



**Law
Commission**
Reforming the law

Annual Report 2017 -18

The Law Commission

Annual Report 2017-18

(Law Com No 379)

The Fifty Second Annual Report of the Law Commission

Presented to Parliament pursuant to section 3(3) of the Law Commissions Act 1965

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Law Commission Annual Report 2017-18

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.

This annual report covers the period 1 April 2017 to 31 March 2018, although we have also included references beyond the reporting period, up to and including 1 June 2018 when the terms of this report were agreed.



Law Commission staff, Chief Executive and Commissioners at our London office

Contents

Chair's introduction	1
Chief Executive's comment	3
Part One: Who we are and what we do	4
Part Two: Review of our work for 2017-18	8
Commercial and common law	9
<i>Feature: From bills of sale to goods mortgages</i>	12
Criminal law	14
<i>Feature: Anti-money laundering</i>	17
Property, family and trust law	19
<i>Feature: Commonhold</i>	22
Public law and Welsh law	24
<i>Feature: Review of the Deprivation of Liberty Safeguards</i>	26
Part Three: Implementation of Law Commission law reform reports 2017-18	28
Reports implemented	29
Reports in the process of being implemented	30
Reports awaiting implementation	32
Reports accepted but will not be implemented	36
Reports awaiting a Government decision	37
Part Four: How we work	45
<i>Feature: 13th Programme of law reform</i>	52
Part Five: Our people and corporate matters	54
Appendix A: Implementation status of Law Commission law reform reports	61
Appendix B: The cost of the Commission	75
Appendix C: Our business plan priorities for 2017-18	76
Appendix D: Targets for 2017-18 and 2018-19	77
Index of projects, Bills and Acts	78

Chair's introduction



To The Right Honourable David Gauke MP, Lord Chancellor and Secretary of State for Justice

I am proud to introduce the Law Commission's 52nd Annual Report.

The new Programme

For us, the most significant event of the year was the publication and laying before Parliament of the Commission's Thirteenth Programme of Law Reform, approved by your predecessor as Lord Chancellor (Rt Hon David Lidington MP). This contains 14 projects on subjects as varied as automated vehicles, smart contracts, surrogacy, and residential leasehold. Each of the projects in the Programme was included following an indication from the relevant department with policy responsibility, in accordance with the Law Commission Act 2009 and the 2010 Protocol, that there is a serious intention to take forward reform in this area. Several chime with the Government's wish to promote Global Britain in the field of legal services.

The compilation of the Programme followed a public consultation, to which we received a record number of replies, and discussion with Government departments. The unexpected General Election of 2017 had the effect of delaying the new Programme for nearly six months because of the combined effect of "purdah" before polling day (during which no decision can be made by Ministers save on matters of urgency) and the inevitable period after the election during which new Ministers are familiarising themselves with the issues facing their Departments. Nevertheless, we now have a substantial agenda of

potential projects with potential to bring real benefits to our fellow citizens. As well as the Programme we have accepted references from Government departments on important subjects such as confiscation and money laundering.

It is only right to mention that in the past eight years our core funding has been very sharply reduced, to the point where some of the projects in the Programme may well have to wait until we have specific funding to cover them. In 2009-10, as in previous years, the Commission's income simply consisted of a grant from your Department. The figure in that year was £3.94m. By 2014-15 it was £2.9m. Following successive spending reviews it is now £2.23m and scheduled to be reduced to £1.97m in 2019-20. We have been able to bridge the gap so far by obtaining references, and some Programme projects, with specific funding from the relevant department.

But in the long term, or even the medium term, this funding method is in my view not viable. The Law Commission was set up by the 1965 Act with a statutory duty to keep the whole of the law of England and Wales under review. One of my predecessors, Sir Terence Etherton (now Master of the Rolls and Head of Civil Justice), described our establishment as "an inspired act of Government borne of the belief that accessible, intelligible, fair and modern law is the constitutional right of every citizen". We cannot fulfil our statutory duty adequately if we reach the point where we can only embark on projects with earmarked funding. There will always be law reform projects which do not hit the headlines but where the law has become outdated or unfair and needs fixing. If we do not tackle such problems, no one else will.

With both Houses of Parliament substantially preoccupied with legislation connected with the UK's forthcoming exit from the European Union, it has proved even more difficult than usual to secure Parliamentary time for Law Commission-recommended legislation. Since the enactment last year of the Unjustified Threats (Intellectual Property) Act 2017 no Bill has been introduced under the House of Lords' special procedure. I hope very much that in forthcoming sessions of Parliament the pressure will be slightly less. The special procedure

under which Law Commission bills are scrutinised in detail by a committee of the House of Lords, so that very little “floor time” is needed thereafter in either House, has proved of great value and I suggest it should be cherished. It provides a model of how uncontentious legislation can be enacted. In that context I record my disappointment that the Goods Mortgages Bill, which accompanied our report on Bills of Sale (better known to the public as logbook loans), has not been introduced into Parliament.

In June 2017, as recorded in my introduction to our last Annual Report, the biennial Leslie Scarman Lecture was delivered by the then Lord Chief Justice of England & Wales, Lord Thomas of Cwmgiedd on “Law Reform Now in 21st Century Britain – Brexit and Beyond”.

Welsh law is beginning to diverge in a variety of areas from English law. We reported in 2016 on the Form and Accessibility of the Law in Wales and will report this year (2018) on Planning Law in Wales. Later in 2018 we expect to begin a project on Welsh tribunals. My colleagues and I have held meetings with the Constitutional and Legislative Affairs Committee (CLAC) and with the Llywydd (Presiding Officer) of the Welsh Assembly, as well as with the Counsel General for Wales. We are also fortunate to have the advice and support of our Welsh Advisory Committee.

Commissioners and Staff

There have been no changes among the Commissioners during the year under review, but there have been changes among the senior lawyers working for us. David Connolly, formerly team manager for public law, has moved to the criminal law team. Henni Ouahes is his successor in the public law team and shares responsibilities for Welsh law with David. Laura Burgoyne continues as team manager for commercial and common law; Matthew Jolley as Head of Legal Services and team manager for property, family and trusts law; and Jessica de Mounteney as our senior Parliamentary Counsel. Julia Jarzabkowski, a very experienced Law Commission lawyer who worked on statute law repeals among many other areas, left us on appointment as a District Judge.

Each project we undertake has (depending on its scope) one or more team lawyers and one or more research assistants, in each case under the supervision of a Commissioner and team manager. From time to time we have external lawyers working as consultants on specific projects. The combination of team lawyers and research assistants is tried and tested. The team lawyers bring to the project not only knowledge of the law but also the wisdom derived from practical experience of law reform. We are lucky to have them. The research assistants are among the best and the brightest young lawyers in the country. Many go on to have very successful careers in the law. This year’s leavers’ next ports of call include the Department of Health, the Office of Parliamentary Counsel; Herbert Smith Freehills, Carpmaels and Ransford; Cornerstone Chambers, Landmark Chambers, Quadrant Chambers and 1 King’s Bench Walk; one is staying with the Commission as a team lawyer. Two are becoming judicial assistants at the Supreme Court and one at the Court of Appeal.

Finally

On 31 July 2018 I shall reach the end of my three year term of office as Chair of the Commission. I express my great appreciation and thanks for the support I have had from the talented and enthusiastic public servants who staff the Commission. It has been a privilege to work with such able and congenial colleagues. When I started work here many previous Law Commissioners told me that the Chairmanship is the best job in the English legal system. So it has proved.



Sir David Bean
Chair

Chief Executive's comment



This has been a year of two halves in many ways.

The first half was dominated by considerable uncertainty. The 13th Programme was delayed by the general election, which in turn resulted in our being unable to finalise potential new projects. Our inability to realise income from this new work caused a budget shortfall and considerable anxiety among our staff. In many ways, this period highlighted the volatility of the Law Commission's current operating model.

Between 2010 and the end of the Spending Review our budget is due to have been cut by 54%. The impact of this has been to increase pressure to realise a greater number of income-generating projects so as to make up the overall shortfall in funding. Maintaining such high levels of income is unlikely and makes strategic planning of workload, people and finances extremely challenging. I hope, therefore, that I am able to report in a future Annual Report that our budgetary position is more settled.

More positively, the second half of the year is one of real achievement. In December 2017, the Lord Chancellor approved our 13th Programme of Law Reform. It is a varied and highly relevant Programme of work and demonstrates once again the value of the Law Commission. We also attracted Ministerial references for online communications, confiscation and anti-money laundering. Many of the projects we are taking on are income-generating, which means we will receive the highest amount of project specific income ever, some £1.8m.

As a result, the Commission has a degree of security in the short- to mid-term, which in turn means we have been able to maintain staffing levels, our source of expertise. It has also been good for morale, something represented in excellent People Survey results, which saw the Commission improve across several key areas. I am not, however, complacent and we are working hard to ensure the Commission remains a great place to work.

The year is, therefore, finishing on a positive note – a great Programme of work, strong People Survey results and a slight easing of the budgetary pressures. None of this would have been possible without the commitment, expertise and hard work of all of our staff. Our reputation stands and falls on the quality of their work and I am enormously grateful for all of the effort they have made, both on existing projects and in helping to bring about the 13th Programme.

A handwritten signature in black ink, which appears to read 'Phillip Golding'. The signature is fluid and cursive.

Phillip Golding
Chief Executive

Part One:

Who we are and what we do

The Law Commission

The Law Commission is headed by five Commissioners, all of whom are appointed by the Lord Chancellor. At 31 March 2018, the Law Commissioners were:

- The Rt Hon Lord Justice Bean¹, Chair.
- Professor Nick Hopkins², Property, Family and Trust Law.
- Stephen Lewis³, Commercial and Common Law.
- Professor David Ormerod QC⁴, Criminal Law.
- Nicholas Paines QC⁵, Public Law and Welsh Law.

The Commissioners are supported by the staff of the Law Commission. The staff are civil servants and are led by a Chief Executive, Phillip Golding.

The Law Commission was created by the Law Commissions Act 1965 for the purpose of reforming the law. It is a statutory arms' length public body, which is sponsored by the Ministry of Justice (MoJ).

The Law Commission's principal objective is to promote the reform of the law. We do this by reviewing areas of the law and making recommendations for change. We seek 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 of legislation.

The progress we have made during 2017-18 is recorded in Part Two.

LAW COMMISSION BOARD

The Commissioners, Chief Executive and non-executive board members meet as the Law Commission Board on a monthly basis. They are joined by the Law Commission's team heads and Senior Parliamentary Counsel. Board meetings are used to set the Commission's strategic direction, review risk, discuss operational matters and review the financial position.

NON-EXECUTIVE BOARD MEMBERS

Bronwen Maddox and Sir David Bell are the Law Commission's non-executive board members. They provide support, independent challenge and expertise to the Commission when it is meeting as a Board.

OUR OBJECTIVES

We have worked together to identify the characteristics to which the Law Commission should aspire:

- To be the authoritative voice on law reform.
- To make a difference through our law reform work.
- To be proactive in promoting the need for law reform in key areas and achieve "good law".
- To have a strong reputation in the UK and abroad for being effective in the delivery of law reform.
- To attract the best talent and be an excellent place to work.

1 Sir David Bean joined the Commission on 1 August 2015.

2 Professor Nick Hopkins joined the Commission on 1 October 2015.

3 Stephen Lewis joined the Commission on 1 January 2015.

4 Professor David Ormerod QC joined the Commission on 1 September 2010.

5 Nicholas Paines QC joined the Commission on 18 November 2013.

Our Business Plan⁶ for 2017-18 identified four priority areas:

- Law reform – ensuring that the law is fair, modern and clear.
- An outward facing organisation – to develop our internal and external communications processes.
- Our people – to attract the best and continue to ensure the Law Commission is an excellent place to work.
- Finance and governance – to ensure decision making that is robust and sound.
- The commitments to meet these priorities can be found at Appendix C.

OUR RELATIONSHIP WITH THE MINISTRY OF JUSTICE

In July 2015 we agreed a Framework Document with the MoJ⁷, which sets out the broad framework for the Department's sponsorship of the Commission and how the relationship between us and the MoJ should operate.

The document outlines the responsibilities of the MoJ sponsorship team in relation to the Commission. The sponsorship team is our primary contact with the MoJ. Its members act as advocates for us within the Ministry and other Departments, and ensure that we are aware of MoJ's views and any relevant departmental policies.

The Framework Document makes it clear that, while the sponsorship team has a role in monitoring the Commission's activities, it has "no involvement in the exercise of the Commissioners' judgment in relation to the exercise of their functions".

The frequency with which Ministers of the MoJ and other Departments will meet members of the Commission, and the scope of the Commission's relationship with Parliament are also set out in the Framework Document, albeit that, in recent times, these arrangements have tended to operate more

flexibly. It details the Lord Chancellor's statutory duties in relation to the Commission and the direct relationship we have with Parliament through, for example, maintaining contacts with Parliamentarians and committee chairs, and giving evidence in relation to our functions or projects.

MEASURING SUCCESS

The implementation of our recommendations for reform is clearly an important indicator of the success of the Law Commission. This is covered in detail in Part Three of this report.

However, implementation does not fully demonstrate the breadth of our impact. In an effort to assess our impact and influence, we take note of instances when the Law Commission is cited in judgments or during business in the Houses of Parliament. During the reporting period the Commission was mentioned 96 times in judgments in England and Wales and our name appears 92 times in Hansard, the official report of Parliamentary proceedings.

Our work is also widely quoted in academic journals and the media, with over 2,200 references to the Law Commission across national, local, trade and academic media during the reporting period. Some of these will be made in support of the Commission; some will not. At the very least these figures show that we continue to engage the attention of people with an interest in the law and what can be achieved through its reform.

Historically, two thirds of our reports have been accepted by Government in whole or in part. However, there are many reasons why our recommendations for reform may not be implemented despite being accepted by Government. This may include a lack of parliamentary time to debate our proposals or a change in ministerial priorities – indeed, in the last fifteen years only three of our reports have been rejected.

6 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/05/Final-Business-plan.pdf>.

7 Framework Document: Ministry of Justice and the Law Commission for England and Wales (2015).

THE LAW COMMISSION IN WALES

2017-18 has seen further advances in relation to the Law Commission's work in Wales.

Working with the Welsh Government

The Wales Act 2014 brought into force amendments to the Law Commission Act 1965 to take account of Welsh devolution, making significant changes to our relationship with the Welsh Government and how we work with Welsh Ministers in relation to devolved matters.

The Act empowers us to give information and advice to Welsh Ministers. In turn, this enables Welsh Ministers to refer work directly to the Commission whereas, previously, referrals could be made only through the Wales Office. This is a very welcome development.

The 2014 Act also:

- Provides for a protocol⁸ setting out the working relationship between the Law Commission and the Welsh Government; and
- Requires Welsh Ministers to report annually to the Welsh Assembly about the implementation of our reports relating to Welsh devolved matters.

Reforming the law in Wales

Our 12th Programme of Law Reform included, for the first time, two law reform projects that related to Wales only:

- The Form and Accessibility of the Law Applicable in Wales – report published in June 2016 with the majority of the recommendations accepted. See page 30 for more details.
- Planning Law in Wales – a major consultation paper setting out proposals for the simplification of planning law in Wales was published in November 2017. See page 24 for more details.

During the consultation process for the 13th Programme of Law Reform, two possible projects relating exclusively to Wales were suggested. We also received numerous consultation responses from Welsh consultees, including proposals for devolved areas of the law. We have discussed with the Welsh Government, judiciary and other stakeholders undertaking a project in relation to the devolved tribunals in Wales and will develop these ideas over the coming months. Any such work would be taken on as a Ministerial reference from the Welsh Government and conducted alongside the main Programme.

We continue to keep the machinery already in place to provide law reform in Wales under review, making improvements where we can. One of our Commissioners, Nicholas Paines QC, also has special responsibility for Welsh law. In 2017 Nicholas spoke about law reform in Wales at the Legal Wales conference in Swansea.

We are grateful for the support and contributions we have received from our colleagues and stakeholders in Wales.

Welsh Advisory Committee

The support we have received throughout the year from our Welsh Advisory Committee has been much appreciated. We established the Committee in 2013 to advise us on the exercise of our statutory functions in relation to Wales, and to give the people of Wales a stronger voice in law reform.

Welsh Language Policy

We published our Welsh Language Policy⁹ on 4 September 2017. This sets out our commitment to treating with linguistic parity projects relating to Wales and projects which are likely to have significant public interest in Wales. We now routinely publish appropriate project documents, such as report summaries, bilingually.

8 Protocol rhwng Gweinidogion Cymru a Comisiwn y Gyfraith/Protocol between the Welsh Ministers and the Law Commission (2015).

9 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/06/LC-Welsh-Language-Policy.doc>.

Part Two:

Review of our work in 2017-18

Commercial and common law

Commissioner: Stephen Lewis



Pension Funds and Social Investment	Report published	June 2017	page 9
From Bills of Sale to Goods Mortgages	Report published	November 2017	page 10
Electronic Execution of Documents	Project started	January 2018	page 10
Smart Contracts	Initial work started, project due to commence Summer 2018	Spring 2018	page 10
Insurable Interest	Draft Bill published for comment	June 2018	page 11

Pension Funds and Social Investment

Since auto-enrolment was brought in by the Government in 2012, the amount of money in defined contribution pension schemes has increased significantly. By 2030 they are expected to total some £1.68 trillion. This raises questions about how the new pension assets are to be invested and whether at least a proportion can be invested for the wider social good – combining social and financial objectives in order to “do well and do good at the same time”.

In November 2016, the then Minister for Civil Society asked us to look at how far pension funds may or should consider issues of social impact when making investment decisions. We were asked to provide an accessible account of the law in this area, and to consider the legal or regulatory barriers to social investment. This project built on our 2014 report, *Fiduciary Duties of Investment Intermediaries*, and accompanying guidance, which considered when pension trustees can take environmental and social factors into account when making investment decisions.

In our call for evidence we asked for examples of social investments which pension funds could or should be making. Consultees mentioned property and infrastructure projects such as social housing, green energy and sustainable transport initiatives

as investment opportunities with a genuine potential to both do good and do well. However, UK defined contribution pension schemes are lagging behind the rest of the world in investment in property and infrastructure. Less than 5% of funds are invested in property and we did not find any examples of infrastructure investment by UK defined contribution pension schemes.

We found that barriers to social investment by pension funds are, in most cases, structural and behavioural rather than legal or regulatory. We identified steps which can be taken by government, regulators and others to minimise these barriers, including:

- Amending the law so that pension funds have to report on their policies on evaluating social impact, considering members’ ethical concerns and exercising stewardship powers.
- Issuing guidance about how schemes can manage illiquid investments in their funds, such as investment in infrastructure.
- Taking steps to address barriers to consolidation of defined contribution pension schemes so they are more able to invest in illiquid assets.
- Encouraging pension providers and the pensions industry to devise a set of standard terminology around social investment, to help pension savers understand where their money is going.

