



Ministry
of Justice

Tailored Review of the Law Commission of England and Wales



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Executive Summary

- 1.1. Tailored Reviews provide assurance to Ministers and the relevant Principal Accounting Officer about the ongoing need for the functions provided by an Arm's Length Body (ALB). Reviews are conducted in line with Cabinet Office guidance to ensure that an ALB's delivery continues to contribute to departmental strategic priorities and to examine the body's efficiency, effectiveness, accountability and governance arrangements in a fair and transparent way.
- 1.2. The Law Commission of England and Wales is an Advisory Non-Departmental Public Body (ANDPB) of the Ministry of Justice (MoJ), established by statute in 1965 with the objective of promoting law reform.
- 1.3. The review consulted key stakeholders, considered a range of key reports and held staff focus groups to assess the effectiveness, efficiency, governance, transparency and diversity of the Law Commission within the devolved context and in light of Britain's upcoming exit from the European Union.
- 1.4. The review found that the current delivery model of an ANDPB was still appropriate, that the Law Commission's functions were still required, and that the Commission is effective in the delivery of its functions.
- 1.5. The Law Commission and the MoJ should work together to fully implement the review's recommendations which are set out in the table on Page 4. Where appropriate, the Law Commission is responsible for regularly reporting on progress to the MoJ Policy Sponsorship team, the ALB Centre of Expertise and within its Annual Reports.

Recommendations		Page
1.	The Law Commission of England and Wales should continue to carry out the functions required by the Law Commissions Acts of 1965 and 2009.	p.8
2.	The Law Commission of England and Wales should remain in its current delivery form as an Advisory Non-Departmental Public Body.	p.8
3.	With a view to maintaining the independence and capability of the Law Commission, the MoJ ALB Centre of Expertise, Finance Business Partners, Policy Sponsors and the Law Commission should conduct a review of the current funding model and other funding arrangements to ensure that the Law Commission's funding model is sufficiently robust.	p.10
4.	With a view to improving awareness and engagement, the Law Commission should consider, as part of planned website changes, how project pages on the website could clearly display 'next steps' post-publication of the report and recommendations, for quick reference by stakeholders and consultation respondents.	p.11
5.	With a view to increasing implementation rates, the Law Commission should be clear in job descriptions for the Chair and Commissioners that they have a role in networking and meeting with parliamentarians and Senior Officials to increase awareness of the Law Commission and its work. Training and/or supporting guidance should be developed by the Law Commission on how and when Commissioners should seek to build relationships with Parliamentarians.	p.12
6.	With a view to maintaining good corporate governance, the Commission's Code of Best Practice should be updated in line with guidance provided by the 2017 Functional Review of Public Bodies Providing Expert Advice to Government.	p.15
7.	With a view to improving the working relationship with the MoJ, the Law Commission should work with the MoJ ALB Centre of Expertise to review and update the Framework Document. Specific consideration should be given to:	p.15
(a)	whether the current meetings between Ministers and the Law Commission remain an effective means of engagement	p.15
(b)	requirements that representatives of the Law Commission meet with senior policy officials from the MoJ for strategy discussions to ensure MoJ Projects are conducted successfully; and,	p.15
(c)	clear division of responsibilities between assurance partnership provided by ALB Centre of Expertise and sponsorship provided by Policy Sponsor team.	p.15
8.	With a view to improving the diversity of Commissioners, the Law Commission should work in collaboration with the MoJ Public Appointments Team, to attract a more diverse range of individuals by undertaking more outreach and promotion activity regarding the role of the Commissioner by utilising the Commission's stakeholder network and targeting more diverse groups within the sector	p.16
9.	With a view to improving all elements of diversity at all levels, the Law Commission should prioritise the publication of a Diversity and Equality Strategy, in line with that of Government, during the year 2019-20. The strategy should include a plan for implementation and monitoring of progress.	p.17

Purpose and Scope of Review

- 2.1 The Public Bodies Transformation Programme Guidance 2016-20 notes that the Government will review its ALBs at least once during the lifetime of Parliament. Tailored Reviews (TRs) provide assurance to government and the public on the continued need for a public body. Where appropriate, reviews make recommendations to improve the efficiency, effectiveness, and governance arrangements of the bodies under review.
- 2.2 The TR of the Law Commission was carried out in accordance with the principle of proportionality whilst remaining fully cognisant of the recent reviews that have taken place (see points 3.3 and 3.4 below). Evidence for the review was gathered via desk research and a series of interviews with key stakeholders. The Law Commission gave evidence to the Justice Select Committee (JSC) which subsequently wrote to the Lord Chancellor with views on the review.¹ In addition, two staff focus groups were held with staff from different teams and at different grades. The review was supported by a critical friend - Richard Jarvis, Chief Executive of the Judicial Appointments Commission - who provided robust challenge to the assumptions and recommendations of the review team throughout the lifetime of the review.
- 2.3 Further detail on what TRs are, the Terms of Reference (ToR) for this review and a full list of stakeholders can be found at Annexes A and B, respectively.

¹ <https://www.parliament.uk/documents/commons-committees/Justice/correspondence/law-Commission-sos.pdf>

² <https://www.legislation.gov.uk/ukpga/1965/22>

Context

Historical Context

- 3.1 The Law Commission of England and Wales was established by the enactment of the Law Commissions Act 1965.² The Act established a body of Commissioners, led by a Chairman and appointed by the Lord Chancellor, with the purpose of promoting law reform.
- 3.2 Amendments introduced by the Law Commissions Act 2009 clarified the working relationship between government and the Commission with the aim of improving the implementation rate of recommendations.
- 3.3 In 2013, the MoJ carried out a Triennial Review of the Law Commission.³ The review concluded that the functions of the Commission were still required by government, and that no changes to the delivery model were required. This TR has built upon the work undertaken as part of the 2013 Triennial Review to ensure that the conclusions remain valid and that progress against recommendations has been made.
- 3.4 In 2017, the Cabinet Office conducted a Functional Review of Bodies Providing Expert Advice to Government. The objectives of this review were to:
 - “establish a framework that optimises the creation, provision, dissemination and use of independent expert advice within government;
 - by identifying appropriate classification and operation of advisory bodies in government, drawing on lessons from ANDPBs and departmental expert committees;

³ <https://www.gov.uk/government/publications/law-Commission-triennial-review-stage-one-report>

- making practical recommendations on the management, organisation and impact of expert advice and the bodies that provide.”⁴

3.5 As an ALB with advisory functions, the Law Commission is subject to the outcomes and recommendations of this review. As such, the review team has considered whether the Law Commission would be better constituted as an Expert Committee (see Section 6).

Current Context

3.6 The Law Commission is currently in the process of completing its 13th Programme of Law Reform, signed off by the Lord Chancellor and published in December 2017.⁵

3.7 Sir David Bean’s tenure as Chairman came to an end in July 2018 and Sir Nicholas Green was appointed to take over as Chairman from August 2018.

Purpose and Structure of the Law Commission

4.1 The Law Commission is an ANDPB of the MoJ. The current aims of the Law Commission can be found at Figure 1.

Figure 1: The Aims of the Law Commission

- To ensure that the law is as fair, modern, simple and as cost-effective as possible;
- To conduct research and consultations in order to make systematic recommendations for consideration by Parliament, and;
- To codify the law, eliminate anomalies, repeal obsolete and unnecessary enactments and reduce the number of separate statutes.

