



Ministry of
JUSTICE

Report on the implementation of Law Commission proposals

24 January 2011

Report on the implementation of Law Commission proposals

Presented to Parliament pursuant to Section 3A of the Law Commissions Act 1965 as inserted by Section 1 of the Law Commission Act 2009.

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Report on the implementation of Law Commission proposals

Introduction

I am pleased to present this report which relates to the implementation of Law Commission proposals. This is the first annual report to be presented following the passing of the Law Commission Act 2009.

The Law Commission Act 2009, which came into force on 12 January 2010, amends the Law Commissions Act 1965 to place a duty on the Lord Chancellor to report to Parliament each year on the extent to which Law Commission proposals have been implemented by the Government. This report covers the period 12 January 2010 to 11 January 2011.

The Law Commission Act 2009 also provides the statutory basis for the protocol between the Government and the Law Commission. The protocol was agreed in March 2010 and sets out how the Government and the Law Commission should work together on law reform projects.

The Government is committed to ensuring that the law is modern, simple and accessible and holds the work of the Law Commission in very high regard. This report demonstrates that progress is being made to implement the excellent work of the Law Commission. There is clearly further to go and I am pleased in that regard that the new House of Lords procedure for Law Commission bills has been made permanent. The procedure, which reduces the amount of time which selected Law Commission bills spend on the floor of the House of Lords, has already enabled the implementation of two Law Commission reports (The Rules Against Perpetuities and Excessive Accumulations and Third Parties – Rights against Insurers) and will I hope lead to the implementation of more over the next few years.

The Right Honourable Kenneth Clarke QC MP
Lord Chancellor

24 January 2011

Scope of the report

1. Section 3A of the Law Commissions Act 1965, as inserted by Section 1 of the Law Commission Act 2009, places a duty on the Lord Chancellor to report to Parliament each year on the extent to which Law Commission proposals have been implemented by the Government.
2. This is the first annual report to be published by the Government under the Act. The report covers the period 12 January 2010 to 11 January 2011.
3. As stipulated by the Act, the report covers Law Commission proposals that have been implemented by the Government during the year, proposals that have not been implemented, including plans for implementation and decisions taken not to implement proposals.
4. The report covers only the reports of the Law Commission of England and Wales, although it notes when these reports were done jointly with the Scottish Law Commission.

Proposals that have been implemented¹

The Rules Against Perpetuities and Excessive Accumulations²

5. The rule against perpetuities and the rule against excessive accumulations are two distinct but related legal rules, used mostly in relation to trusts and wills. Both rules seek to address the broad question of the extent to which one generation should be able to dictate the future use and ownership of property, and restrict the freedom of later generations of owners to deal with property as they please. The Law Commission's 1998 report identified a number of problems with both rules, and recommended reform via a draft bill.
6. The Perpetuities and Accumulations Act 2009, which takes forward the Law Commission report on this issue, received Royal Assent on 12 November 2009. The Act came into force on 6 April 2010.

Third Parties – Rights against Insurers³

7. The Third Parties (Rights against Insurers) Act 2010 replaces its 1930 predecessors. When an insured is liable to a third party (for example an employee), and the insured becomes insolvent, the Acts transfer the insured's rights under the insurance policy to the third party, enabling them to proceed directly against the insurer. The 2010 Act seeks to solve the 1930 Acts' mainly procedural problems.
8. The Third Parties (Rights against Insurers) Act, which takes forward the proposals contained within the joint Law Commission and Scottish Law Commission report on this issue, received Royal Assent on 25 March 2010. The Government is working to identify what needs to be done to ensure a smooth commencement and hopes to make an announcement early this year.

¹ Many Law Commission proposals are implemented by legislation. This section explains progress in terms of implementation of such legislation both by reference to the date of Royal Assent and to the coming into force date.

² The Rules about Perpetuities and Excessive Accumulations (LC 251) (31.03.1998).

³ Third Parties – Rights against Insurers (LC 272) (31.07.2001).

