



Law
Commission
Reforming the law

Annual Report 2009-10



THE LAW COMMISSION

(LAW COM No 323)

ANNUAL REPORT 2009–10

The Forty-Fourth Annual Report of the Law Commission

*Laid before Parliament pursuant to section 3(3) of the Law
Commissions Act 1965*

*Ordered by The House of Commons to be printed
29 June 2010*

© Crown Copyright 2010

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

ISBN: 9780102965728

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID P002364472 06/10

Printed on paper containing 75% recycled fibre content minimum.

THE LAW COMMISSION

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

Commissioners: The Rt Hon Lord Justice Munby, *Chairman*
 Professor Elizabeth Cooke
 David Hertzell
 Professor Jeremy Horder
 Frances Patterson QC¹

Chief Executive: Mark Ormerod CB

The Commission is located at Steel House, 11 Tothill Street, London, SW1H 9LJ.



Chairman, Commissioners and Chief Executive

(Standing) David Hertzell Mark Ormerod Sir James Munby Jeremy Horder
(Seated) Frances Patterson QC Elizabeth Cooke

This Annual Report covers the period 1 April 2009 to 31 March 2010, although we have also included recent and relevant references beyond the reporting period.

The terms of this report were agreed on 9 June 2010.

The text of this report is available on the Internet at: http://www.lawcom.gov.uk/ann_reports.htm.

¹ Frances Patterson QC succeeded Kenneth Parker QC on 1 January 2010.

THE LAW COMMISSION ANNUAL REPORT 2009–10

CONTENTS

	Page
HIGHLIGHTS OF 2009-10	vi
CHAIRMAN'S INTRODUCTION	1
PART 1: ABOUT THE COMMISSION	4
Who we are	4
What we do	4
Departing Commissioner	5
New Commissioner	6
PART 2: OUR WORK	6
Commercial law and common law	6
Criminal law and evidence	10
Property family and trust law	15
Public law	21
Statute law	26
Economic analysis	31
PART 3: GOVERNMENT RESPONSES	34
Responsibility for state and condition of property	34
Aggravated, exemplary and restitutionary damages	34
Liability for psychiatric illness; damages for personal injury: medical, nursing and other expenses; claims for wrongful death; damages for personal injury: non-pecuniary loss	35
Limitation of actions	36
Pre-judgment interest on debts and damages	37
Housing: proportionate dispute resolution	38
Capital and income in trusts: classification and apportionment	38

	Page
PART 4: MEASURING SUCCESS	40
Performance	40
Targets	40
Measuring success	41
PART 5: HOW WE WORK	42
Developing our programme of work	42
The Law Commission's role and methods	42
Protocol between the Lord Chancellor and the Law Commission for England and Wales	42
Code of best practice for Law Commissioners	43
Equality and diversity	43
External relations	43
PART 6: STAFF AND RESOURCES	48
APPENDIX A: IMPLEMENTATION OF LAW COMMISSION REPORTS	52
Table showing implementation status of Law Commission law reform reports	61
APPENDIX B: THE COST OF THE COMMISSION	69
INDEX OF PROJECTS, BILLS AND ACTS	70

Highlights of 2009–10

2009

April	May	August	October	November	December
7th April	7th May	3rd August	29th October	4th November	10th December
Admissibility of Expert Evidence in Criminal Proceedings consultation opens (CP190)	Capital and Income in Trusts: Classification and Apportionment report and draft Bill published (LC315)	Sir James Munby takes up post as Chairman	Intestacy and Family Provision Claims on Death consultation opens (CP191)	Consumer Remedies for Faulty Goods final report published (LC317)	Conspiracy and Attempts final report published (LC318)
			30th October	12th November	15th December
			Poor Relief consultation closes (CP SLR 03/09)	Law Commission Act 2009 receives Royal Assent	Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation final report and draft Bill published (LC319)
				12th November	
				Coroners and Justice Act 2009 receives Royal Assent (see LC304)	
				12th November	
				Perpetuities and Accumulations Act 2009 receives Royal Assent (see LC251)	

2010

January		February	March		April
1st January	25th January	11th February	17th March	29th March	8th April
Frances Patterson QC takes up post as Commissioner to lead on Public Law	Stakeholders' event in Royal Courts of Justice	Leslie Scarman lecture delivered by Ruth Bader Ginsburg of the US Supreme Court	The Illegality Defence final report and draft Bill published (LC320)	Protocol between the Lord Chancellor and the Law Commission comes into force (LC321)	Bribery Act 2010 receives Royal Assent (see LC313)
11th January	29th January	24th February	19th March	31st March	
Week-long Law Commission exhibition opens in the House of Commons	Courts and Administration of Justice consultation closes (CP SLR 04/09)	Adult Social Care consultation opens (CP192)	Turnpikes consultation opens (CP SLR 02/10)	Public Nuisance and Outraging Public Decency consultation opens (CP193)	
12th January			22nd March		
Law Commission Act 2009 comes into force			Government announces acceptance of Capital and Income in Trusts: Classification and Apportionment recommendations (LC315)		
12th January			25th March		
Lotteries consultation opens (CP SLR 01/10)			Third Parties (Rights Against Insurers) Act 2010 receives Royal Assent (see LC272)		

LAW COMMISSION ANNUAL REPORT 2009-10

To the Right Honourable Kenneth Clarke QC, MP, Lord Chancellor and Secretary of State for Justice

I am proud to present the Law Commission's 44th Annual Report which marks an enormously significant year for the Commission and for the process of law reform in England and Wales.

In November 2009 Parliament passed the Law Commission Act 2009. The Act, which came into force on 12 January 2010, creates a duty on the Lord Chancellor to report to Parliament annually on the implementation of Law Commission proposals. It also provides for the Lord Chancellor and the Commission to agree a protocol on how the Government and the Law Commission should work together. The protocol¹ was laid before Parliament and came into force on 29 March 2010.



Both the Act and its associated protocol represent a landmark in the development of a more productive working relationship between the Commission and the Government. They set out how the Commission will work with Government departments on law reform projects, with obligations on both; and how the Government will account to Parliament for its response to the Commission's work. They represent a significant contribution to ensuring that the Law Commission's work is implemented.

Equally significant has been the success of the new House of Lords procedure for Law Commission Bills,² which allows for the Second Reading of technical and politically non-controversial Law Commission Bills to be taken off the floor of the House. This has operated as a trial procedure for two bills – on Perpetuities and Accumulations and Third Parties' Rights Against Insurers – and has allowed valuable legislation to proceed to the statute book that has previously found it difficult to secure a place in the main legislative programme. We very much hope that the new procedure will be adopted permanently by the House of Lords.

We were extremely pleased to see the enactment of the Bribery Act 2010, which received Royal Assent on 8 April 2010 and derives from the recommendations we made to Government in our report Reforming Bribery.³ On 22 March 2010 we were glad to hear the Government announce its acceptance of the legislative recommendations we made in our report, Capital and Income in Trusts: Classification and Apportionment.⁴ We were also pleased to see the recommendations on

¹ (2010) Law Com No 321.

² The Perpetuities and Accumulations Act 2009 received Royal Assent on 12 November 2009. The Third Parties (Rights against Insurers) Act 2010 received Royal Assent on 26 March 2010.

³ (2008) Law Com No 313.

⁴ (2009) Law Com No 315.

diminished responsibility and provocation we made in our report, Murder, Manslaughter and Infanticide,⁵ substantially implemented in the Coroners and Justice Act 2009, which received Royal Assent on 12 November 2009.

Against this, however, we were disappointed with the then Government's response to our reports on Damages – as contained in the draft Civil Law Reform Bill – and the decision not to proceed with our work on Limitation. We await the new Government's response to the House of Commons Justice Committee's critical pre-legislative scrutiny report on the draft Bill. Since the Bill contains other provisions deriving from Law Commission reports, we hope that these at least will be taken forward in the Civil Law Reform Bill – a statutory vehicle that we would welcome being a regular feature of each Parliament.

A number of people played an important part in these developments. On these and many other matters we were grateful for the support of your predecessor, Jack Straw, and Michael Wills, formerly Minister of State at the Ministry of Justice, together with Ministry of Justice officials. Lord Lloyd of Berwick introduced the Law Commission Bill, with Government support, as a Private Peer's Bill; and it was sponsored in the House of Commons by Emily Thornberry MP. We are very grateful to them both. Finally, and most especially, I pay tribute to my predecessor, Lord Justice Etherton, who pioneered these and many other reforms of strategic importance to the Law Commission. His legacy will have a lasting and positive impact on the standing and effectiveness of the Commission and on the process of law reform.

During the year, we published five reports, making recommendations in areas as diverse as criminal conspiracy, consumer insurance and trust law, and we launched 11 consultations. Consultations are an extremely important part of our work, directly refining our thinking and shaping our recommendations. We continue to be grateful to the many individuals and organisations who give their valuable time and expertise to provide responses – the judiciary; lawyers; parliamentarians; strategy, policy and legal officials in Government departments; interest groups; and, not least, the general public.

We have made good progress this year in building and developing relationships with our many advisers, partners and friends, and improving their understanding of our role. An indication of our external relations activities can be seen in Part 5 of this report. The highlight was the Third Leslie Scarman Lecture, presented at Middle Temple Hall on 11 February 2010 to an audience of senior judiciary, lawyers, MPs and government officials. We extend our thanks to Ruth Bader Ginsburg, Associate Justice of the US Supreme Court, for the fascinating insights she offered us in her lecture, “Judicial Stimulation of Legislative Change: a view from the United States”.⁶

For the first time this year we staged an exhibition in the Houses of Parliament to raise our profile and generate interest in the Law Commission and our role in reforming the law. We are grateful to Oliver Heald MP for sponsoring this event.

⁵ (2006) Law Com No 304.

⁶ The transcript of the lecture is available on the Law Commission website at http://www.lawcom.gov.uk/other_publications.htm.

We have been greatly encouraged by the support from all sides of Parliament. Notably, the then Lord Chancellor, in giving evidence to the Justice Committee on the pre-legislative scrutiny of the draft Civil Law Reform Bill, remarked: "The Law Commission have done a terrific job, and I am well aware of the fact that it is demoralising for them and their staff if they produce very good proposals which are then left on the shelf. We are trying break through that."⁷ In its report, the Justice Committee said: "We endorse the Secretary of State's appreciation of the work of the Law Commission. We believe the delay in legislating on Law Commission recommendations is not only demoralising for the organisation but leads to a waste of limited resources".⁸ Further support was given during the passage of the Law Commission Bill and the two Bills using the trial procedure. Henry Bellingham MP, speaking for the then Opposition, referred to the desirability of a "close and positive relationship between the Law Commission and the Lord Chancellor".⁹ The then Liberal Democrat spokesman, David Howarth MP, has also been very supportive, as have been members of all parties and the Crossbenches in the House of Lords.

This is the first year in which I have had the privilege to report on behalf of the Commission. Throughout I have been enormously impressed by the expertise, breadth of knowledge and dedication of its staff. It is in no small measure down to them that we continue to earn greater respect across Government and beyond. I have been grateful for the welcome shown me by my fellow Commissioners and am delighted, in my turn, to welcome Frances Patterson QC. Frances joined us on 1 January 2010 as the Commissioner to lead on Public Law. She replaces Kenneth Parker QC, who left the Commission on 30 September last year on his appointment to the High Court bench, and to whom we are sincerely grateful for the notable contribution he made to law reform.

I consider it a great honour to be appointed Chairman of this highly regarded organisation, the origins of which lie in the belief that "one of the hallmarks of an advanced society is that its laws should not only be just but also that they be kept up to date and be readily accessible to all who are affected by them".¹⁰ I am privileged to be leading the Law Commission forward into the next year and, with the expert support and commitment of Commissioners and staff, to build on the excellent work of my predecessor and continue our work in making the laws of England and Wales fair, modern, simple and cost effective.



Sir James Munby
Chairman

⁷ Draft Civil Law Reform Bill: pre-legislative scrutiny. House of Commons Justice Committee. Sixth report of session 2009-10. HC 300-I (193).

⁸ Above. HC 300-I (194).

⁹ *Hansard* (HC), 16 October 2009, col 600.

¹⁰ Proposals for English and Scottish Law Commissions (1965) Cmnd 2573.

PART 1

ABOUT THE COMMISSION

Who we are

- 1.1 The Law Commission was created in 1965¹ for the purpose of reforming the law. The Commission is headed by five Commissioners who are appointed by the Lord Chancellor.
- 1.2 The current Commissioners are:
 - The Rt Hon Lord Justice Munby, Chairman
 - Professor Elizabeth Cooke, Property, Family and Trust Law
 - David Hertzell, Commercial and Common Law
 - Professor Jeremy Horder, Criminal Law, Evidence and Procedure
 - Frances Patterson QC, Public Law
- 1.3 The Commissioners are supported by:
 - the Chief Executive;
 - members of the Government Legal Service, whose names can be found in Part 2;
 - Parliamentary Counsel, who draft the Bills to reform and consolidate the law;
 - legal research assistants, most of whom are recently qualified law graduates;
 - economic advisers;
 - librarians;
 - a communications team;
 - a corporate services team.

What we do

- 1.4 The Law Commission's main task is to review areas of the law and make recommendations for change. The Commission seeks to ensure that the law is as simple, accessible, fair, modern and cost-effective as possible. A number of specific types of reform are covered by the Law Commissions Act 1965:
 - simplification and modernisation of the law
 - codification
 - removal of anomalies
 - repeal of obsolete and unnecessary enactments
 - consolidation

¹ Law Commissions Act 1965.

Departing Commissioner

- 1.5 We were sorry to bid farewell to Kenneth Parker QC, who left the Law Commission on 30 September 2009. Kenneth made a significant contribution to law reform in the period following his appointment in January 2006 as the Commissioner leading on Public Law. His term in office included most of the project on remedies against public bodies, and he started the important projects on adult social care and level crossings law. He also oversaw the project on the illegality defence on Professor Hugh Beale's departure in July 2007, seeing the project to a successful conclusion.
- 1.6 Kenneth was sworn in as a High Court Judge, sitting in the Queen's Bench Division, in October 2009. We extend our sincere thanks and best wishes to him.

New Commissioner

- 1.7 We were delighted to welcome Frances Patterson QC, who was appointed as a Commissioner for England and Wales to lead on Public Law. Frances, who joined the Commission on 1 January 2010, was formerly Head of Kings Chambers in Manchester and Leeds, and Head of the Public Law Department within chambers. In 2008 she was appointed Deputy High Court Judge of the Queen's Bench Division, authorised to sit in the Administrative Court. She is a leading practitioner in all aspects of town and country planning, environmental law, compulsory purchase and compensation, highways, education, administrative law and community care law.

PART 2 OUR WORK

- 2.1 This Part contains reports from our legal teams on the work they have undertaken during the period covered by this Annual Report.

COMMERCIAL LAW AND COMMON LAW

Team members

Tamara Goriely (*Team Manager*)
Donna Birthwright, Stephanie Hack

Research Assistants

Lorenzo Arditì, Caroline Lody,
Martyn Naylor, James Sharpe



David Hertzell
Commissioner

Insurance contract law

- 2.2 The Law Commission and Scottish Law Commission are conducting a wide-ranging joint review of insurance contract law. The law was codified in 1906 and is now seriously out-of-date. Although some of the problems have been addressed by codes of practice, regulation and the Financial Ombudsman Service, these do not resolve all the inadequacies in the underlying law. Moreover, the existence of multiple, overlying rules makes the law even more inaccessible. Our aim is to simplify the law and bring it into line with modern market practice.
- 2.3 This year, our first priority was to reform the law of non-disclosure and misrepresentation as it affects consumers. In December 2009 we published a final report and draft Bill covering disclosures and representations in consumer insurance.
- 2.4 We were much encouraged by the widespread support given to our draft Bill. The Association of British Insurers commented that it gives “legal status to existing best practices, and brings them together in one place in a clear format”. The Chartered Insurance Institute agreed it would “provide a modern and stable foundation” to further innovation. Meanwhile, Consumer Focus, the Trading Standards Institute, and Which? called for the Bill’s swift implementation. We hope that Parliamentary time will soon be found for it.
- 2.5 We have also continued our series of issues papers, to promote discussion of specific issues before more formal consultation. In April 2009 we published Issues Paper 5, looking at the needs of the smallest businesses. Increasingly, such “micro-businesses” buy insurance online, without the benefit of a broker, in the same way as consumers. The paper suggested that such businesses should

be treated as consumers for the purposes of pre-contract information and unfair terms. It then asked how “micro-businesses” should be defined.