Aims of the Law Commission, <https://www.lawcom.gov.uk/about/>

4.2 The Commission consists of the Chair and four other Commissioners, appointed by the Lord Chancellor, who are responsible for the selection of projects and the content of reports and consultation papers produced by the Law Commission. The Commissioners are supported by a Chief Executive, members of the Government Legal Service (GLS), Parliamentary Counsel, Research Assistants and a Corporate Services team. At the time of writing, the Law Commission employs 57.4 FTEs. The structure of the Law Commission can be found at Annex D.

4.3 The Board of the Law Commission is responsible for its strategic governance and consists of the Chair, the four Commissioners, the Chief Executive and two Non-Executive Board Members (NEBMs) - who were introduced following recommendations of the 2013 Triennial Review.

4.4 The Law Commission’s core funding is provided by Parliament and received via the MoJ and stands at £2,210,000 for 2018-19. The Law Commission secures additional income by undertaking paid

⁴ <https://www.gov.uk/government/publications/functional-review-of-bodies-providing-expert-advice-to-government>

⁵ <https://www.lawcom.gov.uk/project/13th-programme-of-law-reform/>

work on behalf of other government departments. Detailed analysis of the funding model can be found at Section 7.

Functions

- 5.1 In promoting law reform, the substantive functions of the Law Commission, as laid out in the Law Commissions Act 1965, are to:
- make systematic recommendations for consideration by Parliament;
 - codify the law;
 - eliminate anomalies;
 - repeal obsolete and unnecessary enactments; and,
 - reduce the number of separate statutes.

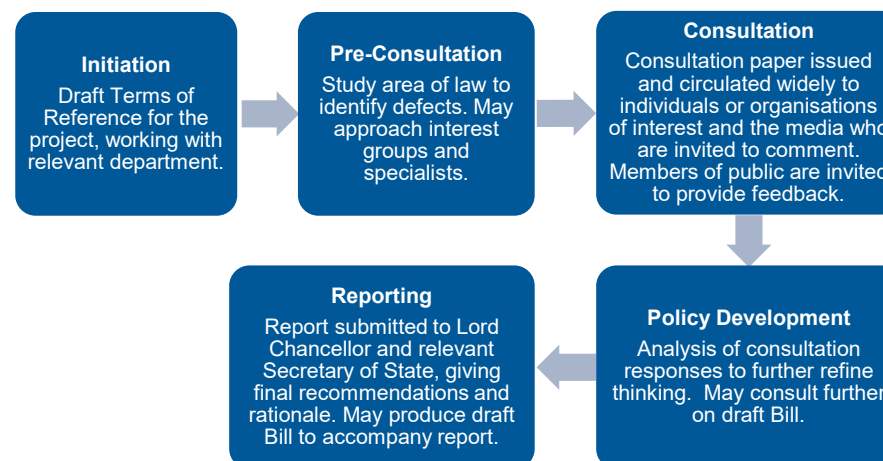
'The Commission's work is of clear benefit to the whole Government, much of it offering the prospect of savings to public bodies, private businesses, the third sector and to individuals, as well as improving access to justice by making the law more accessible and transparent.' – Justice Committee

- 5.2 Procedural functions of the statute require the Law Commission to submit programmes of law reform to the Lord Chancellor for approval before undertaking new work. The Law Commission should then provide advice and recommendations to government departments, including Welsh Ministers where applicable, by means of draft Bills or proposals for reform.
- 5.3 The 2010 Protocol document, produced following the 2009 Law Commissions Act, outlines the ways of working between the Law Commission and Ministers with relevant policy responsibility. It states that before approving the inclusion of a project in the overall

programme, the responsible Minister must give an undertaking that there is serious intention to take forward law reform in this area.⁶

- 5.4 The process by which the Law Commission complete a law reform project is detailed in Figure 2.

Figure 2: The Law Commission's Process of Conducting a Law Reform Project



Are these Functions Still Required by Government?

- 5.5 In 2013, the Triennial Review concluded: “The overwhelming weight of evidence from respondents to the call for evidence is in favour of retaining all of the Commission’s substantive functions. The Government agrees with this conclusion, in view of the clear contribution these functions make to the development of better and more effective law.”⁷

⁶ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/06/lc321_Protocol_web.pdf

⁷ Triennial Review: Part One, Page 12.

- 5.6 The review team continues to support this conclusion. All stakeholders interviewed agreed that the functions of the Law Commission are still required, and their existence was described as 'essential', 'imperative' and 'vital'.

Recommendation:

The Law Commission of England and Wales should continue to carry out the functions required by the Law Commissions Acts of 1965 and 2009.

Classification

- 6.1 The 2013 Triennial Review concluded that the evidence gathered was overwhelmingly in favour of maintaining ANDPB status; the Law Commission delivers a technical function and the Commission's ability to deliver its functions is dependent on its freedom from external pressures, in particular, political influence.⁸ The review team is satisfied that this analysis and conclusion still stands.
- 6.2 The 2017 Functional Review provided practical guidance to departments considering the most appropriate structure for bodies providing independent, expert advice, and more specifically, whether they should be classified as ANDPBs or Expert Committees.⁹ This was not a question addressed by the Triennial Review but has been considered as part of this review.
- 6.3 The Law Commission holds many of the indicative features of an ANDPB, including the high frequency of advice provided, a large number of staff supporting the Commissioners and being established by statute.¹⁰ It is important for the Commission to be,

and be seen to be, independent of departmental and governmental interference. Whilst a change of classification may not actually impact operational independence, it would likely have an impact on the *perception* of independence. As such, the review does not consider that there would be any material benefit to reclassification as an Expert Committee. Parliament, the legal sector and wider public rely upon the independent, apolitical advice the Law Commission provides to government departments and this is best delivered in its current form.

'It is important that [the Law Commission] are non-party political ... they are an avenue for productive legal reform and for taking forward legal rules less dependent on party politics.' – Academic

- 6.4 All stakeholders interviewed agreed that independence is the source of the Law Commission's credibility. It is the key benefit that the Law Commission provides, and they can therefore be relied upon to challenge existing law in a way that government themselves cannot.

Recommendation:

The Law Commission of England and Wales should remain in its current delivery form as an Advisory Non-Departmental Public Body.

Finances and Funding Model

- 7.1 The Law Commission receives core funding from parliament via the MoJ. In 2014/15 this was in the amount of £2.9m, falling to £2.23m

⁸ See table of 'Options Analysis', Triennial Review: Part One, Page 19.

⁹ Expert Committees and ANDPBs are similar, but Expert Committees are not arm's length bodies, instead they are committees of independent experts operating from within a government department.

¹⁰ Functional Review of Public Bodies Providing Expert Advice to Government, Page 11.

in 2017/18 and scheduled to be reduced further to £1.97m in 2019/20. In order to off-set this reduction, the Law Commission has had to supplement its core funding by charging government departments for projects it undertakes on their behalf.