The Government published its final response to the report in June 2018, agreeing to implement the recommended reforms which could help unlock more ethical investments.

From Bills of Sale to Goods Mortgages

Bills of sale are a way in which individuals can use goods they already own as security for a loan. The Law Commission's 2016 report on Bills of Sale recommended that the Victorian Bills of Sale Acts should be repealed and replaced with modern legislation that imposes fewer burdens on lenders and provides more protection for borrowers.

We published our final report and draft Goods Mortgages Bill in November 2017. If implemented, the Bill would:

- Bring better protection for consumer borrowers and innocent purchasers of mortgaged goods.
- Provide modernised and simplified registration requirements for lenders.
- Give flexibility for sophisticated borrowers, such as high net worth individuals and unincorporated businesses.

After conducting a short consultation, the Government announced in May 2018 that it would not introduce legislation at this point in time.

Electronic Execution of Documents

Most modern businesses have embraced technology to conduct transactions online and electronically. However, we have been told that uncertainty around the electronic execution of documents is preventing some businesses from moving towards fully electronic transactions, which could be faster and more efficient.

The purpose of the project is to address any uncertainty in the law as to the validity of electronic signatures and general formalities around the electronic execution of documents, including deeds.

Work has started on this project and we expect to publish a consultation paper before the end of the year.

Smart Contracts

There has been much press coverage recently in relation to the use of "smart contracts", particularly in the financial services world. By "smart contracts" we refer to the technology which runs on blockchain and by which legal contracts may be executed automatically, at least in part.

The use of smart contracts to execute legal contracts is expected to increase efficiency in business transactions and it is suggested that the use of blockchain technology will increase trust and certainty.

It is important to ensure that English courts and law remain a competitive choice for business. Therefore, there is a compelling case for a Law Commission scoping study to review the current English legal framework as it applies to smart contracts.

The purpose of this project would be to ensure that the law is sufficiently certain and flexible to apply in a global, digital context and to highlight any topics which lack clarity or certainty.

We have started our initial research on this project, which is due to begin in Summer 2018.

Insurable Interest

At its simplest, the requirement for insurable interest means that, for a contract of insurance to be valid, the person taking out the insurance must have an interest in the subject matter of the insurance. This generally means they must stand to gain a benefit from the preservation of the subject, or to suffer a disadvantage should it be lost or damaged. The Life Assurance Act 1774 and the Marine Insurance Act 1906 provide that the absence of insurable interest renders an insurance contract void and unenforceable.

The current law is unclear in some respects and antiquated and restrictive in others. It is inhibiting the insurance market's ability to develop products for which there is demand. As a result we, together with the Scottish Law Commission, are working to develop recommendations which will simplify and update the law in this area, and draft a Bill to implement those proposals.

Responses to our consultations have shown strong support for retaining the principle of insurable interest. It is said to guard against moral hazard, protect insurers from invalid claims and distinguish insurance from gambling. Stakeholders have particularly emphasised the need for reform of insurable interest in the context of life and related insurances, such as health insurance. In our most recent consultation we proposed that archaic restrictions should be removed in order to allow people to insure the lives of their children and cohabitants, and a greater ability to insure the lives of employees.

Our proposals are intended to be relatively permissive, to ensure that, broadly speaking, any legitimate insurance products that insurers want to sell and people wish to buy, can be made available. Whether insurance is appropriate in any given circumstances should be left to the market to determine, with regulatory intervention if necessary.

In June 2018 we published an updated draft Bill for review. Having considered stakeholders' comments on the previous version, the updated draft relates only to life and life-related insurance.

From bills of sales to goods mortgages

Bills of sale are a way in which individuals can use goods they already own as security for loans while retaining possession of those goods. Their use has grown from under 3,000 in 2001 to over 30,000 in 2016. They are mainly used for “logbook loans”, where a borrower grants security over their vehicle.

Bills of sale are currently governed by two Victorian statutes, the Bills of Sale Acts 1878 and 1882. In September 2014, HM Treasury asked the Law Commission to review the bills of sale legislation and to make recommendations for its reform. We published a consultation paper in July 2015, and a report in September 2016. The Government accepted the majority of these recommendations and supported the Law Commission in drafting legislation to implement them. We consulted on an initial draft in July 2017 and published a further report, along with a draft Goods Mortgages Bill, in November 2017. Our recommendations were supported by a broad base of stakeholders.

The Government announced in May 2018 that it would not introduce legislation at this point in time. It cited the “small and reducing market and the wider work on high-cost credit”. This is disappointing given the strength of the case for reform and the breadth of support for the draft Bill. We hope that, in the future, a case can again be made for taking the Bill forward and we stand ready to work with the Treasury if it decides to do so.

Why does the law need to be updated?

After detailed research and consultation with stakeholders, we concluded that the legislation is archaic and wholly unsuited to the 21st century. Lenders and consumer groups alike agree that the law is in need of reform.

The current law creates hardship for borrowers and private purchasers, imposes unnecessary burdens on lenders and restricts access to finance for unincorporated businesses and high net worth individuals.

Hardship for borrowers

The great majority of bills of sale are issued for logbook loans, often taken out by borrowers who have difficulty accessing other forms of credit. These borrowers are particularly vulnerable to inadequacies in the existing law.

The statutory form for a bill of sale, set out in the 1882 Act, confuses borrowers rather than helps them to understand the consequences of taking out the loan.

And, unlike in hire-purchase, lenders under bills of sale are allowed to seize assets such as vehicles without a court order in the event of the borrower’s default, even if almost all of the loan has been repaid. Borrowers who cannot pay have no statutory right to surrender their vehicle in full and final settlement.

Unfairness for innocent purchasers

Innocent private purchasers do not acquire ownership if they buy a vehicle which is subject to a logbook loan, even if they did not know about the security. Instead, they often face a stark choice: pay off someone else’s debt or lose the vehicle to the lender.

Hire-purchase law provides private purchasers with more protection. A private purchaser who buys a vehicle in good faith without notice of the hire-purchase agreement becomes the owner of the vehicle and takes free of the hire-purchase agreement.

Problems for lenders

Lenders also lose out under the current law. The Bills of Sale Acts set out complex documentation requirements. The sanction for non-compliance is severe and disproportionate: the lender loses its right to the goods and its right to repayment of the loan.

In addition, lenders must register loans at the High Court in accordance with a cumbersome and expensive paper-based regime.

The register is so difficult to search that it is almost never used for checking whether a bill of sale exists over an asset. Instead, logbook lenders routinely

register with commercially-run asset finance registries on a voluntary basis. In practice, trade buyers use these registers to find out about vehicle finance arrangements, including bills of sale. However, the price of searching these private registers may deter private purchasers.

Access to finance for small businesses and high net worth individuals

There have been many complaints that the technicality of the Bills of Sale Acts restricts the ability of unincorporated businesses to access finance. One technicality, for example, is that bills of sale can only be used for fixed loans, and not for guarantees or revolving credit.

At present, bills of sale are hardly ever used for arrangements that are not loans over vehicles. However, consultees suggested that, with appropriate reform, this could change. Some pointed to a strong demand for art lending, where it would be desirable to allow high net worth individuals to secure loans and guarantees against art works.



Members of the Commercial and Common Law Team

What did we recommend?

The Law Commission recommends that the Bills of Sale Acts should be repealed and replaced by a new “Goods Mortgages Act” to govern the way that individuals can use their existing goods as security.

Our draft Goods Mortgages Bill is designed to:

- (1) Protect borrowers, so that goods cannot be repossessed too readily;
- (2) Protect innocent purchasers who buy goods without realising that they are subject to a security interest;
- (3) Save costs caused by unnecessarily complex registration requirements; and
- (4) Remove unnecessary restrictions on secured lending to more sophisticated borrowers, such as high net worth individuals and unincorporated businesses.

Criminal law

Commissioner: Professor David Ormerod QC

Misconduct in Public Office	Consultation opened	September 2016	page 14
Protection of Official Data	Consultation opened	February 2017	page 14
Sentencing Code	Consultation opened	July 2017	page 15
Anti-money Laundering	Project started	February 2018	page 15
Abusive and Offensive Online Communications	Project started	April 2018	page 15
Search Warrants	Consultation opened	June 2018	page 16

Misconduct in Public Office

Misconduct in public office is a common law offence: it is not set out in any statute. The offence is widely considered to be ill-defined and has been subject to criticism by the Government, the Court of Appeal, the press and legal academics.

We are reviewing the current law with aim of providing options for reform and modernisation.

We published an issues paper in January 2016, and a further consultation paper in September 2016. As part of our consultation, we proposed the creation of two criminal offences to replace the common law offence of misconduct in public office: an offence criminalising a breach of duty causing or risking serious harm and an offence criminalising an abuse of position for the purpose of achieving a benefit or causing a detriment.

Our proposals were based on an analysis of the harms and wrongs underlying the current offence. We also propose ways to define public office more clearly and consistently. Finally, we sought consultees' views on additional reforms, such as a review of sexual offences and the specification of public office as an aggravating factor for the purposes of sentencing.

The boundaries of the current law are unclear. New statutory offences would improve clarity, transparency and fairness, and should lead to better charging decisions and fewer difficult cases needing extensive judicial consideration.

We are working towards publication of the report in 2019.

Protection of Official Data

In 2015 we were asked by the Cabinet Office to undertake an independent review of the law around the protection of official data, including the Official Secrets Acts, to ensure that the relevant statutes keep pace with the challenges of the 21st Century.

We launched an open public consultation in February 2017 and received a large number of responses. The focus of our work has been primarily upon the Official Secrets Acts 1911-1989. We have also analysed the numerous other offences (over 120) that exist to criminalise the unauthorised disclosure of information. In addition, we have examined matters that might arise in the investigation and prosecution of Official Secrets Act cases. Finally, we have examined the argument that could be made for the introduction of a statutory public interest defence to the unauthorised disclosure offences contained in the Official Secrets Act 1989.

Clear, modern offences should assist with the proper protection of official data, enhancing justice and transparency and providing the right protection to citizens.

We are working towards publication of the report in Autumn 2018.

Sentencing Code

The law on sentencing procedure affects all criminal cases, and is applied in hundreds of thousands of trials each year. Currently, the law lacks coherence and clarity. It is spread across many statutes, frequently updated and has a variety of transitional arrangements. This makes it difficult for the courts to understand the present law.

Our aim in this project is to introduce a single sentencing statute that will act as the comprehensive source of sentencing law – the “Sentencing Code”. This would help reduce the risk of unlawful sentences being passed. An economic impact analysis has estimated that it would save up to £255 million over the next decade by avoiding unnecessary appeals and reducing delays in sentencing clogging up the court system. A new Sentencing Code would reduce errors of law, remove causes of delay and improve the efficiency, transparency and fairness of the process of criminal justice.

We held a public consultation on our proposals and the draft Bill between July 2017 and January 2018. We also conducted a supplementary consultation on our proposals for the consolidation of the children and young persons provisions of the Sentencing Code in April 2018.

We are working towards publication of the report and draft Sentencing Code Bill in Autumn 2018.

Anti-money Laundering

We have been commissioned by the Home Office to review the consent provisions of the anti-money laundering regime in Part 7 of the Proceeds of Crime Act 2002 and of the counter-terrorism financing regime in Part 3 of the Terrorism Act 2000.

The primary purpose of the review is to improve the prevention, detection and prosecution of money laundering and terrorism financing in the UK. The review will focus on the current consent regime and analyse the benefits and problems arising from it to produce reform options. You can read more about this project on page 17.

We intend to publish the consultation paper in July 2018.

Abusive and Offensive Online Communications

In February 2018 the Government asked the Law Commission to conduct a review of the application of existing criminal offences of offensive communication to conduct online.

With research showing that nearly a third of UK internet users were on the receiving end of trolling, harassment or cyberbullying last year, the Commission will provide a robust review of the current laws and set out how they apply to online communications.

If deficiencies are identified, we have agreed to do further work looking at potential options for reform for an additional 6 months. The terms of reference for this second phase will be agreed after the completion of the first.

We are working towards publication of a review of the current law in Autumn 2018.

Search Warrants

A search warrant is a court order authorising a police officer or other official to enter a building or other place and search for articles specified in the warrant. The complexity of the present law means that decisions to issue a search warrant or the way the warrant was executed are prone to error and legal challenge.

The Home Office has asked us to identify and address problems with the law governing search warrants and to produce reform which will clarify and rationalise the law.

In our consultation paper, which was launched in June 2018, we made provisional proposals designed to simplify the law, introduce extra protections for the public and modernise the powers needed by law enforcement to investigate serious crime.

Reform would bring clarity to the agencies applying for warrants and to those whose premises are subject to them. It should also allow better and more efficient processes for application, issue, execution and challenge of warrants.

We are scheduled to publish a final report by the end of 2018.

Anti-money laundering

Current law

During the consultation for the 13th Programme of Law Reform, the Law Commission suggested a project on reform of aspects of the Proceeds of Crime Act 2002 (POCA). Over the course of discussions with the Home Office we agreed to conduct two related but separate projects – one on the law which governs confiscation of the proceeds of crime, and the other on the ‘consent regime’ which is part of the anti-money laundering provision in Part 7 of POCA.

The law requires certain financial institutions and service providers to share with the National Crime Agency (NCA) information about a transaction they suspect may involve money-laundering or terrorist financing. Failure to do so is an offence.

The consent regime provides a mechanism for businesses to seek the consent of the Financial Intelligence Unit of the NCA to proceed with a suspicious transaction. The anti-money laundering provisions are very broad, capturing many transactions. The consent regime provides an essential mechanism to allow businesses to continue to function within the market whilst taking proper account of the need to reduce money laundering. In practice, this involves consent being sought from the NCA in the form of a suspicious activity report (SAR) completed by a nominated officer or reporter (an employee at a business nominated to submit SARs). SARs form an essential feature of both domestic and international criminal investigations.

Where the NCA consents, the business can continue with the transaction and the person responsible for making the report of the suspicious activity will not have committed a money laundering offence.

Problems and some possible solutions

The current law is problematic in a variety of ways but two stand out in particular.

Numerous low intelligence value SARs

The number of SARs the NCA receives is high and is increasing year on year. In an 18 month period from October 2015 to March 2017 the NCA received 634,113 SARs,¹⁰ the majority of which have little value to the NCA in its intelligence gathering functions. The large volume of SARs is attributable to a number of factors including: a discrepancy between information capable of arousing suspicion and information of intelligence value, defensive reporting by businesses fearing criminal prosecution otherwise, and the fact that the money laundering offences apply to proceeds associated with any crime.

Potential solutions to this issue include:

- (1) Giving reporters more clarity on the meaning of “suspicion”, and requiring that suspicion is based on some objective grounds. This may help to reduce reporting on situations that are merely unusual.
- (2) Better training for reporters, including guidance on what might constitute grounds for suspicion, and better feedback on SARs from the NCA.
- (3) The introduction of a standard form for reporting consent SARs to the NCA. This may improve the quality of information that is received within a SAR and help the NCA to identify the grounds for the reporter’s suspicion.

10 NCA, Suspicious Activity Reports: Annual Report 2017 at figure i.

Defensive reporting practices

Empirical research and anecdotal evidence suggest that reporters tend to engage in defensive reporting. This may be caused in part by reporters not knowing whether they are required by law to report an activity. This combined with the potential for both corporate and individual criminal liability has led to reporters erring on the side of caution. This defensive reporting directly contributes to the high numbers of SARs and indirectly to the poor quality of the reports. Potential solutions to this issue include:

- (1) Re-evaluating the maximum penalty where a failure to report is negligent rather than intentional.
- (2) Better guidance on the circumstances in which reporters will have a reasonable excuse for not making a report of a suspicious activity.



Members of the Criminal Law Team

Our approach to undertaking the project

In the first months of the project we have held a series of roundtable events with academics, practitioners and supervisory authorities to discuss provisional concerns with the current law and potential reform options. In addition, we have held a series of individual meetings with stakeholders including members of the judiciary, law enforcement agencies, NGOs and governmental agencies. We are intending to publish a consultation paper with provisional proposals for reform in the Summer.

During the consultation period we will be hosting a symposium event at the Institute of Advanced Legal Studies. This event will consist of a series of panels dealing with the most contentious issues with the consent regime and will see over 100 leading professionals in the AML sector in attendance. The event is designed to raise awareness of the project, encourage engagement with the provisional proposals and answer questions about some of the more detailed issues raised by the project.

After consultation closes we will analyse the responses, make any necessary amendments to our proposals and produce a final report in late 2018.

Property, family and trust law

Commissioner: Professor Nick Hopkins

Updating the Land Registration Act 2002	Consultation opened	March 2016	page 19
Making a Will	Consultation opened	July 2017	page 19
Technical Issues in Charity Law	Report published	September 2017	page 20
Residential Leasehold and Commonhold	Project started	December 2017	page 20
Commonhold	Call for evidence opened	February 2018	page 21

Updating the Land Registration Act 2002

The land registration regime is of enormous and growing importance. Approximately 85% of land in England and Wales is registered, with HM Land Registry maintaining nearly 25 million titles. Dealings and disputes that engage the land registration regime can be complex and require expert advice. Uncertainty in the regime makes advising clients difficult, incentivises litigation and increases costs for landowners.

We are currently undertaking a wide-ranging review of the Land Registration Act 2002, with a view to amending the parts that could be improved in light of the experience of its operation. In particular, we are examining the extent of HM Land Registry's guarantee of title, rectification and alteration of the register, and the impact of fraud. We are also re-examining the legal framework for electronic conveyancing.

Evidence suggests that some areas of the current law would benefit from revision or clarification. Our consultation, which ran from 31 March to 30 June 2016 revealed a range of often highly technical issues that have important implications for those who own land (whether the land is a home, a business or an investment), those with an interest in land (including mortgage providers), and HM Land Registry.

Following an analysis of the responses to our consultation, we aim to publish our report and draft Bill in July 2018.

Making a Will

The law of wills is largely a product of the 19th century, with the main statute being the Wills Act 1837. The law that specifies when a person has the capacity to make a will ("testamentary capacity") is set out in the 1870 case of *Banks v Goodfellow*. Our work on wills, considers a wide range of topics relating to how wills are made and interpreted, including:

- Testamentary capacity.
- The rules that govern when a will is valid (such as requirements for signing and witnessing), and what happens when those rules are not properly followed.
- Protecting vulnerable testators.
- Making wills electronically.

We published a consultation paper in July 2017. Our provisional proposals include the introduction of a dispensing power enabling a court, on a case by case basis, to admit a will when formality requirements have not been complied with but the court is satisfied that a document represents the testator's final wishes. It also provisionally proposed a new mental capacity test which takes into account the modern understanding of conditions like dementia and changes to protect vulnerable people from being placed under undue pressure as to their testamentary

intentions. Alongside that there was a suggestion that the age for making a will should be lowered from 18 to 16. We also want to pave the way for the introduction of electronic wills, to better reflect the modern world once the technology is in place which would enable fraud to be prevented.