- 2.6 We received 49 responses, summaries of which we published in November 2009. Most respondents supported greater protection for micro-businesses, although it will be important to provide a definition which is clear and certain at the time the contract is made.
- 2.7 In March 2010, we published Issues Paper 6, considering whether an insurer should be liable for a policyholder’s loss suffered as a result of a late or non-payment of an insurance claim. At present, the English case of *Sprung v Royal Insurance (UK) Ltd*¹ provides that a policyholder cannot recover for such losses, even if the insurer wrongfully refuses to pay a claim and the policyholder goes out of business as a result. We argued that this is out-of-line with general contract principles and most other common law jurisdictions, including Scotland.
- 2.8 In summer 2010, we intend to publish two further issues papers. The first will look at the policyholder’s post-contract duty of good faith. The second will consider whether marine brokers should continue to be liable for premiums. We will also publish a policy statement on pre-contract disclosure in commercial insurance (for both large and small businesses). We will then produce a further formal consultation paper, setting out detailed proposals on insurable interest, post-contract good faith and brokers’ liability for premiums.

Consumer remedies for faulty goods

- 2.9 This was a joint project with the Scottish Law Commission, referred to us by the Department for Business, Enterprise and Regulatory Reform in December 2007.
- 2.10 In November 2009, we published our final report,² recommending ways to simplify the law on the remedies available to consumers who buy goods which “do not conform to contract”. This followed a consultation paper³ in November 2008.
- 2.11 This area of law affects almost everyone and is particularly complex. Currently, UK consumers have the “right to reject” faulty goods. This means they have a right to a full refund, provided they act within “a reasonable time”. The area is also governed by the European Consumer Sales Directive, under which consumers’ first recourse is to repair or replacement. In October 2008, the European Commission published a proposal which, if adopted, would have required the UK to abolish the right to reject.
- 2.12 We recommended that the right to reject should be retained as a short-term remedy of first instance. It is simple and easy to use and it inspires consumer confidence. In our opinion poll, 94% of consumers considered that the right to a refund was important to them, and 89% of consumers thought it should be retained, even though consumers can get replacements and repairs.

¹ [1999] 1 Lloyd’s Rep IR 111.

² Consumer Remedies for Faulty Goods (2009) Law Com No 317; Scot Law Com No 216.

³ Consumer Remedies for Faulty Goods (2008) Law Commission Consultation Paper No 188; Scottish Law Commission Discussion Paper No 139.

- 2.13 However, there needs to be greater clarity about how long the right to reject lasts. We think that in normal circumstances, a consumer should have 30 days to return faulty goods and receive a refund, with limited flexibility for special circumstances such as perishable goods, or goods which both parties know will not be used for some time.
- 2.14 We are pleased that in March 2010, Viviane Reding, the EU Commissioner responsible for this area, acknowledged the importance of the UK's right to reject, and undertook to amend the proposed new directive.⁴

Consumer misrepresentation and unfair commercial practices

- 2.15 In February 2010 we started a new consumer-related project, again jointly with the Scottish Law Commission. It has been referred to us by the Department for Business Innovation and Skills and considers the private rights available to consumers who have been the victims of unfair commercial practices.
- 2.16 In May 2008, the UK implemented the Unfair Commercial Practices Directive through the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). These are enforced by the Office of Fair Trading and trading standards officers, but do not allow individuals to bring claims for damages. In July 2008, the Department asked the Law Commission for preliminary advice on the issues that would be raised by providing consumers with a private right of redress for unfair commercial practices.
- 2.17 The preliminary advice, published in November 2008, concluded that a right of redress for all unfair commercial practices would have uncertain and possibly costly effects, and might introduce new complications into the law. It may be better to reform the current law of misrepresentation and duress, and limit any new rights to the areas where they are most needed.
- 2.18 Our current project considers the law as it affects consumers. Our aims are to:
- (1) simplify the law of misrepresentation, to make it easier to understand, and to remove unnecessary differences between the civil law and CPRs;
 - (2) help those who have suffered from aggressive practices under the CPR, possibly by extending the law of duress;
 - (3) consider possible additional protection, if there is clear evidence that consumers suffer detriment from other unfair commercial practices, without having an adequate remedy under existing law.
- 2.19 We aim to publish a consultation paper in February 2011 and a final report in March 2012.

The illegality defence

- 2.20 In March 2010, we published a final report and draft Bill⁵ on the illegality defence, which concludes our long-running review of this area. This followed a consultative report,⁶ published in January 2009.

⁴ Speech, Madrid 15 March 2010 (available on <http://europa.eu>)

⁵ (2010) Law Com No 320.

⁶ (2009) Consultation Paper No 189.

- 2.21 The project considered how the law should respond when a claimant has been involved in some form of illegal conduct connected to their claim. This issue can arise in many different areas of the law. One example would be where an employee paid cash-in-hand claims unfair dismissal. Another would be where cohabitants put a jointly-owned house in one person's name to hide it from creditors. If the couple then splits up, should the other partner be able to claim a beneficial interest under a trust?
- 2.22 This is a controversial area, where there are no easy solutions. We do not think it possible to devise fixed rules. Instead, the courts should consider the policy rationales which underlie the defence, and apply them to the facts of the case.
- 2.23 The report concluded that in claims in contract, unjust enrichment or tort, improvements were best left to the courts, to develop through case law. The courts are now taking a less technical approach. They are more prepared to base their decisions on policy factors and explain their reasoning accordingly.
- 2.24 However, in one area – the law of trusts – we recommended legislative reform. We therefore published a short draft Bill. It would apply where a trust has been created or continued to conceal the beneficiary's interest for a criminal purpose. In most cases, the beneficiary would be entitled to their normal legal rights. However, in exceptional circumstances, the court would have a discretion to prevent the beneficiary from enforcing the trust. We set out a list of factors that the courts may take into account.



Members of the Commercial and Common Law Team

CRIMINAL LAW AND EVIDENCE

Team members

Claire Brown (*Team Manager*)
Raymond Emson, Christina Hughes,
Simon Tabbush, Clare Wade

Research Assistants

Fiona Alexander, Peter Melleney, Gael Scott



**Professor Jeremy Horder
Commissioner**

Conspiracy and attempts

- 2.26 On 10 December 2009 we published a final report¹ and draft Bill on conspiracy and attempts. The report makes recommendations to reform the law governing the criminal liability of those who agree, or attempt, to commit offences and follows our consultation paper,² published in October 2007.

Conspiracy

- 2.27 Our main recommendation on conspiracy would resolve the problem with the law highlighted by the House of Lords decision in *Saik*.³ Under the current law, where, as in *Saik*, a person is charged with conspiring to commit a money laundering offence the prosecution must prove that he or she knew or intended that the money in question represented the proceeds of crime. This sets the fault element too high, given that the substantive money laundering offence would have been made out if he or she merely suspected that the money represented the proceeds of crime. We recommend that where the substantive offence has no fault element as to circumstances or where mere negligence suffices, the prosecution should have to prove recklessness and in all other cases the prosecution should have to prove the same fault as required in the substantive offence.
- 2.28 We also recommend that the spousal exemption be abolished. This anachronistic exemption currently allows spouses and civil partners to escape liability if they conspire together, but with no one else. We similarly recommend the abolition of the exemption from liability for those who conspire only with the intended victim of the planned offence.

¹ Conspiracy and Attempts (2009) Law Com No 381.

² Conspiracy and Attempts (2007) Law Commission Consultation Paper No 183.

³ [2006] UKHL 18, [2007] 1 AC 18.

- 2.29 Our other recommendations on conspiracy would, if implemented, clarify when a conspirator should be exempted from liability as the intended victim of a conspiracy, abolish the requirement for the consent of the Director of Public Prosecutions for the prosecution of conspiracies to commit summary only offences and provide a scheme for extra-territorial jurisdiction.

Attempts

- 2.30 As regards attempts, our recommendations would resolve a number of uncertainties and ambiguities under the current law. We provide for the commission of an attempt with conditional intent and for the fault element to be proved where the substantive offence includes a circumstance element but no fault element in relation to it, or only negligence. We also recommend legislative change so that attempted murder may be committed by way of omission.

The High Court's jurisdiction in relation to criminal proceedings in the Crown Court

- 2.31 The High Court has jurisdiction to entertain challenges to decisions made in the course of criminal proceedings in the Crown Court but only if the decision is not a "matter relating to trial on indictment".⁴ The rationale for the exclusion is easily identifiable. Challenges to decisions made in the course of criminal proceedings should not be a means of unnecessarily delaying or interrupting trials. However, the problem has been in locating the boundary of the exclusion. The expression "matter relating to trial on indictment" has proved to be a fertile source of argument giving rise on numerous occasions to lengthy and expensive litigation.
- 2.32 In October 2007, the Commission published a consultation paper⁵ in which we proposed removing appeal from the Crown Court to the High Court by way of case stated. This proposal met with broad agreement.
- 2.33 We also proposed that challenges to decisions made in the course of criminal proceedings in the Crown Court should no longer lie to the High Court but instead should lie to the Court of Appeal. It was to be tightly drawn for appeals once the trial had started, not so tightly drawn for appeals before the trial had started and more relaxed still for appeals after the jury had been discharged. It would not have interfered with the normal appeals against conviction and sentence. Consultees thought this proposal had a number of difficulties, and we have therefore looked at it again.
- 2.34 The consultation period closed in 2008. We expect to publish a final report and draft Bill in summer 2010 which will take account of the views of consultees, provide for rights of appeal where they do not currently exist and aim to simplify this area of criminal procedure.

⁴ Supreme Court Act 1981, s 29(3).

⁵ The High Court's Jurisdiction in Relation to Criminal Proceedings (2007) Law Commission Consultation Paper No 184.

The admissibility of expert evidence in criminal proceedings

- 2.35 It has long been accepted that specialised areas of knowledge, where relevant to the determination of a disputed factual issue, should be explained to the jury by experts in the field because the jury can be presumed to be unfamiliar with such areas. However, the possibility or likelihood of jury deference in relation to complex areas of knowledge gives rise to problems if there are legitimate questions about the validity of an expert's opinion. Some recent cases suggest that unreliable expert evidence is perhaps being admitted too readily and that sometimes this can lead to wrongful convictions.
- 2.36 Accordingly, this project is considering the admissibility of expert evidence in criminal trials in England and Wales and, in particular, whether there should be a new approach to the determination of evidentiary reliability in relation to expert evidence.
- 2.37 We published a consultation paper⁶ on 7 April 2009 and intend to publish our report at the end of 2010.

Simplification of criminal law

- 2.38 In the 10th Programme of Law Reform,⁷ the Law Commission expressed the intention of embarking on a project for the simplification of the criminal law. Simplification is not the same as codification, but includes work that could be preparatory to later codification.
- 2.39 The simplification project involves reviewing some of the older or less used common law or statutory offences, with a view to considering either the abolition of these offences or the making of relatively modest legal changes aimed at removing injustices or anomalies. In some cases it may recommend restating existing common law offences in statutory form.
- 2.40 Offences so far considered for review are:
- (1) Public nuisance and outraging public decency.
 - (2) False imprisonment and kidnapping.
 - (3) Offences against the administration of justice and the public interest, including:
 - (a) perverting the course of justice;
 - (b) refusal to serve in a public office;
 - (c) failure by a common innkeeper to provide board and lodging;
 - (d) escape, breach of prison and rescue from lawful custody.

⁶ The Admissibility of Expert Evidence in Criminal Proceedings in England and Wales (2009) Law Commission Consultation Paper No 190.

⁷ (2007) Law Com No 311, para 2.24 and following.

Public nuisance and outraging public decency

- 2.41 Our consultation paper on public nuisance and outraging public decency⁸ was published on 31 March 2010.
- 2.42 Public nuisance is a common law offence, consisting of any wrongful act or omission which exposes members of the public to risks to life, health or safety or loss of comfort or amenity. Broadly, it can be divided between environmental nuisances that affect a neighbourhood on the one hand, and offensive behaviour in public on the other. A person is liable if the act or omission was performed negligently, that is to say, if he or she ought reasonably to have known of the possible bad effects.
- 2.43 Outraging public decency means doing an indecent act, or creating an indecent display, in such a place or in such a way that members of the public may witness it and be shocked or disgusted by it. To be liable, the person must intend to do the act in question; but there is no need to know or intend that it would be offensive, or even that it would be observed at all.
- 2.44 Our provisional proposals are:
- (1) Both offences should be restated in statutory form.
 - (2) Both offences should require intention or recklessness: that is, that the person should either intend the bad effects or outrage, or be aware that they might ensue and decide to perform the act anyway.
 - (3) The separate common law offence of conspiracy to outrage public decency should be abolished and replaced by the normal statutory conspiracy offence.

The other offences

- 2.45 Work has begun on false imprisonment and kidnapping, and we hope to publish a consultation paper later this year. The other topics are still at the planning stage.

Fitness to plead

- 2.46 This project addresses the treatment of mentally disordered defendants prior to trial in the criminal courts.
- 2.47 Many of the problems surrounding the current rules for determining fitness to plead relate to the fact that they were devised when psychiatry was in its infancy. The project will draw on relevant empirical evidence and comparative jurisdictions in an attempt to identify more appropriate contemporary legal tests and rules for determining fitness to plead. We intend to publish our consultation paper in September 2010.

⁸ Simplification of Criminal Law: Public Nuisance and Outraging Public Decency (2010) Law Commission Consultation Paper No 193.

Regulation, public interest and the liability of businesses

- 2.48 This project appeared in our 10th Programme as an item of on-going work examining corporate criminal liability. Following a request from what is now the Department for Business, Innovation and Skills in late 2008 and as a result of discussion with that department and the Ministry of Justice in early 2009, our work has taken as its focus the use of criminal law as a way of promoting regulatory objectives or public interest goals, and particularly how businesses are treated by the criminal law.
- 2.49 The project examines: (1) the use of the criminal law as a way of promoting regulatory objectives and public interest goals, with the aim of producing a set of guidelines for lawmakers across Whitehall, (2) whether the doctrines of delegation and consent and connivance are unfair to small businesses and (3) the application of the identification doctrine in the regulatory or public interest context and the possibility of giving courts the power to apply a due diligence defence. We aim to publish a consultation paper in mid-2010.



Members of the Criminal Law Team

PROPERTY FAMILY AND TRUST LAW

Team members

Matthew Jolley (*Team Manager*)
Elizabeth Drummond, Julia Jarzabkowski,
Colin Oakley, Catherine Vine,
Joel Wolchover

Research Assistants

Diego Aranda Teixeira, Jack Connah,
Kira King, Paul Powlesland



Professor Elizabeth Cooke
Commissioner

Capital and income in trusts: classification and apportionment

- 2.50 The current law on the classification of trust receipts from companies as income or capital is complex and can give rise to surprising results. The complicated rules which oblige trustees to apportion between income and capital in order to keep a fair balance between different beneficiaries are also widely acknowledged to be unsatisfactory. They are technical, rigid and outdated, often causing more difficulties in practice than they solve. As a result, their application is often expressly excluded in modern trust instruments.
- 2.51 The distinction between trust income and capital receipts is also an important issue for charities. Many charitable trusts have permanent capital endowments which cannot be used to further the charity's objects; only the income generated can be used. This may inhibit the achievement of the charity's objects and encourage investment practices which concentrate on the form of receipts rather than on maximising overall return.
- 2.52 The Commission published a consultation paper¹ on this subject in July 2004. Work on the project was suspended pending completion of other work and recommenced in early 2008. Following a number of meetings with an expert advisory group, the project team held detailed policy discussions with a number of key stakeholders, notably HM Revenue and Customs and HM Treasury, the Charity Commission and the Trust Law Committee, sponsored by the Society of Trust and Estates Practitioners (STEP).
- 2.53 The Commission published a report² and draft Bill in May 2009 recommending the abolition of the rules of apportionment for new trusts, the reclassification of shares distributed on exempt demergers as capital, and a new power for charitable trusts with permanent endowments to invest on a total return basis within a scheme regulated by the Charity Commission.

¹ Capital and Income in Trusts: Classification and Apportionment (2004) Consultation Paper No 175.

² Capital and Income in Trusts: Classification and Apportionment (2009) Law Com No 315.

2.54 On 22 March 2010 the Government announced its acceptance of these recommendations. The Ministry of Justice is consulting on the draft Trusts (Capital and Income) Bill.

Easements, covenants and profits à prendre

2.55 This project builds upon the joint work of the Law Commission and Land Registry on registration of title to land. That work culminated in the Land Registration Act 2002, which sought to rationalise the principles of title registration in order to ensure that the register of title should contain as complete and accurate a picture as possible of the nature and extent of rights relating to a particular piece of land. The need for further substantive reform of the general law relating to interests in land was acknowledged throughout the project and it was expected that the Commission would carry forward land law reform initiatives, including the current project, in the following years.

2.56 The project considers the general law governing easements, covenants and profits à prendre: their characteristics, how they are created, how they come to an end and how they can be modified. Although the scope of the project is wide, it is concerned only with private law rights and does not consider public rights such as public rights of way. The project does not include covenants entered into between landlord and tenant, which are subject to different rules.