Murder, Manslaughter and Infanticide⁴

9. This report reviewed the law of homicide, including the relationship between the law of murder and manslaughter, defences and partial defences to murder, and complicity in murder. It recommended restructuring the law of homicide into three tiers and, within that structure, reform of secondary liability for murder.
10. The Coroners and Justice Act 2009, which takes forward parts of this report, received Royal Assent on 12 November 2009. These provisions were brought into force on 4 October 2010. Also see paragraph 54 below.

Trustee Exemption Clauses⁵

11. The report examined the use of trustee exemption clauses which are provisions in a trust instrument which exclude or restrict a trustee's liability for breach of trust. Such clauses are capable of protecting trustees from the consequences of any actions or omissions, however negligent, provided they have not acted dishonestly.
12. The recommendations contained within this report have been accepted and implemented by the Government. Statements were made in the House of Commons on 14 September 2010⁶ and in the House of Lords on 5 October 2010.⁷

Reforming Bribery⁸

13. This report recommended reforms to the law on bribery. The current law is fragmented, inconsistent and leaves a gap in the law where bribery is committed outside England and Wales by foreign nationals, even if those nationals are domiciled or habitually resident in England and Wales.
14. The Bribery Act 2010, which takes forward the Law Commission report on this issue, received Royal Assent on 8 April 2010. The Government plans to bring the Act into force in April 2011.

⁴ Murder, Manslaughter and Infanticide (LC 304) (29.11.2006).

⁵ Trustee Exemption Clauses (LC 301) (19.07.2006).

⁶ <http://www.publications.parliament.uk/pa/cm/cmtoday/cmwms/archive/100914.htm#d2e164>

⁷ <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101005-wms0001.htm>

⁸ Reforming Bribery (LC 313) (20.11.2008).

Proposals that have not yet been implemented

Partnership Law⁹

15. The report was a joint Law Commission and Scottish Law Commission report on the law relating to partnerships, including the law specifically relating to limited partnerships. The report recommended the weaving together of the law on general and limited partnerships, with changes to general partnership law and to the law specifically relating to limited partnerships. Under the current law a partnership in England and Wales is not a legal entity separate from its members. There is therefore no separate legal person which can enter contracts and hold property; and a partnership is automatically dissolved on any change of partner (although the remaining partners can agree to continue in partnership).
16. Reforms were recommended to the law specifically relating to limited partnerships, which are widely used for venture capital funds. A general partner manages the business, while the limited partner is not involved in management and has limited liability. The recommendations clarify and modernise the law on limited partnerships, which has been little changed since its introduction in 1907.
17. In 2006, the then Government announced after consultation that it would not implement the Law Commission's recommendations in relation to general partnerships, but that it did intend (broadly speaking) to implement those specifically relating to limited partnerships. The Legislative Reform (Limited Partnerships) Order 2009, which implements two of those recommendations, came into force on 1 October 2009. The Government plans to address the remaining recommendations as and when resources and priorities allow.

Unfair Terms in Contracts¹⁰

18. The present law on unfair contract terms is covered by two pieces of UK legislation which are confusing and contain inconsistent and overlapping provisions.
19. This report, which was a joint Law Commission and Scottish Law Commission report, was accepted in principle by the previous Government in 2006. Implementation of the Commissions' recommendations is on hold pending negotiation of the draft EU Consumer Rights Directive. Negotiations on the Directive are expected to conclude in late-2011.

⁹ Partnership Law (LC 283) (18.11.2003).

¹⁰ Unfair Terms in Contracts (LC 292) (24.02.2005).

The Forfeiture Rule and the Law of Succession¹¹

20. This report seeks to solve a specific problem in succession law. There is a rule that a murderer may not inherit from the person he or she has killed. But the law also cuts out the murderer's descendants from the line of succession. This project asked whether it is right to bar the descendants in this way and addressed an analogous problem where a beneficiary rejects (disclaims) an inheritance.
21. The proposals contained within this report were accepted by the previous Government and were included in the draft Civil Law Reform Bill, which was published for pre-legislative scrutiny during the 2009/2010 session of Parliament. The Government is pleased to be supporting Greg Knight MP's Private Members Bill on this issue. The Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Bill is currently before Parliament.