Our proposed reforms would bring the law of wills up to date, protect people against fraud or undue influence, and ensure that people's last wishes are given effect. The changes potentially affect the entire adult population as most people can and should make a will. However, it is thought that 40% of adults do not and we hope that reform of the law will encourage those who do not have a will to make one.

Following the analysis of responses and development of policy, we aim to publish our report and draft Bill by mid-2019.

Technical Issues in Charity Law

There are about 167,000 charities registered with the Charity Commission and thousands more that are not required to register. Charities are a force for good and millions donate regularly to help them to help others. But there are problems with the law within which charities operate, which means that time and money is spent on administration when it could be used to further charitable causes. Our report, commissioned by the Department for Digital, Culture, Media and Sport was published on 14 September 2017 and recommends reform of a range of technical issues within charity law.

The report recommends:

- That charities are given more flexibility to obtain tailored advice when they sell land, and that unnecessary administrative burdens are removed.
- Changes to the law to help charities amend their governing documents more easily, with Charity Commission oversight where appropriate.
- Increased flexibility for charities to use their permanent endowment, with checks in place to ensure its protection in the long term.

- Removing legal barriers to charities merging, when a merger is in their best interests.
- Giving trustees advance assurance that litigation costs in the Charity Tribunal can be paid from the charity's funds.
- Wider and rationalised powers for the Charity Commission including introducing a single set of criteria to decide changes to a charity's purposes; increased powers to prevent charities using misleading names; and the ability to confirm that trustees were properly appointed.

These recommendations will remove unnecessary administrative and financial burdens faced by charities as a result of inappropriate regulation and inefficient law, while safeguarding the public interest in ensuring that charities are run effectively. The reforms will save charities a large amount of time, as well as money. Those cost savings include an estimated £2.8 million per year from increased flexibility concerning sales of land.

Residential Leasehold and Commonhold

In England and Wales, properties can either be owned as freehold or as leasehold. Leasehold is a form of ownership where a person owns a property for a set number of years (typically, 99 or 125 years) on a lease from a landlord, who owns the freehold. Flats are almost always owned on a leasehold basis, but in recent years it has also increasingly been used for newly built houses.

It is estimated that there are at least 4 million leasehold properties in England alone. However, we have been told that the law which applies to leasehold is far from satisfactory. The Ministry of Housing, Communities and Local Government has tasked us with improving consumer choice, and with providing greater fairness and transparency for leaseholders. In the first instance, our project examines leasehold enfranchisement and commonhold, which provides an alternative form of ownership to residential leasehold.

Leasehold enfranchisement

Our project on leasehold enfranchisement involves a review of leaseholders' rights to:

- Purchase the freehold of their house.
- Participate, with other leaseholders, in the collective purchase of the freehold of a group of flats.
- Extend the lease of their house or flat.

Responses to our 13th Programme consultation criticised the current legislation as being complex, inconsistent and costly. Government has asked us to review the enfranchisement process to make it simpler, easier, quicker and more cost effective, and to examine the options to reduce the price payable by leaseholders to enfranchise.

The Ministry of Housing, Communities and Local Government and for devolved matters the Welsh Government, have asked us to prioritise measures for the owners of leasehold houses. We will publish our solutions for leasehold houses before summer recess 2018, followed in September by a detailed consultation on a new enfranchisement regime in respect of leasehold houses and flats. We will publish our report, and assist with the implementation of our recommendations, in 2019.

Commonhold

Commonhold was introduced in 2004 as a new way to own property. It allows a person to own a freehold 'unit' – such as a flat within a building – and at the same time be a member of the company which manages the shared areas and buildings.

Our 13th Programme consultees told us that there are various issues within the current commonhold model. These issues could make commonhold unattractive to homeowners, developers, mortgage lenders and others across the wider property sector. Government has announced that it wishes to reinvigorate commonhold. Our project will look at why commonhold has failed to gain popularity, and what changes can be made to the current law to make it an attractive and workable alternative to leasehold.

On 22 February 2018 we launched an eight-week call for evidence to find out what is stopping commonhold becoming more common: see page 22 for more information. Later this year, we will publish a detailed consultation paper setting out our proposals to address the issues which have been raised in response to our call for evidence. We will publish our final report, and assist with the implementation of our recommendations, in 2019.

Commonhold

With abuses in the leasehold sector regularly hitting headlines, many may question why commonhold is not a more common form of ownership in England and Wales.

Commonhold was introduced in 2004 (when legislation from 2002 came into force), primarily to provide an alternative to residential leasehold. It allows a person to own a flat on a freehold basis and provides a management structure to regulate the relationship between these separately owned flats.

Stakeholders point out that in most other countries, leasehold simply does not exist. Instead, a form of commonhold exists which allows flat owners to buy the freehold of their homes.

Commonhold has a number of advantages over leasehold. In particular:

- (1) *Ownership does not run out* – unlike leases which expire and can be costly to extend.
- (2) *Standard rules and regulations apply* – which should make conveyancing simpler and cheaper.
- (3) *No external landlord* – instead owners manage the shared areas together.



Members of the Property, Family and Trust law team

Stakeholders suggest that commonhold could avoid some of the most criticised features of residential leasehold ownership. In response to the Government consultation, *Tackling unfair practices in the leasehold market*, **Eddie Goldsmith, Chairman of the Conveyancing Association** said:

“

Replacing leasehold, where possible, with Commonhold... could solve many of the problems raised, specifically with the increase in new-build leasehold houses such as escalating ground rents, the sale of the freehold in order to make a substantial profit, and the rise in fees and premiums to leaseholders in order to allow them to, for example, extend leases and make alterations to the property.

”

Commonhold also has potential in a commercial context. For example, it could be used to regulate relations between individual shops in a retail park or offices in an office block.

Despite its apparent advantages, however, fewer than 20 commonholds have been created since the law came into force. Manchester and London have just one commonhold scheme each.

In order to find out why commonhold has failed to gain popularity, we launched an eight week call for evidence on 22 February 2018.

In our call for evidence, we set out issues within the current law of commonhold which, we have been told, create a barrier to its success. We invited observations on whether the issues raised are problematic in practice and whether there are other difficulties with the current law. Understanding these concerns will assist us in proposing reforms to make commonhold an accepted and viable alternative to leasehold.

We identified that for commonhold to succeed, it would need to be accepted by a wide range of people. In particular, it would require developers to build commonholds, mortgage lenders to finance them and homeowners to buy them.

We therefore divided our call for evidence into separate parts, targeted at different individuals within the property market. In one section of our call for evidence, we discussed the issues which may make commonhold unattractive to homeowners and in another, the issues which may make it unattractive across the wider property sector.

Additionally, we discussed the difficulties faced by existing leaseholders wishing to convert to commonhold. We have been told that conversion to commonhold is currently extremely difficult due to the requirement for unanimous consent.

We have become aware of the issues set out in our call for evidence through responses received to our 13th Programme consultation, through initial discussions with some stakeholders and through reading academic commentary. Unsurprisingly, commonhold has generated a significant academic interest, given its potential to revolutionise how people own property in England and Wales. We have limited direct evidence as to whether and why the issues raised would actually deter those in the property sector from using commonhold. For example:

- Are potential homeowners concerned about becoming a member of a company which manages the common areas?
- Are developers reluctant to use commonhold because of difficulty in structuring mixed use schemes?
- Are lenders concerned about their security if the commonhold ends?

Our call for evidence looks to find the answer to these, and many other, questions.

We also recognise the importance of obtaining evidence from the very few individuals with direct experience of living in or setting up a commonhold. Through HM Land Registry and Companies House records, we were able to identify all 157 commonhold units that currently exist. At the same time as launching our call for evidence, we wrote to each of these commonholders and encouraged them to share their personal experiences with us through an online survey.

The evidence received from current commonholders, prospective homeowners and across the wider property sector will be invaluable to us as we begin to shape proposals for the reform of commonhold. Later this year, we will launch a consultation which will discuss, in detail, the technical legal reforms necessary for commonhold to succeed.

“

The advantages of commonhold to those who live in it are many... there is no reason why it cannot and will not be widely adopted here. We just have not yet alighted on the right formula.

(Philip Rainey QC to the All Party Parliamentary Group on Leasehold and Commonhold on 11 September 2017)

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Public law and Welsh law

Commissioner: Nicholas Paines QC

Electoral Law	Policy development	Ongoing	page 24
Planning Law in Wales	Consultation opened	November 2017	page 24
Simplification of Immigration Rules	Project started	December 2017	page 25
Automated Vehicles	Project started	March 2018	page 25

Electoral Law

Electoral law in the UK is complex, voluminous, and fragmented, with many statutes and secondary legislation governing a long list of elections and referendums.

As part of our 11th Programme of Law Reform we set out to streamline the legislative framework governing all elections and referendums, and to simplify and modernise the law governing the conduct of elections and referendums.

We published an interim report, jointly with the Scottish and Northern Ireland Law Commissions, in February 2016. The central thrust of our reforms is to enable elections to take place within a holistic and coherent legal governance structure. One Act of Parliament would cover the core structure for running electoral events within the UK Government's legislative competence, supplemented by simplified secondary legislation.

We are working closely with the Cabinet Office and the Electoral Commission to formulate ways in which some of our recommendations can be implemented through secondary legislation. This would replace many existing instruments. This aspect of our work is under review by the Cabinet Office.

Planning Law in Wales

Planning law in Wales is unnecessarily complicated and, in places, difficult to understand. Since planning law was last consolidated in the Town and Country Planning Act 1990, a number of piecemeal changes have been made. Added to this there are also a number of points of divergence between the law in Wales and England.

As part of our 12th Programme of Law Reform the Law Commission was asked by the Welsh Government to examine the operation of the development management system. We did not find a need for substantial reform in this area, but that there was clearly a need for planning law in Wales to be simplified and modernised.

Following a scoping paper, our consultation paper was published in November 2017. We proposed that the primary legislation should be restated so as to be contained in a single piece of accessible legislation, along with technical reforms that would correct errors and ambiguities in the law, and in some places proposed simplified and streamlined planning processes.

The result of these changes would be a consolidated Planning Law Act for Wales which would deliver greater consistency and certainty in the planning infrastructure in Wales.

We are considering consultation responses and will be publishing a report later in 2018.

Simplification of Immigration Rules

The Immigration Rules are long and complex. Since 2008, when the modern points-based system was introduced, they have been increasingly criticised for being poorly drafted and confusingly organised. A number of decisions under the rules have been challenged in the highest courts, where the Rules were the subject of adverse comments by senior members of the judiciary.

As part of our 13th Programme of Law Reform, we will be consulting on ways in which the Rules might be streamlined, simplified and improved. Our project will not review substantive immigration policy. It will instead aim to make the Rules simpler and more accessible to the user.

A simplified set of Immigration Rules will make them easier to understand and apply by Home Office staff, legal professionals and applicants. It will promote consistency of style and substance across the Rules and ought to reduce the risk of adverse decisions and comment by the courts.

We will be publishing a consultation paper later in 2018.

Automated Vehicles

The Government's Centre for Connected and Autonomous Vehicles (CCAV) has asked the Law Commission to undertake a far-reaching review of the UK's regulatory framework for road-based automated vehicles.

In a joint project with the Scottish Law Commission, we will identify pressing problems in the law that may be barriers to the use of automated vehicles. Our work will consider a wide variety of areas of law, ranging from road traffic legislation to product liability. This will build on the work of CCAV and the insurance law reforms in the Automated and Electric Vehicles Bill.

It is not the purpose of this review to determine whether increased automation in driving is positive or not. The Commission's task is simply to propose a legal framework which can remain effective in the light of new vehicles that may no longer require a human driver at all times.

It will also help promote confidence in the laws around the safe use of automated vehicles, and in the UK as a vibrant, world-leading venue for connected and automated vehicle industry.

We aim to publish a scoping paper for consultation before the end of 2018.

Review of the deprivation of liberty safeguards

Those who lack the mental capacity to make certain decisions – such as an older person with dementia or someone with learning disabilities – sometimes need to be deprived of their liberty in a place like a hospital or care home. This can only happen when it is in their best interests, for example to be kept in their care home to prevent them from danger. This is a deprivation of liberty and the law requires that a proper authorisation process should be in place to ensure that this is done lawfully. This process is called the Deprivation of Liberty Safeguards (“DoLS”) and it is governed by the Mental Capacity Act 2005.

In 2014 a Supreme Court decision significantly widened the interpretation in law of a deprivation of liberty¹¹. It meant that everyone living in hospitals, care homes and even private and family settings – who are under constant supervision and not free to leave – are as a matter of law “deprived of their liberty”. That deprivation must be subject to legal safeguards, even if there are no concerns about the care arrangements and they are in the person’s best interests.

Authorities have been unable to cope with the huge increases in the number of DoLS applications. An increasing number of DoLS referrals are being left unassessed – over 120,000 last year – and statutory timescales for assessments are being routinely breached. We estimated that adhering to the complex current DoLS process within a year of referral would cost up to £2.2 billion annually (approximately 2% of the entire NHS budget). In short, health and social care services have been unable to cope with the increase in cases and the administrative burden.

The Law Commission Review

In 2014 the Department of Health asked the Law Commission to review the legal framework for the DoLS. We undertook a full public consultation exercise in 2015. On 13 March 2017, we published our final report and draft Bill. The report recommends the DoLS be repealed with pressing urgency and proposes a new scheme, entitled the ‘Liberty Protection Safeguards’, to authorise deprivations of liberty.

Our recommended safeguards would mean:

- Enhanced rights to advocacy and periodic checks on the care or treatment arrangements for those most in need.
- Giving greater prominence to issues of the person’s human rights, and of whether a deprivation of their liberty is necessary and proportionate, at the stage at which arrangements are being devised.
- Extending protections to all care settings such as supported living and domestic settings – therefore removing the need for costly and impractical applications to the Court of Protection.
- Widening the scope to cover 16 and 17 year olds and planned moves between settings.
- Cutting unnecessary duplication by taking into account previous assessments, enabling authorisations to cover more than one setting and allowing renewals for those with long-term conditions.
- Extending who is responsible for giving authorisations from councils to the NHS if in a hospital or NHS health care setting.
- A simplified version of the best interests assessment which emphasises that, in all cases, arrangements must be necessary and proportionate before they can be authorised.
- A reduced annual cost of £236 million a year in total – saving £10 million a year which can be reinvested into NHS health care and adult social care services.

The Government's Response

On 14 March 2018, the Government published its response to our report. The Government agreed in principle that the current DoLS system should be replaced as a matter of pressing urgency, and stated that it will legislate in due course. Before the introduction of any new system, the Government has said that it will need to consider carefully the detail of these proposals carefully and ensure that the design of the new system fits with the conditions of the sector, taking into account the future direction of health and social care. The Government has also asked the independent review of the Mental Health Act (chaired by Sir Simon Wessely) to consider further the interface between the Law Commission's scheme and the Mental Health Act.

In its response, the Government has accepted, or accepted in principle, all of our recommendations except the recommendation relating to a statutory codification of capacity law in relation to children and four matters which it has left to the independent Mental Health Act review to consider. The Government has confirmed that it will bring forward legislation to implement the model when parliamentary time allows.



Members of the Public Law Team

Part Three

Implementation of Law Commission law reform reports 2017-18

There have been a number of developments in recent years designed to increase the rate at which Law Commission reports are implemented:

- The Law Commission Act 2009, which places a requirement on the Lord Chancellor to report to Parliament annually on the Government's progress in implementing our reports.
- Protocols between the Law Commission and the United Kingdom and Welsh Governments, which set out how we should work together.

Law Commission Parliamentary Procedure

One further development is a dedicated Parliamentary procedure, approved by the House of Lords on 7 October 2010 as a means of improving the rate of implementation of Law Commission reports. Bills are suitable for this procedure if they are regarded as “uncontroversial”; this is generally taken to mean that all three Front Benches in the House are supportive in principle

Seven Law Commission Bills have now followed this procedure:

- Intellectual Property (Unjustified Threats) Act 2017, received Royal Assent on 27 April 2017.
- Insurance Act 2015, received Royal Assent on 12 February 2015.
- Inheritance and Trustees' Powers Act 2014, received Royal Assent on 14 May 2014.
- Trusts (Capital and Income) Act 2013, received Royal Assent on 31 January 2013.
- Consumer Insurance (Disclosure and Representations) Act 2012, received Royal Assent on 8 March 2012.
- Third Parties (Rights against Insurers) Act 2010, received Royal Assent on 25 March 2010.
- Perpetuities and Accumulations Act 2009, received Royal Assent on 12 November 2009.

In our report on *The Form and Accessibility of the Law Applicable in Wales* we recommended that the Welsh Assembly should adopt a similar procedure, echoing an earlier call for this from the Assembly's Constitutional and Legislative Affairs Committee.

Implementation of our Reports 2017-18

Between 1 April 2017 and 31 March 2018 we published 3 final reports with recommendations for law reform:

- Pension Funds and Social Investment, 21 June 2017.
- Technical Issues in Charity Law, 14 September 2017.
- From Bills of Sale to Goods Mortgages, 23 November 2017.

The statistics from the creation of the Commission in 1965 to 31 March 2018 are:

- Law reform reports published – 228.
- Implemented in whole or in part – 149 (65%).
- Accepted in whole or in part, awaiting implementation – 12 (5%).
- Accepted in whole or in part, will not be implemented – 7 (3%).
- Awaiting response from Government - 19 (8%).
- Rejected – 31 (14%).
- Superseded – 10 (4%).

REPORTS IMPLEMENTED

Electronic Communications Code

- Digital Economy Act 2017.

The Electronic Communications Code is the statutory regime that governs relationships between landowners and communications operators when placing communications infrastructure on public and private land. This project focused on private property rights between landowners and electronic communications operators. It did not consider planning law.

In February 2013, we made recommendations to form the basis of a revised Code. The proposed changes to the Code would set out the legal position in clear terms, provide the clarity that the Code lacked, and provide an efficient forum for dispute resolution.

The Government published details of its revised proposals for a new Electronic Communications Code on 17 May 2016. The proposed reforms remained broadly aligned with our recommendations, with some key exceptions. In particular, Government has decided to adopt a different basis for the valuation of Code rights and to confer automatic rights to upgrade and share apparatus. Those proposed reforms were implemented in the Digital Economy Act 2017, which received Royal Assent on 27 April 2017.

Intellectual Property (Unjustified Threats)

- Intellectual Property (Unjustified Threats) Act 2017.

Intellectual property law has long-standing provisions which protect certain businesses from being harmed by unjustified threats. The existing statutory provisions were criticised for not working as well as they should. We published our final report in October 2015¹² with draft Bill text and the Government accepted our recommendations for change.

The Intellectual Property (Unjustified Threats) Bill was introduced into the House of Lords in May 2016 using the special procedure and it received Royal Assent on 27 April 2017. It came into force on 1 October 2017.