2.57 The interests examined in the current project are as follows:

(1) An easement is a right enjoyed by one landowner over the land of another. A positive easement involves a landowner going onto or making use of something in or on a neighbour's land. A negative easement is a right to receive something (such as light or support) from the land of another without obstruction or interference.

(2) A covenant (insofar as the project is concerned) is a promise, usually contained in a deed, made in relation to land. Covenants may be positive or restrictive. A restrictive covenant, in contrast to those of a positive nature, can have some characteristics which are associated with property rights: it is possible for successors in title to the original covenanting parties to benefit from, and be bound by, the provisions of the original covenant.

(3) A profit à prendre gives the holder the right to remove products of natural growth from another's land. Many profits concern ancient, but not necessarily obsolete, practices; some, such as the right to fish or shoot on the land of another, can be of great commercial value.

2.58 Easements, covenants and profits à prendre can be fundamental to the enjoyment of property. For example, many landowners depend on easements in order to obtain access to their property, for support or for drainage rights. Easements and covenants also play a vital part in enabling the successful development of land for housing. Examples of profits à prendre include grazing rights, which are of considerable importance to farm businesses.

- 2.59 The Law Commission published a consultation paper³ on easements, covenants and profits à prendre on 28 March 2008. The consultation period ended on 30 June 2008.
- 2.60 The Law Commission's proposals in the consultation paper were guided by the need to have a law of easements, covenants and profits à prendre that is as coherent and clear as possible. Making the law more accessible and easier to operate would benefit private homeowners, businesses and organisations that own property, those who deal with and develop land, professional advisers and HM Land Registry. Consultation responses confirmed that easements, covenants and profits à prendre are vitally important in the twenty-first century and that they are of practical significance to a large number of landowners.
- 2.61 The Law Commission is in the process of finalising policy decisions and instructing Parliamentary Counsel to draft a Bill. The final stage of the project will be to prepare a report setting out our recommendations. We expect to publish the report and draft Bill in early 2011. Further work on specific types of interest (in particular, rights to light) may follow publication of our recommendations on the general law in this area.

Intestacy and Family Provision Claims on Death

- 2.62 This project involves a wide-ranging review of the current rules governing the inheritance of assets where a person dies intestate (that is, without leaving a will which disposes of all of his or her property).
- 2.63 Many tens of thousands of people die intestate each year, and it appears that this figure is rising. Research suggests that more than 27 million adults in England and Wales do not have a will and that those who may need one most are the least likely to have one, such as cohabitants and parents with dependent children.⁴
- 2.64 Aspects of the current law under review include: the entitlements of different family members, in particular any surviving spouse and children, and cohabitants who were not married to or in a civil partnership with the deceased; the role of the "statutory legacy" paid to a surviving spouse or civil partner; and the rules which govern the administration of intestate estates and distribution of assets to beneficiaries.
- 2.65 The project also involves a review of the operation of the Inheritance (Provision for Family and Dependents) Act 1975. Under this statute, certain family members and dependants may apply to court for reasonable financial provision from a deceased person's estate on the ground that the intestacy rules or the terms of a will did not make such provision for them. Among other things, the project is considering the range of relatives and dependants eligible to apply, the conditions which must be met in order for an application to succeed and the remedies available where an applicant is successful.

³ Easements, Covenants and Profits à Prendre (2008) Consultation Paper No 186.

⁴ National Consumer Council, Finding the Will: a Report on Will-Writing Behaviour in England and Wales (September 2007).

- 2.66 The project was included in the Law Commission's 10th Programme of Law Reform at the request of the Ministry of Justice.⁵ The Ministry found widespread support for reform during its own consultation on the level of the statutory legacy paid to the surviving spouse or civil partner of a person who dies intestate.⁶
- 2.67 We published a consultation paper⁷ in October 2009. We have received more than 120 responses. We are currently analysing the responses and will then develop final policy recommendations. We expect to publish a report and draft Bill in late 2011.

Marital property agreements

- 2.68 This project examines the status and enforceability of agreements made between spouses and civil partners (or those contemplating marriage or civil partnership) concerning their property and finances. Such agreements might regulate the couple's financial affairs during the course of their relationship. Equally they might seek to determine how the parties would divide their property in the event of divorce, dissolution or separation. They might be made before marriage (when they are often called "pre-nuptial agreements" or "pre-nups") or during the course of marriage or civil partnership. They need not be made in anticipation of impending separation; but they might constitute separation agreements reached at the point of relationship breakdown.
- 2.69 In contrast to the position in many other jurisdictions, marital property agreements are not currently enforceable in the event of the spouses' divorce or the dissolution of the civil partnership. But the court may take them into account when determining how to apportion the couple's finances after the relationship breakdown.
- 2.70 The legal recognition of marital property agreements is of great social importance. Relationship breakdown remains a significant phenomenon and financial and property disputes between separating spouses and civil partners often lead to distress and expense for all involved.
- 2.71 There is a view that the fact that pre-nuptial agreements are not binding may deter some people from marrying or entering into civil partnerships. The issue may be of particular importance to people who are contemplating a second marriage and want to protect their assets from any future claim. It may also be highly relevant to couples who have entered into marital property agreements in jurisdictions where such agreements are enforceable.

⁵ (2007) Law Com No 311, paras 2.9 to 2.13.

⁶ Ministry of Justice, *Administration of Estates – Review of the Statutory Legacy: Response to Consultation* (2008).

⁷ Intestacy and Family Provision Claims on Death (2009) Consultation Paper No 191.

- 2.72 The Commission considered some of the issues relevant to this project in the context of its work on cohabitation. The Commission's report⁸ made recommendations about cohabitation agreements. The Marital Property Agreements project will not consider the treatment of cohabitation agreements; its scope is limited to financial and property agreements between spouses and civil partners.
- 2.73 This project commenced in October 2009. We are reviewing whether the current law's approach to the status and enforceability of marital property agreements is correct, or whether certain sorts of agreements ought to be capable of legal enforcement, subject to safeguards. In doing so, we are examining the law and practical experience of a number of other countries that recognise marital property agreements and talking to those who advise couples on legal issues relating to marriage and separation. We have considered previous proposals for reform and have commissioned Dr Emma Hitchings of the University of Bristol to conduct research into the experiences and views of family practitioners in this area. We are also working with Professor Anne Barlow of Exeter University who is researching public attitudes towards pre-nuptial agreements with the National Centre for Social Research.
- 2.74 Our consultation paper will explore the arguments for and against a range of options for reform, including a number of approaches that have been suggested in the past by Government and other groups. The consultation paper will invite people's views as to the correct balance between a couple's autonomy to decide for themselves the financial effects of divorce or dissolution and the need for the law to provide protection for economically weaker parties.
- 2.75 We plan to publish a consultation paper on this subject in late summer 2010.

The rights of creditors against trustees and trust funds

- 2.76 Details of this trust law project can be found in the Annual Report for 2004/2005.⁹ This project will not commence until after completion of current law reform projects when it will be considered against other priorities.

⁸ Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307.

⁹ (2005) Law Com No 294.



Members of the Property, Family and Trust Law Team

PUBLIC LAW

Team members

Richard Percival (*Team Manager*)
Lauren Jamieson, Tim Spencer-Lane,
Keith Vincent, Jon Woolf

Visiting Academic Consultant

Professor Alex Marsh

Research Assistants

Laura Giles, Catherine Greenwood,
Amanda Walker



**Frances Patterson QC
Commissioner**

Adult social care

- 2.77 We published our consultation paper¹ on adult social care in February 2010. The consultation period ends on 1 July. The project had been included in the 10th Programme of Law Reform.² From the outset, it was apparent that this would be a large scale project involving a very substantial piece of legislation as its end product. We therefore resolved to break the project into three separate phases, and at each phase both the Commission and the Government would consider whether to proceed to the next stage. The first phase was completed in November 2008 with the publication of a scoping report, which outlined our view of what the substantive law reform project should cover. Both the Commission and the Government approved continuing to phase two of the project, the substantive law reform stage. The only element of our scoping paper that the Government did not wish to proceed with was our proposal that the project should consider redress issues, including whether a community care tribunal should be established.
- 2.78 The consultation paper marks the first main stage of this second phase. We outlined the defects of the current law in our last Annual Report.³ Briefly, the law is inadequate, often incomprehensible and outdated. Much of service provision is still covered by an Act of 1948, the National Assistance Act, but the law relating to adult social care is spread over about 40 different statutes, supported by thousands of pages of statutory guidance and practice guidance. As a result, the law is not only opaque, but inefficient and expensive to operate.
- 2.79 The consultation paper proposes that there should be a single adult social care statute. At the start of the process, we took the view that the differences in the law as it relates to England and Wales are not so great that it requires separate Acts to cover the two countries, but this may change as the proposals develop. The Welsh Assembly Government did not consider it necessary for the project to be jointly sponsored, but that decision is being kept under review.

¹ (2010) Consultation Paper No 192.

² (2007) Law Com No 311, paras 2.2 to 2.8.

³ (2009) Law Com No 316, paras 7.4 to 7.10.

- 2.80 The single statute, we provisionally propose, would include principles to inform decision-making under the Act, provided that such principles can be drawn up with sufficient precision to act as propositions of law, appropriate for inclusion in a statute. We therefore put forward for consultation broad concepts, which might form the basis of statutory principles. We propose a single, explicit duty on local authorities to undertake community care assessments, and the use of a single set of eligibility criteria to determine service provision. These criteria would be set out in regulations that the Secretary of State and Welsh Ministers would be obliged to make. There would also be a single duty to assess carers, with a parallel system of eligibility criteria governing the provision of carers' services by local authorities. We also propose an express duty on local authorities to make enquiries in cases of suspected abuse and neglect of adults. This duty would relate to the discharge of the existing functions of local authorities – we took the view that the question of whether or not there should be further compulsory powers in relation to safeguarding adults at risk was a policy matter for the Department of Health and the Welsh Assembly Government, not us. The consultation paper was published with a draft impact assessment.
- 2.81 Adult social care affects millions of people and costs billions of pounds. It was therefore particularly important that we undertake a wide ranging and thorough consultation process. We have had the benefit of discussions with an advisory group, which brings together many of the interest groups working for people with disabilities and older people, with organisations representing the statutory authorities and private, voluntary sector care providers and individual service users and academics.
- 2.82 With a great deal of help from the members of our advisory group, we have arranged a series of seminars, workshops, conferences and other events, with the aim of reaching as wide a range of potential consultees as possible. We were particularly concerned to reach service users and carers, and so were very grateful to various organisations for arranging local meetings for us in Bristol, Conwy, South Yorkshire and Southampton. SENSE also arranged a very useful national meeting with deaf-blind service users. There are many other events. The consultation diary includes events ranging from a large scale conference in Cardiff organised for us by the Welsh Commissioner for Older People and Age Concern Cymru/Help the Aged Wales to meetings with safeguarding boards, seminars organised by the Association of Directors of Adult Social Services, meetings with carers groups including the Standing Commission on Carers and the Princess Royal Trust for Carers as well as academic conferences and one-to-one meetings with various other organisations.
- 2.83 We will report our conclusions in the spring of 2011.

The law relating to level crossings

- 2.84 The team's second 10th Programme project relates to level crossings law. It was proposed by the Department for Transport and the Office for Rail Regulation. The project is a joint one with the Scottish Law Commission. Since his appointment, the Chairman has taken personal responsibility for the level crossings project.

- 2.85 The law relating to the 7,500 to 8,000 level crossings in Great Britain is extremely complicated and inaccessible. The safety regime for each level crossing is determined by either the nineteenth century private or local Act which authorised the railway, or by a specific order made under the Level Crossings Act 1983 or one of its predecessors. The relationship between these rules and the Health and Safety at Work Etc Act 1974 is difficult and obscure. There are limited powers to close highways (vehicular highways, bridlepaths and footpaths) which cross the railway at a level crossing; and no practical powers to compulsorily close a private right of way over a level crossing.
- 2.86 The range of law that touches the project has proved enormous. As well as railways law, the project requires consideration of highways law, planning law (developments often impact on level crossing usage) and safety. We have had to consider the nature and status of private rights of way over level crossings, which involves difficult issues of land law. Finally, misconduct at level crossings engages the criminal law, so we also have to consider the adequacy or otherwise of existing criminal offences at level crossings. In many of these areas, the law in Scotland is quite different to the law in England and Wales, adding further to the complexity of the project. In developing our proposals, we have maintained close contacts with the Property, Family and Trust Law team and the Criminal Law team.
- 2.87 We expect to publish a consultation paper in the summer of 2010. In that, we will engage with the central issues of regulation, safety and closure, and consider whether there should be a new approach to safety and new closure powers for level crossings. We will also consider the other areas of law which impact on level crossings – planning, private rights of way and criminal law.
- 2.88 We have benefitted from considerable assistance from railway organisations, particularly the Office for Rail Regulation and the Rail Safety and Standards Board, as well as the Department for Transport. The Scottish Law Commission has also liaised with Scottish Government officials. But level crossings also engage a very wide range of interests, and we have also been much assisted by the members of our advisory group. These range from disability groups to those representing walkers, cyclists and horse-riders, to the National Farmers Union, British Transport Police and the heritage railway industry.

Administrative Redress: Public Bodies and the Citizen

- 2.89 This project goes back to the Commission's 9th Programme of Law Reform. By the time we published our consultation paper in July 2008⁴, the key provisional proposals fell into three categories: reforms to the availability of compensation on judicial review, reform of the tort system where public bodies were defendants, and reforms to the public sector ombudsmen.

⁴ (2008) Law Commission Consultation Paper No 187.

- 2.90 Our consultation revealed strong disagreement with our proposals, particularly on the private law side. While many telling points were made, we felt that our proposals – in some areas, with significant amendment – had not been shown to be fatally flawed. Nevertheless, in the circumstances, we did not consider it appropriate to continue work on these areas. In May 2010, we published a report⁵ in which we expressed our conclusion that we would not continue to develop proposals in relation to the first two categories of provisional proposals.
- 2.91 The project focused on the liability of public bodies. Fundamental to our approach in relation to both the judicial review and private law areas was an acceptance of the need to consider the extent to which reforms might divert resources allocated for public purposes to individuals as compensation payments. We sought to make proposals that achieved a correct balance between fairness to individual citizens and appropriate protections to public bodies and the funds they use.
- 2.92 In order to come to conclusions on how this balance should be struck, we needed to understand the resource implications of what we were suggesting. Unfortunately, and despite considerable work by officials in HM Treasury, which we gratefully acknowledge, it proved impossible to establish even the current level of compensation paid by central Government, let alone to assess what the effects of reforms might be.
- 2.93 The report concluded that the lack of basic data on compensation was unfortunate. It was not only necessary for such information to be collected and published for proper consideration of reform proposals, but also to reflect properly public bodies' duties of accountability and transparency. Further, it was only if armed with such information that public bodies could themselves react appropriately when liable to improve service provision.
- 2.94 We therefore recommended that such figures be collated and published by both central and local Government, subject to successful pilot projects.
- 2.95 In contrast, our proposals in relation to the public sector ombudsmen were generally well received. We therefore proposed to continue to develop our work in this area. Both the responses and the new context provided by the discontinuation of the other elements mean that we consider that it is appropriate to consult further on this aspect of the project. We will therefore publish a further consultation paper later in the year.

⁵ Administrative Redress: Public Bodies and the Citizen (2010) Law Com No 322.



Members of the Public Law Team

STATUTE LAW

Team members

i) Consolidation

The Chairman, Robin Dormer, John Sellers, Douglas Hall and Anne Piper

ii) Statute Law Repeals

The Chairman, John Saunders, Jonathan Teasdale, Heather Murphy and Carmen McFarlane

CONSOLIDATION

Introduction

- 2.97 The consolidation of statute law has been an important function of the Law Commission since its creation. Consolidation consists in drawing together different enactments on the same subject matter to form a rational structure and to make more intelligible the cumulative effect of different layers of amendment. Usually this is done by preparing a single new statute. However, in the case of a large consolidation, it may be done by means of several new statutes.¹ The aim is to make statutory law more comprehensible, both to those who have to operate it and to those who are affected by it.
- 2.98 In recent years we have prepared fewer consolidation measures than in previous years. One reason for this has been the change since the 1970s to the way Parliament amends legislation. Amendments are now routinely done by textual amendment: that is, by inserting, removing or replacing text in the original statute. This means that with modern electronic sources of legislation, and with existing printed reference material which is constantly updated, it is much easier now than it used to be to read the up-to-date version of an Act. The Statute Law Database is an addition to the sources of such material. The need to consolidate simply to take account of textual change has therefore largely disappeared.
- 2.99 However, consolidations can do things which cannot be replicated by a version of an Act which is merely an updated version of its text. There is still a need for consolidation, especially where there has been a large amount of legislative activity. This is because the law on the subject may now be found in a number of different Acts, or because the structure of the original Act has become distorted by subsequent amendment.

