



Ministry
of Justice

Report on the implementation of Law Commission proposals

March 2015

Report on the implementation of Law Commission proposals

Presented to Parliament pursuant to section 3A of the Law Commissions Act 1965 as amended by section 1 of the Law Commission Act 2009

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Introduction

I am pleased to present this report on the implementation of Law Commission proposals. This is the fifth annual report to be presented following the passing of the Law Commission Act 2009. This Act places the Lord Chancellor under a duty to report to Parliament each year on the extent to which the Law Commission's proposals have been implemented by the Government. The report covers the period 12 January 2014 to 11 January 2015.

During this year a number of Law Commission projects have been implemented. These include Consumer Redress for Misleading and Aggressive Practices, Adult Social Care and Intestacy and Family Provision Claims on Death (submitted under the special procedure for uncontroversial Law Commission Bills). There has also been the completion of the consolidation of the legislation concerning the Cooperative and Community Benefit Societies.

In addition to these projects a number of Bills which implement Law Commission recommendations have received Royal Assent; for example, the Insurance Act 2015 (submitted under the special procedure) and the Infrastructure Act 2015.

During this year we have also seen the publication of the Law Commission's Twelfth Programme of Law Reform which includes a broad range of significant projects. We look ahead with interest to working with the Commission to input as necessary into the projects.

Despite the continuing difficult financial climate in which we operate, we have made noteworthy and substantial progress on the implementation of Law Commission proposals. We would also like to congratulate the Law Commission on its 50th anniversary which they celebrate this year.

The Right Honourable Chris Grayling MP

Lord Chancellor

Scope of the report

1. Section 3A of the Law Commissions Act 1965, as amended by section 1 of the Law Commission Act 2009, places a duty on the Lord Chancellor to report to Parliament each year on the extent to which the Law Commission proposals have been implemented by the Government.
2. This is the fifth annual report to be published by the Government under the Law Commission Act 2009. The report covers the period 12 January 2014 to 11 January 2015.
3. As provided for under the Law Commission Act 2009, the report covers Law Commission proposals that have been implemented by the Government during the year, proposals that have not yet been implemented, including plans for implementation, and decisions taken not to implement proposals.
4. It should be noted that the scope of the report is in relation to the Law Commission in England and Wales. However, the report notes where projects have been conducted jointly with the Scottish Law Commission and Northern Ireland Law Commission.
5. The report deals primarily with Law Commission proposals that are for HM Government to implement. Some proposals which are for the Welsh Government to implement in respect of Wales have been included for ease of reference within this report.

Proposals that have been implemented

Consumer Redress for Misleading and Aggressive Practices¹

6. Misleading and aggressive commercial practices are a major problem for consumers. In 2009, research from Consumer Focus showed that almost two-thirds of the population had fallen victim to a misleading or aggressive practice causing an estimated consumer detriment of £3.3 billion a year. Vulnerable housebound and older people face particular problems from high-pressure doorstep selling.
7. Although EU Regulations do exist in this area they previously could only be enforced by the Competition and Markets Authority or Trading Standards. Consumers had to rely on private law rights if they wanted to take action.
8. The Law Commission report (jointly with the Scottish Law Commission) in March 2012 recommended limited reform by targeting the most serious causes of consumer detriment.
9. The report recommended that consumers should have a new legal right of redress against traders who carry out misleading or aggressive practices. Consumers would be entitled to a refund or a discount on the price, and damages if the unfair practice caused additional loss. The Government accepted the great majority of the Law Commissions' recommendations. These were included in the Consumer Protection (Amendment) Regulations 2014 which came into force on 1 October 2014.

Adult Social Care²

10. The Law Commission published the final report on Adult Social Care on 11 May 2011, and following this the Government agreed to implement the vast majority of the recommendations. The Care Act 2014 implements the Law Commission's recommendations in England and the Social Services and Well-being (Wales) Act 2014 implements the recommendations in Wales.³
11. The Social Services and Well-being (Wales) Act 2014 establishes a new legal framework for adults' and children's care and support in Wales. The Care Act 2014 achieves the same effect but in respect of adults. Both pieces of legislation represent a consolidation of dozens of pieces of legislation dating back to the National Assistance Act 1948. The Acts will ensure that the outcomes that matter to people are at the heart of decisions about care and support, put carers on an equivalent footing to those they care for, and provide for new national eligibility arrangements in respect of care and support. Furthermore, the Acts will establish new statutory frameworks for protecting adults at risk from abuse and neglect.