The new Act creates a framework within which parties can negotiate fairly over intellectual property disputes, but will protect those who can be most harmed by unjustified threats to sue for infringement.

Late Payment of Insurance Claims

As part of our review of insurance contract law conducted jointly with the Scottish Law Commission, we considered the issue of late payment of insurance claims. We found that, where an insurer refused to pay a valid claim or paid it only after unreasonable delay, the existing law did not provide a remedy for the policyholder. Notably, the policyholder was not entitled to damages for any loss suffered as a result of the insurer's unreasonable conduct.

In July 2014, we recommended reform of the law in this area. We recommended that there should be an implied term in every insurance contract requiring the insurer to pay valid claims within a reasonable time, with what constituted a "reasonable time" depending on the circumstances of the case. We said that breach of that term should give rise to contractual remedies, including damages, but that insurers should not be liable for delays caused by genuine disputes.

Our draft clauses were included in the Enterprise Act 2016, and now form part of the Insurance Act 2015. They extend to the whole of the UK and came into force on 4 May 2017.

REPORTS IN THE PROCESS OF BEING IMPLEMENTED

The Form and Accessibility of the Law Applicable in Wales

We published our report on the form, presentation and accessibility of the law relating to Wales on 29 June 2016. The report made a number of recommendations to the Welsh Government that seek to secure improvements in those aspects of both the existing law and future legislation in Wales.

The Welsh Government issued its final response on 19 July 2017. The report provides a helpful blueprint as to how the Welsh Government and others can take action to ensure the law of Wales are more accessible. The Welsh Government was able to

12 (2015) LC 360.

accept, or accept in principle, all except one of the recommendations for action by it.

The Welsh Government has already begun to implement these recommendations by starting a pilot programme of consolidation, codification and better publication. In March 2018 it launched a consultation on a draft Legislation (Wales) Bill, which would give effect to some of our recommendations.

Fiduciary Duties of Investment Intermediaries

We published our report on fiduciary duties of investment intermediaries in July 2014. The report explained the nature of fiduciary duties and other duties to act in the best interests of savers, and clarified how far those who invest on behalf of others may take account of factors such as social and environmental impacts and ethical standards. The report concludes that legislation on this issue is not required.

The Government published its response in October 2014, welcoming the findings and our clear guidance that trustees should not focus exclusively on maximising short term goals.

Our report made a number of specific recommendations to Government departments, and to the Financial Conduct Authority (FCA) and the Pensions Regulator (TPR), aimed at embedding its findings in relevant regulations and guidance, and addressing other issues identified in the course of the review. These recommendations have been implemented in part.

Our report included recommendations in respect of the Occupational Pension Schemes (Investment) Regulations 2005. The Government is once again considering these recommendations as part of its consideration of our Pension Funds and Social Investment report.¹³

Matrimonial Property, Needs and Agreements

- Final report and draft Bill published 27 February 2014.¹⁴
- Interim response from Government 18 September 2014.

This project was set up, initially under the title “Marital Property Agreements” to examine the status and enforceability of agreements (commonly known as “pre-nups”) made between spouses and civil partners (or those contemplating marriage or civil partnership) concerning their property and finances.

In February 2012 the scope of the project was extended to include a targeted review of two aspects of financial provision on divorce and dissolution, namely provision for the parties’ financial needs and the treatment of non-matrimonial property.

We published our final report in February 2014, making the following recommendations:

- The meaning of “financial needs” should be clarified by the provision of guidance so that it can be applied consistently by the courts.
- Legislation be enacted introducing “qualifying nuptial agreements”.
- Work should be done to assess whether a formula for calculating payments would be feasible, but only when sufficient data is available about divorce outcomes under the current law.

The Government’s interim response was published on 18 September 2014. The Government has accepted and taken action on the recommendation for guidance. The Family Justice Council developed financial guidance for separating couples and unrepresented litigants, which it published in September 2015, followed by publication of guidance for the judiciary on financial needs in June 2016.

13 (2017) LC 374.

14 (2014) LC 343.

With regard to our recommendations on a financial tool for separating couples the Government has convened a research advisory group to explore the feasibility of developing such a tool. The Government is considering qualifying nuptial agreements as part of a wider consideration of options for further private family law reforms and will respond in due course.

REPORTS AWAITING IMPLEMENTATION

Conservation Covenants

- Final report and draft Bill published 24 June 2014.¹⁵
- Response from Government 28 January 2016.

Currently, landowners can agree to use or not to use their land in a particular way. But any agreement will be enforceable against future owners only if certain conditions are met. It must impose only restrictions (for example, not to build on the land), not positive obligations (for example, to maintain a dry stone wall). And those restrictions must “touch and concern” other land nearby by providing an identifiable benefit to that land. This limitation can make it difficult to pursue long-term conservation goals.

This project considered the case for permitting landowners to enter into long-lasting and enforceable agreements where a conservation objective would be met by an obligation to use, or not use, land in a particular way. These types of agreements, which already exist in other jurisdictions such as the USA, Canada, Australia, New Zealand and Scotland, are not specifically linked to nearby land. They allow a landowner to agree, for example, to maintain a woodland habitat and allow public access to it, or to refrain from using certain chemicals on land.

The consultation for this project ran from March to June 2013 and we published our final report and draft Bill on 24 June 2014.¹⁶ The report recommends the introduction of a new statutory scheme of conservation covenants in England and Wales. In this scheme, a conservation covenant would:

- Be formed by the agreement of two parties – a landowner (a person with a freehold estate or leasehold estate of more than seven years), and a responsible body drawn from a limited class of organisations.
- Be able to contain both restrictive and positive obligations.
- Be capable of binding the landowner’s successors in title (that is, all subsequent owners) after he or she has disposed of the land.
- Be made for the public good.

The then Secretary of State for the Environment, Food and Rural Affairs (Rt Hon Elizabeth Truss MP) wrote to the Commission on 28 January 2016 praising the quality of our work and giving a commitment to explore the role conservation covenants could play in the 25-year Environment Plan being prepared by the department. In the 25 Year Plan published earlier this year,¹⁷ Government has confirmed that, working with landowners, conservation groups and other stakeholders, it will review and take forward our proposals for a statutory scheme of conservation covenants.

¹⁵ (2014) LC 349.

¹⁶ (2014) LC 349.

¹⁷ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (2018) p 62.

Making Land Work: Easements, Covenants and Profits à Prendre

- Final report and draft Bill published 8 June 2011.¹⁸

This project examined the general law governing:

- Easements – rights enjoyed by one landowner over the land of another, such as rights of way.
- Covenants – promises to do or not do something on one’s own land, such as to mend a boundary fence or to refrain from using the land as anything other than a private residence.
- Profits à prendre – rights to take products of natural growth from land, such as rights to fish.

These rights are of great practical importance to landowners and can be fundamental to the use and enjoyment of property. We looked closely at the characteristics of these rights, how they are created, how they come to an end, and how they can be modified.

Our report recommended reforms to modernise and simplify the law underpinning these rights, making it fit for the 21st century and a modern registration system. The recommendations would remove anomalies, inconsistencies and complications in the current law, saving time and money by making it more accessible and easier to use. This would benefit those who rely on and engage with these interests most: homeowners, businesses, mortgage lenders and those involved in the conveyancing process. They would give new legal tools to landowners to enable them to manage better their relationships with neighbours and facilitate land transactions. Furthermore, the reforms would give greater flexibility to developers when building estates where there would be multiple owners and users.

The Government announced in the Housing White Paper published on 7 February 2017 that: “*The Government also intends to simplify the current restrictive covenant regime by implementing the Law Commission’s recommendations for reform and will publish a draft Bill for consultation as announced in the Queen’s Speech*”. This supplemented the earlier announcement on 18 May 2016 that the Government intended to bring forward proposals in a draft Law of Property Bill to respond to the Commission’s recommendations¹⁹. A draft Bill is being prepared for publication and we are assisting Government with its preparation.

Mental Capacity and Deprivation of Liberty

- Final report published 13 March 2017.²⁰
- Interim response from Government, 30 October 2017.
- Detailed response from the Government, 14 March 2018.

On 13 March 2017, we published our final report and draft Bill recommending that the Deprivation of Liberty Safeguards (DoLS) be repealed with pressing urgency. The report sets out a replacement scheme for the DoLS – which we have called the Liberty Protection Safeguards.

In its detailed response, the Government has accepted, or accepted in principle, all of the recommendations except the recommendation relating to a statutory codification of capacity law in relation to children, and four areas which it has left for the independent Mental Health Act review to consider.

18 (2011) LC 327.

19 See also the then Department for Communities and Local Government, Tackling unfair practices in the leasehold market, Summary of consultation responses and Government response (December 2017), para 36, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670204/Tackling_Unfair_Practices_-_gov_response.pdf.

20 (2017) LC 372.

Pension Funds and Social Investment

- Final report published 21 June 2017.²¹
- Final Government response published on 18 June 2018.

This project was referred to us in November 2016 by the then Minister for Civil Society. We were asked to look at how far pension funds may or should consider issues of social impact when making investment decisions.

Our report found that barriers to social investment by pension funds are, in most cases, structural and behavioural rather than legal or regulatory. We identified steps which could be taken by Government, regulators and others to minimise these barriers.

The Government's final response was received in June 2018, agreeing to implement the recommended reforms which could help unlock more ethical investments.

Public Services Ombudsmen

- Final report published 14 July 2011.²²

Our 2011 report focuses on five ombudsmen: the Parliamentary Commissioner; the Health Service Ombudsman; the Local Government Ombudsman; the Public Services Ombudsman for Wales; and the Housing Ombudsman.

The report makes a series of recommendations aimed at improving access to the public services ombudsmen, ensuring that they have the freedom to continue their valuable work and improving their independence and accountability. The report's key recommendation for a wider review has now taken place, which in turn has led to legislative reform to enable the creation of a single Public Service Ombudsman.

The Government published the draft Public Service Ombudsman Bill on 5 December 2016. If

enacted, the draft Bill would abolish the present Parliamentary and Health Service Ombudsman and the Local Government Ombudsman and create a new organisation with strengthened governance and accountability. It would improve access to the ombudsman's services by allowing for all complaints to be made with or without the help of a representative and in a variety of formats to meet the digital age. The draft Bill was scrutinised by the Communities and Local Government Select Committee on 6 March 2017, with next steps still to be confirmed.

Regulation of Health and Social Care Professionals

- Final report and draft Bill published 2 April 2014.²³

This project dealt with the professional regulatory structure relating to 32 health care professions throughout the UK, and social workers in England – more than 1.5 million professionals in total. It was the first ever tripartite project conducted jointly with the Scottish Law Commission and the Northern Ireland Law Commission.

Our final report and draft Bill set out a new single legal framework for the regulation of health and social care professionals and reforms the oversight role of Government in relation to the regulators.

The Government published its response on 29 January 2015, noting the need for further work on refining our recommendations to achieve the priorities of better regulation, autonomy and cost-effectiveness while maintaining a clear focus on public protection. On 31 October 2017 the Government published a consultation paper on reforming regulation which builds upon our report.

21 (2016) LC 374.

22 (2011) LC 329.

23 (2014) LC 345.

The Health and Social Care (Safety and Quality) Act 2015 implemented our recommendations that all regulatory bodies and the Professional Standards Authority have the consistent overarching objective of promoting public protection and that regulatory bodies have regard to this objective in fitness to practise proceedings.

Taxi and Private Hire Services

- Final report and draft Bill published 23 May 2014.²⁴

This project was proposed as part of the 11th Programme by the Department for Transport. Its aim was to take a broadly deregulatory approach to the process of modernising and simplifying the regulatory structures for this important economic activity.

In May 2012 we published our consultation paper, proposing a single statute to govern both the taxi and private hire trades, and the setting of national standards in order to free up the private hire market. The interest was such that we had to extend the consultation period twice. We received just over 3,000 responses, a then record number for any of our consultations.

Some of our proposals provoked a great deal of controversy. In April 2013 we published a short interim statement explaining that we had changed our views on abolishing the ability of local licensing authorities to limit taxi numbers and had refined our views in other areas. We also published all of the responses received.

Our report and draft Bill were published in May 2014. Although the Government has not yet responded formally to our recommendations, two taxi and private hire measures – based on our recommendations – were included in the Deregulation Act 2015, which received Royal Assent in March 2015. The Welsh Government has recently concluded a consultation on taxi and private hire vehicle licensing which is based heavily on our recommendations.

Wildlife

- Report on the control of invasive non-native species published February 2014.²⁵ Recommended reforms given effect in the Infrastructure Act 2015.
- Final report on remaining elements, with draft Bill, published 10 November 2015.²⁶

Wildlife law is spread over numerous statutes and statutory instruments, dating back to the 19th century. The legislation is difficult for people and businesses to access, for policy makers to adapt and for everyone to understand.

This project was proposed by the Department for Environment, Food and Rural Affairs (Defra) and included in our 11th Programme. It considered the transposition of key EU directives on wild birds and those animals and plants characterised as European Protected Species, and their integration with other, domestic, legal structures. It also sought to bring various purely domestic protection regimes for specific species into the same legislative structure. In March 2012 the Government asked us to add consideration of the possibility of appeals against licensing decisions by regulatory bodies to the project.

We held a consultation in 2012 proposing a single statute bringing together most of the law relating to wildlife. In addition to making specific proposals on the most appropriate way of transposing the EU directives, we also looked at the current regime for the enforcement of wildlife legislation, including both criminal offences and civil sanctions, and at appeals.

Following a request by Defra to bring forward one element of the project, we published a report on the control of invasive non-native species in February 2014. Our recommendations in relation to species control orders were given effect in the Infrastructure Act 2015. Our final report and draft Bill on the

24 (2014) LC 347.

25 (2014) LC 342.

26 (2015) LC 362 (two volumes).

remaining elements of the project were published in November 2015.

The Government issued its response on 22 November 2016, explaining that exit from the EU provides an opportunity to re-examine our regulatory framework so that it meets our needs in future including our international obligations. The Government will therefore consider the implications of EU Exit on wildlife policy before deciding whether and how to implement our recommendations.

REPORTS ACCEPTED BUT WILL NOT BE IMPLEMENTED

Bills of Sale

- Original report published 12 September 2016.²⁷
- Updated report with draft Bill published 23 November 2017.²⁸

In 2014, HM Treasury asked the Law Commission to review the Victorian-era Bills of Sale Acts. Bills of sale are a way in which individuals can use goods they already own as security for loans while retaining possession of those goods. They are now mainly used for “logbook loans”, where a borrower grants security over their vehicle. The borrower may continue to use the vehicle while they keep up the repayments, but if they default the vehicle can be repossessed, without the protections that apply to hire-purchase and conditional sale transactions.

In September 2016 the Law Commission recommended that the Bills of Sale Acts should be repealed and replaced with modern legislation that provides more protection for borrowers and imposes fewer burdens on lenders. The Government agreed with the majority of our recommendations and supported the Law Commission in drafting legislation to implement them. The Bill was announced in the Queen’s Speech in June 2017.

Our final recommendations are set out in a draft Goods Mortgages Bill, published in November 2017. After conducting a short consultation, the Government announced in May 2018 that it would not introduce legislation at this point in time. It cited the “small and reducing market and the wider work on high-cost credit”.

Level Crossings

- Final report, with draft Bill and draft regulations published 25 September 2013.²⁹

This joint project with the Scottish Law Commission seeks to improve the law relating to the 7,500 to 8,000 level crossings in Great Britain.

Our recommendations would:

- Create a new, more streamlined procedure to close individual level crossings where it is in the public interest to do so.
- Bring safety regulation entirely under the umbrella of the Health and Safety at Work etc. Act 1974, and provide tools to support this.
- Impose a statutory duty on railway and highway operators to consider the convenience of all users, and to co-operate with each other when carrying out their obligations in respect of level crossings.
- Provide clarity regarding the position of statutory level crossings.
- Disapply outdated or obsolete statutory provisions.

The Government provided a final response to the report in October 2014, accepting both the case for reform and the majority of our recommendations.³⁰ In May 2018, the Minister of State for Transport, Jo Johnson, wrote to the Commission stating the Department’s final view on reform. The Minister agreed that reform is needed but stated that the best way to achieve this is through administrative

²⁷ (2016) LC 369.

²⁸ (2017) LC 376.

²⁹ (2013) LC 339.

³⁰ (2015) HC 1062.

changes rather than through legislative reform. The Government stressed that these administrative changes were ‘in the spirit of the Law Commission’s recommendations’.

REPORTS AWAITING A GOVERNMENT DECISION

Cohabitation

Cohabitation: The Financial Consequences of Relationship Breakdown

- Final report published 31 July 2007.³¹
- Holding response from Government 6 September 2011.³²

In this project, at the Government’s request, we examined the financial hardship suffered by cohabitants or their children on the termination of cohabitants’ relationships by breakdown or death. The existing law is a patchwork of legal rules, sometimes providing cohabitants with interests in their partners’ property, sometimes not. The law is unsatisfactory: it is complex, uncertain and expensive to rely on. It gives rise to hardship for many cohabitants and, as a consequence, for their children.

Our report recommended the introduction of a new scheme of financial remedies that would lead to fairer outcomes on separation for cohabitants and their families. The scheme is deliberately different from that which applies between spouses on divorce and, therefore, does not treat cohabitants as if they were married. It would apply only to cohabitants who had had a child together or who had lived together for a specified number of years (which the report suggests should be between two and five years).

In order to obtain financial support – which might be in the form of a cash lump sum or transfer of a property, but not ongoing maintenance – applicants would have to prove that they had made contributions to the relationship that had given rise to certain

lasting financial consequences at the point of separation. For example, one partner might have enjoyed an enhanced earning capacity because the other partner took on responsibility for childcare.

In broad terms, the scheme would seek to ensure that the financial pluses and minuses of the relationship were fairly shared between the couple. For example, if one partner were disadvantaged in the job market as a result of time spent bringing up the couple’s children, they might receive some financial compensation from their former partner to support them while retraining or otherwise preparing to return to work.

The report recommended that there should be a way for couples, subject to necessary protections, to opt out of any such agreement, leaving them free to make their own financial arrangements.

In 2011 the Government announced that it did not intend to take forward our recommendations for reform during that Parliament. Government is still considering the recommendations.

Intestacy and Family Provisions Claims on Death (Cohabitants)

- Final report and draft Inheritance (Cohabitants) Bill published 13 December 2011.
- Holding response from Government 21 March 2013.³³

In this project we examined two important aspects of the law of inheritance: the intestacy rules that determine the distribution of property where someone dies without a will; and the legislation that allows certain bereaved family members and dependants to apply to the court for family provision.

31 (2007) LC 307.

32 Written Ministerial Statement, Hansard (HC), 6 September 2011, col 16WS.

33 Written Statement, Hansard (HL), 21 March 2013, vol 744, col 59WS.

Our final report, Intestacy and Family Provision Claims on Death, was accompanied by two draft Bills to implement our recommendations.³⁴ The first Bill was implemented and became the Inheritance and Trustees' Powers Act 2014. The second Bill, the draft Inheritance (Cohabitants) Bill, would:

Reform the law regarding an application for family provision by the survivor of a couple (who were not married or in a civil partnership) who had children together.