¹ The most recent example of this is the consolidation of the law on the National Health Service in England and Wales, which comprised three Acts: the National Health Service Act 2006 (c 41), the National Health Service (Wales) Act 2006 (c 42) and the National Health Service (Consequential Provisions) Act 2006 (c 43).

- 2.100 Consolidations are technically difficult to do and require a considerable amount of work, often extending over periods of years. It is not just a matter of identifying the amendments made to an original Act. Changes elsewhere in our statute law, changes in European law, or changes resulting from court decisions may also need to be reflected in a consolidated text. The effects of devolution can be particularly complex, and the impact of the Human Rights Act 1998 may need to be considered. Provisions that have become obsolete need to be identified and repealed. In some cases the substantive law needs to be altered before a satisfactory consolidation can be produced. All of this requires meticulous accuracy. It also requires the application of significant resources, both at the Law Commission and in the Department responsible for the area of law in question. There are often competing priorities for consolidation, and (especially in Departments) other priorities of theirs may mean that they cannot devote resources to consolidation.
- 2.101 The increasing volume of legislation also poses a problem. The Public General Acts enacted by Parliament ran to 3,204 A4-sized pages in 2008. By contrast, in 1965, the year in which the Law Commission was created, the figure was 1,817 pages, and those are pages of the smaller format then in use. Consolidation cannot sensibly be undertaken unless the legislation to be consolidated remains relatively stable during the period it takes to complete the consolidation. It is not unknown for a consolidation to be postponed or even abandoned completely because of new changes in the legislation to be consolidated.



Members of the Parliamentary Drafting Team

The past year

- 2.102 During the past year, work has continued on a number of consolidation Bills.
- 2.103 A draft Bill consolidating the legislation on charities was published for consultation in September 2009. A consolidation Bill was ready to be introduced into Parliament in January 2010, but in the event it was not introduced. The 2009-10 session of Parliament had, of course, to be brought to an end by the dissolution before the general election. The relevant Department (the Cabinet Office, of which the division concerned is the Office of the Third Sector) has so far made funds available to enable the Law Commission to engage a freelance drafter (formerly a member of the Office of the Parliamentary Counsel) to undertake the consolidation. We do not know at the moment what the position will be on this consolidation following the general election.
- 2.104 Work continues on a consolidation of the legislation about private pensions, funded on the same basis as that on charities, except that the relevant Department in this case is the Department for Work and Pensions. This is a very large exercise. We hope that it will prove possible to publish a draft of the consolidation for consultation during the later part of 2010, with a view to introducing a consolidation Bill into Parliament in the session 2010-11.
- 2.105 We have also embarked on a consolidation of the legislation on bail. The relevant Department is the Ministry of Justice. Work on this is progressing, and we hope that it will be possible to publish a consultation draft of this consolidation in the summer of 2010, again with a view to introducing a consolidation Bill into Parliament in the session 2010-11.
- 2.106 After an interruption in work by the Department of Health on the consolidation of the legislation on the Health Service Commissioner for England, we now hope that it will be possible to bring this project to a conclusion before the end of the next session of Parliament.

STATUTE LAW REPEALS

- 2.107 The principal purpose of our statute law repeals work is the repeal of statutes that are obsolete or which otherwise no longer serve any useful purpose. By modernising the statute book and leaving it clearer and shorter, the work helps to save the time of lawyers and others who need to use it. The work is carried out by means of Statute Law (Repeals) Bills, which the Law Commissions publish periodically in draft in their Statute Law Repeals reports. There have been eighteen such Bills since 1965. All have been enacted, thereby repealing some 2500 Acts in their entirety and achieving the partial repeal of thousands of other Acts.
- 2.108 The work of the statute law repeals team during 2009 and early 2010 has focused on four projects – poor relief, courts and administration of justice, lotteries and turnpikes.

- 2.109 The poor relief project proposed the repeal of obsolete enactments relating to the poor relief arrangements that existed before the start of the modern welfare state. Most of them are relics of the parish-based poor law system that existed before 1834. The earliest Acts identified for repeal date back to 1697 during the reign of William III and made provision for the poor in areas such as Colchester, Exeter, Hereford and Shaftesbury. Most of the enactments were passed to provide the necessary powers to raise money from the inhabitants of a parish to build workhouses to contain the poor and elderly. Our consultation paper, published in July 2009, proposed the repeal of some 57 obsolete Acts.
- 2.110 The courts and administration of justice project examined a number of obsolete Acts relating to matters such as the building of courts and judges' lodgings. The oldest was an Act of 1688 to erect a court of conscience in Newcastle-upon-Tyne. Our consultation paper, published in October 2009, proposed the repeal of 30 obsolete statutory provisions, including 23 whole Acts.
- 2.111 The lotteries project was concerned with seven enactments, most passed in the eighteenth and early nineteenth centuries, which related to the holding of lotteries. Typically these Acts were secured for the purpose of holding a variety of private lotteries in London with a view to raising funds for the lottery promoters. In one case the lottery prize was an extremely rare gem, the Pigot diamond. The lottery mechanism was used as an alternative to trying to effect outright sale of an asset which would, for reasons relating to the economic climate of the day, have proved impracticable. Our consultation paper was published in January 2010.
- 2.112 The turnpikes project related to 170 turnpike or analogous Acts, mostly affecting the highways of Gloucestershire, Oxfordshire and Surrey. These enactments date back to a time when the authority responsible for repairing and maintaining the highways of England was the parish. The Acts were passed to authorise the necessary building work, as well as to provide for the charging of tolls. Responsibility for repairing most public highways in England passed to county councils in the late nineteenth century. As a result these enactments, spanning the years 1696 to 1888, are all proposed for repeal. The proposals, set out in our consultation paper published in March 2010, include a number of Acts passed to authorise the construction of the roads connecting London with Holyhead.
- 2.113 Other repeal projects in 2010 will include obsolete laws about charitable institutions and about civil and criminal justice.
- 2.114 In each area of statute law repeals work the team produces a consultation paper on a selection of repeal proposals. These papers are then circulated for comments to Government departments and other interested bodies and individuals, as well as appearing on our website. Subject to the response of consultees, repeal proposals relating to all our statute law repeals work, including the projects mentioned above, will be included in our next Statute Law Repeals Report which is planned for 2012.



Members of the Statute Law Repeals Team

ECONOMIC ANALYSIS

Team members

Vindelyn Smith-Hillman (Economic Adviser), Keightley Reynolds (Assistant Economist)

Impact assessment

- 2.115 The Law Commission has now had its own economics team for just over two years. While the team provides economics advice across a range of issues, it is primarily focused on facilitating the impact assessment of law reform recommendations. The process involves the economics team working alongside the legal teams in evaluating the cost/benefit implications of different options to resolve a legal problem.
- 2.116 Guidance provided by the Better Regulation Executive¹ describes impact assessment as both a tool and a continuous process:
- A **tool** used by policy makers to assess and present the likely costs and benefits (monetised as far as possible) and the associated risks of a proposal that might have an impact on the public, private or third sector... A **continuous process**, consistent with the policy appraisal cycle..., to help policy makers to fully think through the reasons for government intervention, to weigh up various options for achieving an objective and to understand the consequences of a proposed intervention.
- 2.117 During our consultations, we ask consultees to evaluate the costs that may be incurred and benefits that may be derived from legislative change. It is quite likely that a project will have several options, producing similar benefits, which could correct the identified problem. However, each option may carry different cost implications, some of which can vary significantly.
- 2.118 A formal impact assessment now forms an important part of our published final reports. Since 2009 a growing number of stand-alone impact assessments have accompanied the recommendations in our reports. See, for example, Consumer Remedies for Faulty Goods² and Capital and Income in Trusts: Classification and Apportionment.³

Developments in economics

- 2.119 One of the continuing challenges faced by the economics team, and shared by many others, is the inherent difficulty in building an evidence base that fully reflects the cost/benefit dimensions of law reform recommendations.
- 2.120 An important step forward this year has been the development of the Cost-Benefit Framework by the Office for Criminal Justice Reform (OCJR). The

¹ BRE Impact Assessment Guidance located at <http://www.berr.gov.uk/files/file44544.pdf> (last visited 15 June 2010).

² (2009) Law Com No 317.

³ (2009) Law Com No 315.

framework is focused on policies relating to the criminal justice system. Its value lies in providing a fairly comprehensive evidence base that details costs across a broad range of issues. For example, the average prison cost by prison type, Her Majesty's Courts Service (HMCS) cost by courts and cost by offence category, to name but a few available cost estimates. The Framework is part of the wider Criminal Justice System Appraisal Toolkit that can be used in conjunction with the Evidence Base and New Justice Framework. It will be particularly helpful to projects undertaken by the Criminal Law team

Education and engagement

- 2.121 The economics team represented the Law Commission at two significant events during the year: Developments in Economics Education Conference (September) in Cardiff and the Government Economic Service (GES) Annual Conference (July). These both proved good opportunities to raise our profile beyond the confines of the legal corridors. We have committed to always having a presence at the annual GES conference.
- 2.122 One of the significant developments of the team was to initiate the Impact Assessment Working Group (IAWG). The group consists of lead departmental representatives, from within the Ministry of Justice (MoJ) and organisations attached to the MoJ, who regularly produce impact assessments. The longer-term group focus is the improvement of the knowledge requirements of impact assessments across the MoJ in order to ensure their uniformity and higher quality; and the development of an evidence database to reduce existing information deficits. The group meets every six to eight weeks and the secretariat is within the Law Commission. The group has pooled resources to share training across the four main departments currently represented which, in addition to the Law Commission, include HM Land Registry, the Legal Services Commission and MoJ.
- 2.123 The economics team now maintains a regular presence at MoJ headquarters on one or two days each week. The collaborative arrangements have proved beneficial in raising familiarity with MoJ staff and procedures, and raising awareness of resource availability. This has proved helpful in identifying possible evidence sources that are of value to various group projects.



Members of the Economics Team

PART 3

GOVERNMENT RESPONSES

Responsibility for State and Condition of Property¹

- 3.1 The Commission's 1996 report and draft Bill made recommendations for the allocation of responsibility for the repair of property between landlord and tenant where none had been expressly made, and, in the case of residential property, for an implied term that a dwelling was fit for human habitation.
- 3.2 In December 2009 the Commission was notified of the Department for Communities and Local Government's decision not to proceed with the recommendations. Those made in relation to residential property were rejected. Those relating to commercial property were accepted but the primary legislation needed to implement them is not considered a priority in the light of current commercial practice.

Aggravated, Exemplary and Restitutionary Damages²

- 3.3 We published this report in 1997. In November 1999 the Lord Chancellor's Department said that it accepted our recommendations on aggravated and restitutionary damages, though not those on exemplary damages, and would legislate when a suitable opportunity arose.
- 3.4 However, no opportunity was forthcoming. In May 2007, the Department for Constitutional Affairs reconsidered our recommendations in its consultation paper on *The Law on Damages*.³ That paper pointed out that several cases have since confirmed that aggravated damages are compensatory rather than punitive and that the House of Lords extended the availability of exemplary damages. The Department for Constitutional Affairs thought that legislation was unnecessary.
- 3.5 In July 2009, the Ministry of Justice published a response to this consultation paper, which confirmed that it would not proceed with our proposals on aggravated damages.⁴

¹ (1996) Law Com No 238.

² (1997) Law Com No 247.

³ Department for Constitutional Affairs Consultation Paper, *The Law on Damages* (CP 9/07), May 2007.

⁴ Ministry of Justice, Response to Consultation on the Law on Damages (CP(R) 9/07), July 2009: see: <http://www.justice.gov.uk/consultations/docs/law-damages-response.pdf> (last visited on 15 June 2010).

Liability for Psychiatric Illness;⁵ Damages for Personal Injury: Medical Nursing and Other Expenses;⁶ Claims for Wrongful Death;⁷ Damages for Personal Injury: Non-Pecuniary Loss⁸

- 3.6 During the late 1990s we carried out a major review of damages, which resulted in reports on Liability for Psychiatric Illness, Damages for Non-Pecuniary Loss, Damages for Medical, Nursing and Other Expenses and Claims for Wrongful Death. Although a few of our recommendations have been implemented, most have not.⁹ In November 1999, the Government announced that it would undertake a comprehensive assessment of the recommendations.
- 3.7 The Department for Constitutional Affairs eventually published a consultation paper on our reports in May 2007.¹⁰ The paper accepted many of our recommendations on damages for wrongful death.¹¹ However, it proposed a more limited extension of those able to claim under the Fatal Accidents Act 1976. On bereavement damages, the paper agreed to extend entitlement to the fathers of illegitimate children, to cohabitantes and children aged under 18 who lose their parents. However, the Department did not agree that parents should be entitled to claim bereavement damages for children aged over 18. Nor did it agree to extend bereavement damages to siblings or to adults who lose parents.
- 3.8 In December 2009, the Ministry of Justice published a draft Civil Law Reform Bill, which included provisions to give effect to these more limited proposals. The draft Bill was submitted to the House of Commons Justice Committee for pre-legislative scrutiny. The Committee criticised many of the ways the Government had limited and altered our recommendations. The Committee was especially critical of the Government's decision not to provide bereavement damages to parents whose children die over the age of 18:

The death of a child at any age is a tragedy for the parents... In our view, it is better to "overcompensate" the very small number of parents who do not feel profound bereavement on the death of their child rather than deny the overwhelming majority who have strong and enduring ties to their children this formal recognition of their loss.¹²

⁵ (1998) Law Com No 249.

⁶ (1999) Law Com No 262.

⁷ (1999) Law Com No 263.

⁸ (1999) Law Com No 257.

⁹ In relation to Law Com No 257, in February 2000, the Court of Appeal increased the level of awards for non-pecuniary loss in cases of severe injury: *Heil v Rankin* [2000] 2 WLR 1173. In April 2002, the then Lord Chancellor's Department increased the level of bereavement damages from £7,500 to £10,000. The Government also extended the recovery of National Health Service costs from road traffic accidents to all personal injury claims: Health and Social Care (Community Health and Standards) Act 2003, s 150.

¹⁰ Department for Constitutional Affairs Consultation Paper, *The Law on Damages* (CP 9/07), May 2007.

¹¹ Above, at [2] to [68].

¹² *Draft Civil Law Reform Bill: Pre-Legislative Scrutiny*, House of Commons Justice Committee (2009-10) HC 300-1, para 103.

- 3.9 We would hope that the Government is able to reconsider this issue in future legislation.
- 3.10 In our report on Medical, Nursing and Other Expenses, we recommended reversing the decision in *Hunt v Severs*,¹³ so that claimants are under a personal obligation to account to a provider of gratuitous care for past care costs. The draft Civil Law Reform Bill accepted this, but thought that the obligation should also extend to future care. The Justice Committee pointed to several difficulties with the Government's proposal, and the Ministry of Justice undertook to consider it further.¹⁴ We welcome this undertaking, and look forward to further discussions on the issue.
- 3.11 Finally, our report on Liability for Psychiatric Illness recommended legislative reform. In its 2007 consultation paper, the Department for Constitutional Affairs rejected this, noting that the courts had adopted a more flexible approach, and proposing to leave this area to the courts. In July 2009, the Ministry of Justice confirmed that it did not intend to proceed with our recommendation in this area.¹⁵

Limitation of Actions¹⁶

- 3.12 In 2001 we published a report and draft Bill in which we recommended replacing the many complex limitation rules by a single "core regime". Most claimants would have three years to bring an action, starting when they knew, or ought reasonably to have known, the relevant facts. Except in personal injury claims, defendants would be protected by a "long stop", preventing claims from being brought more than ten years after the events took place.
- 3.13 In July 2002 the Lord Chancellor's Department accepted our recommendations in principle, saying it "would give further consideration to some aspects of the report, with a view to introducing legislation when an opportunity arises".¹⁷ In December 2008, the Leader of the House of Commons announced that the Government intended to include provisions on this subject within a Civil Law Reform Bill.
- 3.14 However, on 19 November 2009 Bridget Prentice, the Parliamentary Under-Secretary of State for Justice, announced that the draft Bill would not include provisions to reform the law of limitation of actions. She said that:

¹³ [1994] 2 WLR 602.

¹⁴ *Draft Civil Law Reform Bill: Pre-Legislative Scrutiny*, House of Commons Justice Committee (2009-10) HC 300-1, para 131.

¹⁵ The recommendations in Law Com No 257 that juries should not assess compensatory damages appear to have been overlooked by the Government. We look forward to the Government considering these recommendations in the future.

¹⁶ (2001) Law Com No 270.