¹ Consumer Redress for Misleading and Aggressive Practices (LC 332) (28.03.2012).

² Adult Social Care (LC 326) (11.05.2011).

³ The Care Act 2014 and the Social Services and Well-being Act received Royal Assent in May 2014.

Intestacy and Family Provision Claims on Death⁴

12. Following publication of the Law Commission's report in May 2011, the Government announced acceptance of some of the Law Commission's recommendations. These were given effect in the Inheritance and Trustees' Powers Act 2014 which changes three areas of the law. Firstly, it simplifies and updates the law of intestacy which determines the way in which an estate is distributed in the absence of a will; secondly, it adjusts some technical rules relating to the Inheritance (Provision for Family and Dependants) Act 1975 which permits certain family members and dependants to apply to the court to vary the distribution of an estate; and lastly, it amends the Trustee Act 1925 so as to bring trustees' powers to apply funds for the benefit of beneficiaries in line with current practice.
13. The Government considers that these reforms will make it simpler for people to deal with the practical and financial issues that arise when a family member dies. The reforms will also simplify the administration of trusts. The Act was introduced in July 2013 and received Royal Assent on 14 May 2014. Its provisions came into force on 1 October 2014.

Cooperative and Community Benefit Societies⁵

14. Over time there have been significant developments in company law, the regulation of financial services and changes to EU law. As a result the legislation on societies had become complicated and technical. It was not easy to navigate the various separate enactments on the subject or to understand how the legislation fitted together. The consolidation contained in the Co-operative and Community Benefit Societies Act 2014 removes spent and obsolete provisions and brings together amendments and additions to the Industrial and Provident Societies Act 1965.
15. The contents of this consolidation extend to both England and Wales and Scotland so fall within the responsibility of both the Law Commission for England and Wales and the Scottish Law Commission.
16. The Government is strongly committed to supporting mutuality and fostering diversity within the financial sector and believes this consolidation is an essential step in supporting the co-operative movement.

Insurance Contract Law⁶

17. The Law Commission published its second report (with an accompanying draft Bill) on insurance contract law in July 2014. This is a joint report with the Scottish Law Commission. The report made recommendations for reform to the law of disclosure in business insurance, insurance warranties, insurers' remedies for fraudulent claims, and damages for late payment.
18. The Insurance Act 2015 received Royal Assent in February 2015 and provides that most of its clauses will come into force 18 months from this date.

⁴ Intestacy and Family Provision Claims on Death (LC 331) (13.12.2011).

⁵ Cooperative and Community Benefit Societies Consolidation Bill (LC 341) (19.12.2013).

⁶ Insurance Contract Law: Business Disclosure; Warranties' Insurers' Remedies for Fraudulent Claims; Late Payment (LC353) (17.07.2014).

19. The Insurance Act 2015 reflects the Commissions' recommendations, except for the clause relating to late payment which was considered too controversial for the special Law Commission Bill procedure. The Government has said that it will continue to work with the Law Commission and key stakeholders on this issue with a view to introducing reform at the next legislative opportunity.
20. The Insurance Act 2015 also makes amendments to the Third Parties (Rights against Insurers) Act 2010 (see below).

Proposals that have not yet been implemented

(i) Proposals in the process of implementation

Consumer Rights: Unfair Terms in Contracts and Consumer Remedies for Faulty Goods⁷

Unfair Terms in Contracts

21. In 2005 the Law Commission and Scottish Law Commission published a report on unfair terms in contracts which recommended a simplified regime, bringing together the UK law (set out in the Unfair Contract Terms Act 1977) and the regulations implementing the EU Directive.
22. In May 2012, the Government asked the two Commissions to update its recommendations relating to consumers with a view to their implementation. Particularly issues had arisen in the 2009 litigation over bank charges for unauthorised overdraft. Since 1994 the courts have had power to assess the fairness of terms in consumer contracts, but may not consider the amount of the price. While the Court of Appeal believed that overdraft charges could be assessed for fairness, the Supreme Court held that they could not be assessed because they were price terms.
23. In March 2013, the Commissions published an updated report. It recommended that the courts should not interfere with prices which are transparent and prominent; however, where charges are tucked into small print, the courts should have the power to assess them for fairness.
24. The Government has adopted all the recommendations in the two Commissions' updated report and they have been included in Part 2 of the Consumer Rights Bill 2014 which is expected to receive Royal Assent shortly.