- 7.2 This revised funding model not only addressed the need for all parts of government and its public bodies to reduce cost, but was intended by the MoJ to ensure that the Law Commission was incentivised to focus on areas of law reform which would be implemented by the relevant government department. This assumed that departments would only contract the Law Commission to undertake work if they were supportive of reform in this area and there was adequate parliamentary time to implement the recommendations within the final report. To date, the Law Commission has an implementation rate of 66% with only three reports having been rejected in the last 15 years. It was envisaged that this new funding model would further increase the implementation rate and consequently make the organisation more impactful. Given the duration of Law Commission reform projects it would be premature to state whether this has been effective.
- 7.3 To help manage this reduction in core funding, the Law Commission has undertaken significant work to ensure that it operates in an efficient and economic fashion. Approximately 93% of the Law Commission's expenditure relates to staffing costs. Therefore, during the financial year 2016-17, the Law Commission restructured and streamlined its Corporate Services team which generated savings of 3% on 2015-16 costs. This has had a positive impact with staff at all levels of the Commission having commented that the team is more efficient, roles and responsibilities are clearer, and that they have been 're-invigorated'. To make further savings to staff costs, the Law Commission would need to begin restructuring and reducing its legal staff. This would impact its ability to undertake income-generating projects and would likely impact the performance and effectiveness of the organisation as a whole. Furthermore, the

consensus among stakeholders interviewed was that the expertise of the Commission's legal staff is its key asset.

- 7.4 The Law Commission has raised concerns around the stability and robustness of the new funding model both in its most recent Annual Report¹¹ and when giving evidence before the Justice Select Committee in July 2018. There is some uncertainty around how the Law Commission will generate sufficient income to meet its planned programme and expenditure each year, especially at a time when resources are limited across government and departments may be less likely to commit to paying for Law Commission services. In 2017/18 the Law Commission was unable to secure sufficient income and the MoJ was required to temporarily meet a £387,000 overspend. This was due to a six-month delay to the commencement of the Law Commission's new Programme caused by the general election and preceding period of "purdah." This should be viewed as an extraordinary event and was not due to failings by either the Law Commission or the MoJ. It does, however, suggest that there may be a problem with the robustness of the Law Commission's current funding model, particularly given that it is unlikely that it would be able to reduce expenditure any further.
- 7.5 Whilst there was no consensus, there was a perception among some of the stakeholders interviewed that the Law Commission's funding model negatively impacted its independence, which is a view shared by the Law Commission. When deciding whether or not to pursue a reform project the Law Commission considers three things; importance, suitability and resources. There is the perception that the current funding model is incentivising the Law Commission away from pursuing those projects of most importance and towards those which are the most able to pay. Whilst giving evidence to the Justice Select Committee in July 2018, Sir David Bean, the departing Chair, said that there had been "a tendency, which will accelerate, for the paid work to elbow aside the unpaid work," making particular reference to the reform work on the early

¹¹ Annual Report 2017/18

Victorian law on wills and the common law offence of misconduct in public office.

- 7.6 Under the Law Commissions Act 1965 and the 2010 Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission,¹² the Law Commission is required to submit programmes of law reform to the Lord Chancellor for approval prior to commencement. In this way, the Lord Chancellor has always had some degree of influence over the work that the Law Commission undertakes. Nevertheless, it is important that the Law Commission continues to operate independently and a careful balance between efficiency and independence needs to be maintained.
- 7.7 As such, further work should be done by both the MoJ and the Law Commission to determine whether the current funding model continues to be appropriate, whether changes could be made to improve its stability and robustness, and to remove any perception of a lack of independence. Potential areas to discuss, as part of the next Spending Review, might include exploring the balance between MoJ 'core' funding and paid projects and looking at ways to formalise the current underwriting arrangements. There was also a consensus among stakeholders interviewed that the Law Commission offers excellent value for money with one stakeholder stating that their organisation would have been willing to pay more for the Law Commission's services. It might therefore make sense for the Law Commission to consider reviewing its charging model at the same time to see whether additional funds could be raised in this way.

Recommendation:

With a view to maintaining the independence and capability of the Law Commission, the MoJ ALB Centre of Expertise, Finance Business Partners, Policy Sponsors and the Law Commission should conduct a review of the current funding model and other funding arrangements to ensure that the Law Commission's funding model is sufficiently robust.

Effectiveness and Efficiency

The Process of Law Reform

- 8.1 The Consultation Period (both for individual projects and Programmes of Law Reform) has been praised by many stakeholders as being highly effective. The Commission consults a diverse range of individuals and groups including experts in their fields, senior judges and practitioners. One stakeholder suggested that more consultation of practitioners across all projects may increase the practicality of recommended reforms. There is sufficient time to respond and the Law Commission is responsive to questions or submissions received.
- 8.2 Stakeholders commended the diverse range of fields, topics and areas of law reform the Commission challenges. In particular, the 13th Programme has been responsive to emerging technologies.
- 8.3 The lifecycle of a project usually lasts longer than a year and the review team wanted to test whether these timescales were appropriate. Stakeholders interviewed, particularly those from the legal sector, were not concerned with projects taking a long time as they recognised that the Law Commission is often dealing with challenging and complex areas of law reform that should not be

¹² Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission

rushed. Time is required to build consensus and generate implementable advice.

- 8.4 However, caution should be exercised to ensure that the time taken is not so long that a project or policy area is then no longer a priority. The review team observed variance in the level of stakeholder management that has taken place when projects overrun.
- 8.5 On occasions the Law Commission may decide that a project should no longer be progressed, for example where wider developments mean that the project is no longer relevant or other work needs to take priority. As the Lord Chancellor signs off the programme, the Law Commission should ensure that any substantial changes are notified to him. The governance around this process could be clearer and a review of how this happens in practice should be undertaken. This would also help to support the general transparency of the Law Commission.

Implementation

- 8.6 The implementation rate of recommendations, since the conception of the Law Commission, stands at 66% and only 14% of recommendations have been rejected in that time.
- 8.7 The Law Commission is transparent on its implementation rate and regularly updates the implementation table on its website.

Recommendation:

With a view to improving awareness and engagement, the Law Commission should consider, as part of planned website changes, how project pages on the website could clearly display 'next steps' post-publication of the report and recommendations, for quick reference by stakeholders and consultation respondents.

- 8.8 A key factor impacting the implementation rate is the parliamentary timetable which, at the time of writing, is largely occupied with EU Exit legislation; this is outside of the Law Commission's control. There are, however, some measures that the Law Commission can be taking to increase the likelihood of government departments or Parliamentarians taking forward draft legislation.
- 8.9 For example, by networking and building closer relationships with Parliamentarians, policy colleagues and Ministers, the Commission may be able to find alternative ways to pass legislation outside of the normal departmental route, such as Private Members' Bills, inclusion in complementary bills or by building consensus around their existing Special Procedure process.¹³ This would need to be done carefully to ensure that the Commission's independence is not impacted. As such, the review recommends the Commission considers drafting internal guidance to support this, as well as including it as a requirement in the job descriptions of the Chair and Commissioners.

¹³ Where Law Commission Bills are non-controversial, the Law Commission can introduce them directly to the House of Lords via Special Procedure. Details on the Special Procedure can be found here: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07156>

Recommendation:

With a view to increasing implementation rates, the Law Commission should be clear in job descriptions for the Chair and Commissioners that they have a role in networking and meeting with parliamentarians and Senior Officials in order to increase awareness of the Law Commission and its work. Training and/or supporting guidance should be developed by the Law Commission on how and when Commissioners should seek to build relationships with Parliamentarians.

8.10 The Commission, with assistance from the sponsorship team, should continue to engage with departmental Strategy Units, both within the MoJ and at other government departments, on horizon scanning for future law reform projects to identify potential reform opportunities that are most relevant and therefore more likely to be taken forward. The sponsorship team could also provide support to the Law Commission to maintain the impetus for reform and to see Law Commission proposals implemented by the Government.