¹⁷ *Hansard* (HL), 16 July 2002, vol 637, col 127.

a recent consultation with key stakeholders has demonstrated that there are insufficient benefits and potentially large-scale costs associated with the reform. In addition, the courts have remedied some of the most significant difficulties with the law that the Law Commission identified, for example, in relation to the limitation aspects of child abuse cases. The limitation reforms will therefore not now be taken forward.¹⁸

3.15 We are disappointed that our report has effectively been rejected.

Pre-judgment Interest on Debts and Damages¹⁹

3.16 In February 2004 we published a report on courts' powers to award interest on debts and damages in court proceedings. We found that courts routinely imposed an 8% interest rate. As a result, many vulnerable debtors were over-compensating creditors for short-term delays in payment. In 2010, when interest rates are at a historic low, this unfairness to debtors is even more marked.

3.17 Our report made two main recommendations:

- (1) there should be a specified rate set each year at 1% above the Bank of England base rate; and
- (2) the courts should have a power to award compound interest in appropriate cases.

3.18 In September 2008 the Government agreed that the Lord Chancellor should have power to prescribe a pre-judgment interest rate. However, the Government said it wished to consult further on whether the rate should be 1% above base, and how often the rate should be changed. On compound interest, the Government said it wished to legislate for a power to provide for this, but had not yet reached a conclusion on whether compound rates were appropriate.

3.19 In December 2009, the Ministry of Justice published the draft Civil Law Reform Bill. The draft Bill included enabling provisions to give the Lord Chancellor flexible powers to decide what the interest rate should be, and when compound interest should be available. The Ministry commented that:

The details of how the power to set interest rates will be exercised remain to be settled. Our intention is to consult widely before any decisions are taken as to how the powers will be used.²⁰

3.20 When the issue was referred to the House of Commons Justice Committee for pre-legislative scrutiny, the Committee expressed surprise that the Government has not made a decision on either the rate of pre-judgment interest or the type of case where compound interest should apply. The Committee welcomed the Government's commitment to consult on the issues, and commented:

¹⁸ Written Ministerial Statement, *Hansard* (HC), 19 November 2009, vol 501, col 13WS.

¹⁹ (2004) Law Com No 287.

²⁰ *Draft Civil Law Reform Bill: Pre-Legislative Scrutiny*, House of Commons Justice Committee (2009-10) HC 300-1, para 175.

If it is the prospect of claims against the National Health Service which is delaying a decision on interest, then other ways of dealing with this concern must be found.²¹

- 3.21 We endorse the Committee's conclusions. We hope that the Government will act to reduce the 8% rate currently imposed on debtors. The current rate goes further than simply compensating claimants for their loss.

Housing: Proportionate Dispute Resolution²²

- 3.22 This report was published in May 2008. In it, we took a broad view of how housing disputes should be dealt with, from the initial creation of a dispute through the system for early advice and information to formal structures of adjudication. The centrepiece of the report was the proposal that what we termed "triage plus" should be adopted as the basic organising principle for those providing housing advice and assistance. Triage plus brought together three key elements – signposting, whereby people with problems receive an initial diagnosis and are then referred to the right route for a solution; intelligence gathering and oversight of how problems arise to see whether they reveal systemic problems; and feedback designed to improve the quality of initial decisions. We also recommended that other ways of resolving disputes (aside from formal adjudication) should be encouraged.

- 3.23 In relation to formal adjudication, we recommended that stand-alone disrepair cases (that is, not those arising as a counter-claim to a possession action) and disputes relating to park homes should be moved from the county court to the Residential Property Tribunals Service. We also recommended that *full* powers in relation to interim relief should be given to (effectively) the county court in relation to statutory homelessness appeals. The substantive appeal already lies in the county court. We made a number of other recommendations in respect of such matters as the training of the judiciary, the provision of better information and the availability of duty-desks in county courts.

- 3.24 In its response in July 2009, the Government broadly accepted all of our recommendations on early advice and assistance. Our main recommendation on encouraging alternative dispute resolution was accepted, but not a proposal for a pilot study of early neutral evaluation. The Government had consulted separately on park homes, and concluded that most of that jurisdiction should be transferred to the tribunal. However, our recommendations for transfer of disrepair cases and interim relief in homelessness cases were rejected.

Capital and Income in Trusts: Classification and Apportionment²³

- 3.25 The Law Commission's report on Capital and Income in Trusts: Classification and Apportionment was published on 7 May 2009. A Written Ministerial Statement dated 22 March 2010 announced that "the Government have carefully considered the report and are pleased to announce that they accept the Law Commission's

²¹ *Draft Civil Law Reform Bill: Pre-Legislative Scrutiny*, House of Commons Justice Committee (2009-10) HC 300-1, para 176.

²² (2008) Law Com No 309.

²³ (2009) Law Com No 315.

recommendations.”²⁴ The statement also announced a consultation on a draft Trusts (Capital and Income) Bill. This Bill implements the three legislative recommendations made by the report.

- 3.26 The first legislative recommendation relates to the classification of trust receipts as income or capital and will reform the rules governing receipts from tax-exempt corporate demergers so that these are classified as capital (subject to a limited power to make a payment to income). The second is to abolish the apportionment rules – a set of rules which require reallocation between capital and income, often by way of complex and time-consuming calculations. Finally, the Bill will reform the procedure by which charitable trusts may adopt a total return approach to investment – that is, an approach which does not require them to take account of the form of investment receipts as income or capital.
- 3.27 The report also made two non-legislative recommendations for further consideration and discussions: first as to the feasibility and mechanics for total return investment for private trusts, and secondly on the Charity Commission’s current scheme for total return investment for charities.

²⁴ Written Ministerial Statement, Bridget Prentice, *Hansard* (HC), 22 March 2010, vol 508, col 14WS.

PART 4

MEASURING SUCCESS

Performance

- 4.1 Table 4.1 summarises our main targets for the year 2009–10 and how we met those targets.

Table 4.1: Targets 2009-10

TARGET	OUTCOME
To complete Reports on:	
Administrative Redress: Public Bodies and the Citizen	Published 26 May 2010 (LC322)
Conspiracy and Attempts	Published 10 December 2009 (LC318)
Insurance Contract Law: Misrepresentation in Consumer Insurance	Published 15 December 2009 (LC319)
The High Court's Jurisdiction in Relation to Criminal Proceedings	Publication is projected for July 2010
Consumer Remedies for Faulty Goods	Published 4 November 2009 (LC317)
To complete Consultation Papers on:	
Level Crossings	Publication is projected for July 2010
Regulation, Public Interest and the Liability of Businesses	Publication is projected for August 2010
Intestacy and Family Provision Claims on Death	Published 29 October 2009 (LCCP191)
Fitness to Plead and Insanity	Publication is projected for September 2010
To publish the following issues papers	
Insurance Contract Law: Small Businesses	Published 16 April 2009
Insurance Contract Law: Damages for Late Payment	Published 24 March 2010

- 4.2 Table 4.2 summarises our major targets for 2010–11 (in addition to those targets carried forward from 2009–10, as indicated in Table 4.1).

Table 4.2: Targets 2010-11

TARGET	
To complete Reports on:	
Adult Social Care	
Expert Evidence in Criminal Trials	
Easements, Covenants and Profits à Prendre	
To complete Consultation Papers on:	
Ombudsmen	
Marital Property Agreements	
Insurance Contract Law	
Misrepresentation and Unfair Commercial Practices	
To publish the following issues papers:	
Insurance Contract Law: Insured's Post-Contractual Duty of Good Faith	
Insurance Contract Law: Brokers' Liability to Pay Premiums	

Measuring success

- 4.3 There are a number of ways in which the Commission gauges success. Implementation of our reports is clearly key and is covered in detail in Appendix A to this report.
- 4.4 However, implementation does not fully demonstrate the breadth of the Commission's impact. To address this, we record instances during the calendar year when the Law Commission is cited in judgments, by other law reform bodies or during business in the Houses of Parliament.
- 4.5 Table 4.3 shows the number of citations for the calendar year 2009.

Table 4.3: Citations 2009

2009 calendar year	
In UK judgments	96
In judgments from other common law jurisdictions	8
In Hansard	57

- 4.6 In addition, the Commission's work is widely quoted in academic journals and the media. A basic search on the internet reveals 364 references made in UK academic journals during the calendar year 2009, and our monitoring service picked up 590 references to the Law Commission from the media during 2009-10. Some of these will be made in support of the Commission; some may not be. At the very least these figures show that the Law Commission is gaining attention and stimulating debate on the issues with which we are tasked to deal.

PART 5

HOW WE WORK

Developing our programme of work

- 5.1 Decisions about whether to include a particular subject in a programme of reform are based on the importance of the issues it will cover, the availability of resources in terms of both expertise and funding, and whether the project is suitable to be dealt with by the Commission.
- 5.2 Although we have a duty to “take and keep under review *all* the law”,¹ it is important that our efforts are directed towards areas of the law that most need reform and reforms that are most likely to be implemented. There should be a focus on change that will deliver real benefits to the people, businesses, organisations and institutions to which that law applies.
- 5.3 The 10th Programme of Law Reform² was launched in April 2008. Part 2 of this report provides an update on the progress of this Programme. During the summer of 2010 we will be consulting on the content of the 11th Programme.

The Law Commission’s role and methods

- 5.4 We usually start our projects by producing a scoping or discussion paper. The aim of this is to explore how extensive the project should be, find out the key issues as seen by others, and identify interested parties. We will then produce a consultation paper to describe the present law and its shortcomings, and set out provisional proposals for reform. During the consultation period, we try actively to seek out interested parties and engage them, including holding meetings and debates. All responses are analysed and considered very carefully.
- 5.5 The Commission’s final recommendations are set out in a report. When the implementation of any recommendations would involve primary legislation, the report will usually contain a Bill drafted by Parliamentary Counsel. The report is laid before Parliament. It is then for the Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless a Private Member or Peer agrees to do so. After publication of a report the Commission and Parliamentary Counsel who worked on the draft Bill often give further assistance to Government ministers and departments.
- 5.6 The Commission publishes the responses to consultations, either separately or in the final report.
- 5.7 The Commission has signed up to the Government Code on Consultation.

Protocol between the Lord Chancellor and the Law Commission for England and Wales

- 5.8 In March 2010, the Law Commission agreed a statutory protocol with the Lord Chancellor that governs how the Commission and Government departments

¹ Law Commissions Act 1965, s 3(1).

² (2007) Law Com No 311.

should work together on law reform projects. The protocol is provided for under the Law Commission Act 2009, which came into force on 12 January 2010 and amends the Law Commissions Act 1965, and will apply to projects commencing after 29 March 2010.

- 5.9 Under the Act, the Lord Chancellor will also be required to report annually to Parliament on the extent to which the Law Commission's proposals have been implemented by the Government and the reasons for decisions taken during the year not to implement proposals.

Code of best practice for Law Commissioners

- 5.10 In accordance with Government policy for all non-departmental public bodies, there is a written code for Law Commissioners, agreed with the Ministry of Justice. It incorporates the Seven Principles of Public Life and covers matters such as the role and responsibilities of Commissioners. The code is available on our website.³
- 5.11 The work of the Commission is based on thorough research and analysis of case law, legislation, academic and other writing, law reports and other relevant sources of information both in the United Kingdom and overseas. It takes full account of the European Convention on Human Rights and of relevant European law. We act, where appropriate, in consultation with the Northern Ireland Law Commission and the Scottish Law Commission, and work jointly with our Scottish colleagues on a number of projects.

Equality and diversity

- 5.12 The Commission is committed to consulting fully with those likely to be affected by its proposals, and to assessing the impact of its proposed policies and removing or mitigating any unfairly adverse effect on particular groups within society wherever possible.
- 5.13 The Commission's full Equality and Diversity Action Statement may be seen on our website.⁴
- 5.14 We continue to try to make our work accessible to a wider range of people. In February 2010 we launched our consultation on Adult Social Care, making the consultation paper available in large print, and the summary and all supporting documents available in large print, easy read and audio formats.

External relations

- 5.15 The Law Commission works hard to establish strong links with a wide range of organisations and individuals who have an interest in law reform, and greatly values these relationships. We are indebted to those who send us feedback on our consultation papers, and those who provide input and expertise at all stages of the process of making recommendations to Government.

³ <http://www.lawcom.gov.uk/about.htm>.

⁴ As above.

- 5.16 It would not be possible in this Annual Report to thank individually everyone who provides us with guidance or offers us their views. We would, however, like to express our gratitude to all those organisations and individuals who have worked with us as members of advisory groups on our many projects. We are grateful, also, to the academics and members of the judiciary who have contributed in many ways to our work during the course of the year.



The Law Commission held a stakeholder event in the Royal Courts of Justice in January 2010

- 5.17 We acknowledge the support and interest shown in the Commission and its work by a number of ministers, Members of Parliament from across the political spectrum and public officials. And we thank the many practitioners and legal associations working in specialist and general fields who have given us their time and support to further our awareness and understanding of various areas of interest.
- 5.18 In January 2010 we staged a week-long exhibition in the House of Commons, using the opportunity to build new relationships with members of both Houses. Later that month over 70 people joined us for a modest celebration at the Royal Courts of Justice. Our guests included the judiciary, public officials, legal practitioners and representatives from business and the third sector.



Visitors to the Law Commission's stand in the House of Commons

- 5.19 Members of the Law Commission accept invitations throughout the year to attend and speak at seminars, lectures and conferences. We continue to seek out opportunities for reaching and engaging those people who are interested in law reform and the processes by which the law is improved.
- 5.20 In May 2009, a team of legal and other staff from the Commission joined members of the judiciary and teams from many of London's law firms and sets of chambers in the annual London Legal Walk. The team raised over £2,000 for the London Legal Support Trust, which organises the event to support free legal advice agencies in and around London, including Law Centres and pro bono advice surgeries.



At the start of the 2009 London Legal Walk, our walkers were joined by Sir Terence Etherton, who was our Chairman at the time

5.21 In February 2010 we were proud that 300 people requested tickets to the third Leslie Scarman lecture. The lecture, which was oversubscribed, was delivered in the Middle Temple Hall by Ruth Bader Ginsburg, Associate Justice of the US Supreme Court.



Justice Ginsberg with the present Chairman, Sir James Munby, and two previous Chairmen, Dame Mary Arden DBE and Sir Roger Toulson

- 5.22 The four law reform bodies of the UK and the Republic of Ireland together with the Jersey Law Commission come together for an annual meeting, which they take in turns to host. This year's meeting took place on 12 June 2009 in Belfast.
- 5.23 Over the course of the year we have worked closely with the Scottish Law Commission on a number of projects. We continue to collaborate on insurance contract law and in December 2009 jointly published our final report and draft Bill on Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation.⁵
- 5.24 Much of the Law Commission's work on statute law repeals is also conducted jointly with the Scottish Law Commission and many of the repeal candidates contained in Statute Law Repeals Reports extend to Scotland. Indeed because Statute Law (Repeals) Acts extend throughout the United Kingdom and the Isle of Man, the Law Commission liaises regularly on its repeal proposals not only with the Scottish Law Commission but also with the authorities in Wales (the Office of the Secretary of State for Wales and the Counsel General to the National Assembly for Wales) and with the authorities in Northern Ireland and in the Isle of Man. Their help and support in considering and responding to the repeal proposals is much appreciated. We also keep in touch with the Law Commission of Northern Ireland.
- 5.25 The Law Commission also plays a wide role in the international business of law reform. We are pleased to continue to receive international guests at our offices in London and invitations to visit colleagues around the world.

⁵ (2009) Law Com No 319; Scot Law Com No 219

PART 6

STAFF AND RESOURCES

Staff

- 6.1 The Commissioners very much appreciate the dedication and expertise of all the staff at the Law Commission. During the period of this Annual Report several members of staff moved on for the sake of career development. The Commissioners are grateful for their contribution to the work of the Commission.

Legal staff

- 6.2 The Commission's lawyers are barristers, solicitors or legal academics from a wide range of professional backgrounds, including private practice and the public service.
- 6.3 Parliamentary Draftsmen who prepare the draft Bills attached to the law reform reports, and who undertake the consolidation of existing legislation, are seconded to the Law Commission from the Office of the Parliamentary Counsel. The Commission is very grateful to them all for their expertise and hard work.

Research assistants

- 6.4 Each year a dozen or so well qualified graduates have been recruited to assist with research, drafting and creative thinking. They generally spend a year or two at the Commission before moving on to further their legal training and careers. The selection process is extremely thorough and the Commission has aimed to attract a diverse range of candidates of the highest calibre through contact with faculty careers advisers, as well as through advertisements both online and in the press. For many research assistants, working at the Commission has been a rung on the ladder to an extremely successful career. The Commission recognises the contribution they make, not least through their enthusiastic commitment to the work of law reform and their lively participation in debate.