Consumer remedies for faulty goods

25. UK consumers have a legal right to reject faulty goods. This provides consumers with the right to a refund if they act within a reasonable time.
26. In 2009 the Law Commission and the Scottish Law Commission recommended that the right to reject should be retained in the UK as a short-term remedy of first instance. However, more certainty was needed over how long the right lasted. The Commissions recommended that in normal circumstances, a consumer should have 30 days to return faulty goods and receive a refund. The Government accepted the need for a clear time limit. The 30 day period, with provision for a shorter period for certain items such as perishable goods, is included in Part 1, Chapter 2 of the draft Consumer Rights Bill 2014.

⁷ Unfair Terms in Contracts (LC 292) (24.02.2005) and Consumer Remedies for Faulty Goods (LC 317) (11.2009).

27. To prevent consumers from being locked into a cycle of failed repairs, the report recommended that consumers should be entitled to escape a contract after one failed repair or one failed replacement. This recommendation is also included in the Consumer Rights Bill 2014 which is expected to receive Royal Assent shortly.

Electronic Communications Code⁸

28. 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.
29. In February 2013, the Law Commission provided a series of recommendations which formed the basis of a revised Electronic Communications Code. The proposed changes to the Code would set out the legal position in clear terms, provide the clarity that the current Code lacks, and provide an efficient forum for dispute resolution.
30. Following the publication of the Law Commission's report, the Department for Culture Media and Sports commissioned a piece of further analysis to study the economic impact of various alternative wayleave regimes.⁹
31. The Department for Culture Media and Sport announced in December that they would reform the Code based on the Law Commission's recommendations, and prepared legislation which was tabled as an amendment to the Infrastructure Bill 2014-15 on the 8th January 2015. However since tabling, DCMS has received representations raising technical issues on the draft schedule that would have introduced the revised Electronic Communications Code. In order to consider further, Government decided to withdraw the revised Code, Clause 49 of the Infrastructure Bill.
32. DCMS remains committed to implementing Code reform and intends to consult at the earliest opportunity.

Third Parties (Rights against Insurers)¹⁰

33. The Third Parties (Rights against Insurers) Act 2010 implements with some modifications the proposals contained within the joint Law Commission and Scottish Law Commission report on this issue. When brought into force, the Act will replace legislation from 1930, streamlining and improving the procedures under which a person with a claim against an insolvent but insured wrongdoer can claim against the insurer. Most importantly, the new Act will allow the claimant to proceed against the insurer directly without first establishing the liability of the insolvent person.

⁸ Electronic Communications Code (LC 336) (28.02.2013).

⁹ <https://www.gov.uk/government/publications/modelling-the-economic-impacts-of-alternative-wayleave-regimes-the-nordicity-report> (January 2014).

¹⁰ Third Parties (Rights against Insurers) (LC 272) (31.07.2001).

34. The 2013 Implementation Report indicated that the Government was working towards implementation of the 2010 Act but had provisionally concluded that it would have to be amended before it could be commenced.
35. Some of the necessary amendments were included in Part 6 and Schedule 2 to the Insurance Act 2015. The amendments included the creation of a regulation-making power to alter the circumstances in which the 2010 Act applies. To ensure that the application of the 2010 Act is as wide as it ought to be, taking into account the scope of the 1930 legislation and developments in insolvency law, the Government is continuing to work closely with the Commission to draft the regulations with a view to commencing the 2010 Act as amended by the Insurance Act 2015 and the proposed regulations as soon as is reasonably possible.