In defined circumstances, entitle the deceased's surviving cohabitant to inherit under the intestacy rules where there was no surviving spouse or civil partner. Generally speaking, this entitlement would arise if the couple lived together for five years before the death or for two years if they had a child together.

The Government announced in March 2013 that it did not intend to implement the draft Inheritance (Cohabitants) Bill during the then current Parliament. Government is still considering the recommendations.

Consumer Prepayments on Retailer Insolvency

- Final report published on 13 June 2016.³⁵
- Awaiting Government response.

In the UK, online retail sales and the gift card and voucher market are booming, and consumers frequently pay in advance for products – from flights and theatre tickets to gym memberships and bathroom suites.

If the business that has taken the prepayment becomes insolvent, consumers may be left with neither the item they paid for, nor any real prospect of a refund through the insolvency process (although they may have other avenues such as through their card provider).

In September 2014, the then Department for Business, Innovation and Skills (BIS, now BEIS) asked the Law Commission to examine the protections given to consumer prepayments and to consider whether such protections should be strengthened. We published our recommendations in July 2016, setting out five recommendations which would improve consumers' position on insolvency.

We have been discussing our recommendations with the Department for Business, Energy and Industrial Strategy (BEIS) and some have been implemented in part. We await the formal Government response.

Contempt of Court: Court Reporting

- Final report published 26 March 2014.³⁶
- Interim response from Government 13 March 2015.³⁷

This report aims to modernise the way court reporting restrictions are communicated to the media. Reporting restrictions can be imposed by the judge in a case where publication of certain information may prejudice a fair trial. Typically, the order will provide that publication should be postponed until after the trial (or any linked trial) has finished. If the media breach such an order they will be in contempt of court and liable to criminal penalties. Under current law these important orders are communicated to the media by printing a copy of the order and posting it on the door of the court. This makes it difficult for the media to find out whether a reporting restriction is in place, leading to increased risks of prejudicing a fair trial, as well as the media being sometimes overly cautious in reporting, to avoid the risk of being found to be in contempt. In the report we recommended:

- Introducing a publicly accessible database available on the internet (similar to the one that already operates in Scotland) listing the court hearings in which restrictions are currently in place.

³⁴ (2011) LC 331.

³⁵ (2016) LC 368.

³⁶ (2014) LC 344.

³⁷ Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015), paragraph 77.

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- Creating a more extensive restricted database where, for a charge, registered users could find out the detail of the reporting restriction and could sign up for automated email alerts of new orders.

These recommendations would greatly reduce their risk of contempt for publishers – from large media organisations to individual bloggers – and enable them to comply with the court’s restrictions or report proceedings to the public with confidence. We also undertook a pilot study that demonstrated the likely efficiency of such a scheme.

The Government has welcomed our recommendations and stated its intention to respond formally when the Criminal Justice System Common Platform is implemented.

Criminal Records Disclosures: Non-Filterable Offences

- Final report published 1 February 2017.
- Awaiting Government response.

In July 2016, the Commission was asked by the Home Office to review one specific aspect of the criminal records disclosure system, known as “filtering”.

On 1 February 2017, the Commission published its report. Within the narrow confines of this project, the report includes a recommendation that a statutory instrument should set out a single, itemised list of non-filterable offences in the future. We recommended a wider review of the disclosure system and the Government is considering our recommendations.

Data Sharing Between Public Bodies

- Scoping report published 11 July 2014.³⁸
- Interim Government response received on 24 December 2014.

Public bodies frequently report difficulties in sharing data with other public bodies, to an extent that impairs their ability to perform their functions for citizens. Some of these problems stem from defects in the law itself, and some from problems with understanding the law.

We conducted this project as a scoping review designed to identify where the problems truly lie and what should be done to address them. We ran a consultation during Autumn 2013 and published our scoping report in July 2014. In the report we concluded that a full law reform project should be carried out in order to create a principled and clear legal structure for data sharing.

The Government welcomed the publication of our scoping report and sent an interim response on 24 December 2014, which noted the usefulness of the scoping report and its resonance with the Government’s work in the open policy making space. The open policy making process and subsequent public consultation identified a number of priority areas taken forward in the Digital Economy Act, which received Royal Assent on 27 April 2017.

Enforcement of Family Financial Orders

- Final report published on 15 December 2016.
- Interim Government response received on 2 August 2017.

Each year thousands of separating couples apply to the family courts for financial orders. Sometimes these orders are not complied with. We published our report on the enforcement of these family financial orders in December 2016, following concerns raised by practitioners that the legal routes and procedures for enforcing payment of financial order, contained in a range of legislation and court rules, were

unnecessarily complex. This means that it can be difficult for parties, particularly litigants in person, to recover the money they are owed. The aim of the project was to make recommendations suggesting how this difficult area of law could be made more effective, efficient and accessible, and to strike a fairer balance between the interests of the creditor and the debtor.

Our report recommended the consolidation of all procedural rules dealing with the enforcement of family financial orders. It would create a “route map” for enforcement proceedings, in the form of an Enforcement Practice Direction, and provides comprehensive guidance for litigants in person. We recommended changes to the enforcement procedure to ensure early disclosure of the financial circumstances of the debtor so that an appropriate method of enforcement can be selected, with provision for the court to obtain information from third parties (Government Departments and private bodies such as banks). The report also recommends reforms to bring more of the debtor’s assets, including those held in pensions and in joint bank accounts, within the scope of enforcement. Where debtors can pay, but will not, the report recommends new powers to disqualify debtors from driving, or to prevent them travelling abroad, in order to apply pressure to pay.

Our recommendations could result in creditors recovering additional funds of £7.5 million to £10 million each year, while debtors who cannot pay would be protected from undue hardship. The burden on the state would be reduced by making savings on welfare benefits. More widely, the benefits would include savings in court time; an increase in parties’ access to and understanding of effective enforcement; and an increase in public confidence in the justice system.

The Government provided an interim response to the Commission’s recommendations on 2 August 2017, indicating that the report provided a firm basis for consideration of the full extent of the problem of the non-payment of family financial orders and the ways to tackle it. A full response will be provided after consideration of the report’s recommendations in the context of the Government’s broader thinking on the family justice system.

Event Fees in Retirement Homes

- Final report published 31 March 2017.³⁹
- Interim Government response received on 26 November 2017.

This project was referred to us by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government). It asked the Law Commission to investigate terms in long leases for retirement properties which require the consumer holding the lease to pay a fee on certain events – such as sale, sub-letting or change of occupancy. We called these “event fees”.

In March 2017, we published a report recommending reforms to address concerns that event fees are charged in unfair circumstances. They will also ensure that consumers are provided with clear information about event fees at an early stage in the purchase process. This will enable consumers to make informed decisions about purchasing a retirement property, and to appreciate what that means for their future financial obligations.

We are awaiting a final response from the Government to these recommendations.

³⁹ (2017) LC 373.

Hate Crime

- Final report published 28 May 2014.⁴⁰
- Awaiting Government response.

This project was referred to us by the MoJ following the publication of the Government's three-year Hate Crime Action Plan in March 2012. As part of our extensive consultation work we hosted a symposium with over 100 interested stakeholders and received over 150 responses to our consultation.

The police and Crown Prosecution Service record a crime as a "hate crime" if the victim or anyone else believes that it is motivated by hostility based on any one or more of five characteristics: (1) disability; (2) transgender identity; (3) race; (4) religion; and (5) sexual orientation. Currently, the substantive criminal law regarding hate crime falls under three Acts:

- The Crime and Disorder Act 1998 (which covers "aggravated offences" on grounds of race or religion).
- The Public Order Act 1986 (which covers stirring up hatred on grounds of race, religion or sexual orientation).
- Sections 145 and 146 of the Criminal Justice Act 2003 (which cover enhanced sentencing for offences motivated by hostility to any of the five protected characteristics).

The project examined the case for extending the aggravated offences and the offences of stirring up hatred to include all five of the protected characteristics. We also considered use of the current powers for a judge when sentencing to reflect in the penalty imposed any evidence of hostility demonstrated in the commission of the offence.

In our report we made the following key recommendations, that:

- The enhanced sentencing system for hate crimes be strengthened and that anyone given

an enhanced sentence for hostility should have this recorded on the Police National Computer.

- The Sentencing Council should produce sentencing guidelines to deal with hate crime.
- There should be a full-scale review of aggravated offences or, in the absence of this, the extension of aggravated offences to include disability, sexual orientation and transgender identity.
- The stirring up offences should not be extended.

We are awaiting a response from the Government to these recommendations.

The High Court's Jurisdiction in Relation to Criminal Proceedings

- Report and draft Bill published on 27 July 2010.⁴¹
- Holding response from Government 13 March 2015.⁴²

This project made recommendations for rationalising and simplifying the ways that judicial review and appeals by way of case stated can be used to challenge Crown Court decisions.

The Government is continuing to consider these recommendations.

40 (2014) LC 348.

41 (2010) LC 324.

42 Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015), paragraph 99.

Kidnapping

- Final report published 20 November 2014.⁴³
- Awaiting a Government response.

The aim of the recommendations we made in our November 2014 report was to modernise the law on kidnapping and false imprisonment and address the gaps in the law relating to child abduction. Specifically, we recommended that:

- The kidnapping offence be redefined in statute but should remain triable in the Crown Court only.
- The existing offence of false imprisonment be replaced by a new statutory offence of unlawful detention.
- The maximum sentence for offences under sections 1 and 2 of the Child Abduction Act 1984 be increased from seven to 14 years' imprisonment.
- Section 1 of the 1984 Act be extended to cover cases involving the wrongful retention of a child abroad – this would close the gap in the law highlighted in the case of *R (Nicolaou) v Redbridge Magistrates' Court*.⁴⁴

This work forms part of a wider project, Simplification of the Criminal Law, which originated in our 10th Programme of Law Reform. The Government has been considering the feasibility of the Law Commission's recommendations and we hope to receive a response to the report in due course.

Offences Against the Person

- Scoping report and draft Bill published 3 November 2015.⁴⁵
- Awaiting Government response.

This was a project for the modernisation and restatement of the main offences of violence, which are:

- Those contained in the Offences Against the Person Act 1861.
- The offences of assault and battery, which are common law offences.
- Assault on a constable, which is an offence under the Police Act 1996, section 89.

Our aim was to replace all these offences with a single modern and easily understandable statutory code largely based on a draft Bill published by the Home Office in 1998 but with some significant changes and updating. Our best estimate of the gross savings from the recommended reform is around £12.47million per annum.

We published our report in November 2015 and are awaiting a response from the Government.

Public Nuisance and Outraging Public Decency

- Final report published 24 June 2015.⁴⁶
- Awaiting a Government response.

This report recommends retaining the offences and restating them in statute largely in their existing form. However, as the offences are serious ones, punishable by up to life imprisonment, the recommendations provide that the defendant should be liable only if there is proof of intention or recklessness. At present public nuisance only requires proof of negligence, and outraging public decency has no requirement of fault.

43 Kidnapping and related Offences (2014) LC 355.

44 [2012] EWHC 1647 (Admin); [2012] 2 Cr App R 23.

45 (2015) LC 361.

46 (2015) LC 358.

This work forms part of a wider project, Simplification of the Criminal Law, which originated in our 10th Programme of Law Reform. The Government is considering this report and will respond in due course.

Rights to Light

- Final report and draft Bill published 4 December 2014.⁴⁷
- Awaiting Government response.

Rights to light are easements that entitle landowners to receive natural light through defined apertures (most commonly windows) in buildings on their land. The owners of neighbouring properties cannot substantially interfere with the right, for example by erecting a building that blocks the light, without the consent of the landowner.

We published our final report and draft Bill on 4 December 2014.⁴⁸ We recommend:

- Establishing a statutory notice procedure allowing landowners to require their neighbours to tell them within a set time limit if they plan to seek an injunction to protect their right to light.
- Introducing a statutory test to clarify when the courts may order damages to be paid, rather than halting development or ordering a building to be demolished by granting an injunction (this takes into account the Supreme Court decision in the case of *Coventry v Lawrence*).
- Updating the procedure whereby landowners can prevent their neighbours from acquiring rights to light by prescription.
- Amending the law governing when an unused right to light is to be treated as having been abandoned.
- Giving power to the Lands Chamber of the Upper Tribunal to discharge or modify obsolete or unused rights to light.

We await Government's response to our recommendations.

Technical Issues in Charity Law

- Final report published 14 September 2017.⁴⁹
- Awaiting Government response.

Our report published in September 2017 seeks to address issues with the law within which charities operate that results in time and money spent on administration when it could be used for charitable causes. For more information on the project, see page 20.

We currently await the Government's interim response.

Termination of Tenancies for Tenant Default

- Final report published 31 October 2006.⁵⁰
- Awaiting Government response.

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 layperson and the unwary practitioner. It does not support negotiated settlement and provides insufficient protection for mortgagees and sub-tenants.

Our report recommended the abolition of forfeiture and its replacement by a modern statutory scheme for the termination of tenancies on the ground of tenant default that would balance the interests of all parties affected and promote more proportionate outcomes.

The Government's 2015 report on the implementation of our proposals identified some stakeholder concerns about the summary termination procedure proposed. The Government said in its report that

47 (2014) LC 356.

48 (2014) LC 356.

49 (2017) LC 375.

50 (2006) LC 303.

it was considering how these concerns might be overcome.⁵¹ Consideration of these issues is continuing and we await Government's decision.

Unfitness to Plead

- Final report and draft Bill published 13 January 2016.⁵²
- Interim Government response received on 30 June 2016.

The law relating to unfitness to plead addresses what should happen when a defendant who faces criminal prosecution is unable to engage with the process because of his or her mental or physical condition. The law aims to balance the rights of the vulnerable defendant with the interests of those affected by an alleged offence and the need to protect the public. However, the current law in this area is outdated, inconsistently applied and can lead to unfairness.

After a wide-ranging consultation conducted in winter 2010/11⁵³ we published an analysis of responses⁵⁴ and an issues paper in 2013⁵⁵ and our final report and draft Bill in January 2016⁵⁶.

Government provided an interim response on 30 June 2016, acknowledging our work and noting that a substantive response would be provided in due course.

51 Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015) HC 1062.

52 (2016) LC 364 (two volumes).

53 (2010) LCCP 197.

54 <http://www.lawcom.gov.uk/project/unfitness-to-plead/>.

55 <http://www.lawcom.gov.uk/project/unfitness-to-plead/>.

56 (2016) LC 364 (two volumes).

Part Four:

How we work

LAW REFORM

The work of the Commission is grounded in thorough research and analysis of case law, legislation, academic and other writing, and other relevant sources of information both in the UK and overseas. It takes full account of the European Convention on Human Rights and relevant European law. Throughout this process, where appropriate, we act in consultation or work jointly with the Northern Ireland Law Commission and the Scottish Law Commission.

Our Programme of Law Reform

We are required to submit to the Lord Chancellor programmes for the examination of different branches of the law with a view to reform.

Every three or four years we consult widely, asking for suggestions for appropriate projects. During 2017-18 we have continued work on projects selected for our 12th Programme of Law Reform, which we launched in July 2014, and earlier programmes. Details of this work are set out in Part Two of this report. The full list of nine projects selected for our 12th Programme can be found in our annual report for 2014-15.⁵⁷

We published our 13th Programme on 14 December 2017⁵⁸ with work beginning on some of these projects from January 2018. The consultation for this Programme of Law Reform received our largest ever response rate, with over 1,300 responses covering 220 individual suggestions for law reform projects.

For more information on the 13th Programme and the list of projects selected, see page 52.

Decisions about whether to include a particular subject in a programme of reform are based on:

- The extent to which the law in that area is unsatisfactory.
- The potential benefits that would flow from reform.

- Whether the independent non-political Commission is the most suitable body to conduct a review in that area of the law.
- Whether the Commissioners and staff have or have access to the relevant experience.

Although we have a duty to “take and keep under review all the law”,⁵⁹ 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. We focus on change that will deliver real benefits to the people, businesses, organisations and institutions to which that law applies.

Consultation

We are committed to consulting fully with all the people and organisations potentially affected by our proposals. We engage with stakeholders from the outset of a project, even before a piece of work is officially adopted, and conduct thorough, targeted consultations throughout. This allows us to acquire a good understanding of the issues that are arising in an area of law and the effect they are having, and gives us a clear picture of the context within which the law operates. We use this to assess the impact of our proposed policies and refine our thinking.

Our consultations can include meetings with individuals and organisations, public events, conferences, symposia and other types of event, as well as interviews and site visits. We often work through representative organisations, asking them to help us reach their members and stakeholders.

During our formal consultations we ask for written responses and provide a number of ways for consultees to submit these. All the responses we receive are analysed and considered carefully. Aggregated analyses are published on our website, and in some cases individual responses, usually alongside our final report.

⁵⁷ Annual Report 2014–15 (2015) LC359, p12–13.

⁵⁸ (2017) LC 377.

⁵⁹ Law Commissions Act 1965, s 3(1).

We follow the Government Consultation Principles issued by the Cabinet Office.⁶⁰

Making Recommendations for Reform

We set out our final recommendations in a report. If implementation of those recommendations would involve primary legislation, the report will usually contain a Bill drafted by our in-house Parliamentary Counsel. The report is laid before Parliament. It is then for Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless an MP or Peer opts to do so.

After publication of a report the Commissioner, members of the relevant legal team and the Parliamentary Counsel who worked on the draft Bill will often give assistance to Government Ministers and Departments to help them take the work forward.