Communications

- 6.5 The team: Phil Hodgson, Dan Leighton, Terry Cronin.
- 6.6 The Communications team supports the work of the Law Commission by providing strategic direction on the Commission's communications issues and services to the Commissioners and legal teams that include: media management, stakeholder engagement, PR, internal communications, event management, eCommunications and publishing.



The Communications Team

Corporate services

- 6.7 The team: Donna Greene, Jacqueline Griffiths, Barbara Wallen, Nicole Latte, Alison Meager, Jackie Samuel, Carmen McFarlane.
- 6.8 The Commission has continued to benefit from the experience, expertise and commitment of its small Corporate Services Team (CST) of administrative staff. The CST is responsible for accommodation, health and safety, human resources, information technology, programme management, records management, resource accounting, information assurance and secretarial assistance. These support services help the Commission to function effectively and smoothly.
- 6.9 The CST values the help available to them from colleagues in MoJ, in particular from Democracy, Constitution and Law's¹ Legal Policy Team, Information Directorate and the Human Resources Directorate. The CST is also grateful to the Corporate HQ Workplace Management Team and Central Health and Safety Branch.

Library

- 6.10 The team: Keith Tree, Michael Hallissey.
- 6.11 The Library service continues to provide a vital information service in support of the legal work of the Commission. The Law Commission makes use, reciprocally, of a number of other libraries and particular thanks are due to the Judges' Library at the Royal Courts of Justice, MoJ and the Institute of Advanced Legal Studies. In addition, a large collection of printed sources is available for research. Library staff also provide training and advice in all areas of legal information research.

¹ Now Law, Rights and International Group.

- 6.12 The Library makes full use of the internet and other electronic services and databases. Where possible, these are also made available through each individual desktop PC. The internet is also being used to make available old Law Commission reports and consultation papers through the British and Irish Legal Information Institute.² Our older publications, which are not available on our website, can be supplied in electronic format (pdf) on request. (This service is currently provided by the communications team.)
- 6.13 The Law Commission library staff are employed by the Library and Information Service (LIS), which provides the judiciary and staff in the MoJ, HMCS, and associated offices with the information resources and publications needed to carry out their work.



The Corporate Services Team and the Library Team

Working at the Commission

Work/life balance

- 6.14 There are a wide variety of work/life balance arrangements in place, such as home-working and working part-time or compressed hours. In addition, staff loans, secondments and short-term appointments are also welcomed.

Health and safety

- 6.15 The Commission attaches great importance to the health and safety of its staff and others who visit its premises. Quarterly meetings of the Steel House Health and Safety Committee take place, chaired by MoJ's Central Health and Safety Branch. The Head of Corporate Services is the Competent Person for health and safety management at the Commission, representing staff at the Committee and monitoring progress against a detailed Health and Safety Plan.

² <http://www.bailii.org>.



The Chairman, Commissioners and Chief Executive

(Signed) SIR JAMES MUNBY, *Chairman*
ELIZABETH COOKE
DAVID HERTZELL
JEREMY HORDER
FRANCES PATTERSON QC

MARK ORMEROD, *Chief Executive*

9 June 2010

APPENDIX A

IMPLEMENTATION OF LAW COMMISSION REPORTS

Introduction

A.1 This Appendix sets out the progress that has been made towards implementation of our reports over the past year. In summary:

- (1) the Law Commission published five law reform reports between 1 April 2009 and 31 March 2010;
- (2) four reports were implemented during that period by way of primary legislation passed through Parliament;
- (3) one report is in the process of being implemented;
- (4) ten reports now await implementation; and
- (5) eleven reports await a decision from Government.

A.2 Our progress during the year can be seen in the context of the Law Commission's overall achievements:

Law reform reports published	100%	(185)
Accepted, implemented and decision awaited (maximum potential for implementation)	80%	(148)
Accepted and implemented in whole or in part	68%	(125)
Accepted by Government in whole, in part or in principle but awaiting implementation	7%	(13)
Response from Government awaited	6%	(11)
Rejected	15%	(27)
Superseded	5%	(9)

A.3 Progress towards improving the rate of implementation has been assisted by two recent developments. In November 2009 Parliament passed the Law Commission Act 2009 (amending the Law Commissions Act 1965). A key feature of this Act is that it places a requirement on the Lord Chancellor to report to Parliament annually on the Government's progress in implementing Law Commission reports. The first report to Parliament will be delivered after the end of the 2010-2011 reporting year.

A.4 Following the commencement of the Law Commission Act 2009, in March 2010 the Government and the Law Commission agreed the terms of a Protocol in relation to Law Commission work. The latter part of the Protocol sets out departmental responsibilities once the Law Commission has published a report. The Minister for the relevant department will provide an interim response to the

Law Commission as soon as possible (but not later than six months after publication of the report), and will give a final response within a year of the report being published.

- A.5 We welcome these developments, which will greatly assist in ensuring that progress is made in considering and implementing Law Commission reports in a timely and efficient manner.

Implemented reports

Reforming Bribery¹

- A.6 In December 2005 Government published a consultation paper on the law relating to bribery. In our final report, published in November 2008, we recommended replacing the common law offence of bribery and various statutory offences of corruption with two new offences. We also recommended the creation of two specialised offences relating to the bribery of foreign officials and to corporations who fail to prevent bribery on the part of employees or agents.
- A.7 The recommendations have been implemented in the Bribery Act 2010, which received Royal Assent on 8 April 2010.

Murder, Manslaughter and Infanticide²

- A.8 The Commission's report, published in 2006, has been partially implemented by the Coroners and Justice Act 2009. Sections 54-56 of that Act substantially implement the Commission's recommendations for reform of the partial defences of provocation and diminished responsibility. They are due to come into force on 4 October 2010.

Third Parties (Rights against Insurers)³

- A.9 In 2001 the Law Commission and Scottish Law Commission published a final report and draft Bill, relating to the right of a third party to proceed against an insurer where the insured is subject to an insolvency-type event. The report recommended reform of the existing Third Parties (Rights against Insurers) Act 1930. The Commissions' recommendations were accepted by Government in 2002, and a Bill was introduced in the House of Lords on 23 November 2009. The Bill was the second in the trial of the House of Lords procedure for Law Commission Bills. It proceeded through Parliament and received Royal Assent on 25 March 2010. During the passage of the Bill Commissioner David Hertzell and Lord Bach, then Parliamentary Under-Secretary of State for Justice, gave evidence to the Special Public Bill Committee on 12 January 2010.

The Rules against Perpetuities and Excessive Accumulations⁴

- A.10 The Commission's 1998 report made a number of recommendations for the reform of the rules relating to perpetuities and excessive accumulations. A draft Bill was prepared by the Commission giving effect to the recommendations. The

¹ Law Com No 313.

² Law Com No 304.

³ Law Com No 272.

⁴ Law Com No 251.

Commission's recommendations were accepted by Government in March 2001, and a Bill was introduced in the House of Lords on 1 April 2009.⁵ This was the first in a trial of a House of Lords procedure for Law Commission Bills.⁶ The Bill completed its Parliamentary passage, and received Royal Assent on 12 November 2009. During the passage of the Bill the then Chairman of the Law Commission, Lord Justice Etherton, submitted evidence to the Special Public Bill Committee on 20 May 2009.

Reports in the process of being implemented

Distress for Rent⁷

- A.11 The Commission's report on this subject was published in 1991. It recommended the complete abolition of the remedy of distress for non-payment of rent for both commercial and residential tenancies. In March 2003, the Government indicated its acceptance of the recommendation in relation to residential tenancies only. For commercial tenancies, distress for non-payment of rent would be reformed rather than abolished.
- A.12 The Tribunals, Courts and Enforcement Act 2007 entirely abolished the existing law of distress, but introduces a new statutory regime for commercial rent arrears recovery. The Act received Royal Assent on 19 September 2007 and it was expected that the relevant provisions would come into force in 2008. On 17 March 2009, Parliamentary Under-Secretary of State Bridget Prentice made an announcement in Parliament on a review of bailiff and enforcement law. However, this made no reference to our recommendations and we have received no indication as to whether the review will include them. We await further developments.

Reports awaiting implementation

Damages for Personal Injury: Medical Nursing and Other Expenses⁸

- A.13 See Part 3⁹ for more details.

Claims for Wrongful Death¹⁰

- A.14 See Part 3¹¹ for more details.

Partnership Law¹²

- A.15 Our joint report with the Scottish Law Commission was published in November 2003. It was in two parts. Most of the recommendations concerned general

⁵ *Hansard* (HL), 1 April 2009, vol 709, col 1081.

⁶ Law Commission Bills, First Report of the Procedure Committee of the House of Lords (2007-8) HL 63.

⁷ Law Com No 194.

⁸ Law Com No 262.

⁹ Paras 3.6 to 3.10 above.

¹⁰ Law Com No 263.

¹¹ Paras 3.6 to 3.10 above.

¹² Law Com No 283; Scot Law Com No 192.

partnerships. In 2006, the Government rejected this part of the report.¹³ We also made recommendations about limited partnerships. Limited partnerships (as distinct from limited liability partnerships) allow general partners and limited partners to join together. A general partner manages the business and has unlimited liability for its obligations, while limited partners take no part in the management and assume only limited liability. Our recommendations were designed to clarify the relationship between limited partnerships and general partnership law.

- A.16 In July 2006 the Government announced its intention to implement this part of our report.¹⁴ In August 2008, the Department for Business, Enterprise and Regulatory Reform published a consultation paper and draft Legislative Reform Order. Subsequently, however, the Government announced that it would proceed with the limited partnership reforms in stages.
- A.17 So far, one order has come into effect. The Legislative Reform (Limited Partnerships) Order 2009 makes two main changes: making a certificate of registration conclusive evidence that a limited partnership has been formed at the date shown on the certificate; and requiring all new limited partnerships to include “Limited Partnership” or “LP” or equivalent at the end of their names. The Government intends to discuss alternative options for taking forward our other recommendations. These include proposals relating to capital contributions and clarifying what activities are permitted for limited partners without jeopardising their limited status. We await the outcome of these discussions.

Pre-judgment Interest on Debts and Damages¹⁵

- A.18 See Part 3¹⁶ for more details.

Unfair Terms in Contracts¹⁷

- A.19 The present law on unfair contract terms is unacceptably confusing. It is covered by two pieces of legislation, containing inconsistent and overlapping provisions. In February 2005 we published a report and draft Bill jointly with the Scottish Law Commission. The draft Bill rewrites both laws as a single regime, in a way that is much more accessible to consumer and business advisers. The report also recommends improving protection for the smallest and most vulnerable businesses, employing nine or fewer members of staff.
- A.20 In July 2006, Department for Trade and Industry Minister Ian McCartney wrote to us to say that the Government accepted the Commissions’ recommendations in principle, subject to an evaluation of the impact of the reforms.¹⁸

¹³ Written Ministerial Statement, Ian McCartney, *Hansard* (HC), 20 July 2006, vol 449, col 53WS.

¹⁴ See above.

¹⁵ (2004) Law Com No 287.

¹⁶ Paras 3.16 to 3.21 above.

¹⁷ (2005) Law Com No 292; Scot Law Com No 199.

¹⁸ See www.dti.gov.uk/consumers/buying-selling/sale-supply/unfair-contracts/index.html (last visited on 15 June 2010).

- A.21 However, in October 2008, the European Commission published a proposal for a draft directive on consumer rights which would, among other things, harmonise the law on unfair contract terms.¹⁹ The first draft Directive proved to be controversial, and in March 2010, Commissioner Viviane Reding undertook to amend it and bring it back to the European Parliament in November 2010.²⁰ Any legislation in this area awaits the outcome of the European negotiations.

The Forfeiture Rule and the Law of Succession²¹

- A.22 In July 2005 we published a final report and draft Bill to solve a particular problem in succession law. We recommended that where a person forfeits the inheritance of property because they kill the person from whom they would inherit, the property should be distributed as if the killer had died. The effect is that property will normally pass to the next in line, such as the killer's children. Our recommendations would also apply where the heir voluntarily disclaims the property.
- A.23 In 2006, the Government accepted our recommendations, subject to minor modifications.²² In December 2009, legislative provisions along the lines we had recommended were included in the draft Civil Law Reform Bill, subject to some minor amendments. We welcome these provisions, and are encouraged by the support they received from the House of Commons Justice Committee.²³ We hope they can be enacted without undue delay.

Renting Homes: The Final Report²⁴ ***and Housing: Encouraging Responsible Letting***²⁵

- A.24 On 13 May 2009, the Government published its response to a report it had commissioned into the private rented sector led by Dr Julie Rugg. That response also stood as the Government's response to two of our reports on housing law – Renting Homes and Encouraging Responsible Letting.
- A.25 In its response, the Government acknowledged the contribution made by our two reports to the development of housing policy but took the firm view that the time was not right to implement the fundamental reforms proposed in Renting Homes. We are encouraged to note that the Government's reasoning is based on an assessment of the housing market in the current financial climate, rather than a fundamental disagreement on the merits of our proposals. We therefore hope that the Government will return to the proposals at an appropriate time in the future.

¹⁹ Com (2008) 624/3, published on 8 October 2008. The draft directive implements some of our recommendations, including the need for core terms to be not only in plain, intelligible language but also "transparent": that is, legible and actually available to the consumer.

²⁰ See European Parliament Press Release, 13 March 2010 at http://www.europarl.europa.eu/news/expert/infopress_page/063-70800-076-03-12-911-20100317IPR70798-17-03-2010-2010-false/default_en.htm (last visited on 15 June 2010).

²¹ (2005) Law Com No 295.

²² Written Ministerial Statement, Baroness Ashton, *Hansard* (HL), 18 December 2006, vol 687, col WS223.

²³ *Draft Civil Law Reform Bill: Pre-Legislative Scrutiny*, House of Commons Justice Committee (2009-10) HC 300-1, para 185.

²⁴ Law Com No 297, published 5 May 2006.

²⁵ Law Com No 312, published 14 August 2008.

- A.26 At the same time as rejecting our fundamental reform package, the Government has, however, accepted the principle that, in the private sector, there should be mandatory written agreements. Consultations have been opened on two options, one being that recommended by Renting Homes. If this is accepted, it would constitute acceptance of an important and valuable part of the Law Commission proposals.
- A.27 In relation to the regulation of the private sector, the response recognises the need for regulatory change to improve housing conditions in the private sector. This was our fundamental case in Encouraging Responsible Letting. On the substance of the regulatory approach, the Government have adopted an alternative mechanism to what we proposed. However, it has accepted in principle one of our important recommendations, that letting agents be subject to a formal and mandatory regulatory structure.

Capital and Income in Trusts: Classification and Apportionment²⁶

- A.28 See Part 3²⁷ for more details.

Reports awaiting a Government decision

Damages for Personal Injury: Non-Pecuniary Loss²⁸

- A.29 See Part 3²⁹ for more details.

Company Security Interests³⁰

- A.30 In August 2005 we published a final report and draft legislation on Company Security Interests recommending major reforms. These would replace the present paper-based system with a new on-line process to register charges cheaply and instantaneously. They would also provide simpler and clearer rules to determine “priority” disputes between competing interests over the same property.
- A.31 We were disappointed that the then Department for Trade and Industry was not able to include our recommendations within the Companies Act 2006. Last year we said that we awaited a formal decision on whether the Government accepted our recommendations. There have been no further developments in this area.

Trustee Exemption Clauses³¹

- A.32 A trustee exemption clause is a provision in a trust instrument which excludes or restricts a trustee’s liability for breach of trust. In July 2006 we published a report recommending that the use of trustee exemption clauses would be most effectively regulated by the adoption across the trust industry of a non-statutory rule of practice governing the disclosure and explanation of relevant clauses. This should be enforced by the regulatory and professional bodies who govern and

²⁶ (2009) Law Com No 315.

²⁷ Paras 3.25 to 3.27 above.

²⁸ (1999) Law Com No 257.

²⁹ Paras 3.6 to 3.9 above.

³⁰ (2005) Law Com No 296.

³¹ (2006) Law Com No 301.

influence trustees and trust drafters. A number of bodies have already implemented the rule.³² The report recommends that Government should promote the application of the rule of practice as widely as possible across the trust industry. We are still awaiting a formal decision by Government as to whether they accept our recommendation.

Termination of Tenancies³³

- A.33 This project examined the means whereby a landlord can terminate a tenancy because the tenant has not complied with his or her obligations. 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.
- A.34 The Commission's report, published in October 2006, recommended the abolition of forfeiture and its replacement by a modern statutory scheme for the termination of tenancies on the ground of tenant default. We are still awaiting a decision by Government as to whether it accepts these recommendations.