Company Security Interests¹²

22. Companies often grant charges and other security interests over their assets to secure loans. This project looked at how such security interests should be registered. It also considered how to resolve conflicts between different secured lenders and between lenders and buyers.
23. A power to amend the scheme for registration of charges, which could be used to implement some of the Law Commission's recommendations contained within this report, was included in the Companies Act 2006. Following consultation, which closed in June 2010,¹³ the Government have announced that they intend to revise the current scheme so that there is a single UK-wide scheme that applies to all companies incorporated under the Companies Act 2006 or its predecessors.¹⁴ Views will be sought on draft Regulations. The revised scheme for registration of charges is unlikely to come into force before 2012. Consideration will be given to the rest of the Law Commission's recommendations after decisions have been made with regards to registration of charges.

¹¹ The Forfeiture Rule and the Law of Succession (LC 295) (04.07.2005).

¹² Company Security Interests (LC 296) (07.07.2005).

¹³ www.bis.gov.uk/Consultations/registration-of-charges?cat=closedawaitingresponse

¹⁴ www.bis.gov.uk/assets/biscore/business-law/docs/g/10-1319-government-response-consultation-registration-of-charges.pdf

Termination of Tenancies¹⁵

24. This report examined the means whereby a landlord can take back a property let to a tenant because the tenant has not complied with his or her obligations under the lease. This is an issue of great practical importance for many landlords and tenants of residential and commercial properties. The current law is difficult to use and littered with pitfalls for both the lay person and the unwary practitioner.
25. The Government is undertaking work to study and consider this report and aims to respond early this year.

Participating in Crime¹⁶

26. This report examined the law of secondary liability for assisting and encouraging crime. The principles determining when someone can be found liable for a crime, on the basis of help or encouragement have become less clear and can result in some defendants being treated too leniently and others too harshly.
27. Proposals within this report are being considered alongside those contained within the Law Commission's Intoxication and Criminal Liability and the more recently published Conspiracy and Attempts reports. The Government aims to respond to the Law Commission early this year.

Cohabitation: The Financial Consequences of Relationship Breakdown¹⁷

28. This report examined the financial consequences of the termination of cohabitants' relationships by separation or death. The existing law is a patchwork of legal rules, sometimes providing cohabitants with interests in their partners' property. The law is unsatisfactory: it is complex, uncertain, and expensive to rely on. It gives rise to hardship for many cohabitants and, as a consequence, their children.
29. The Government is considering the research on the impact of the Family Law (Scotland) Act 2006 along with the proposals set out in the Law Commission's report and aims to make an announcement on our position early this year.

¹⁵ Termination of Tenancies (LC 303) (31.10.2006).

¹⁶ Participating in Crime (LC 305) (10.05.2007).

¹⁷ Cohabitation: The Financial Consequences of Relationship Breakdown (LC 307) (31.07.2007).

Intoxication and Criminal Liability¹⁸

30. Many crimes, particularly crimes of violence, are committed when the offender is in a state of extreme or partial intoxication. This report addresses the law governing the extent to which, in order to avoid liability, a defendant may rely on his or her drunken or otherwise intoxicated state at the time he or she committed a criminal offence. It recommends codifying the law and making it more logical and consistent.
31. Proposals within this report are to be considered alongside those contained within the Law Commission's Participating in Crime and the more recently published Conspiracy and Attempts reports. The Government aims to respond to the Law Commission early this year.

Capital and Income in Trusts: Classification and Apportionment¹⁹

32. This report examined the complicated rules governing the treatment of trust receipts and outgoings as capital or income. It considered the extent to which trustees who have to distinguish between income and capital should be able to invest on a "total return" basis balancing overall risk and return rather than having to produce receipts in a particular form.
33. The Government has accepted the proposals contained in this report. Legislation is to be introduced when Parliamentary time permits.

Consumer Remedies for Faulty Goods²⁰

34. This report, which was a joint Law Commission and Scottish Law Commission report, recommended ways to simplify the law on the remedies available to consumers who buy goods which "do not conform to contract". This area of law is particularly complex. Currently, UK consumers have a right to a full refund, provided they act within "a reasonable time". However, how long the right to reject lasts is unclear.
35. As with the recommendations contained within the Law Commission's report on Unfair Contract Terms (paragraphs 18–19 above), the proposals contained within this report are being considered in the context of the ongoing negotiation of the proposed EU Consumer Rights Directive. We expect negotiations on this Directive to conclude in late-2011.