Contempt of Court (1): Juror Misconduct and Internet Publications¹¹

36. In December 2013 the Law Commission published a report containing recommendations for law reform relating to contempt by jurors and to aspects of contempt by publication as they relate to modern media. This report is the first of three planned for the review of the law of contempt.
37. The report contains recommendations to reform the law of strict liability contempt relating to archived online material and to modernise the way in which juror misconduct is handled including by creating offences of jurors researching their cases and to provide limited exceptions to the prohibition on jurors disclosing deliberations, for example, in order to uncover miscarriage of justice.
38. Recommendations from the report to create new offences and provide powers for judges to require jurors to surrender electronic communications devices were introduced in February 2014 in the Criminal Justice and Courts Bill. The Government made a statement to Parliament in July 2014 which gave the response to the report's remaining recommendations.
39. The Government accepts that the Law Commission's recommendations concerning strict liability contempt represent a balanced and measured proposal and two clauses were included in the Bill at introduction to implement the measure. However, as announced in the former Attorney-General's Written Statement of 30 June to the House, the Government has decided not to pursue the measure and has introduced amendments to omit the clauses from the Bill.
40. The Government does not intend to take forward the recommendations concerning a specific defence for disclosure of juror deliberations to the Criminal Cases Review Commission or an exception to the disclosure offence allowing approved academic research. Decisions on whether to accept the recommendations concerning juror information and education will be deferred until after enactment of the Bill so that they can be considered alongside implementation of measures in the Bill.

¹¹ Contempt of Court – Juror Misconduct and Internet Publications (LC 340) (09.12.2013).

Matrimonial Property, Needs and Agreements¹²

41. The Law Commission published its final report on Matrimonial Property, Needs and Agreements in February 2014. The report makes recommendations to clarify the law of financial needs on divorce or dissolution of a civil partnership which would ensure that the law is applied consistently by the courts and reinforces judicial best practice. In addition, it investigates whether an aid to calculation of spousal support could be devised. Finally, it recommends the introduction of qualifying nuptial agreements in England and Wales which would be enforceable contracts enabling couples to make binding arrangements for the financial consequences of divorce or dissolution.
42. The Government's interim response to the Law Commission was published on 18 September 2014 and a final response on the recommendations relating to qualifying nuptial agreements and an aid to calculating spousal support will be given by the new Government once it has had time to consider the issues. Work on the Report's recommendations to clarify financial needs is being taken forward by the Family Justice Council.

Wildlife Law: Control of invasive non native species¹³

43. On 11 February 2014, the Law Commission published its final report on Wildlife Law: Control of Invasive Non-native Species. This project is part of a wider project on wildlife law but was brought forward at the request of Defra and the Welsh Government.
44. Invasive non-native species are ones that arrive as a result of human action and cause environmental and economic damage. They pose a significant threat to ecosystems as well as damaging property and infrastructure. Existing law does not contain sufficient powers to allow for their timely and effective control or eradication. The Law Commission's recommendations in relation to species control orders will allow for a proportionate and necessary response to an increasing problem.
45. It is anticipated that a final response will be published by the Government in Spring 2015. However, in response to the report, the Government has already introduced measures in the Infrastructure Act 2015 based on the Law Commission's recommendations.

Renting Homes: Wales¹⁴

46. In 2012, the Welsh Government asked the Law Commission to update its report *Renting Homes: the Final Report*, published in 2006. The subsequent report *Renting Homes in Wales* did this and looked at devolution implications. The Welsh Government White Paper *Renting Homes – A better way for Wales* committed to implementing the updated proposals. Nearly a third of the population of Wales - just under 400,000 households - rent their homes. The law governing their relationship with their landlords is complex. The project seeks to replace it with a just, modernised and understandable legal structure.

¹² Matrimonial Property, Needs and Agreements (LC343) (27.02.14).

¹³ Wildlife Law: Control of Invasive Non-native Species (LC342) (11.02.2014).

¹⁴ Renting Homes: Wales (LC 337) (09.04.2013).

47. Implementation of the proposals will entail dis-applying much of the existing housing legislation applicable to Wales and replacing it with a simpler framework comprising only two forms of occupation contract: secure contracts modelled on the local authority secure tenancy and standard contracts modelled on the current assured shorthold tenancy. Model contracts which are compliant with the requirements of the new legislation will be provided by the Welsh Government. Existing tenancy and licence agreements will also be converted into one of these new contracts. The Bill to implement the proposals is scheduled for introduction into the National Assembly for Wales in 2015.