8.11 The Law Commission offers post-report implementation support which includes a dedicated member of staff working with the relevant government department on preparations for any draft legislation. This is often more efficient than a policy official picking up the topic from scratch and can increase the likelihood of implementation, however, this resource requires funding. At present, this is more likely to take place in paid projects and not all projects are able to benefit from this measure. As such, it would be helpful if implementation was considered before a project is started as well as throughout development. The MoUs between the Commission and Policy Teams would be a good vehicle to do this.

Communications

8.12 The year 2016-17 saw the hiring of a new Head of Communications and a two-year communications strategy agreed; the review team

considers the impact to be highly effective in promoting law reform and this practice should continue.

8.13 The 2018-19 Business Plan includes objectives to update the website and explore ‘Digital by Default’ policy. This demonstrates the Law Commission’s commitment to meet the needs of customers in a more digitised society.



17.7% increase in website users



2,070 media mentions (98% of all coverage was positive or neutral)



16% increase in Twitter followers

Progress on the 12th Programme of Law Reform

8.14 The 12th Programme of Law Reform launched in July 2014 with a timeline of three to four years. Of the nine projects outlined in the 12th Programme of Law Reform, eight are complete and the remaining four are in the ‘Policy Development’ stage. Figure 3 shows the status of each project.

Figure 3: Status of Completion of Projects included in the 12th Programme of Law Reform

Name of Project	Status	
Bills of sale	Reported November 2017. In May 2018 the Government said it will not introduce legislation at this time.	✓
Firearms: scoping project	Reported December 2015. Recommendations implemented by part 6 of the Policing and Crime Act 2017.	✓
The form and accessibility of the law applicable in Wales: advisory project	Reported June 2016. Welsh Government response July 2017 agrees with the Commission’s recommendations.	✓

Name of Project	Status	
Land registration	Reported 24th July 2018. The final response from the Department for Business, Energy and Industrial Strategy is expected in July 2019.	✓
Deprivation of Liberty	Final report and draft Bill published March 2017. Government response received, March 2018, agrees that the current Deprivation of Liberty system should be replaced as a matter of pressing urgency and broadly agrees with the Commission's Liberty Protection Safeguards model. Legislation will be brought forward when Parliamentary time allows.	✓
Planning and development control in Wales	Reported 3rd December 2018. The final response from the Welsh Government is expected in November 2019.	✓
Protecting consumer prepayments on retailer insolvency	Reported July 2016. Awaiting government response.	✓
Sentencing procedure	Reported 22nd November 2018. The final response from MoJ is expected in November 2019.	✓
Wills	Policy Development stage. Final recommendations and draft Bill scheduled for completion mid-2019.	

8.15 The review team is satisfied with the rate of completion of the 12th Programme of Law Reform, given the target for completion is three to four years and all but one project has been published.

8.16 The contents of a Programme of Law Reform are never the only projects that the Commission will undertake, the Commission also undertakes work referred to them by government departments, as required by the 1965 Law Commissions Act. In 2016-17, the Commission began work on the four references made to them by government departments and published reports on two of these in 2017. Additional work such as this has an impact on the timeline of Programmes of Law Reform.

8.17 It is too early to fully evaluate progress on the 13th Programme of Law Reform which was launched in December 2017. In the first eight months since launching, the Law Commission had begun work on five of the 14 projects.

8.18 It should be noted that ten of the 14 projects in the 13th Programme are not paid projects and the Law Commission has expressed concern that, for the first time, these may be projects that are not undertaken because of insufficient funding.

8.19 During the staff focus groups, a number of individuals cited the 13th Programme as a success of the Commission, largely due to the challenging context in which they were working. The 2017 election, and preceding period of purdah, resulted in delays to obtaining protocol support from government departments and the Lord Chancellor's approval on the final programme. The consultation opened in July 2016 and received over 1,300 submissions covering 220 different topics which demonstrates high public interest in the work of the Law Commission and therefore successful promotion of law reform.

Governance

9.1 The Law Commission's compliance with key principles and good practice indicators laid out by the 2017 Functional Review has been fully analysed at Annex H. The review team has highlighted successful progress on the recommendations of the Triennial Review, as well as further areas of improvement, in the following sections.

Non-Executive Board Members (NEBMs)

9.2 Following the 2013 Triennial Review, two NEBMs have been appointed to the Board of the Law Commission. The first, Sir David Bell, was appointed in September 2015 and the second, Bronwen

Maddox, in November 2016.¹⁴ Senior members of staff at the Commission noted the significant improvement they have brought to the Board and how they have helped professionalise the governance structures. Both NEBMs have been welcomed and their independent view and challenge is well received and respected.

'The need for decisions to be contextualised and explained to non-lawyers forces you to think about them in a different way and how to communicate them to stakeholders more explicitly.' - Team Manager, Law Commission

- 9.3 Whilst external stakeholders are not in a position to comment on the effectiveness of the Board and the internal governance of the organisation, when questioned regarding the introduction of NEBMs, they were generally supportive of the idea in principle, as a method of preventing 'groupthink' and increasing diversity in decision making.
- 9.4 During staff focus groups, it was suggested that the role of the NEBMs' and the benefits they bring could be communicated to staff more effectively. Additionally, senior staff suggested that NEBMs could become more involved in corporate responsibilities, for example on diversity strategies.
- 9.5 The review team has considered whether the two NEBMs provide sufficient balance to the Board or if this could be improved by the appointment of a third. Considering the size of the Law Commission and the current good governance observed, the review team is satisfied that the two NEBMs provide sufficient oversight and challenge at present.

The Performance of the Board

- 9.6 Alongside the two recently appointed NEBMs, the Board of the Law Commission consists of the Chair, four other Commissioners, and the Chief Executive. Board meetings are also attended by Team Managers and the Head of Corporate Services – a total of 13 attendees. Since the introduction of NEBMs, there is a clear separation between Board meetings and Peer Review meetings – where decisions on law reform projects are made.
- 9.7 The Board meets monthly and for each meeting a 'Board Pack' is produced. This document sets out the communications grid, forward look, team project updates, corporate targets, a corporate risk register and highlights any issues, updates or decisions to be made. The review team considers this to be a productive tool for focusing Board meetings ultimately improving efficiency. It also serves as a suitable method of evaluation of the Board's performance, which the 2013 Triennial Review recommended be put in place.

'The board pack is an excellent idea and an extremely good example of governance, both in quality and quantity.'
– Sir David Bell, NEBM

- 9.8 Team Managers' attendance of the Board meetings serves the purpose of supporting Commissioners on operational matters and of representing teams directly; it also allows for greater dissemination of information to staff. The review team recognises this as action to increase internal transparency. These larger Board meetings have not slowed down discussion, the additional input is welcomed and there is clarity of roles and decision-making authority. The review team considers there to be merit in their attendance, however, with

¹⁴ Sir David Bell is Vice Chancellor of Reading University and former Her Majesty's Chief Inspector of Schools, he spent six years as Permanent Secretary at the Department for Education. Bronwen Maddox is Chief Executive of the Institute for Government and has a background in journalism having held various positions at Prospect Magazine and the Times.

a view to maintaining productivity, recommend that the Board meetings should not get any larger than they are at present.

Code of Best Practice

9.9 The 2013 Triennial Review recommended documents such as the Code of Best Practice should be updated to ensure they remain in line with best practice.¹⁵ This document has not been updated since 2014.¹⁶ The existence of corporate documents, such as this and the Register of Commissioners' Interests, is a key indicator of good corporate governance – though to be useful, they must remain current.

Recommendation:

With a view to maintaining good corporate governance, the Commission's Code of Best Practice should be reviewed and updated if necessary.