¹⁸ Intoxication and Criminal Liability (LC 314) (15.01.2009).

¹⁹ Capital and Income in Trusts: Classification and Apportionment (LC 315) (06.05.2009).

²⁰ Consumer Remedies for Faulty Goods (LC 317) (04.11.2009).

Conspiracy and Attempts²¹

36. This report addresses the law governing statutory conspiracy (under the Criminal Law Act 1977) and attempt (under the Criminal Attempts Act 1981). It recommends reform to resolve the problems with the current law which amongst other things sets the fault element too high in respect of conspiracies to commit certain offences.
37. The Government is considering the report carefully alongside the Law Commission's reports on Intoxication and Criminal Liability and Participating in Crime and aims to respond early this year.

Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation²²

38. This joint Law Commission and Scottish Law Commission report addresses the issue of what a consumer must tell an insurer before taking out insurance. Under the current law, consumers are required to volunteer information about anything which might be material to a "prudent insurer". A failure to do so allows the insurer to treat the insurance contract as if it never existed and refuse all claims under the policy, which is overly harsh.
39. The Government is undertaking work to study and consider this report and aims to respond early this year.

The Illegality Defence²³

40. The report dealt with the illegality defence which arises when a defendant in a private law action argues that the claimant should not be entitled to their normal rights or remedies because they have been involved in illegal conduct which is linked to the claim. The defence is problematic as if the courts accept the illegality defence, it often involves granting an unjustified windfall to the defendant. However, if the courts refuse, they may be seen to be helping a claimant who has behaved illegally.
41. The Government's consideration of this report has been delayed by the need to focus on other priorities, but it aims to respond early this year.

²¹ Conspiracy and Attempts (LC 318) (10.12.2009).

²² Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (LC 319) (15.12.2009).

²³ The Illegality Defence (LC 320) (17.03.2010).

Administrative Redress: Public Bodies and the Citizen²⁴

42. The report expressed the Commission's conclusions that, in the light of responses to the consultation paper, it could not continue to develop proposals on the availability of compensation on judicial review and reform of the tort liability of public authorities. The project would, however, continue in relation to reform of the public sector ombudsmen, and a further consultation paper was subsequently published. The report also made recommendations in relation to the reporting by public authorities of the costs of compensation.
43. The Government is considering the feasibility of the Law Commission's proposals on reporting compensation and associated litigation costs as part of future initiatives on improving the publication of public bodies' data in open and standardised formats. The Government's consideration of this report has been delayed by the need to focus on other priorities, but aims to respond in late Spring.

The High Court's Jurisdiction in relation to Criminal Proceedings²⁵

44. The report considered challenges which may be brought in the High Court in respect of decisions made in relation to cases in the Crown Court for trial. The current system is confusing and has produced anomalies.
45. The Government is considering this report carefully and is aiming to provide its initial response early this year.

²⁴ Administrative Redress: Public Bodies and the Citizen (LC322) (26.05.2010).

²⁵ The High Court's Jurisdiction in relation to Criminal Proceedings (LC324) (27.07.2010).

Decisions taken not to implement

Landlord and Tenant: Responsibility for State and Condition of Property²⁶

46. This report examined the law regulating the responsibilities of landlord and tenant for the repair and maintenance of leased premises. The law is unsatisfactory as there is no acceptable standard which has to be met by leased premises, there is no legal requirement that the responsibility for the repair of the property should be specifically allocated, and the remedies for the enforcement of repairing obligations were not always effective to ensure that the necessary repairs were carried out.
47. The Government does not consider that the problems with the law in this area are sufficient to require legislative intervention. There are no current plans, therefore, to implement the proposals contained within this report.