Fiduciary Duties of investment Intermediaries¹⁵

48. The Law Commission published its report on fiduciary duties of investment intermediaries in July 2014. The report explains the nature of fiduciary duties and other duties to act in the best interests of savers and clarifies how far those who invest on behalf of others may take account of factors such as social and environmental impact and ethical standard. The report concludes that legislation on this issue is not required. Instead the Law Commission has drafted six pages of guidance for trustees. It recommends that the guidance should be adopted by regulators and circulated widely to trustees.
49. The report also supports the Government's reforms to the governance of contract-based workplace pension schemes, including the new requirement on contract-based pension providers to establish Independent Governance Committees. It recommends that Committee members should be under a statutory duty to act in members' interests.
50. The Government published its response on the 27 October 2014.¹⁶ It welcomes its clear guidance that fiduciaries such as pension scheme trustees have a duty to consider any factors which are, or may be, financially material to the performance of an investment – including over the long-term. The report makes very clear that this should include taking into account environmental and social, and corporate governance factors and wider macroeconomic considerations, where trustees think these may be financially material.
51. The Government shares the Law Commission's hope that this report will remove any remaining misconception that fiduciary duties require trustees to focus on maximising short-term returns alone. The Government also welcomes the Law Commission's conclusion that the law is sufficiently flexible to allow trustees to make investment decisions that are based on non-financial factors, provided they have good reason to think that scheme members share the concern, and there is no risk of significant financial detriment to the fund.
52. The Business Secretary has already written to a number of representative bodies in the pensions and investment industry welcoming the report and urging them to convey the Commission's clear guidance to their members.

¹⁵ Fiduciary Duties of Investment Intermediaries (LC 350) (30.06.2014).

¹⁶ As part of *Implementation of the Kay Review: Progress Report*.

53. The report makes 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. The Government's response to these, developed in consultation with the FCA and TPR, are set out in the report.¹⁷

¹⁷ Pages 28-32 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367070/bis-14-1157-implementation-of-the-kay-review-progress-report.pdf

(ii) Proposals awaiting Government decision on implementation

Data Sharing between Public Bodies¹⁸

54. Data sharing affects us all. Public bodies report that they cannot always share the data they need to share and, as a result, miss out on opportunities to provide better services to citizens. At the same time, the protection of privacy is fundamental to any data sharing regime.
55. The law surrounding data sharing is complex. Powers to share data are scattered across a very large number of statutes and may be set out expressly or implied. In addition, there are common law powers. The Data Protection Act 1998 sets the limits on data sharing and the rules for handling personal data. The law of confidentiality protects confidential or private information. Contract, employment and European Union law plays a part, as does the European Convention on Human Rights. There are also professional regulations, such as those that prohibit doctors from breaching the confidentiality of their patients.
56. The Law Commission completed their scoping report on data sharing between public bodies in July 2014. The Law Commission found that there are both unnecessary obstacles to useful and legitimate data sharing and a lack of a clear and principled approach to proper safeguards for privacy. The report concludes that some of the obstacles stem from the law, and some from other sources, such as institutional attitudes, incentives and disincentives. The report makes the following three key recommendations:
- i. a full law reform project carried out to map, modernise, simplify and clarify the statutory provisions that permit and control data sharing. The project should consider how best to create a principled and clear legal structure for data sharing, which will meet the needs of society. These include efficient and effective government, the delivery of public services and due protection of privacy. Data sharing law must accord with emerging European law and cope with technological advances.
 - ii. Scope of the review extended beyond data sharing between public bodies to the disclosure of information by or from public bodies or other organisations carrying out publicly funded functions.
 - iii. The project should be conducted on a tripartite basis by the Law Commission of England and Wales, together with the Scottish Law Commission and the Northern Ireland Law Commission.
57. The Law Commission consider that the project could usefully include consideration of the functions of the Information Commissioner, including the Commissioner's enforcement role. Furthermore, the work of other bodies providing advice and guidance should be explored to improve the consistent application of data sharing law across Government and in public service delivery more widely.

¹⁸ Data Sharing between Public Bodies (LC 351) (11.07.14).

58. The Government welcomes the publication of the Law Commission scoping report on data sharing between public bodies. The Government sent an interim response on 24 December 2014 which noted the usefulness of the scoping report and its resonance with work that the Government has started in the open policy making space. The Government will send a full response following the conclusion of that work in early 2015. In the meantime, Government continues to address the non-legal barriers through work such as the Centre of Excellence for Information Sharing.