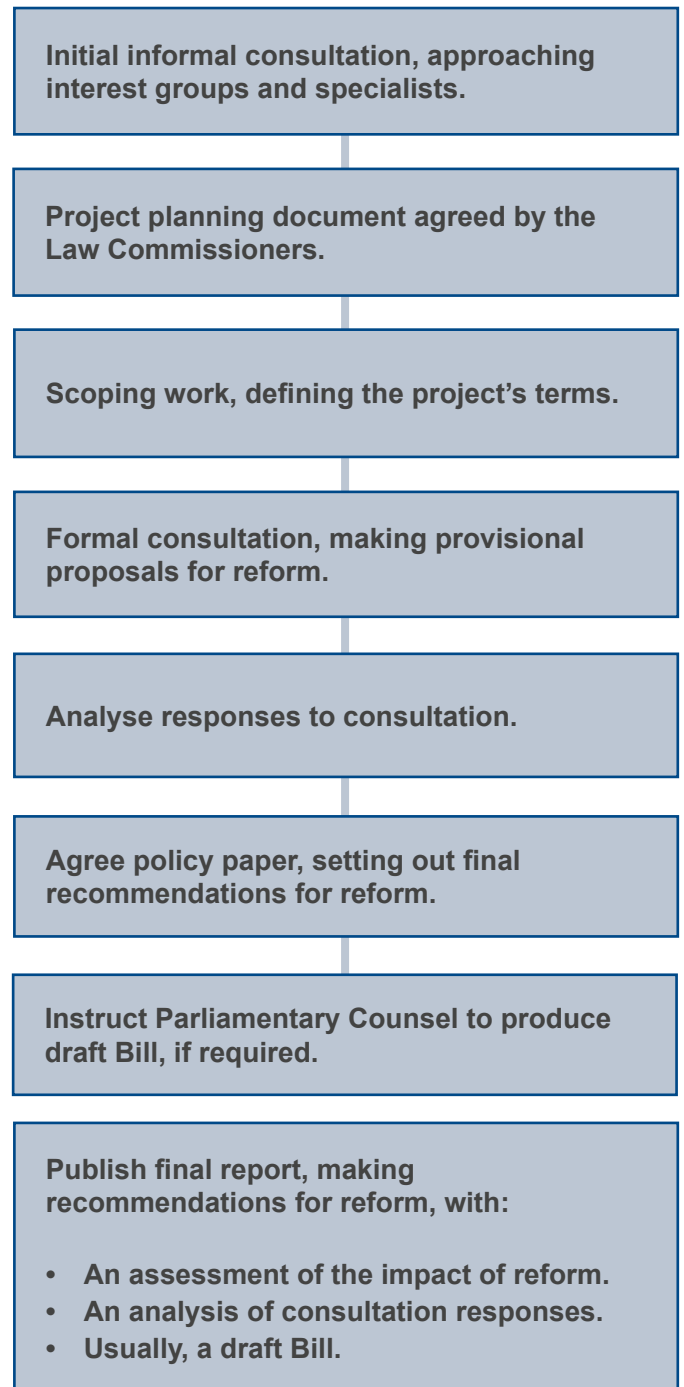
Other Law Reform Projects

In addition to the law reform projects that make up our programme, we also undertake law reform projects that have been referred to us directly by Government departments.

During 2017-18, two projects were referred to us by Government:

- Anti-Money Laundering – the primary purpose of this review is to improve the prevention, detection and prosecution of money laundering and terrorism financing in the UK. This project was referred to us by the Home Office (see page 17).
- Abusive and Offensive Online Communications – a review of the application of existing criminal offences of offensive communication to conduct online, with a view to identifying deficiencies in the law. This project was announced in February 2018 in the Prime Minister’s speech to mark the centenary of women’s suffrage. This project was referred to us by the Department for Digital, Culture, Media and Sport.

Figure 4.1 Common stages of a law reform project



60 <https://www.gov.uk/government/publications/consultation-principles-guidance> (last visited 7 April 2016).

Statute Law

The Law Commission's statutory functions set out in section 3(1) of the Law Commissions Act 1965 include a duty "to prepare from time to time at the request of the Minister comprehensive programmes of consolidation and statute law revision, and to undertake the preparation of draft Bills pursuant to any such programme approved by the Minister".

Since its creation, the Law Commission has performed the important function of removing legislation that is obsolete or which has lost any modern purpose. The legislation appears to be still in force but this is misleading because it no longer has a job to do. This may be because the political, social or economic issue an Act was intended to address no longer exists or because an Act was intended to do a specific thing which, once done, means it has served its purpose.

Over time a vast body of legislation has built up – this is commonly referred to as the "statute book". Legislation that has no further function has not always been effectively cleared away. This can make things more costly, in terms of time and money, for those who work with the law. Also, an Act that still appears to have legal significance may entice people to rely on it, for example, as is becoming more common, where a person without the aid of a lawyer brings or defends a court case on the basis of a statutory right they think they have.

The work of the Law Commission improves the accuracy of the statute book so it can be used with greater confidence. As social and technological change continues to be reflected in new legislation, and as internet access to statutory law increases its availability, the need for systematic and expert review of existing legislation will continue.

Statute Law Repeals

Candidates for repeal are identified and researched. The legal background to an Act is examined, as well as the historical and social circumstances which might have led to it. We consult on proposed repeals and then prepare a draft Bill. The repeals are carried out by means of Statute Law (Repeals) Bills. Nineteen of these Acts have been enacted so far, between them repealing over 3,000 Acts in their entirety and partially repealing thousands of others.

In recent times, enthusiasm in Government for repeals work has reduced, which in turn makes it difficult for the Commission to allocate resource to this aspect of our work. Nevertheless, we remain committed to repeals work and will consider how best we can focus our attention on those areas which have the potential to cause genuine confusion.

Consolidation

Between our establishment in 1965 and 2006, we were responsible for 220 consolidation Acts. Since then only two have been produced: the Charities Act 2011 and the Co-operative and Community Benefit Societies Act 2014. This change reflects the fact that, in a time of reduced funding in most areas of public services and, specifically, reduced core funding for the Law Commission, consolidation is perhaps seen by Government to be a lower priority.

However, the need for simplification of the law is as great as it ever has been. We have come to see merit in codification rather than a simple consolidation in areas where statute law is incoherent or confusing and where codification would bring genuine practical benefits. Codification, which we first suggested in our *Form and Accessibility of the Law Applicable in Wales* report, differs from consolidation in two main respects. First, the exercise of drawing the existing law together into one Act is accompanied by a degree of technical reform. That is, the legislation is changed in limited and uncontroversial respects with a view to improving how it operates. Secondly, in future when legislating in an area covered by a code additions to or amendments are made to the code, rather than creating new statutes.

Implementation

Crucial to the implementation of our consolidation and statute law repeals Bills is a dedicated parliamentary procedure. The Bill is introduced into the House of Lords and, after Lords Second Reading, is scrutinised by the Joint Committee on Consolidation Bills. The Committee is appointed by both Houses specifically to consider consolidation and statute law repeal Bills and will hear evidence from the Law Commission. After this, the Bill returns to the House of Lords and continues through its remaining stages.

THE LAW COMMISSION AND GOVERNMENT

Government Response to Law Commission Reports

In March 2010 we agreed a statutory Protocol⁶¹ with the Lord Chancellor that governs how the Commission and Government Departments should work together on law reform projects. The latter part of the Protocol sets out departmental responsibilities once we have published a report. The Minister for the relevant Department will provide an interim response to us as soon as possible but not later than six months after publication of the report. We expect to receive a final response within a year of the report being published.

Improving the Prospects of Implementation

The Protocol also says that we can only take on work where there is a “serious intention” to reform the law by the government. As a result this confirmation is sought from the relevant departments before any law reform projects get underway. While this is not a guarantee that the Government will accept or implement our recommendations for reform, it enables us to commit resources to a project in the knowledge that we have a reasonable expectation of implementation.

Accounting to Parliament for Implementation

The Law Commission Act 2009 requires the Lord Chancellor to report to Parliament on the extent to which our proposals have been implemented by the Government. The report must set out the Government’s reasons for decisions taken during the year to accept or reject our proposals and give an indication of when decisions can be expected on recommendations that are still being considered. The Lord Chancellor issued the sixth of these reports on 12 January 2017⁶² covering the period 12 January 2015 to 11 January 2016. A report was not published last year but the seventh report is expected to be published in Summer 2018, covering the period 12 January 2016 to 11 January 2018.

The Law Commission and the Welsh Government

The Wales Act 2014 provides for a protocol⁶³ to be established between the Law Commission and the Welsh Government. This protocol was agreed and presented to the National Assembly for Wales on 10 July 2015. It sets out the approach that we and Welsh Ministers jointly take to our law reform work. It covers how the relationship works throughout all the stages of a project, from our decision to take on a piece of work, through to the Ministers’ response to our final report and recommendations.

In a direct reflection of the obligations placed on the Lord Chancellor by the Law Commission Act 2009, the 2014 Act also requires Welsh Ministers to report annually to the Assembly about the implementation of our reports relating to Welsh devolved matters. The second Welsh Government Report on the Implementation of Law Commission Proposals/ Adroddiad ar weithredu cynigion Comisiwn y Gyfraith was laid before the Assembly on 16 February 2018.

61 Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission (2010) LC 321.

62 <https://www.gov.uk/government/collections/implementation-of-the-law-commission-proposals> (last visited 13 April 2016).

63 Protocol rhwng Gweinidogion Cymru a Comisiwn y Gyfraith/Protocol between the Welsh Ministers and the Law Commission (2015).

INFORMING DEBATE AND SCRUTINY

We are often invited to give evidence to special committees to assist with their inquiries and their consideration of Bills, some of which may include provisions that have derived from Law Commission recommendations.

THE LAW COMMISSIONERS

The five Law Commissioners work full time at the Law Commission, except that the Chair sits as a judge for one working week in four.

In accordance with Government policy for all non-departmental public bodies, there is a Code of Best Practice for Law Commissioners. It incorporates the Seven Principles of Public Life and covers matters such as the role and responsibilities of Commissioners.⁶⁴

EXTERNAL RELATIONS

We work hard to establish strong links with a wide range of organisations and individuals who have an interest in law reform, and greatly value these relationships. We are indebted to all those who send us feedback on our consultation papers, contribute project ideas for our programmes of law reform, and provide input and expertise at all stages of the process of making recommendations to Government.

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 our Welsh Advisory Committee and all those organisations and individuals who have worked with us as members of advisory groups on our many projects and who have contributed in so many ways to our work during the course of the year.

We also acknowledge the support and interest shown in the Commission and our work by a number of ministers at Westminster and in Cardiff, Members of Parliament and of the Welsh Assembly and Peers

from across the political spectrum, and by public officials. We continue to make progress in extending the number of ways in which we engage with our friends and supporters.

COMMUNICATIONS

Since 1965 we have changed the lives of many people by reforming the law for the better. Underpinning this is the need to communicate effectively to enable greater public engagement in our consultations, create awareness of what we do amongst Government departments and build momentum behind our recommendations for reform.

One year through the two-year communications strategy, the Commission's communications offering is now structured based on the industry best practice – the Government Communications Service Modern Communications Operating Model (MCOM).

Already this is paying dividends across our campaigning and marketing channels. During the reporting period more than 216,000 users visited the website. We have 4,200 new subscribers to receive automatic updates about our work – 20,224 in total. Our Twitter account has also grown and now reaches nearly 14,000 followers. This is alongside two positive front pages in national media and more than 1,000 proactive media articles across broadcast, national, local and trade media informing people of our work.

EDUCATION AND ENGAGEMENT

We have a statutory duty to promote the reform of the law and continue to work hard in this area. Alongside the production of various infographics to explain in plain English each new law reform project, we speak to students and practitioners from across Britain and the world.

Over the past year or so this has involved:

⁶⁴ <http://www.lawcom.gov.uk/about/who-we-are>.

- Helping to set the standards for law reform globally by contributing extensively to the Commonwealth Law Reform Guide.
- Once again supporting the Big Voice Model Law Commission project, a volunteer-led project to spark sixth formers' interest in issues of legal identity and the process of law reform.
- Speaking at sessions at universities across the country including Liverpool, Cardiff, and Exeter as well as hosting a group of international undergraduate students from Rice University, Texas.
- Hosting sessions or Skype calls for law reformers from Australia, China, South America and across the world.
- Presenting the Sentencing Code to lawyers in Hong Kong
- Training at the Judicial College to emphasise the importance of law reform to the judiciary.

SPEAKING ON LAW REFORM

As an outward facing organisation the Commission's Chair, Commissioners and staff have been active speaking at many different events across the country.

Over 2017-18, highlights include:

- Hosting the 6th Scarman Lecture at Gray's Inn with keynote speaker The Rt Hon. the Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales.
- The annual Legal Wales conference in 2017.
- Keynote speeches at All-Party Parliamentary Group meetings on Commonhold and Leasehold Reform, and Surrogacy.
- A lecture on the Protection of Official Data at the Royal United Services Institute.
- A series of consultations reaching over 1,400 practitioners and students in England and Wales for the Sentencing Code project.
- A keynote speech at the Retirement Housing Group conference about our Event Fees in Retirement Properties report.
- A presentation on the Sentencing Code at the Bar Council's annual conference 2017.

SOCIAL RESPONSIBILITY

Every year a team, made up of our legal and other staff, join members of the judiciary and teams from many of London's law firms and sets of chambers in the annual London Legal Walk. In 2017 the team raised almost £700 for the London Legal Support Trust, which organises the event. The funds go to support free legal advice agencies in and around London, including Law Centres and pro bono advice surgeries.

Our staff have also come together to raise funds for other causes during the year, in a variety of ways, for example a very successful baking day in aid of London Legal Support Trust.

OUR PARTNER LAW COMMISSIONS AND THE DEVOLVED AUTHORITIES

In June 2017 the Chair and Chief Executive attended the Conference of Law Commissions in Edinburgh alongside colleagues from the law reform bodies of Jersey, the Republic of Ireland and Scotland. This is an annual event that allows us to exchange experiences and strengthen our relationships.

We continue to work closely with our colleagues in the Scottish Law Commission, seeking views as appropriate and engaging on a regular basis.

Case study – the 13th programme of law reform



Under the Law Commissions Act 1965 the Law Commission is required to submit Programmes of law reform to the Lord Chancellor. Since then, every three or four years we have set out the areas we intend to work on for the next few years.

As a genuinely consultative organisation, we go out to the public to ask their views on the laws that are causing problems for people and businesses. We try to reach as many people as possible – to make sure we reflect people’s concerns and get to the bottom of the most pressing problems.

In July 2016, the consultation for our 13th Programme of Law Reform was launched at an event at the Supreme Court with Baroness Hale and Attorney General Jeremy Wright. The response was unprecedented and a clear reminder of the public’s appetite for law reform. We received the largest ever volume of responses across our more than 50-year history, with over 1,300 submissions covering 220 different topics.

Decisions about whether to include a subject in a programme of reform are taken by the five Commissioners. Whittling this number of ideas down to a programme which was achievable was no easy task. The Commissioners based their final selections on published criteria, namely:

- The extent to which the law is unsatisfactory (for example, unfair, unduly complex, inaccessible or outdated), and the potential benefits of reform.
- Whether the independent, non-political Commission is the most suitable body to conduct the project.
- Whether the necessary resources are available to enable the project to be carried out effectively.

Alongside this, our Protocol with Government, agreed in 2010, means that we can only take on projects where there is a “serious intention” on the part of Government to reform the law. Having got that agreement from individual departments, on 14 December 2017 the 13th Programme of Law Reform was published.

It revealed 14 areas of law to come under scrutiny by Commissioners. They are:

- A Modern Framework for Disposing of the Dead.
- Administrative Review.
- Automated Vehicles.
- Electronic Signatures (Electronic Execution of Documents).
- Employment Law Hearing Structures.
- Intermediated Securities.
- Modernising Trust Law for a Global Britain.
- Museum Collections.
- Registered Land and Chancel Repair Liability.
- Residential Leasehold (and Commonhold).
- Simplifying the Immigration Rules.
- Smart Contracts.
- Surrogacy.
- Unfair Terms in Residential Leasehold.

The projects selected for the 13th Programme are designed to address a wide range of issues. Broadly projects within the Programme aims to fulfil one of two aims: either to boost Global Britain and help enhance the UK's competitiveness or to improve the way in which the law works for citizens or businesses.

Response to the programme has been positive and whilst a substantial body of law reform work, we hope to start work over the next three years. However, given the uncertain climate in which we are operating, the Commission recognises the need to remain flexible in terms of being able to react to potential new priorities during the course of the Programme.

As such, inclusion in the 13th Programme is not a guarantee that the Commission will be able to take forward work immediately across all areas. This is in no way a reflection of the priority the Commission attaches to individual projects.

That being said, swift progress has been made on some projects with a call for evidence on commonhold – a potential alternative to residential leasehold – launched in February 2018 and work ongoing on electronic signatures, the Immigration Rules and automated vehicles.

Working with experts and the public, we will strive to make sure the law is modern, simple and fair as we make our recommendations for reform.

Part Five:

Our people and corporate matters

The Law Commission is grateful to everyone within the organisation for their hard work, expertise and support as well as their contribution to the work of the Commission.

BUDGET

The Law Commission's core funding, provided to us by Parliament and received through the MoJ, for 2017-18 was £2.487m. The cost of the Commission can be found at Appendix B.

The cost to operate the Commission is approximately £4m. This ensures that we are suitably resourced to undertake effective law reform. Our reducing budget following the Spending Review 2015 means that there is an increased necessity for some of our law reform projects to be funded by monetary contributions, on a cost recovery basis, from the sponsoring Government department.

This approach is not without risk, as seen during 2017-18, when the General Election caused a delay to the finalisation of the 13th Programme. This meant that the Commission was unable to commence the forecasted number of income producing projects, resulting in an overspend of our budget. MoJ acknowledged that this was outside of our control and, given the Commission's tight budgetary position following the spending review, agreed to underwrite the overspend.

STAFF AT THE COMMISSION

The Commissioners are supported by the staff of the Law Commission. The staff are civil servants and are led by a Chief Executive.

In 2017-18 there were 59 people working at the Law Commission (full-time equivalent: 53.4 as at 31 March 2018).⁶⁵

Figure 5.1 People working at the Commission (full-time equivalent, at 31 March 2018)

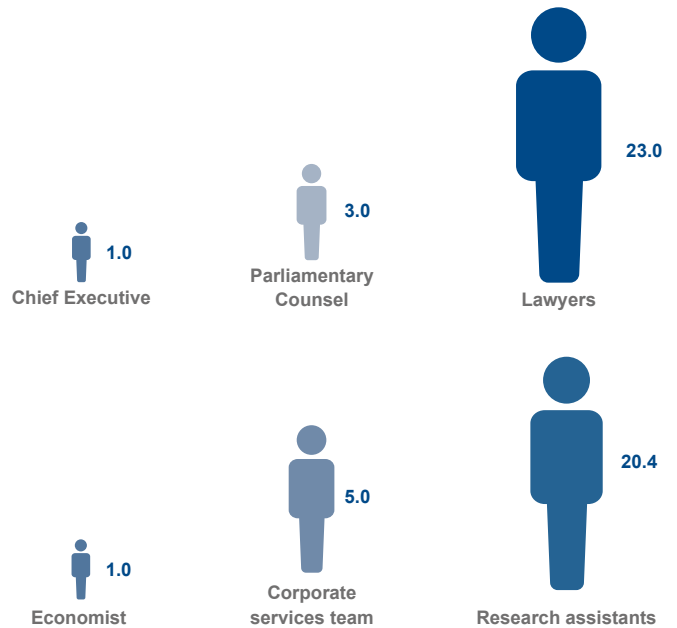
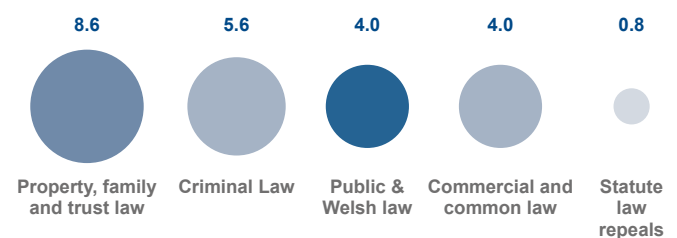


Figure 5.2 Lawyers (full-time equivalent, at 31 March 2018)



65 Excluding the Chair, Chair's Clerk and Commissioners.

Chief Executive

Our Chief Executive is responsible for setting the strategic direction of the Commission, in discussion with the Chair and other Commissioners, and for staffing, funding, organisation and management. The Chief Executive is the Commission's Budget Holder. He is also responsible for the day-to-day management of the Law Commission's relationship with the MoJ, including liaising with and influencing senior Departmental officials and promoting contacts and influence within Government departments.