Relationship with MoJ

9.10 The Law Commission's sponsorship relationship with the MoJ is set out in a Framework document, produced in 2015, following the Triennial Review recommendations.¹⁷ The Framework stipulates that it should be reviewed every three years, but may be reviewed at any other time if necessary.

9.11 The MoJ sponsorship team and ALB Centre of Expertise should work with the CEO to review and update the Framework Document.

Recommendation:

With a view to improving the working relationship with the MoJ, the Law Commission should work with the MoJ ALB Centre of Expertise to review and update the Framework Document. Specific consideration should be given to:

- a) whether the current meetings between Ministers and the Law Commission remain an effective means of engagement;
- b) requirements that representatives of the Law Commission meet with senior policy officials from the MoJ for strategy discussions to ensure MoJ Projects are conducted successfully and the Law Commission contributes to the core business of the MoJ; and,
- c) clear division of responsibilities between assurance partnership provided by ALB Centre of Expertise and sponsorship provided by Policy Sponsor team.

Diversity

10.1 The Law Commission is a consultative body that ultimately serves the interests of the public of England and Wales. It is therefore necessary that the Commission should represent those that they consult with and those that they seek to serve, in terms of gender, race and disability.

10.2 With regards to gender, the wider staff of the Commission is well balanced; including the Chair, Commissioners and Chair's Clerk, 48% of staff are male and 52% female. However, the review team

¹⁵ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/03/Commissioners_code_of_practice_2014.pdf

¹⁶ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2016/06/register_of_Commissioners_interests.pdf

¹⁷ <https://www.lawcom.gov.uk/document/framework-document/>

observes that gender diversity amongst the Chair and Commissioners is lacking and should be addressed.

- 10.3 Data is not held with regard to race and disability but work is already underway to make improvements in this area. For example, the 2018 Research Assistant (RA) Recruitment Campaign specifically targeted more diverse law schools. This resulted in an increase of 27% in the number of universities that candidates attended. The Law Commission is currently devising a strategy to raise the conversion rate to interview and then hire. Related to this, stakeholders noted the success of the inclusion of RAs in a multigenerational workforce and the opportunities provided to them.
- 10.4 Stakeholders from the legal and academic sectors suggested that not enough of their colleagues and networks are aware of the opportunity to apply to and become a Commissioner; the review team recommends the Law Commission does more to promote these roles.
- 10.5 Commissioners and senior staff of the Law Commission utilise and role model flexible working arrangements such as working from home, in order to support family responsibilities. This should be advertised in future Commissioner recruitment campaigns with a specific view to attracting more diverse candidates.

Recommendation:

With a view to improving the diversity of Commissioners, the Law Commission should work in collaboration with the MoJ Public Appointments Team, to attract a more diverse range of individuals by undertaking more outreach and promotion activity regarding the role of the Commissioner by utilising the Commission’s stakeholder network and targeting more diverse groups within the sector.

- 10.6 Statute mandates that the Chair shall be a person who holds office as a judge of the High Court or Court of Appeal in England and Wales, and that Commissioners should be judges, barristers, solicitors or university teachers of law. The review team recognises the calibre and expertise of individuals that these requirements produce, but notes that further work is being done to increase the diversity of appointments. The Law Commission has explored the possibility of advertising Commissioner roles as job-shares but was advised that under current legislation this would not be possible.
- 10.7 The staff of the Law Commission are Civil Servants on MoJ terms and conditions, and as such they are encompassed in MoJ Gender Pay Gap reporting. The MoJ Report, published in December 2017, identified five key actions to be taken to improve the gender pay gap. Figure 4 highlights how the Law Commission is taking these forwards.¹⁸

Figure 4: How the Law Commission Action on Gender Pay Gap

Positive Action Pathways (PAP)	Available for staff to access and highlighted in the internal L&D guide. Staff are able to identify opportunities through the MoJ intranet and news provided by MoJ HQ is circulated.
Coaching Squared	Available for staff to access and highlighted in the internal L&D guide. Staff are able to identify opportunities through the MoJ intranet and news provided by MoJ HQ is circulated.
Gender-mixed interview panels	Policy is to have gender mixed interview panels and this is included in recruitment guidance. Interview panels must undertake unconscious bias training before interviews. An unconscious bias workshop was organised for all staff.
Staff Networks	Available for staff and they are able to identify opportunities through the MoJ intranet and news provided by MoJ HQ is circulated. Also in the process of rolling out the Mental Health Allies scheme.
Flexible working	This is available to all staff subject to business requirements and is utilised by many staff. The flexible working policy is covered in the induction pack which is provided to new staff.

¹⁸ <https://www.gov.uk/government/publications/ministry-of-justice-gender-pay-gap-report-2016-2017>

10.8 One of the incomplete Business Plan objectives of 2017-18 was to publish a Diversity and Equality Strategy. This objective has been carried forward to 2018-19 Business Plan and the review teams recommends this be treated as a matter of priority for the year; NEBMs could also support this process. Across all levels of the Commission, Black, Asian and Minority Ethnic (BAME) representation is low. The Diversity and Equality Strategy should seek to improve this; support can be sought from the MoJ's Project Race Team.¹⁹

Recommendation:

With a view to improving all elements of diversity, the Law Commission should prioritise the publication of a Diversity and Equality Strategy, in line with that of Government, during year 2019-20. The strategy should include a plan for implementation and monitoring of progress.

Transparency, Openness and Accountability

Internal

- 11.1 Further to the inclusion of Team Managers in Board Meetings, the Law Commission has taken steps to improve the transparency, openness and accountability within, and amongst staff. Examples of good practice observed by the review team include:
- publication of Board Minutes on the Law Commission intranet;
 - staff consultation when drafting Business Plans;

- cross-team meetings at each grade, attended by Chief Executive, as an opportunity to feed directly into the Senior Management Team. Recently, this forum has enabled RAs to challenge assumptions and help shape Flexible Working Policy; and,
- staff engagement discussions on People Survey results and subsequent Action Plans that resulted in 3% increase on the Staff Engagement index in 2017, compared to 2016.²⁰

External

- 11.2 From evidence gathered in interviews with external stakeholders, the review team has observed the following examples of good practice that should continue:
- 'genuine', 'clear', 'open' and 'responsive' consultation process;
 - regular meetings with stakeholder groups;²¹
 - regular meetings and updates with customers throughout the duration of a project;
 - appearance before the Justice Committee to give oral evidence;²²
 - invitations to stakeholders to attend Board meetings as guests; and,
 - availability of a wide range of documentation on their website – including Business Plans, Annual Reports, Board Minutes, Register of Commissioners interests etc.

¹⁹ Project Race is a team within the MoJ dedicated to improving race equality across the department.

²⁰ The People Survey is the annual survey which looks at Civil Servants' attitudes to and experience of working in government departments. Action Plans were devised focusing on 3 areas – Learning and Development, Diversity & Inclusion and Role of the Line Manager. Learning and Development, specifically saw a 20% increase in staff engagement score.

²¹ i.e. the Law Commission meet annually with the Socio-Legal Scholars Association to inform of the work upcoming for the year ahead, offering members the opportunity to get involved when something of interest is planned.

²² The first JC evidence session took place on March 2, 2016 and the second July 3, 2018.

Devolution

- 12.1 The Law Commission of England and Wales covers the legal jurisdiction of both England and Wales. The Scottish Law Commission is a separate body covering the legal jurisdiction of Scotland.
- 12.2 The Welsh Assembly gained direct legislative competence in 2011 and since then there has been increasing divergence in Welsh and English Law in many areas. The Wales Act of 2014 provides that it is a function of the Law Commission to provide advice and assistance to Welsh Ministers, as well as, an obligation on the Welsh Ministers to report on how Law Commission recommendations have been implemented in Wales.

