LEGISLATION AND REPORTS

As usual the Summer months have produced a large flow of statutues, several reports and a number of judicial decisions which affect us as insurance lawyers in our daily work. The following comments on the changing legal scene are concerned with those aspects which most immediately concern me - this is not to excuse omissions but to explain them, and to hope that readers will nevertheless find my comments of some help.

For some ten weeks from July onwards the publication of legislation created by Parliament during the Spring and Summer has been held up by the printing dispute within H.M.S.O. - a dispute which was resolved only at the end of September: we have yet to see in their final form some 34 new statutues, including the Finance Act.

A private member's bill, which received Royal Assent in July, and which is bound to have some effect on underwriting practice is the Rehabilitation of Offenders Act, which allows the sometime offender to wipe the slate clean after the statutory number of years, even to the extent of denying previous convictions. That with effluxion of time the truth can be denied, and a legal lie set up in place of that truth, must affect the questions that insurers ask in proposal forms, and not just proposal forms for Fidelity Guarantees. The Act will come into operation in 1975, but because of the printing dispute the precise date remains uncertain.

Another statute affecting many insurers, and brokers, in their daily business is the Consumer Credit Act: born from the Crowther report "Truth in Lending", and supported by both main parties in the House, the Act applies to all individual consumer credit transactions between £30 and £5,000. The Director General of Fair Trading is to watch over the operation of the Act, and detailed regulations will be needed to implement many of the sections. The Act is likely to be brought into operation in three distinct stages, so that it will be completely in force next July. While the Act's purpose is specifically to regulate hire purchase/credit sale transactions, insurers instalment premium transactions inevitably get caught by the Act's provisions and the Government departments concerned have refused to make any special exceptions for insurers. One certainty is that any insurer or broker offering credit facilities will have to be licenced - as will any non broker intermediary who wishes to arrange instalment contracts.

On the legal front the Director General of Fair Trading has already moved into action: under powers provided by the Fair Trading Act 1973, at the end of July he referred to the Monopolies and Mergers Commission the supply of services of barristers in England and Wales

of advocates in Scotland, and of solicitors throughout Britain. The Commission is to report within 18 months: firstly on the two Counsel rule (whereby a QC can appear only with a junior) - whether the rule should be retained, abolished or modified and if modified how - and secondly on the question of legal advertising - particularly should solicitors be able to advertise and would this be in the interest of the public rather than of the profession.

Yet another Road Traffic Act rolled off the production line, but not before the House of Lords scrapped one of the ministerially designed components. In consequence there is still no legislation making compulsory the wearing of seat belts despite the mass of statistical evidence from overseas. Until there is compulsion insurers must expect the British judiciary to continue to show indecision on the question whether or not to penalise on the grounds of contributory negligence the unbelted motorist/passenger plaintiff. But the Ministry of Transport has a short bill ready for introduction when Parliament reassembles, so perhaps compulsion will not be long delayed.

To make compulsory laws is simple, to enforce those laws is much more difficult - as witness the mass of case law built up since the breathyliser laws were introduced. Partly because legal ingenuity has blasted so many holes in prosecution cases the Minister of Transport has set up a Committee under the chairmanship of Queens Counsel Mr F A Blennerhassett to review the law on drinking and driving and to report by next Autumn.

Compulsory reading for all insurance lawyers in any way concerned with the handling of liability insurance must be the report of the Law Commission on ante natal injuries published in August. Included with the report is a draft bill with the daunting short title of the Congenital Disabilities (Civil Liability) Bill - surely the Law Commissioners could have done better than this? - which provides for Government the vehicle for implementing the report's basic recommendation. This is that the law should be clarified to allow a child born alive to recover damages for ante natal injury, whether at common law or for breach of statutory duty: but, says the report, a child should not be able to sue its own mother except where its injury has been the result of the mother's negligent driving.

Necessarily the report has been produced in the context of our fault liability system: and so some aspects of the report and the draft bill in theory will need further consideration of the Royal Commission at present at work under the Chairmanship of Lord Pearson comes down in favour - as seems likely - of limited no fault compensation for people injured in road accidents. But from the practical aspect, the Pearson Commission's report is not expected before Autumn 1975, while there will be considerable pressure on the Government to find time for the bill in the next Parliamentary session.

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