Participating in Crime³⁴

- A.35 In May 2007, the Commission published a report and draft Bill setting out recommendations for reform of the law of secondary liability for assisting and encouraging crime. We gave a summary of our recommendations in our previous Annual Report.
- A.36 The Government indicated that it would consider the recommendations when it received the Commission's report on Conspiracy and Attempts in December 2009.³⁵

Cohabitation: The Financial Consequences of Relationship Breakdown³⁶

- A.37 The Law Commission published its report on cohabitation on 31 July 2007. The publication of the report followed two years of work by the Law Commission conducted at the request of, and funded by, the Ministry of Justice. On 6 March 2008, the Ministry of Justice provided an interim response in a Statement to Parliament by the Parliamentary Under-Secretary of State, Bridget Prentice. The response indicated that the Government was postponing its decision on the Law Commission's "very thorough and high quality" report because it was concerned to establish estimates of the financial costs and financial benefits of bringing into effect the Law Commission's recommended scheme. The Government hoped to do so by examining the operation of the Family Law (Scotland) Act 2006. We look forward to receiving the Government's final response.

³² The Society of Trusts and Estates Practitioners has introduced a version of the rule that binds its members in England and Wales. The Law Society has introduced new guidance to the profession to support the Code of Conduct binding solicitors as from 1 July 2007. The Institute of Chartered Accountants in England and Wales has also published guidance on trustee exemption clauses in line with our recommendations which is binding on its members.

³³ (2006) Law Com No 303.

³⁴ (2007) Law Com No 305.

³⁵ See paras A.40 to A.41 below.

³⁶ (2007) Law Com No 307.

Intoxication and Criminal Liability³⁷

- A.38 The Commission published this report on 15 January 2009. It recommended that the distinction between offences of basic and specific intent be removed and the law made more comprehensible, logical and consistent by providing, instead, a definitive list of states of mind to which self-induced intoxication would be relevant. We were advised in July 2009 that this report would be considered along with our report on Participating in Crime once the report on Conspiracy and Attempts had been published. We await a final response on all these reports.

Consumer Remedies for Faulty Goods³⁸

- A.39 Please see Part 2³⁹ for further details.

Conspiracy and Attempts⁴⁰

- A.40 On 10 December 2009 we published a final report and draft Bill on conspiracy and attempts. Our main recommendation on conspiracy would resolve the problem with the current law highlighted by the House of Lords decision in *Saik*,⁴¹ which sets the fault element too high in respect of conspiracies to commit certain offences. We also recommended that certain exemptions relating to conspiracy be abolished and the law relating to the exemption for conspirators who are the intended victim of an offence be clarified.
- A.41 As regards attempts, our recommendations would resolve a number of uncertainties and ambiguities under the current law, including the commission of the offence with conditional intent and the provision for the offence of attempted murder to be by omission.

Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation⁴²

- A.42 In December 2009 we published a final report and draft Bill jointly with the Scottish Law Commission. We recommended a new consumer statute to address 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”. Our draft Bill replaces this with a duty to take reasonable care to answer the insurer’s questions fully and accurately. Where a consumer makes a deliberate or reckless misrepresentation, the draft Bill permits the insurer to refuse claims. Where the consumer answers questions carelessly, the insurer has a proportionate remedy. However, the consumer who acts honestly and carefully is protected.
- A.43 The issue was raised in Parliament on 13 January 2010, following the publication of our report. Sarah McCarthy-Fry, Exchequer Secretary to the Treasury, commented:

³⁷ (2009) Law Com No 314.

³⁸ (2009) Law Com No 317; Scot Law Com No 216.

³⁹ Paras 2.9 to 2.14 above.

⁴⁰ (2009) Law Com No 318.

⁴¹ [2006] UKHL 18, [2007] 1 AC 18.

⁴² (2009) Law Com No 319; Scot Law Com No 219.

The Law Commission's consultation on the draft Bill received a favourable response. The ABI is supportive of the proposals and, out of 39 responses from insurers, only four argued against the reform. We fully support the aims of the Law Commission in reviewing pre-contract disclosure and misrepresentation in consumer insurance law. The Law Commission's proposals will be considered thoroughly in the round with other priorities for legislation at the appropriate time, and my officials are in regular communication with the Law Commission as it progresses that work.⁴³

- A.44 We hope that Parliamentary time will soon be found to implement this important measure. We understand that the new administration is considering this proposal favourably.

The Illegality Defence⁴⁴

- A.45 We published this report in March 2010. It looks at how the law should respond when a claimant in a civil action has been involved in illegal conduct that is connected to the claim in some way. We concluded that in claims in contract, unjust enrichment or tort, improvements were best left to the courts, to develop through case law.
- A.46 However, in one area – the law of trusts – we recommended legislative reform. We therefore published a short draft Bill. It would apply where a trust has been created or continued to conceal the beneficiary's interest for a criminal purpose. In most cases, the beneficiary would be entitled to their normal legal rights. However, in exceptional circumstances, the court would have a discretion to prevent the beneficiary from enforcing the trust. We await a decision on this report.

⁴³ *Hansard* (HC), 13 January 2010, vol 503, cols 264WH-265WH.

⁴⁴ (2010) Law Com No 320.

TABLE SHOWING IMPLEMENTATION STATUS OF LAW COMMISSION LAW REFORM REPORTS

LC No	Title	Status	Related Measures
1966			
3	Proposals to Abolish Certain Ancient Criminal Offences	Implemented	Criminal Law Act 1967 (c58)
6	Reform of the Grounds of Divorce: The Field of Choice (Cmnd 3123)	Implemented	Divorce Reform Act 1969 (c55); now Matrimonial Causes Act 1973 (c18)
7	Proposals for Reform of the Law Relating to Maintenance and Champerty	Implemented	Criminal Law Act 1967 (c80)
8	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd 3149)	Implemented	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c63)
1967			
9	Transfer of Land: Interim Report on Root of Title to Freehold Land	Implemented	Law of Property Act 1969 (c59)
10	Imputed Criminal Intent (<i>Director of Public Prosecutions v Smith</i>)	Implemented in part	Criminal Justice Act 1967 (c80), s 8
11	Transfer of Land: Report on Restrictive Covenants	Implemented in part	Law of Property Act 1969 (c59)
13	Civil Liability for Animals	Implemented	Animals Act 1971 (c22)
1968			
16	Blood Tests and the Proof of Paternity in Civil Proceedings (HC 2)	Implemented	Family Law Reform Act 1969 (c46)
1969			
17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (HC 38)	Implemented	Law of Property Act 1969 (c59)
18	Transfer of Land: Report on Land Charges affecting Unregistered Land (HC 125)	Implemented	Law of Property Act 1969 (c59)
19	Proceedings against Estates (Cmnd 4010)	Implemented	Proceedings against Estates Act 1970 (c17)
20	Administrative Law (Cmnd 4059)	Implemented	See LC 73
21	Interpretation of Statutes (HC 256)	Rejected	
23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (HC 369)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45)
24	Exemption Clauses in Contracts: First Report: Amendments to the Sale of Goods Act 1893: Report by the Two Commissions (SLC 12) (HC 403)	Implemented	Supply of Goods (Implied Terms) Act 1973 (c13)
25	Family Law: Report on Financial Provision in Matrimonial Proceedings (HC 448)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45); now largely Matrimonial Causes Act 1973 (c18)
26	Breach of Promise of Marriage (HC 453)	Implemented	Law Reform (Miscellaneous Provisions) Act 1970 (c33)
1970			
29	Criminal Law: Report on Offences of Damage to Property (HC 91)	Implemented	Criminal Damage Act 1971 (c48)
30	Powers of Attorney (Cmnd 4473)	Implemented	Powers of Attorney Act 1971 (c27)
31	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd 4497)	Implemented	Administration of Estates Act 1971 (c25)

LC No	Title	Status	Related Measures
33	Family Law: Report on Nullity of Marriage (HC 164)	Implemented	Nullity of Marriage Act 1971 (c44), now Matrimonial Causes Act 1973 (c18)
34	Hague Convention on Recognition of Divorces and Legal Separations: Report by the two Commissions (SLC 16) (Cmnd 4542)	Implemented	Recognition of Divorces and Legal Separations Act 1971 (c53); now Family Law Act 1986 (c55), Part II
35	Limitation Act 1963 (Cmnd 4532)	Implemented	Law Reform (Miscellaneous Provisions) Act 1971 (c43)
40	Civil Liability of Vendors and Lessors for Defective Premises (HC 184)	Implemented	Defective Premises Act 1972 (c35)
1971			
42	Family Law: Report on Polygamous Marriages (HC 227)	Implemented	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c38); now Matrimonial Causes Act 1973 (c18)
43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (SLC 21) (Cmnd 4654)	Implemented in part	Finance Act 1972 (c41), s 82.
1972			
48	Family Law: Report on Jurisdiction in Matrimonial Proceedings (HC 464)	Implemented	Domicile and Proceedings Act 1973 (c45)
1973			
53	Family Law: Report on Solemnisation of Marriage in England and Wales (HC 250)	Rejected	
55	Criminal Law: Report on Forgery and Counterfeit Currency (HC 320)	Implemented	Forgery and Counterfeiting Act 1981 (c45)
56	Report on Personal Injury Litigation: Assessment of Administration of Damages (HC 373)	Implemented	Administration of Justice Act 1982 (c53)
1974			
60	Report on Injuries to Unborn Children (Cmnd 5709)	Implemented	Congenital Disabilities (Civil Liability) Act 1976 (c28)
61	Family Law: Second Report on Family Property: Family Provision on Death (HC 324)	Implemented	Inheritance (Provision for Family and Dependents) Act 1975 (c63)
62	Transfer of Land: Report on Local Land Charges (HC 71)	Implemented	Local Land Charges Act 1975 (c76)
1975			
67	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (HC 377)	Rejected	
68	Transfer of Land: Report on Rentcharges (HC 602)	Implemented	Rentcharges Act 1977 (c30)
69	Exemption Clauses: Second Report by the two Law Commissions (SLC 39) (HC 605)	Implemented	Unfair Contract Terms Act 1977 (c50)
1976			
73	Report on Remedies in Administrative Law (Cmnd 6407)	Implemented	Rules of Supreme Court (Amendment No 3) 1977; Supreme Court Act 1981 (c54)
74	Charging Orders (Cmnd 6412)	Implemented	Charging Orders Act 1979 (c53)
75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd 6428)	Implemented	Occupiers' Liability Act 1984 (c3)
76	Criminal Law: Report on Conspiracy and Criminal Law Reform (HC 176)	Implemented in part	Criminal Law Act 1977 (c45)

LC No	Title	Status	Related Measures
77	Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (HC 637)	Implemented	Domestic Proceedings and Magistrates' Courts Act 1978 (c22)
1977			
79	Law of Contract: Report on Contribution (HC 181)	Implemented	Civil Liability (Contribution) Act 1978 (c47)
82	Liability for Defective Products: Report by the two Commissions (SLC 45) (Cmnd 6831)	Implemented	Consumer Protection Act 1987 (c43)
83	Criminal Law: Report on Defences of General Application (HC 566)	Rejected	
1978			
86	Family Law: Third Report on Family Property: The Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods (HC 450)	Implemented	Housing Act 1980 (c51); Matrimonial Homes and Property Act 1981 (c24)
88	Law of Contract: Report on Interest (Cmnd 7229)	Implemented in part	Administration of Justice Act 1982 (c53); Rules of the Supreme Court (Amendment No 2) 1980
89	Criminal Law: Report on the Mental Element in Crime (HC 499)	Rejected	
91	Criminal Law: Report on the Territorial and Extra-Territorial Extent of the Criminal Law (HC 75)	Implemented in part	Territorial Sea Act 1987 (c49)
1979			
95	Law of Contract: Implied Terms in Contracts for the Sale and Supply of Goods (HC 142)	Implemented	Supply of Goods and Services Act 1982 (c29)
96	Criminal Law: Offences Relating to Interference with the Course of Justice (HC 213)	Rejected	
1980			
99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (HC 369)	Implemented	Matrimonial Homes and Property Act 1981 (c24)
102	Criminal Law: Attempt and Impossibility in Relation to Attempt, Conspiracy and Incitement (HC 646)	Implemented	Criminal Attempts Act 1981 (c47)
104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd 8064)	Rejected	
1981			
110	Breach of Confidence (Cmnd 8388)	Rejected	
111	Property Law: Rights of Reverter (Cmnd 8410)	Implemented	Reverter of Sites Act 1987 (c15)
112	Family Law: The Financial Consequences of Divorce (HC 68)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
1982			
114	Classification of Limitation in Private International Law (Cmnd 8570)	Implemented	Foreign Limitation Periods Act 1984 (c16)
115	Property Law: The Implications of <i>Williams and Glyn's Bank Ltd v Boland</i> (Cmnd 8636)	Superseded	See <i>City of London Building Society v Flegg</i> [1988] AC 54
116	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (HC 513)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
117	Family Law: Financial Relief after Foreign Divorce (HC 514)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
118	Family Law: Illegitimacy (HC 98)	Implemented	Family Law Reform Act 1987 (c42)

LC No	Title	Status	Related Measures
1983			
121	Law of Contract: Pecuniary Restitution on Breach of Contract (HC 34)	Rejected	
122	The Incapacitated Principal (Cmnd 8977)	Implemented	Enduring Powers of Attorney Act 1985 (c29)
123	Criminal Law: Offences relating to Public Order (HC 85)	Implemented	Public Order Act 1986 (c64)
124	Private International Law: Foreign Money Liabilities (Cmnd 9064)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
125	Property Law: Land Registration (HC 86)	Implemented	Land Registration Act 1986 (c26)
1984			
127	Transfer of Land: The Law of Positive and Restrictive Covenants (HC 201)	Rejected	
132	Family Law: Declarations in Family Matters (HC 263)	Implemented	Family Law Act 1986 (c55), Part III
134	Law of Contract: Minors' Contracts (HC 494)	Implemented	Minors' Contracts Act 1987 (c13)
137	Private International Law: Recognition of Foreign Nullity Decrees (SLC 88) (Cmnd 9347)	Implemented	Family Law Act 1986 (c55), Part II
1985			
138	Family Law: Conflicts of Jurisdiction (SLC 91) (Cmnd 9419)	Implemented	Family Law Act 1986 (c55), Part I
141	Covenants Restricting Dispositions, Alterations and Change of User (HC 278)	Implemented in part	Landlord and Tenant Act 1988 (c26)
142	Forfeiture of Tenancies (HC 279)	Rejected	
143	Criminal Law: Codification of the Criminal Law: A Report to the Law Commission (HC 270)	Superseded	See LC 177
145	Criminal Law: Offences against Religion and Public Worship (HC 442)	Implemented	Criminal Justice and Immigration Act 2008 (c4)
146	Private International Law: Polygamous Marriages (SLC 96) (Cmnd 9595)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
147	Criminal Law: Poison Pen Letters (HC 519)	Implemented	Malicious Communications Act 1988 (c27)
148	Property Law: Second Report on Land Registration (HC 551)	Implemented	Land Registration Act 1988 (c3)
149	Criminal Law: Report on Criminal Libel (Cmnd 9618)	Rejected	
151	Rights of Access to Neighbouring Land (Cmnd 9692)	Implemented	Access to Neighbouring Land Act 1992 (c23)
152	Liability for Chancel Repairs (HC 39)	Rejected	
1986			
157	Family Law: Illegitimacy (Second Report) (Cmnd 9913)	Implemented	Family Law Reform Act 1987 (c42)
1987			
160	Sale and Supply of Goods (SLC 104) (Cm 137)	Implemented	Sale and Supply of Goods Act 1994 (c35)
161	Leasehold Conveyancing (HC 360)	Implemented	Landlord and Tenant Act 1988 (c26)
163	Deeds and Escrows (HC 1)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
164	Formalities for Contracts for Sale of Land (HC 2)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)