'[The Law Commission are] an acting exemplar in the legal life of England and Wales of how divergence following devolution can be properly addressed.' – Welsh Advisory Committee

Does the Law Commission Consider the Devolved Context Appropriately?

- 12.3 The review team has observed that the Law Commission considers devolution issues at the initiation stage of projects and specific considerations are included in ToR documentation.
- 12.4 The Law Commission established a Welsh Advisory Committee in 2013 that meets in Wales twice a year and is kept informed of developments to the programme of law reform; members can also bring forward ideas. The Law Commission conducts Wales-specific projects and examples can be found in both the 12th and 13th programmes of Law Reform; this inclusion should continue in all future programmes.

- 12.5 The review team is satisfied that the Law Commission is committed to and is equipped to consider the divergence in law at present. However, this should continue to be monitored to ensure that any significant levels of divergence in the future can be dealt with appropriately.
- 12.6 The Law Commission has a Welsh Language Policy and all Wales-specific reports and consultation papers are produced bi-lingually; for projects non-specific to Wales, a summary document is translated. However, those interviewed from the Wales Office and Welsh Advisory committee were all in agreement that the current translation arrangements require significant improvement. The review team recognises the reputational risk that this presents. To produce accurate translations of legal reports and draft legislation, specialist knowledge and translation services are required and the current translation service that the Law Commission uses via the MoJ is unable to provide this. The review team therefore welcomes the Law Commission's work to negotiate new arrangements with a different translation provider.

How effectively does the Law Commission of England and Wales work with the Scottish Law Commission?

- 12.7 Evidence gathered from the Scottish Law Commission suggests that the working relationship between the two Commissions is strong and effective. The two Commissions undertake joint projects, for which MoUs on how they will work together are produced. A customer, from a government department, working with both the Commissions on a joint project praised their effective joint working.
- 12.8 Furthermore, when not formally working together, the Law Commission of England and Wales is forthcoming with advice, information and guidance. They also demonstrate sensitivity to the independence of Scottish Law.

Location

13.1 The Law Commission is currently based in Central London within MoJ estate. Its work relies upon regular engagement with Ministers, Parliamentarians and with officials and important stakeholders across Whitehall. The review is recommending that the Law Commission undertakes more of this essential engagement in order to support income generation and increase implementation rates. This additional engagement will be particularly necessary should the Law Commission assume further responsibilities in the context of the UK exiting the EU. Similarly, much of the UK legal sector is based in London and, as a key stakeholder of its work, the Law Commission is required to work closely with them. Agreement will be sought through the government's Places for Growth Programme for the Law Commission to maintain its London presence.

EU Exit

14.1 On 20 June 2018 the EU Withdrawal Bill completed its passage through both Houses of Parliament and it became law by Royal Assent on 26 June.²³

14.2 The review has found that Britain's exit from the EU will not have an impact on the question of whether the body should continue to exist, but instead give potential further weight to the on-going need for their functions. This is due to the vast amount of consolidation work that will likely be required following transposition of EU law. Additionally, Brussels has always been responsible for keeping EU law modern and up-to-date; once this becomes Retained EU Law, this will become a responsibility of the UK government and the Law Commission are well positioned to undertake this work.

14.3 Stakeholders interviewed were in support of the Law Commission undertaking this responsibility. The Commission should therefore prepare for a possible increase in workload. In the Commission's current financial position and at their current size, it would be challenging to undertake this additional work so any offer of involvement should only be made on the condition that additional funding is provided.

²³ The EU Withdrawal Bill provides for repealing the European Communities Act 1972 and for parliament's approval of the final withdrawal agreement. The Bill also begins the process of transposition of existing EU legislation into UK law and creates a new category of UK law – 'Retained EU Law'.

Annex A: Scope and Purpose of Tailored Reviews

A Non-Departmental Public Body (NDPB) should only exist where there is clear evidence that this model is the most efficient and cost-effective way for the organisation to fulfil its statutory functions and only where these functions are still required. In February 2016, the Cabinet Office announced the Government's ALB Review Strategy 2016-2020 which states that all Arm's Length Bodies (ALBs) will undergo a substantive review during the lifetime of each Parliament.

Tailored Reviews have two parts;

1. to provide a robust challenge to, and assurance of, the continuing need for individual organisations as well as assessing their function and form, and;
2. where it is agreed that an organisation is required, it is then necessary to consider its capacity for delivering more effectively and efficiently, and to evaluate the control and governance arrangements in place to ensure compliance with recognised principles of good corporate governance.

As the name suggests, the reviews are tailored to the organisation being looked at. The review team will consider how best to structure and carry out these reviews following discussions with sponsors, investigative work to understand the organisation's operating environment and mapping of the organisation's key stakeholders. The Review requires early engagement with senior leaders in the relevant organisation to facilitate a collegiate approach and to agree the process the review will follow.

These reviews are carried out in line with the Cabinet Office principles outlined in "Tailored Reviews: Guidance on Reviews of Public Bodies":

- I. **Proportionality:** Reviews should not be overly bureaucratic and should be appropriate for the size and nature of the organisation being reviewed.
- II. **Challenge:** Reviews should be challenging and take a first principles approach to whether each function is required, is being delivered effectively and still contributes to the core business of the organisation.
- III. **Being Strategic:** All ANDPBs must be subject to a tailored review at least once in the lifetime of a Parliament. Departments should define the scope of the review depending on any wider policy or strategic reviews that are being conducted, and also consider combining the

requirements of a tailored review within the scope of any other planned review or evaluation of the department's public bodies.

- IV. **Pace:** Reviews should be completed quickly to minimise the disruption to the organisation's business and should normally take no longer than 6 months, keeping in mind the principle of proportionality.
- V. **Inclusivity:** Reviews should be open and inclusive. The organisation under review should be engaged and consulted throughout the review and have the opportunity to comment on emerging conclusions and recommendations.
- VI. **Transparency:** The final report should set out any recommendations, including any that address areas of non-compliance with corporate governance. Any such issues of non-compliance should be considered by the sponsor. An implementation plan for the agreed recommendations should be agreed between the public body and the sponsor.

Process and Methodologies:

Cabinet Office guidance states that the Review should first identify the main functions of the ANDPB. It should evaluate how these functions contribute to the core business of both the ANDPB and the sponsor department and consider whether these functions are still required. Where the Review finds clear evidence that a particular function is needed, it should then explore how best to deliver this function.

When considering potential delivery models, the Review should explore a wide range of options, including;

- Whether the function can be better delivered by local Government or the voluntary sector;
- Whether the function should move to the private sector;
- If it would be beneficial to merge with another existing body;
- Whether the function can be delivered by the sponsoring department;
- If a less formal structure would deliver better results, or;
- Whether the function should transfer to a new Executive Agency or Government body.

Part Two looks to identify efficiencies, evaluate control and governance arrangements and assess the overall performance of the organisation under review.

Annex B: Terms of Reference

2018 Tailored Review of the Law Commission – Terms of Reference

OBJECTIVES

The Law Commission (the Commission) reviews the laws of England and Wales and recommends reform where it is needed. The aim is to ensure that the law is fair, modern, simple and cost effective.