Our Chief Executive provides advice and assistance to the Chair and other Commissioners, including support of the Chair in his relationships with ministers, the senior judiciary, relevant Parliamentary committees and the media.

Legal Staff

Our lawyers are barristers, solicitors or legal academics from a wide range of professional backgrounds, including private practice and public service.

We organise the legal staff into four teams to support the Commissioners: commercial and common law; criminal law; property, family and trust law and public and Welsh law.

The first four teams undertake law reform work, each with one Commissioner responsible for the work of the team. Each of these four teams is led by a team head, a senior lawyer who provides direct support to the relevant Commissioner and leads the team of lawyers and research assistants working with the Commissioner to deliver their projects. One of the team managers also acts as Head of Legal Services, working closely with the Chief Executive on strategic law reform and staffing issues, and representing the Commission in dealings with key legal stakeholders. Team heads generally do not lead on specific law reform projects themselves; their role focuses on project managing the team's work, providing legal and policy input into those projects, recruiting, mentoring and managing staff and working with the Chief Executive on corporate matters. The

team heads also lead on relationships with key stakeholders inside and outside Government for the projects in their area. Team heads report to the Chief Executive.

Individual lawyers within teams, and occasionally Commissioners, lead on law reform projects. They will, with the support of a research assistant, research the law, lead on the development and drafting of policy proposals and papers, and liaise with key stakeholders alongside the team head. The lawyers will undertake much of the day-to-day work on a law reform project.

We are fortunate to have in-house Parliamentary Counsel who prepare the draft Bills attached to the law reform reports, and who are seconded to the Law Commission from the Office of the Parliamentary Counsel. We are delighted to have their expertise available to us.

Research Assistants

Each year a number of well-qualified graduates are 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.

For many research assistants working at the Commission has been a significant rung on the ladder to a highly successful career.

The selection process is extremely thorough and we aim to attract a diverse range of candidates of the highest calibre through contact with faculty careers advisers, as well as through our website and social media channels, and by placing articles in the relevant media. A comprehensive outreach programme was undertaken as part of the 2017 recruitment process, targeting law faculties at a wider range of universities as well as an improved and more modern social media campaign.

In 2017-18 we recruited 14 research assistants and the 2018-19 RA campaign is now complete, with the new recruits due to start in September 2018.

We recognise the contribution our research assistants make, particularly through their enthusiastic commitment to the work of law reform and their lively participation in debate.

Economic and Analytical Services

The Commission benefits from the expertise of an economist who provides specialist advice in relation to the assessment of the impact of our proposals for law reform. As a member of the Government Economic Service, our economist also provides an essential link with the MoJ and other Government department analytical teams.

Corporate Services

During 2017-18, the corporate services team were required to embed the changes borne out of the team restructure that took effect from the start of 2017. This has effectively meant delivering the same service with less resource while maintaining quality. The team has risen to the challenge and further professionalised the Commission's corporate services in what can be regarded as a very successful year for the team.

The corporate services team leads on providing the following services for the Commission:

- Governance.
- Transformation.
- Strategy and planning.
- Human Resources.
- Information Technology.
- Financial Management.
- Internal, external and strategic communications.
- Knowledge and records management.
- Information assurance.
- Health and safety.
- Business continuity.

SENIOR MANAGEMENT TEAM

Our Senior Management Team is formed of the Chief Executive, legal team heads, head of corporate services, Parliamentary Counsel and the economist. They meet twice a month and take decisions on the

day-to-day running of the Commission as well as reviewing all programme and project planning relating to our law reform projects.

WORKING AT THE COMMISSION

Staff Engagement

The results of the annual People Survey show the Law Commission with an engagement index of 72% for 2017. This represented a 3% increase from the previous year. Our results for 2017 showed an improvement across almost every area compared to the 2016 results. There were notable increases in 'Learning and Development' (+20%) and 'Leadership and Managing Change' (+24%). These were 2 of the 3 areas targeted in the people survey action plan. The third, 'Inclusion and Fair Treatment' also had an increase (+4%) suggesting that there is still work to do in this area.

Following the People Survey, a number of focus groups were held with people from across the Commission to help shape our people action plan for the year. A number of ideas were put forward to address our target areas – Inclusion and Fair Treatment; My Manager and My Team. A People Survey Action Group has been created to monitor and report on progress in implementing the actions.

In addition, to help our staff maintain a good work-life balance, we also offer a wide variety of flexible working arrangements such as home-working, part-time and compressed hours.

Investing in our People

The Law Commission is keen to invest in the continuing professional development of all our staff. In addition to providing access to formal training, we run a series of lunchtime seminars throughout the year and have been building on our efforts over the last year. This has included running sessions on Brexit, regulatory positions, bullying and harassment and diversity and inclusion.

We invite contributors from the legal, parliamentary and academic worlds, as well as asking our colleagues within the Commission to share their considerable expertise.

WHISTLEBLOWING

All civil servants are bound by the Civil Service Code, which sets out the core values; integrity, honesty, objectivity and impartiality, expected of all MoJ employees.

Staff are encouraged to raise immediately any concerns they have about wrongdoing or breaches of the Civil Service Code by following the whistleblowing procedure. We follow the MoJ whistleblowing procedure, which is made available to all staff via the Law Commission intranet.

FREEDOM OF INFORMATION

The Freedom of Information Act encourages public authorities to make as much information as possible available to the public. Under the Act, we are required to adopt a publication scheme that contains information we routinely make available, and ensure that information is published in accordance with the scheme.

We make a significant amount of information available under our publication scheme. One of its benefits is that it makes information easily accessible and free-of-charge to the public, which removes the need for a formal Freedom of Information request to be made.

The Information Commissioner's Office has developed and approved a model publication scheme that all public authorities must adopt. We have adopted this scheme and we use the definition document for non-departmental public bodies to identify the type of information that we should publish. Among this is a quarterly disclosure log of requests made under the Freedom of Information Act that we have received and dealt with. More details can be found on our website.

INFORMATION ASSURANCE

In 2017-18 we reported a total of eight notifiable incidents, the majority which related to the loss of equipment. Each incident was dealt with swiftly, in line with MoJ policies.

HEALTH AND SAFETY

During the year, there were no notifiable incidents in relation to staff of the Commission and the Health and Safety at Work etc Act 1974.

SUSTAINABILITY

Our actions in relation to energy saving contribute to the overall reduction in consumption across the MoJ estate.

Paper is widely recycled in the office. All our publications are printed on paper containing a minimum of 75% recycled fibre content, and we are actively exploring ways to reduce the quantity of our printed materials.



Members of the Corporate Services Team



David Bean

Sir David Bean, Chair



David Ormerod

Professor
David Ormerod QC



N.P. Hopkins

Professor Nick Hopkins



Nicholas Paines

Nicholas Paines QC



S.M. Lewis

Stephen Lewis



Phillip Golding

Phillip Golding
Chief Executive

APPENDICES

Appendix A

Implementation status of Law Commission law reform reports

LC No	Title	Status	Related Measures
2017			
376	From Bills of Sale to Goods Mortgages	Accepted but not implemented	
375	Technical issues in Charity Law	Pending	
374	Pension Funds and Social Investment	Accepted	
373	Event Fees in Retirement Properties	Pending	
372	Mental Capacity and Deprivation of Liberty	Accepted	
371	Criminal Records Disclosures: Non-Filterable Offences	Pending	
2016			
370	Enforcement of Family Financial Orders	Pending	
369	Bills of Sale	Accepted	
368	Consumer Prepayments on Retailer Insolvency	Pending	
366	Form and Accessibility of the Law Applicable in Wales	Accepted	
365	A New Sentencing Code for England and Wales Transition	Superseded	
364	Unfitness to Plead	Pending	
2015			
363	Firearms Law – Reforms to Address Pressing Problems	Implemented	Policing and Crime Act 2017 (Part 6)
362	Wildlife Law	Implemented in part, rejected in part	Infrastructure Act 2015
361	Reform of Offences against the Person (HC 555)	Pending	
360	Patents, Trade Marks and Designs: Unjustified Threats	Implemented	Intellectual Property (Unjustified Threats) Act 2017
358	Simplification of Criminal Law: Public Nuisance and Outraging Public Decency	Pending	
2014			
356	Rights to Light (HC 796)	Pending	
355	Simplification of Criminal Law: Kidnapping and Related Offences	Pending	
No LC Number	Social Investment by Charities	Implemented	Charities (Protection and Social Investment) Act 2016
353	Insurance Contract Law (Cm 8898;SG/2014/131)	Implemented	Insurance Act 2015; Enterprise Act 2016

LC No	Title	Status	Related Measures
351	Data Sharing between Public Bodies: A Scoping Report	Pending	
350	Fiduciary Duties of Investment Intermediaries (HC 368)	Accepted	
349	Conservation Covenants (HC 322)	Accepted	
348	Hate Crime: Should the Current Offences be Extended? (Cm 8865)	Pending	
347	Taxi and Private Hire Services (Cm 8864)	Accepted in part; pending in part	Deregulation Act 2015
346	Patents, Trade Marks and Design Rights: Groundless Threats (Cm 8851)	Superseded	Superseded by LC360
345	Regulation of Health Care Professionals: Regulation of Social Care Professionals in England (Cm 8839 / SG/2014/26 / NILC 18 (2014))	Accepted	
344	Contempt of Court (2): Court Reporting (HC 1162)	Pending	
343	Matrimonial Property, Needs and Agreements (HC 1039)	Implemented in part; pending in part	
342	Wildlife Law: Control of Invasive Non-native Species (HC 1039)	Implemented	Infrastructure Act 2015
2013			
340	Contempt of Court (1): Juror Misconduct and Internet Publications (HC 860)	Implemented	Criminal Justice and Courts Act 2015
339	Level Crossings (Cm 8711)	Accepted but will not be implemented	
337	Renting Homes in Wales/Rhentu Cartrefi yng Nghymru (Cm 8578)	Implemented	Renting Homes (Wales) Act 2016
336	The Electronic Communications Code (HC 1004)	Implemented	Digital Economy Act 2017
2012			
335	Contempt of Court: Scandalising the Court (HC 839)	Implemented	Crime and Courts Act 2013 (s33)
332	Consumer Redress for Misleading and Aggressive Practices (Cm 8323)	Implemented	Consumer Protection (Amendment) Regulations 2014; Consumer Rights Act 2015
2011			
331	Intestacy and Family Provision Claims on Death (HC 1674)	Implemented in part	Inheritance and Trustees' Powers Act 2014
329	Public Service Ombudsmen (HC 1136)	Pending	

LC No	Title	Status	Related Measures
327	Making Land Work: Easements, Covenants and Profits à Prendre (HC 1067)	Accepted	
326	Adult Social Care (HC 941)	Implemented	Care Act 2014 and Social Services and Well-Being (Wales) Act 2014
325	Expert Evidence in Criminal Proceedings in England and Wales (HC 829)	Implemented	Criminal Procedure Rules
2010			
324	The High Court's Jurisdiction in Relation to Criminal Proceedings (HC 329)	Pending	
322	Administrative Redress: Public Bodies and the Citizen (HC 6)	Rejected	
320	The Illegality Defence (HC 412)	Rejected	
2009			
319	Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (Cm 7758)	Implemented	Consumer Insurance (Disclosure and Representation) Act 2012 (c6)
318	Conspiracy and Attempts (HC 41)	Accepted but will not be implemented	
317	Consumer Remedies for Faulty Goods (Cm 7725)	Implemented	Consumer Rights Act 2015
315	Capital and Income in Trusts: Classification and Apportionment (HC 426)	Implemented	Trusts (Capital and Income) Act 2013
314	Intoxication and Criminal Liability (Cm 7526)	Rejected	
2008			
313	Reforming Bribery (HC 928)	Implemented	Bribery Act 2010 (c23)
312	Housing: Encouraging Responsible Letting (Cm 7456)	Rejected	
309	Housing: Proportionate Dispute Resolution (Cm 7377)	Accepted in part	
2007			
307	Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182)	Pending	
305	Participating in Crime (Cm 7084)	Pending	
2006			
304	Murder, Manslaughter and Infanticide (HC 30)	Implemented in part	Coroners and Justice Act 2009 (c25)
303	Termination of Tenancies (Cm 6946)	Pending	

LC No	Title	Status	Related Measures
302	Post-Legislative Scrutiny (Cm 6945)	Implemented	See Post-Legislative Scrutiny: The Government's Approach (2008) Cm 7320
301	Trustee Exemption Clauses (Cm 6874)	Implemented	See Written Answer, Hansard (HC), 14 September 2010, vol 515, col 38WS
300	Inchoate Liability for Assisting and Encouraging Crime (Cm 6878)	Implemented	Serious Crime Act 2007 (c27)
297	Renting Homes: The Final Report (Cm 6781)	Rejected for England, Accepted in principle for Wales	
2005			
296	Company Security Interests (Cm 6654)	Pending	
295	The Forfeiture Rule and the Law of Succession (Cm 6625)	Implemented	Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011
292	Unfair Terms in Contracts (SLC 199) (Cm 6464; SE/2005/13)	Implemented	Consumer Rights Act 2015
2004			
291	Towards a Compulsory Purchase Code: (2) Procedure (Cm 6406)	Accepted but will not be implemented	
290	Partial Defences to Murder (Cm 6301)	Implemented	Coroners and Justice Act 2009 (c25)
288	In the Public Interest: Publication of Local Authority Inquiry Reports (Cm 6274)	Accepted but will not be implemented	
287	Pre-judgment Interest on Debts and Damages (HC 295)	Rejected	
2003			
286	Towards a Compulsory Purchase Code: (1) Compensation (Cm 6071)	Accepted but will not be implemented	
284	Renting Homes (Cm 6018)	Superseded	See LC 297
283	Partnership Law (SLC192) (Cm 6015; SE/2003/299)	Implemented in part; Accepted in part; Rejected in part	The Legislative Reform (Limited Partnerships) Order 2009
282	Children: Their Non-accidental Death or Serious Injury (Criminal Trials) (HC 1054)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
281	Land, Valuation and Housing Tribunals: The Future (Cm 5948)	Rejected	
2002			
277	The Effective Prosecution of Multiple Offending (Cm 5609)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)

LC No	Title	Status	Related Measures
276	Fraud (Cm 5560)	Implemented in part	Fraud Act 2006 (c35)
	2001		
273	Evidence of Bad Character in Criminal Proceedings (Cm 5257)	Implemented	Criminal Justice Act 2003 (c44)
272	Third Parties – Rights against Insurers (SLC 184) (Cm 5217)	Implemented	Third Parties (Rights Against Insurers) Act 2010 (c10); Third Parties (Rights against Insurers) Regulations 2016
271	Land Registration for the Twenty-First Century (jointly with HM Land Registry) (HC 114)	Implemented	Land Registration Act 2002 (c9)
270	Limitation of Actions (HC 23)	Rejected	
269	Bail and the Human Rights Act 1998 (HC 7)	Implemented	Criminal Justice Act 2003 (c44)
267	Double Jeopardy and Prosecution Appeals (Cm 5048)	Implemented	Criminal Justice Act 2003 (c44)
	1999		
263	Claims for Wrongful Death (HC 807)	Rejected	
262	Damages for Personal Injury: Medical and Nursing Expenses (HC 806)	Rejected	
261	Company Directors: Regulating Conflicts of Interests (SLC 173) (Cm 4436; SE/1999/25)	Implemented	Companies Act 2006 (c46)
260	Trustees' Powers and Duties (SLC 172) (HC 538; SE2)	Implemented	Trustee Act 2000 (c29)
257	Damages for Personal Injury: Non-Pecuniary Loss (HC 344)	Implemented in part	See Heil v Rankin [2000] 3 WLR 117
	1998		
255	Consents to Prosecution (HC 1085)	Accepted (Advisory only, no draft Bill)	
253	Execution of Deeds and Documents (Cm 4026)	Implemented	Regulatory Reform (Execution of Deeds and Documents) Order 2005
251	The Rules against Perpetuities and Excessive Accumulations (HC 579)	Implemented	Perpetuities and Accumulations Act 2009 (c18)
249	Liability for Psychiatric Illness (HC 525)	Rejected	
248	Corruption (HC 524)	Superseded	See LC 313
	1997		
247	Aggravated, Exemplary and Restitutionary Damages (HC 346)	Rejected	
246	Shareholder Remedies (Cm 3759)	Implemented	Companies Act 2006 (c46)

LC No	Title	Status	Related Measures
245	Evidence in Criminal Proceedings: Hearsay (Cm 3670)	Implemented	Criminal Justice Act 2003 (c44)
	1996		
243	Money Transfers (HC 690)	Implemented	Theft (Amendment) Act 1996 (c62)
242	Contracts for the Benefit of Third Parties (Cm 3329)	Implemented	Contracts (Rights of Third Parties) Act 1999 (c31)
238	Responsibility for State and Condition of Property (HC 236)	Accepted in part but will not be implemented; Rejected in part	
237	Involuntary Manslaughter (HC 171)	Implemented in part	Corporate Manslaughter and Corporate Homicide Act 2007 (c19); see LC 304
	1995		
236	Fiduciary Duties and Regulatory Rules (Cm 3049)	Rejected	
235	Land Registration: First Joint Report with HM Land Registry (Cm 2950)	Implemented	Land Registration Act 1997 (c2)
231	Mental Incapacity (HC 189)	Implemented	Mental Capacity Act 2005 (c9)
230	The Year and a Day Rule in Homicide (HC 183)	Implemented	Law Reform (Year and a Day Rule) Act 1996 (c19)
229	Intoxication and Criminal Liability (HC 153)	Superseded	See LC 314
	1994		
228	Conspiracy to Defraud (HC 11)	Implemented	Theft (Amendment) Act 1996 (c62)
227	Restitution: Mistakes of Law (Cm 2731)	Implemented in part	See <i>Kleinwort Benson v Lincoln City Council</i> [1999] 2 AC 349
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)
224	Structured Settlements (Cm 2646)	Implemented	Finance Act 1995 (c4); Civil Evidence Act 1995 (c38); Damages Act 1996 (c48)
222	Binding Over (Cm 2439)	Implemented in part	In March 2007, the President of the Queen's Bench Division issued a Practice Direction
221	Termination of Tenancies (HC 135)	Superseded	See LC 303
220	Delegation by Individual Trustees (HC 110)	Implemented	Trustee Delegation Act 1999 (c15)