Damages for Personal Injury: Medical, Nursing and Other Expenses,²⁷ Claims for Wrongful Death²⁸ and Pre-judgment Interest on Debts and Damages²⁹

48. The first two reports carried out a major review of damages. In particular, the reports examined the availability of bereavement damages, the ability of relatives to claim under the Fatal Accidents Act 1976 and whether those who provide gratuitous care should be reimbursed retrospectively.
49. Pre-judgment Interest on Debts and Damages was a stand alone report which addressed the way that courts award interest on debts and damages in the course of court proceedings. It was found that individual debtors were over-compensating creditors for short-term delays in payment, often at a time when they faced financial hardship.
50. The proposals contained within these reports that were accepted by the previous Government were included in the draft Civil Law Reform Bill, which was published for pre-legislative scrutiny during the 2009/2010 session of Parliament. However, as the Civil Law Reform Bill would not contribute to the delivery of the Government's key priorities, the Government has decided not to proceed with it. Statements confirming this

²⁶ Landlord and Tenant: Responsibility for State and Condition of Property (LC 238) (20.03.1996).

²⁷ Damages for Personal Injury: Medical, Nursing and Other Expenses; collateral benefits (LC 262) (02.11.1999).

²⁸ Claims for Wrongful Death (LC 263) (02.11.1999).

²⁹ Pre-judgment Interest on Debts and Damages (LC 287) (24.02.2004).

decision were made in the House of Commons³⁰ and the House of Lords³¹ on 10 January 2011.

Towards a Compulsory Purchase Code: (1) Compensation and (2) Procedure³²

51. The reports examined the current law on compulsory purchase which consists of diverse and sometimes conflicting rules contained in a variety of statutes and cases spanning 150 years. The new rules outlined in the reports addressed all processes for the compulsory acquisition of land, from how compulsory purchase is authorised and implemented, to the means by which an acquiring authority takes possession and secures title to the property, and how compensation for affected parties is computed.
52. The recommendations included in this report were accepted in principle by the previous Government; a statement was made in Parliament to reflect this on 15 December 2005.³³ Whilst the Government will look for opportunities to make discrete reforms to the law in this area when Parliamentary time permits, there is no prospect of comprehensive legislation to take forward the proposals of the Law Commission in the foreseeable future. The position as stated in 2005 remains unchanged.

Murder, Manslaughter and Infanticide³⁴

53. This report reviewed the law of homicide, including the relationship between the law of murder and manslaughter, defences and partial defences to murder, and complicity in murder. It recommends restructuring the law of homicide into three tiers and, within that structure, reform of secondary liability for murder.
54. Homicide provisions in the Coroners and Justice Act 2009 (responding to some of the Law Commission's recommendations) were brought into force on 4 October 2010 (see paragraph 10 above). The Government has given the other proposals in the report careful consideration. However it has come to the conclusion that the time is not right to take forward such a substantial reform of our criminal law.

³⁰ www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110110/wmstext/110110m0001.htm#1101104000017

³¹ www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110110-wms0001.htm#1101103000074

³² Towards a Compulsory Purchase Code: (1) Compensation and (2) Procedure (LC 286 and LC 291) (15.12.2004).

³³ www.publications.parliament.uk/pa/cm200506/cmhansrd/vo051215/wmstext/51215m01.htm#51215m01.html_sbhd2

³⁴ Murder, Manslaughter and Infanticide (LC 304) (29.11.2006).

Housing: Encouraging Responsible Letting and Renting Homes: The Final Report³⁵

55. The report made recommendations to strengthen self-regulation of landlords in the private rented sector, and introduce compulsory regulation for letting agents. The Law Commission recommended that a scheme of “enforced self-regulation” should be introduced if self-regulation failed to drive up housing standards in the sector.
56. Whilst some of the proposals contained within these reports were accepted in principle by the previous Government, given that reform of this area of the law is not in line with the current Government’s deregulatory priorities, the Government currently has no plans to implement the Law Commission’s recommendations by amending the regulations governing private landlords or letting agents or by further regulating the sector. The Government is, however, exploring with partners from the industry how best to counter poor practice by letting and managing agents and will keep the matter under consideration.

³⁵ Housing: Encouraging Responsible Letting (LC 312) (14.08.08) and Renting Homes: The Final Report (LC297) (07.04.06).



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