords on 3 April 2008. The two bills selected for the trial were:

(1) The Perpetuities and Accumulations Bill.

This bill was based on recommendations set out in the Law Commission's 1998 report *The Rules Against Perpetuities and Excessive Accumulations* (Law Com. 251) HC 579. The bill was introduced under the procedure on 1 April 2009 and received the Royal Assent on 12 November 2009.

(2) The Third Parties (Rights against Insurers) Bill

This bill was based on the recommendations set out in the Law Commission and the Scottish Law Commission's 2001 joint report *Third Parties – Rights against Insurers* (Law Com No. 272; Scot Law Com No. 184). The bill was introduced under the procedure on 23 November 2009 and received the Royal Assent on 25 March 2010.

2.5 Following the success of the trial the House of Lords Constitution Committee and the Chief Executive of the Law Commission recommended that the new procedure - modified to extend to Scottish Law Commission bills - should be made a permanent fixture. This proposal received the agreement of the House of Lords on 7 October 2010.