LC No	Title	Status	Related Measures
165	Private International Law: Choice of Law Rules in Marriage (SLC 105) (HC 3)	Implemented	Foreign Marriage (Amendment) Act 1988 (c44)
166	Transfer of Land: The Rule in <i>Bain v Fothergill</i> (Cm 192)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
168	Private International Law: Law of Domicile (SLC 107) (Cm 200)	Rejected	
1988			
172	Review of Child Law: Guardianship (HC 594)	Implemented	Children Act 1989 (c41)
173	Property Law: Fourth Report on Land Registration (HC 680)	Superseded	See LC 235
174	Landlord and Tenant: Privity of Contract and Estate (HC 8)	Implemented	Landlord and Tenant (Covenants) Act 1995 (c30)
175	Matrimonial Property (HC 9)	Rejected	
1989			
177	Criminal Law: A Criminal Code (2 vols) (HC 299)	Superseded	
178	Compensation for Tenants' Improvements (HC 291)	Rejected	
180	Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC 318)	Implemented	Criminal Justice Act 1993 (c36), Part I
181	Trusts of Land (HC 391)	Implemented	Trusts of Land and Appointment of Trustees Act 1996 (c47)
184	Title on Death (Cm 777)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
186	Computer Misuse (Cm 819)	Implemented	Computer Misuse Act 1990 (c18)
187	Distribution on Intestacy (HC 60)	Implemented in part; Rejected in part	Law Reform (Succession) Act 1995 (c41)
188	Overreaching: Beneficiaries in Occupation (HC 61)	Implemented in part	Trusts of Land and Appointment of Trustees Act 1996 (c47)
1990			
192	Family Law: The Ground for Divorce (HC 636)	Rejected	Family Law Act 1996 (c27), Part II (enacted, but never brought into force)
193	Private International Law: Choice of Law in Tort and Delict (SLC 129) (HC 65)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
1991			
194	Distress for Rent (HC 138)	Implemented in part; Rejected in part	Tribunals, Courts and Enforcement Act 2007 (c15), Part III (enacted, but not yet brought into force)
196	Rights of Suit: Carriage of Goods by Sea (SLC 130) (HC 250)	Implemented	Carriage of Goods by Sea Act 1992 (c50)
199	Transfer of Land: Implied Covenants for Title (HC 437)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
201	Obsolete Restrictive Covenants (HC 546)	Rejected	
202	Corroboration of Evidence in Criminal Trials (Cm 1620)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
204	Land Mortgages (HC 5)	Rejected	
1992			
205	Rape within Marriage (HC 167)	Implemented	Criminal Justice and Public Order Act 1994 (c33)

LC No	Title	Status	Related Measures
207	Domestic Violence and Occupation of the Family Home (HC 1)	Implemented	Family Law Act 1996 (c27), Part IV
208	Business Tenancies (HC 224)	Implemented	Regulatory Reform (Business Tenancies) (England and Wales) Order 2003
1993			
215	Sale of Goods Forming Part of a Bulk (SLC 145) (HC 807)	Implemented	Sale of Goods (Amendment) Act 1995 (c28)
216	The Hearsay Rule in Civil Proceedings (Cm 2321)	Implemented	Civil Evidence Act 1995 (c38)
217	Effect of Divorce on Wills (Cm 2322)	Implemented	Law Reform (Succession) Act 1995 (c41)
218	Legislating the Criminal Code: Offences against the Person and General Principles (Cm 2370)	Implemented in part	Domestic Violence Crime and Victims Act 2004 (c28)
219	Contributory Negligence as a Defence in Contract (HC 9)	Rejected	
1994			
220	Delegation by Individual Trustees (HC 110)	Implemented	Trustee Delegation Act 1999 (c15)
221	Termination of Tenancies (HC 135)	Superseded	See LC 303
222	Binding Over (Cm 2439)	Implemented in part	In March 2007, the President of the Queen's Bench Division issued a Practice Direction
224	Structured Settlements (Cm 2646)	Implemented	Finance Act 1995 (c4); Civil Evidence Act 1995 (c38); Damages Act 1996 (c48)
226	Judicial Review (HC 669)	Implemented in part	Housing Act 1996 (c52); Access to Justice Act 1999 (c22); Tribunals, Courts and Enforcement Act 2007 (c15)
227	Restitution: Mistakes of Law (Cm 2731)	Implemented in part; Rejected in part	See <i>Kleinwort Benson v Lincoln City Council</i> [1999] 2 AC 349
228	Conspiracy to Defraud (HC 11)	Implemented	Theft (Amendment) Act 1996 (c62)
1995			
229	Intoxication and Criminal Liability (HC 153)	Superseded	See LC 314
230	The Year and a Day Rule in Homicide (HC 183)	Implemented	Law Reform (Year and a Day Rule) Act 1996 (c19)
231	Mental Incapacity (HC 189)	Implemented	Mental Capacity Act 2005 (c9)
235	Land Registration: First Joint Report with HM Land Registry (Cm 2950)	Implemented	Land Registration Act 1997 (c2)
236	Fiduciary Duties and Regulatory Rules (Cm 3049)	Rejected	
1996			
237	Involuntary Manslaughter (HC 171)	Implemented in part; Superseded in part	Corporate Manslaughter and Corporate Homicide Act 2007 (c19); see LC 304
238	Responsibility for State and Condition of Property (HC 236)	Accepted in part Rejected in part	
242	Contracts for the Benefit of Third Parties (Cm 3329)	Implemented	Contracts (Rights of Third Parties) Act 1999 (c31)
243	Money Transfers (HC 690)	Implemented	Theft (Amendment) Act 1996 (c62)
1997			
245	Evidence in Criminal Proceedings:	Implemented	Criminal Justice Act 2003 (c44)

LC No	Title	Status	Related Measures
	Hearsay (Cm 3670)		
246	Shareholder Remedies (Cm 3759)	Implemented	Companies Act 2006 (c46)
247	Aggravated, Exemplary and Restitutionary Damages (HC 346)	Rejected	
1998			
248	Corruption (HC 524)	Superseded	See LC 313
249	Liability for Psychiatric Illness (HC 525)	Rejected	
251	The Rules against Perpetuities and Excessive Accumulations (HC 579)	Implemented	Perpetuities and Accumulations Act 2009 (c18)
253	Execution of Deeds and Documents (Cm 4026)	Implemented	Regulatory Reform (Execution of Deeds and Documents) Order 2005
255	Consents to Prosecution (HC 1085)	Accepted	<i>(Advisory only, no draft Bill)</i>
1999			
257	Damages for Personal Injury: Non-Pecuniary Loss (HC 344)	Implemented in part; Pending in part	See <i>Heil v Rankin</i> [2000] 3 WLR 117
260	Trustees' Powers and Duties (SLC 172) (HC 538; SE2)	Implemented	Trustee Act 2000 (c29)
261	Company Directors: Regulating Conflicts of Interests (SLC 173) (Cm 4436; SE/1999/25)	Implemented	Companies Act 2006 (c46)
262	Damages for Personal Injury: Medical and Nursing Expenses (HC 806)	Accepted in principle	
263	Claims for Wrongful Death (HC 807)	Accepted in part	
2001			
267	Double Jeopardy and Prosecution Appeals (Cm 5048)	Implemented	Criminal Justice Act 2003 (c44)
269	Bail and the Human Rights Act 1998 (HC 7)	Implemented	Criminal Justice Act 2003 (c44)
270	Limitation of Actions (HC 23)	Rejected	
271	Land Registration for the Twenty-First Century (jointly with HM Land Registry) (HC 114)	Implemented	Land Registration Act 2002 (c9)
272	Third Parties – Rights against Insurers (SLC 184) (Cm 5217)	Implemented	Third Parties (Rights Against Insurers) Act 2010 (c10)
273	Evidence of Bad Character in Criminal Proceedings (Cm 5257)	Implemented	Criminal Justice Act 2003 (c44)
2002			
276	Fraud (Cm 5560)	Implemented in part	Fraud Act 2006 (c35)
277	The Effective Prosecution of Multiple Offending (Cm 5609)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
2003			
281	Land, Valuation and Housing Tribunals: The Future (Cm 5948)	Rejected	
282	Children: Their Non-accidental Death or Serious Injury (Criminal Trials) (HC 1054)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
283	Partnership Law (SLC192) (Cm 6015; SE/2003/299)	Accepted in part; Rejected in part	
284	Renting Homes (Cm 6018)	Superseded	See LC 297
286	Towards a Compulsory Purchase Code: (1) Compensation (Cm 6071)	Accepted (but will not be implemented)	

LC No	Title	Status	Related Measures
2004			
287	Pre-judgment Interest on Debts and Damages (HC 295)	Accepted in part	
289	In the Public Interest: Publication of Local Authority Inquiry Reports (Cm 6274)	Accepted (but will not be implemented)	
290	Partial Defences to Murder (Cm 6301)	Superseded	See LC 304
291	Towards a Compulsory Purchase Code: (2) Procedure (Cm 6406)	Accepted (but will not be implemented)	
2005			
292	Unfair Terms in Contracts (SLC 199) (Cm 6464; SE/2005/13)	Accepted in principle	
295	The Forfeiture Rule and the Law of Succession (Cm 6625)	Accepted	
296	Company Security Interests (Cm 6654)	Pending	
2006			
297	Renting Homes: The Final Report (Cm 6781)	Accepted in part	
300	Inchoate Liability for Assisting and Encouraging Crime (Cm 6878)	Implemented	Serious Crime Act 2007 (c27)
301	Trustee Exemption Clauses (Cm 6874)	Pending	
302	Post-Legislative Scrutiny (Cm 6945)	Implemented	See Post-Legislative Scrutiny: The Government's Approach (2008) Cm 7320
303	Termination of Tenancies (Cm 6946)	Pending	
304	Murder, Manslaughter and Infanticide (HC 30)	Implemented in part; Pending in part	Coroners and Justice Act 2009 (c25)
2007			
305	Participating in Crime (Cm 7084)	Pending	
307	Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182)	Pending	
2008			
309	Housing: Proportionate Dispute Resolution (Cm 7377)	Rejected	
312	Housing: Encouraging Responsible Letting (Cm 7456)	Accepted in part	
313	Reforming Bribery (HC 928)	Implemented	Bribery Act 2010 (c23)
2009			
314	Intoxication and Criminal Liability (Cm 7526)	Pending	
315	Capital and Income in Trusts: Classification and Apportionment (HC 426)	Accepted	
317	Consumer Remedies for Faulty Goods (Cm 7725)	Pending	
318	Conspiracy and Attempts (HC 41)	Pending	
319	Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (Cm 7758)	Pending	
2010			
320	The Illegality Defence (HC 412)	Pending	
322	Administrative Redress: Public Bodies and the Citizen	Pending	

APPENDIX B

THE COST OF THE COMMISSION

B.1 The Commission's resources are mainly made available through the Ministry of Justice in accordance with section 5 of the Law Commissions Act 1965.

	2007/2008 (April/March)		2008/2009 (April/March)		2009/2010 (April/March)	
	£000	£000	£000	£000	£000	£000
Commissioner salaries (including ERNIC)	583.1		541.3		521.5***	
Staff salaries*	2602.1		2899.5		2972.2	
		3185.2		3440.8		3493.7
Printing and publishing; supply of information technology; office equipment; books; publicity; utilities (includes telecommunications) and postage	265.0		216.3**		216.3	
Rent for accommodation	560.0		544.1**		541.7	
Travel and Subsistence	19.2		35.2		20.1	
Other administrative costs (inc. recruitment; fees and services)	82.0		146.4		108.5	
Entertainment	9.6		4.5		5.0	
		935.8		946.5		891.6
TOTAL		4121.0		4387.3		4385.3

* Includes ERNIC, consultancy, secondees, contract staff and agency staff (includes provision of security).

** Cost reduced due to move of office in October 2008.

*** Cost reduced due to a revised start date for a Commissioner.

INDEX OF PROJECTS, BILLS AND ACTS

Administrative Redress: Public Bodies and the Citizen (LC322)	5,23-24,40,68
Admissibility of Expert Evidence in Criminal Proceedings in England and Wales (CP190)	12
Adult Social Care (CP192)	5,21-22,41
Aggravated, Exemplary and Restitutionary Damages (LC247)	34,67
Bribery Act 2010	1,53
Capital and Income in Trusts: Classification and Apportionment (LC315)	1,15-16,31,38-39,57,68
Civil Law Reform Bill	2,35,36,37,56
Claims for Wrongful Death (LC263)	35,54,67
Codification	12
Cohabitation: The Financial Consequences of Relationship Breakdown (LC307)	19,58,68
Companies Act 2006	57
Company Security Interests (LC296)	57,68
Consolidation	26-28
Consolidation – Bail	28
Consolidation – Charities	28
Consolidation – Health Service Commissioner for England	28
Consolidation – Private pensions	28
Conspiracy and Attempts (LC318)	10,11,40,58,59,68
Consumer Insurance Law: Pre-contract Disclosure and Misrepresentation (see Insurance Contract Law)	
Consumer Misrepresentation and Unfair Commercial Practices	8
Consumer Remedies for Faulty Goods	7-8,31,40,59
Coroners and Justice Act 2009	1,53
Courts and the Administration of Justice (see Statute Law Repeals)	
Damages	2,35
Damages for Late Payment and the Insurer's Duty of Good Faith (see also Insurance Contract Law)	7
Damages for Personal Injury: Medical Nursing and Other Expenses	35,36,54
Damages for Personal Injury: Non-Pecuniary Loss	35,57
Distress for Rent	54
Easements, Covenants and Profits à Prendre	16-17,41
Expert Evidence in Criminal Trials	41
Family Law (Scotland) Act 2006	58
Fitness to Plead and Insanity	13,40
Forfeiture Rule and the Law of Succession	56
High Court's Jurisdiction in Relation to Criminal Proceedings	11,40
House of Lords procedure	1
Housing: Encouraging Responsible Letting	56-57
Housing: Proportionate Dispute Resolution	38
Illegality Defence	5,8-9,60
Inheritance (Provision for Family and Dependents) Act 1975	17
Insurance Contract Law	6-7,40,41,47
Insurance Contract Law – Consumer Insurance Law: Pre-contract Disclosure and Misrepresentation (LC319)	6,40,47,59-60,68
Insurance Contract Law – Insured's Post-contractual Duty of Good Faith	41
Insurance Contract Law – Issues paper 5, Micro-businesses	6-7,40
Insurance Contract Law – Issues paper 6, Damages for Late Payment and the Insurer's Duty of Good Faith	7,40
Insured's Post-contractual Duty of Good Faith (see Insurance Contract Law)	
Intestacy and Family Provision Claims on Death (CP191)	17-18,40
Intoxication and Criminal Liability (LC314)	59,68

Law Commission Act 2009	1,43,52
Law Commission Bill	2,3
Law Commissions Act 1965	4,43,52
Legislative Reform (Limited Partnerships) Order 2009	55
Level Crossings	5, 22-23,40
Liability for Psychiatric Illness (LC249)	35,36,67
Limitation of Actions (LC270)	2,36-37,67
Lotteries (see Statute Law Repeals)	
Marital Property Agreements	18-19,41
Micro-businesses (see Insurance Contract Law)	
Misrepresentation in Consumer Insurance (see Insurance Contract Law – Consumer Insurance Law: Pre-contract Disclosure and Misrepresentation)	
Murder, Manslaughter and Infanticide (LC304)	1,53,68
National Health Service (Consequential Provisions) Act 2006	26
National Health Service (Wales) Act 2006	26
National Health Service Act 2006	26
Ombudsmen	41
Participating in Crime (LC305)	58,59,68
Partnership Law	54-55
Perpetuities and Accumulations Act (see also Rules against Perpetuities and Excessive Accumulations)	53-54
Perpetuities and Accumulations Bill (see also Rules against Perpetuities and Excessive Accumulations)	1,53-54
Poor Relief (see Statute Law Repeals)	
Pre-judgment Interest on Debts and Damages (LC287)	37-38,68
Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission for England and Wales (LC321)	1,42,52
Public Nuisance and Outraging Public Decency (see Simplification of criminal law)	12-13
Reforming Bribery (LC313)	1,53,68
Regulation, Public Interest and the Liability of Businesses	14,40
Remedies against Public Bodies (see Administrative Redress: Public Bodies and the Citizen)	
Renting Homes: The Final Report (LC297)	56,68
Responsibility for State and Condition of Property (LC238)	34,66
Rights of Creditors against Trustees and Trust Funds	19
Rules against Perpetuities and Excessive Accumulations (LC251) (see also Perpetuities and Accumulations Bill and Act)	53-54,67
Simplification of criminal law – False Imprisonment and Kidnapping	12
Simplification of criminal law – Offences against the Administration of Justice and the Public Interest	12
Simplification of criminal law – Public Nuisance and Outraging Public Decency (CP193)	12-13
Statute Law (Repeals) Acts	47
Statute Law (Repeals) Bills	28
Statute Law Repeals – Charitable Institutions	29
Statute Law Repeals – Civil and Criminal Justice	29
Statute Law Repeals – Courts and the Administration of Justice	28,29
Statute Law Repeals – Lotteries	28,29
Statute Law Repeals – Poor Relief	28,29
Statute Law Repeals – Turnpikes	28,29
Statute Law Repeals report	29,47
Termination of Tenancies (LC303)	58,68
Third Parties (Rights against Insurers) (LC272)	1,53,67
Third Parties (Rights against Insurers) Act 1930	53
Third Parties (Rights against Insurers) Act 2009	53
Third Parties (Rights against Insurers) Bill	1
Tribunals, Courts and Enforcement Act 2007	54

Trustee Exemption Clauses (LC301)	57-58,68
Trusts (Capital and Income) Bill	39
Turnpikes (see Statute Law Repeals)	
Unfair Terms in Contracts (LC292)	55-56,68



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders/General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other Accredited Agents

Customers can also order publications from:

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Tel 028 9023 8451 Fax 028 9023 5401

ISBN 978-0-10-296572-8



9 780102 965728