LC No	Title	Status	Related Measures
1993			
219	Contributory Negligence as a Defence in Contract (HC 9)	Rejected	
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)
217	Effect of Divorce on Wills (Cm 2322)	Implemented	Law Reform (Succession) Act 1995 (c41)
216	The Hearsay Rule in Civil Proceedings (Cm 2321)	Implemented	Civil Evidence Act 1995 (c38)
215	Sale of Goods Forming Part of a Bulk (SLC 145) (HC 807)	Implemented	Sale of Goods (Amendment) Act 1995 (c28)
1992			
208	Business Tenancies (HC 224)	Implemented	Regulatory Reform (Business Tenancies) (England and Wales) Order 2003
207	Domestic Violence and Occupation of the Family Home (HC 1)	Implemented	Family Law Act 1996 (c27), Part IV
205	Rape within Marriage (HC 167)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
1991			
204	Land Mortgages (HC 5)	Rejected	
202	Corroboration of Evidence in Criminal Trials (Cm 1620)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
201	Obsolete Restrictive Covenants (HC 546)	Rejected	
199	Transfer of Land: Implied Covenants for Title (HC 437)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
196	Rights of Suit: Carriage of Goods by Sea (SLC 130) (HC 250)	Implemented	Carriage of Goods by Sea Act 1992 (c50)
194	Distress for Rent (HC 138)	Implemented in part	Tribunals, Courts and Enforcement Act 2007 (c15), Part III (enacted, but not yet brought into force)
1990			
193	Private International Law: Choice of Law in Tort and Delict (SLC 129) (HC 65)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
192	Family Law: The Ground for Divorce (HC 636)	Implemented	Family Law Act 1996 (c27), Part II (enacted, but never brought into force)

LC No	Title	Status	Related Measures
1989			
188	Overreaching: Beneficiaries in Occupation (HC 61)	Implemented in part	Trusts of Land and Appointment of Trustees Act 1996 (c47)
187	Distribution on Intestacy (HC 60)	Implemented in part	Law Reform (Succession) Act 1995 (c41)
186	Computer Misuse (Cm 819)	Implemented	Computer Misuse Act 1990 (c18)
184	Title on Death (Cm 777)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
181	Trusts of Land (HC 391)	Implemented	Trusts of Land and Appointment of Trustees Act 1996 (c47)
180	Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC 318)	Implemented	Criminal Justice Act 1993 (c36), Part I
178	Compensation for Tenants' Improvements (HC 291)	Rejected	
177	Criminal Law: A Criminal Code (2 vols) (HC 299)	Superseded	Superseded by the criminal law simplification project: see Tenth Programme.
1988			
175	Matrimonial Property (HC 9)	Rejected	
174	Landlord and Tenant: Privity of Contract and Estate (HC 8)	Implemented	Landlord and Tenant (Covenants) Act 1995 (c30)
173	Property Law: Fourth Report on Land Registration (HC 680)	Superseded	See LC 235
172	Review of Child Law: Guardianship (HC 594)	Implemented	Children Act 1989 (c41)
1987			
168	Private International Law: Law of Domicile (SLC 107) (Cm 200)	Rejected	
166	Transfer of Land: The Rule in <i>Bain v Fothergill</i> (Cm 192)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
165	Private International Law: Choice of Law Rules in Marriage (SLC 105) (HC 3)	Implemented	Foreign Marriage (Amendment) Act 1988 (c44)
164	Formalities for Contracts for Sale of Land (HC 2)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
163	Deeds and Escrows (HC 1)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)

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

LC No	Title	Status	Related Measures
1983			
125	Property Law: Land Registration (HC 86)	Implemented	Land Registration Act 1986 (c26)
124	Private International Law: Foreign Money Liabilities (Cmnd 9064)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
123	Criminal Law: Offences relating to Public Order (HC 85)	Implemented	Public Order Act 1986 (c64)
122	The Incapacitated Principal (Cmnd 8977)	Implemented	Enduring Powers of Attorney Act 1985 (c29)
121	Law of Contract: Pecuniary Restitution on Breach of Contract (HC 34)	Rejected	
1982			
118	Family Law: Illegitimacy (HC 98)	Implemented	Family Law Reform Act 1987 (c42)
117	Family Law: Financial Relief after Foreign Divorce (HC 514)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
116	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (HC 513)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
114	Classification of Limitation in Private International Law (Cmnd 8570)	Implemented	Foreign Limitation Periods Act 1984 (c16)
114	Property Law: The Implications of Williams and Glyn's Bank Ltd v Boland (Cmnd 8636)	Superseded	See City of London Building Society v Flegg [1988] AC 54
1981			
112	Family Law: The Financial Consequences of Divorce (HC 68)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
111	Property Law: Rights of Reverter (Cmnd 8410)	Implemented	Reverter of Sites Act 1987 (c15)
110	Breach of Confidence (Cmnd 8388)	Rejected	
1980			
104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd 8064)	Rejected	
102	Criminal Law: Attempt and Impossibility in Relation to Attempt, Conspiracy and Incitement (HC 646)	Implemented	Criminal Attempts Act 1981 (c47)
99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (HC 369)	Implemented	Matrimonial Homes and Property Act 1981 (c24)
1978			
96	Criminal Law: Offences Relating to Interference with the Course of Justice (HC 213)	Rejected	

LC No	Title	Status	Related Measures
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)
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)
89	Criminal Law: Report on the Mental Element in Crime (HC 499)	Rejected	
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
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)
1977			
83	Criminal Law: Report on Defences of General Application (HC 566)	Rejected	
82	Liability for Defective Products: Report by the two Commissions (SLC 45) (Cmnd 6831)	Implemented	Consumer Protection Act 1987 (c43)
79	Law of Contract: Report on Contribution (HC 181)	Implemented	Civil Liability (Contribution) Act 1978 (c47)
1976			
77	Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (HC 637)	Implemented	Domestic Proceedings and Magistrates' Courts Act 1978 (c22)
76	Criminal Law: Report on Conspiracy and Criminal Law Reform (HC 176)	Implemented in part	Criminal Law Act 1977 (c45)
75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd 6428)	Implemented	Occupiers' Liability Act 1984 (c3)
74	Charging Orders (Cmnd 6412)	Implemented	Charging Orders Act 1979 (c53)
73	Report on Remedies in Administrative Law (Cmnd 6407)	Implemented	Rules of Supreme Court (Amendment No 3) 1977; Supreme Court Act 1981 (c54)
1975			
69	Exemption Clauses: Second Report by the two Law Commissions (SLC 39) (HC 605)	Implemented	Unfair Contract Terms Act 1977 (c50)
68	Transfer of Land: Report on Rentcharges (HC 602)	Implemented	Rentcharges Act 1977 (c30)
67	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (HC 377)	Rejected	

LC No	Title	Status	Related Measures
1974			
62	Transfer of Land: Report on Local Land Charges (HC 71)	Implemented	Local Land Charges Act 1975 (c76)
61	Family Law: Second Report on Family Property: Family Provision on Death (HC 324)	Implemented	Inheritance (Provision for Family and Dependants) Act 1975 (c63)
60	Report on Injuries to Unborn Children (Cmnd 5709)	Implemented	Congenital Disabilities (Civil Liability) Act 1976 (c28)
1973			
56	Report on Personal Injury Litigation: Assessment of Administration of Damages (HC 373)	Implemented	Administration of Justice Act 1982 (c53)
55	Criminal Law: Report on Forgery and Counterfeit Currency (HC 320)	Implemented	Forgery and Counterfeiting Act 1981 (c45)
53	Family Law: Report on Solemnisation of Marriage in England and Wales (HC 250)	Rejected	
1972			
48	Family Law: Report on Jurisdiction in Matrimonial Proceedings (HC 464)	Implemented	Domicile and Proceedings Act 1973 (c45)
1971			
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
42	Family Law: Report on Polygamous Marriages (HC 227)	Implemented	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c38); now Matrimonial Causes Act 1973 (c18)
1970			
40	Civil Liability of Vendors and Lessors for Defective Premises (HC 184)	Implemented	Defective Premises Act 1972 (c35)
35	Limitation Act 1963 (Cmnd 4532)	Implemented	Law Reform (Miscellaneous Provisions) Act 1971 (c43)
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
33	Family Law: Report on Nullity of Marriage (HC 164)	Implemented	Nullity of Marriage Act 1971 (c44), now Matrimonial Causes Act 1973 (c18)
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
30	Powers of Attorney (Cmnd 4473)	Implemented	Powers of Attorney Act 1971 (c27)
29	Criminal Law: Report on Offences of Damage to Property (HC 91)	Implemented	Criminal Damage Act 1971 (c48)
	1969		
26	Breach of Promise of Marriage (HC 453)	Implemented	Law Reform (Miscellaneous Provisions) Act 1970 (c33)
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)
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)
23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (HC 369)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45)
21	Interpretation of Statutes (HC 256)	Rejected	
20	Administrative Law (Cmnd 4059)	Implemented	See LC 73
19	Proceedings against Estates (Cmnd 4010)	Implemented	Proceedings against Estates Act 1970 (c17)
18	Transfer of Land: Report on Land Charges affecting Unregistered Land (HC 125)	Implemented	Law of Property Act 1969 (c59)
17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (HC 38)	Implemented	Law of Property Act 1969 (c59)
	1968		
16	Blood Tests and the Proof of Paternity in Civil Proceedings (HC 2)	Implemented	Family Law Reform Act 1969 (c46)
	1967		
13	Civil Liability for Animals	Implemented	Animals Act 1971 (c22)
11	Transfer of Land: Report on Restrictive Covenants	Implemented in part	Law of Property Act 1969 (c59)
10	Imputed Criminal Intent (Director of Public Prosecutions v Smith)	Implemented	Criminal Justice Act 1967 (c80), s 8
9	Transfer of Land: Interim Report on Root of Title to Freehold Land	Implemented	Law of Property Act 1969 (c59)
	1966		
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)

LC No	Title	Status	Related Measures
7	Proposals for Reform of the Law Relating to Maintenance and Champerty	Implemented	Criminal Law Act 1967 (c80)
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)
3	Proposals to Abolish Certain Ancient Criminal Offences	Implemented	Criminal Law Act 1967 (c58)

Appendix B

The cost of the commission

The cost of the Commission is met substantially from core funding provided by Parliament (section 5 of the Law Commissions Act 1965) and received via the Ministry of Justice. The Commission also receives funding contributions from departments towards the cost of some law reform projects, in accordance with the Protocol between the Government and the Law Commission.

	2016–2017 (April–March)		2017–2018 (April–March)	
	£000	£000	£000	£000
Commissioner salaries (including ERNIC) ¹	557.5		559.9	
Staff costs ²	3103.4		3131.5	
		3660.9		3691.4
Research and consultancy	20.6		40.0	
Communications (printing and publishing, translation, media subscriptions, publicity and advertising)	152.8		141.8	
Design, print and reprographics				
Events and conferences (non-training)				
Information technology				
Equipment maintenance				
Library services (books, articles and online subscriptions)				
Postage and distribution				
Telecommunications				
Accommodation recharge (e.g. rent, rates, security, cleaning) (met by MoJ) ³	643.1		575.9	
Travel and subsistence (includes non-staff)	26.0		7.6	
Stationery and office supplies	38.3		22.4	
Recruitment				
Training and professional bodies membership				
Recognition and reward scheme awards				
Childcare vouchers				
Health and Safety equipment/services				
Hospitality	0.0		0.0	
		880.8		787.7
TOTAL		4541.7		4479.1⁴

1 Excludes the Chairman who is paid by HM Courts and Tribunals Service (HMCTS).

2 Includes ERNIC, ASLC, bonuses (not covered under recognition and reward scheme), secondees and agency staff.

3 In November 2013 the Law Commission moved to fully managed offices within the MoJ estate. This cost is met by MoJ directly.

4 Figures will form part of the wider MoJ set of accounts which will be audited.

Appendix C

Our business plan priorities for 2017-18

Ensure that the law is fair, modern and clear

We will:

- Ensure that we focus on the key areas of law reform through finalisation of a balanced 13th Programme.
- Make recommendations to Government that make improvements to current law.
- Ensure that our recommendations are shaped by input from experts, interested stakeholders and members of the public.

An outward facing organisation

We will:

- Continue to develop our relationship with stakeholders through the introduction of a Commission-wide approach to engagement.
- Develop a social media presence that allows our stakeholders to interact with the Law Commission and access our publications easily.
- Review the publication process within the Law Commission, investigating a digital-by-default approach, together with improved methods of communicating the benefits of law reform to stakeholders.

Developing the Law Commission

We will:

- Achieve professional excellence through creating a learning and development programme to help support staff in developing themselves and their career.
- The development of a diversity policy which ensures that the Commission is able to draw on the widest possible pool of candidates for Research Assistant, lawyer and corporate roles.
- Work with staff across the Law Commission to identify actions to improve the organisation, making use of the People Survey scores to support the action plan.
- Ensure that the Law Commission develops a robust information management policy, making effective use of JustStore system.

Promoting integrated performance

We will:

- Analysis of the key components of projects so as to ensure best practice is shared across all teams and consistency of approach achieved wherever possible.
- Ensure strong links between programme management approach, finances and People strategy so that projects are delivered to time and cost wherever possible.
- Ensure that the Law Commission has the staff with the skills and experience to deliver its project work through timely recruitment when vacancies arise.
- Comply with our FOI requirements by responding to requests within 20 working days.
- Ensure a robust financial position by keeping the variance against total budget under control.

Appendix D

Targets for 2017-18 and 2018-19

Targets for 2017-18

Target	Outcome
To publish reports on:	
Pension Funds and Social Investment	Published on 23 June 2017 (LC374)
Technical Issues in Charity Law	Published on 14 September 2017 (LC375)
Land Registration	Carried over to 2018-19
Misconduct in Public Office	Carried over to 2018-19
Protection of Official Data	Carried over to 2018-19
To publish consultations on:	
Wills	Published on 13 July 2017 (LCCP 231)
Sentencing Code	Published on 27 July 2017 (LCCP 232)
Planning Law in Wales	Published on 30 November 2017 (LCCP 233).
Search Warrants	Carried over to 2018-19

Targets for 2018-19

Target	
To publish reports on:	
Anti-Money Laundering (December 2018)	Anti-Money Laundering (Summer 2018)
Land registration (Summer 2018)	Automated Vehicles scoping paper (Autumn 2018)
Misconduct in Public Office (Autumn 2018)	Confiscation and the Proceeds of Crime (Summer 2018)
Offensive Online Communications (Autumn 2018)	Electronic Signatures (Summer 2018)
Planning Law in Wales (Autumn 2018)	Offensive Online Communications (Autumn 2018)
Protection of Official Data (September 2018)	Residential Leasehold – Commonhold (October 2018)
Search Warrants (December 2018)	Residential Leasehold –Enfranchisement (September 2018) preceded by options paper for leasehold houses in July 2018.
Simplifying the Immigration Rules (December 2019)	Search Warrants (Summer 2018)
	Simplifying the Immigration Rules (June 2018)

Index of projects, bills and acts

10 th Programme of Law Reform	42, 43
11 th Programme of Law Reform	24, 35, 35
12 th Programme of Law Reform	7, 24, 46
13 th Programme of Law Reform	1, 3, 7, 17, 21, 23, 25, 46, 52, 53, 55
Abusive and Offensive Online Communications	14, 15, 47
Anti-money Laundering	3, 14, 15, 17, 47
Automated and Electric Vehicles Bill	25
Automated Vehicles	1, 24, 25, 52
Bills of Sale Acts 1878 and 1882	12
Bills of Sale, From Bills of Sale to Goods Mortgages	2, 9, 10, 12, 13, 29, 36
Charities Act 2011	48
Child Abduction Act 1984	42
Cohabitation	37
Conservation Covenants	32
Consumer Insurance (Disclosure and Representations) Act 2012	29
Consumer Prepayments on Retailer Insolvency	38
Contempt of Court: Court Reporting	38
Co-operative and Community Benefit Societies Act 2014	48
Crime and Disorder Act 1998	41
Criminal Justice Act 2003	41
Criminal Records Disclosures: Non-Filterable Offences	39
Data Sharing Between Public Bodies	39
Deregulation Act 2015	35
Digital Economy Act 2017	29, 30
Electoral Law	24
Electronic Communications Code	29, 30
Electronic Signatures and Smart Contracts	29, 30
Enforcement of Family Financial Orders	39, 40
Enterprise Act 2016	30
Event Fees in Retirement Homes	40
Fiduciary Duties of Investment Intermediaries	9, 31
Freedom of Information Act	58
Goods Mortgages Bill	2, 10, 12, 36
Hate Crime	41
Health and Safety at Work etc. Act 1974	36
Health and Social Care (Safety and Quality) Act	35
Inheritance and Trustees' Powers Act 2014	38

Insurable Interest	9, 11
Insurance Act 2015	29, 30
Infrastructure Act 2015	35
Intellectual Property (Unjustified Threats)	30
Intellectual Property (Unjustified Threats) Act 2017	29, 30
Kidnapping	42
Land Registration Act 2002	19
Late Payment of Insurance Claims	30
Law Commission Act 1965	7
Law Commission Act 2009	1, 29, 49
Level Crossings	36
Life Assurance Act 1774	11
Making a Will	19
Making Land Work: Easements, Covenants and Profits à Prendre	33
Marine Insurance Act 1906	11
Matrimonial Property, Needs and Agreements	31
Mental Capacity Act 2005	26
Mental Capacity and Deprivation of Liberty	26, 33
Misconduct in Public Office	14
Offences Against the Person	42
Offences Against the Person Act 1861	42
Official Secrets Acts 1911-1989	14
Pension Funds and Social Investment	9, 29, 31, 34
Perpetuities and Accumulations Act 2009	29
Planning Law in Wales	2, 7, 24
Police Act 1996	42
Proceeds of Crime Act 2002	15, 17
Protection of Official Data	14, 51
Public Nuisance and Outraging Public Decency	42
Public Order Act 1986	41
Public Services Ombudsman	34
Regulation of Health and Social Care Professionals	34
Residential Leasehold and Commonhold	19, 20
Rights to Light	43
Search Warrants	14, 16
Sentencing Code	14, 15, 51
Simplification of the Immigration Rules	24, 25

Taxi and Private Hire Services	35
Technical Issues in Charity Law	19, 20, 29, 43
Termination of Tenancies for Tenant Default	43
Terrorism Act 2000	15
The High Court's Jurisdiction in Relation to Criminal Proceedings	41
Third Parties (Rights against Insurers) Act 2010	29
Town and Country Planning Act 1990	24
Trusts (Capital and Income) Act 2013	29
Unfitness to Plead	44
Updating the Land Registration Act 2002	19
Wales Act 2014	49
Wildlife	35
Wills Act 1837	19

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