In line with Cabinet Office requirements, the Tailored Review (TR) of the Law Commission will provide robust challenge to and assurance on the continuing need for the organisation. The review will be “light touch”, shorter than a full review and more proportionate to the size and budget of the Commission. As such, it will seek to build upon the work undertaken as part of the 2013 Triennial Review to ensure that the conclusions remain valid and progress against them has been made (see Annex B).

Within that context, the TR will assess and challenge whether each function:

- is still needed;
- is still being delivered effectively; and
- contributes to the core business of the organisation, the MoJ and the government as a whole.

If the function/s are still required, the review will consider whether the 2013 Triennial Review delivery model analysis still applies and the recommendation – that an Advisory Non-Departmental Public Body is the most appropriate delivery model of the Commission – remains (see Annex B).

The Review will analyse the delivery model of the organisation by considering the ‘three tests’:

- Does the ALB perform a technical function?
- Does it need to be delivered with political impartiality?
- Does it need to be delivered independently of Ministers?

SCOPE

As a light touch review the scope will cover:

- **Functions:** the TR will examine all current functions, including opportunities for streamlining.
- **Efficiency and effectiveness**
 - Explore the capacity of the Commission to deliver more effectively and efficiently
 - Assess the performance of the Commission and make sure that processes are in place for such assessments.
- **Governance:**
 - Evaluate the control and governance arrangements in place to ensure the Commission and its sponsors are complying with recognised principles of good corporate governance as per Cabinet Office guidance (see Annex A);
 - Assess delivery against the recommendations of the 2013 Triennial Review of the Law Commission (see Annex B);
 - Evaluate the diversity of the body, including action to be taken in response to Gender Pay Gap Reporting.
- **Transparency:** assess the transparency of the Law Commission, its decision making and information/data in the public domain.
- **Location:** assess the extent to which the current London location of the Commission is appropriate.
- **EU:** consider the impact on the Commission, if any, of the UK leaving the EU.
- **Devolution:** understand the impact, if any, of the devolved context. Consider the scope and effectiveness of joint working with the Scottish Law Commission.

The review **will not** consider the content of the programmes of repeals, reforms, consolidations or codification either completed or proposed.

METHODOLOGY

- Conduct desk research of key documents.
- Interviews and stakeholder events, including with members of the Law Commission to gain an understanding of the body and the challenges it faces.
- Consult with Private Office and Partnership Leads to inform and support the TR and align with the departmental transformation and reform agenda.
- Work with MoJ experts to provide advice on analytical, financial, legal and policy aspects to make sure any recommendations are robust and achievable.

SIGNIFICANT DELIVERABLES

- Publication of Law Commission TR report (summer 2018).
- Lessons learned exercise completed and report delivered (autumn 2018).
- Deliver and put in place an Action Plan for implementation of the recommendations (for internal use only).

ROLE OF THE Senior Responsible Officer

- Provide leadership and direction.
- Monitor delivery of the review.
- Scrutinise weekly updates from the review team.
- Empowered to authorise changes to the scope of the review.

ROLE OF THE CRITICAL FRIEND (Richard Jarvis, CEO, Judicial Appointments Commission)

- Oversight of the reviews.
- Provide assurance on the quality of sponsorship and governance.
- Provide a robust challenge to the assumptions and recommendations of the review.

MINISTERIAL SIGN-OFF (Lord Keen of Elie QC and Secretary of State)

The MoJ's Ministers will have the opportunity to comment on the scope of the review and will sign off the final report and recommendations. The Minister for the Cabinet Office will sign off the terms of reference. As a Tier 3 review the final report will be cleared by the Cabinet Office at official level and emerging findings will be shared with them.

STAKEHOLDERS

- Law Commission staff and Board members
- Legal Professionals
- Crown Court Judges
- Justice Select Committee
- House of Lords
- Other government departments
- Academics
- Scottish Law Commission
- Wales Office

ANNEXES

Annex A:

Cabinet Office Tailored Review Guidance, 2016.
<https://www.gov.uk/government/publications/tailored-reviews-of-public-bodies-guidance>

Annex B:

Triennial Review of the Law Commission, 2013.
<https://www.gov.uk/government/publications/law-commission-triennial-review-stage-one-report>

Annex C: Stakeholder List

Of the stakeholders approached, we benefited from the considered input of the following organisations and we are extremely grateful to all those who contributed:

Staff of the Law Commission

City of London Law Society

The Law Commission Welsh Advisory Committee

Lord Hodgson of Astley Abbots

The Bar Council Law Reform Committee

The Socio-Legal Scholars Association

Chancellor of the High Court

Centre Control Automated Vehicles

Land Registry

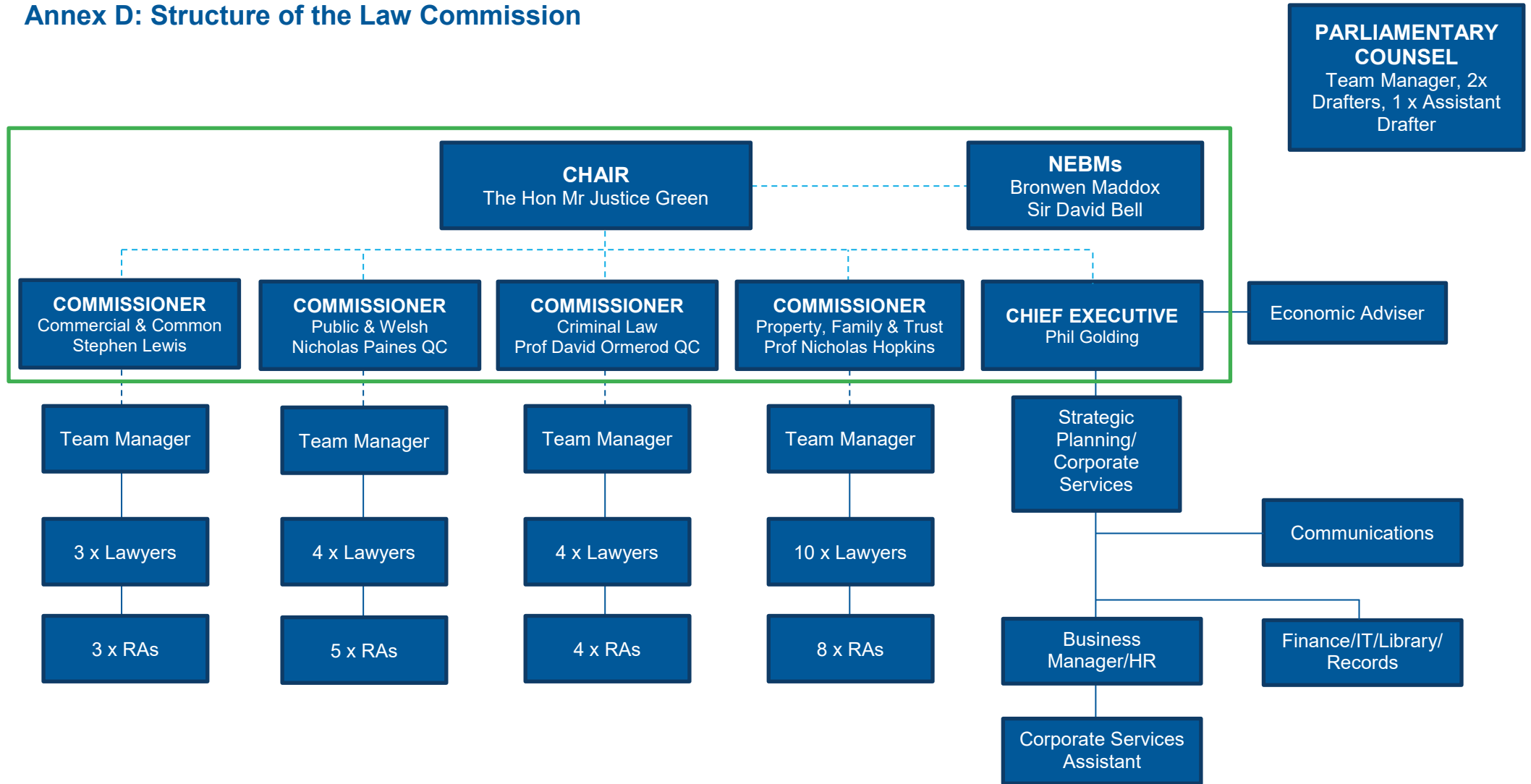
Welsh Government Officials

The Scottish Law Commission

The National Council of Voluntary Organisations

Charity Law Association

Annex D: Structure of the Law Commission



PARLIAMENTARY COUNSEL
 Team Manager, 2x
 Drafters, 1 x Assistant
 Drafter

NOTE: The Chair, Commissioners, Chief Executive and Non-Executive Board Members constitute the Law Commission Board

Annex E: Triennial Review Recommendations and Progress Made

Recommendation	Action Taken
Functions of the Law Commission should remain unchanged.	n/a
Retain the Law Commission as an advisory NDPB.	n/a
The sponsor team, in conjunction with the Law Commission and the ALB Governance Division in the MOJ should create and agree a Framework Document to codify the Commission's terms of reference and the sponsor arrangements with the MOJ. A Sponsor Support Agreement should be developed to set out the respective roles and responsibilities of Sponsor, Business Support Team and the ALB Governance Division more clearly.	Framework Document was published in 2015. Responsibilities of the sponsorship team are laid out in the Framework Document. Sponsor Support Agreements and Business Support Teams are now defunct within the MoJ.
The Law Commission should ensure that documents such as the Code of Best Practice are reviewed regularly and updated to ensure they are in line with current guidance and best practice.	The Law Commission is compliant with the Code of Best Practice as it stands and the Commission updates a Register of Conflicts of Interest (available on their website).
The sponsor team should consider what arrangements should be in place to evaluate the performance of the Commissioners and Chairman and put those arrangements in place.	The Chairman and Commissioners partake in 360 feedback gathering and appraisal process. Recently created 'Roles and Responsibilities' documents should be used in this process. The MoJ ALB Centre of Expertise are in the process of updating public appointee induction and appraisal guidance; once updated, this should be used to further inform the process.
The Commission would benefit from 2-3 Non-Executive Board Members. This would provide a level of support, independent challenge and expertise to the Commission when it is meeting as a Board. This will be particularly valuable given that the Chairman and Commissioners have executive responsibilities in relation to law reform under the 1965 Act. Non-Executive Board Members should have a role relating to the strategic management of the Commission but should not have a role in individual law reform projects.	Sir David Bell KCB was appointed as the first NEBM in July 2015 and Bronwen Maddox was appointed as the second in November 2016. There is clear separation between the roles of the NEBMs and the Commissioners; the former do not have a role in individual law reform projects.
The roles and responsibilities of Chairman, Commissioners and Chief Executive in relation to the governance of the organisation should be more clearly defined, in order to ensure they continue to reflect best practice guidance. The role of the Board should also be clearly defined. This will create clearer accountability and decision-making, enabling the Commission to be more effective. These role descriptions should be set out in the Framework Document.	The Framework Document outlines the role of the Chair in regard to the relationship with Parliament specifically. However, no other roles are outlined in the Framework Document. The Law Commission has produced 'Role of a Commissioner' and 'Role of a Chair' documents. These documents should be published on the Law Commission intranet and used in appraisal processes for the Chair and Commissioners; reference to them should be made in the Framework Document.
Once the roles are more clearly defined, the sponsor team and the Commission should consider what arrangements should be put in place to evaluate the performance of the Law Commission's Board.	The Board Pack is used to measure progress against Business Plan objectives at each Board Meeting.
Given its implications for the Commission's work, including the agreement of the Commission's work programme for the coming period, agreeing the future funding model for the Commission should be an urgent priority, and the new model should also be reflected in the Framework Document. In order that the Commission's choice of law reform projects continues to be based on the principles set out in the statutory Protocol, the funding model should continue to be based on core funding from Parliament via the MOJ with additional contributions from other Departments and the Welsh Government where appropriate.	The Funding Model is laid out in the Framework Document and continues to be based on core funding from Parliament via the MoJ, with additional contributions from other departments. Full analysis of the current funding model can be found at section 7 of the report.

Annex F: 2017 Functional Review of Bodies Providing Expert Advice to Government: Good Practice Indicators

Good Practice Indicator	RAG Rating	Evidence
There is a clear, agreed remit for the body, including scope and coverage of advice and the priority work programme.	Green	Laid out in 1965 Law Commissions Act.
Resources are available to support the body in fulfilling its remit.	Amber	Core funding provided through sponsoring department, MoJ.
Advice and recommendations are based on objective analysis of the evidence available.	Green	Independent process of Law Reform. Analysis of evidence and consensus-building following extensive consultation process.
Chairs and members of bodies visibly uphold high standards of personal and professional conduct.	Green	Abide by the Code of Best Practice and seven Principles of Public Life.
There are clear rules and procedures in place for managing conflicts of interest.	Green	Register of Commissioners Interests available on Law Commission Website.
There are clear liaison, reporting and escalation routes.	Green	Framework Document outlines reporting lines between Chair, Commissioners and Senior Officials as well as clear and realistic expectations of access to Ministers.
Department-level assurance processes are clear and proportionate.	Green	Laid out in Framework Document. Law Commission is subject to ALB Partnership Team Impact Support Analysis process.
Key supporting documents should be in place and up to date.	Amber	Framework Document and Code of Best practice in place but require updating. Other documentation includes Programmes of Reform, Board Minutes, Annual Reports, Business Plans. ²⁴
There is a proportionate approach to capturing impact, value and cost-effectiveness.	Green	Law Commission reports are accompanied by economic impact assessments. Annual reports measure success by looking at implementation rate of recommendations, as well as impact and influence by tracking mentions in judgements, business in Houses of Parliament or cited in media.
There is a commitment to feedback and continuous improvement on both sides.	Green	Both Law Commission and policy sponsorship team engaged and supportive of Tailored Review process. Previous Triennial Review recommendations have been implemented. Law Commission actively seeks customer feedback on projects' content and process.
The body collaborates proactively to add value.	Green	Collaborates with other stakeholder bodies, academia, government departments and public bodies.
There is a recruitment and appointment strategy that promotes diversity and maintains the skills and capacity of the committee in both the immediate and longer term.	Amber	Recruitment and appointment strategy works well to maintain skill and capacity with Learning and Development plans in place; however, more can be done to promote diversity.
Recruitment and appointment procedures are clear, transparent, robust and timely and designed to ensure that the best people, from the widest possible pool of candidates, are appointed.	Green	Recruitment conducted by MoJ Public Appointments Team in line with Office of the Commissioner for Public Appointments and Code of Practice for Public Appointments.
There should be a presumption of openness and transparency.	Green	Good practice demonstrated both internally and externally. Open and transparent in relationship with MoJ.

²⁴ <https://www.lawcom.gov.uk/about/our-policies-and-procedures/>