Conservation Covenants¹⁹

59. The Law Commission report (with an accompanying draft Bill) published on 24 June 2014 proposes introducing a new statutory scheme of conservation covenants. A conservation covenant is a voluntary agreement between a landowner and responsible body (charity, public body or local/central Government) to do or not do something on their land for a conservation purpose. This might be, for example, an agreement to maintain woodland and allow public access to it, or to refrain from using certain pesticides on native vegetation. These agreements are long lasting and can continue after the landowner has parted with the land, ensuring that its conservation value is protected for the public benefit.
60. Conservation covenants are used in many other jurisdictions, but do not exist in the law of England and Wales. Instead, landowners and responsible bodies are relying on complex and expensive legal workarounds, or the limited number of existing statutory covenants that enable certain covenants to be enforced by specified bodies (for example, the National Trust).
61. Under the scheme a conservation covenant would be formed by the agreement of two parties; be able to contain both restrictive and positive obligations and be capable of binding the landowners' successors in title.
62. The Government is considering the report and will be responding to the Law Commission during 2015.

Hate Crime²⁰

63. This project was referred to the Law Commission by the Ministry of Justice. The terms of reference asked the Commission to look at:
- i. extending the aggravated offences in the Crime and Disorder Act 1998 to apply to all five protected characteristics;
 - ii. the case for extending the stirring up of hatred offences under the Public Order Act 1986 to apply to all five protected characteristics.
64. The Commission also examined the current "enhanced sentencing" regime applicable to cases where hostility is established, as this already applies to all five characteristics and involves similar elements to the aggravated offences.

¹⁹ Conservation Covenants (LC349) (24.06.2014).

²⁰ Hate Crime: Should the Current Offences be Extended? (LC348) (28.05.14).

65. The report recommends that the Sentencing Council produce guidance on the approach to sentencing hostility-based offending and that every time the enhanced sentencing provisions under section 145 and 146 of the Criminal Justice Act 2003 are applied, this should be recorded on the offender's Police National Computer (PNC) record.
66. The Commission also recommends a full-scale review of the operation of the aggravated offences under the Crime and Disorder Act 1998 and the enhanced sentencing provisions to establish whether they should be retained, amended, extended to cover hostility based on other characteristics or repealed. The Commission believes that such a review is the most valuable reform option. In the event that the Government decides not to carry out such a review the Commission recommends that the aggravated offences be extended to cover hostility based on disability, sexual orientation and transgender identity
67. The Government is considering the report and will respond in due course.

Reforming the law on taxis and private hire services²¹

68. The law that governs how the taxi and private hire trades operate is old, inconsistent and struggling to deal with internet-driven changes in passenger behaviour. The Law Commission published its report on 23 May 2014 recommending reforms that would make the law clearer for those working in the taxi and private hire trades and their passengers.
69. The Commission's report recognises the value to passenger choice of the two-tier system of private hire vehicles – which must be pre-booked, and taxis – which can use ranks or ply for immediate hire. It makes recommendations to retain and reinforce the distinction. Passenger safety is at the forefront of the Commission's reforms. It is recommending that standards be set nationally for public safety, accessibility and environmental impact. For the first time, passengers of taxis and private hire vehicles could confidently expect consistent levels of safety and quality wherever they travel.
70. As there will not be a dedicated Taxi Bill in the final session of this Parliament, three taxi and private hire measures were included in the Deregulation Bill. All three measures are among the Law Commission's recommendations and rather than undermining or duplicating the Law Commission process, these measures can be regarded as the first steps on a longer path of reform which will be continued in the event that a dedicated Taxi Bill is brought forward.
71. Although one clause has since been dropped and will be considered as part of the package of measures recommended by the Law Commission, the remaining two clauses can deliver tangible benefits to the taxi and private hire trades.

²¹ Taxi and Private Hire Services (LC347) (23.05.2014).

Regulation of Healthcare Professionals²²

72. The Law Commission published its final report (with a draft Bill) on the 2 April 2014 on the regulation of health care professionals, and in England only, the regulation of social workers. This was a joint project with the Scottish and Northern Ireland Law Commissions respectively. The report sets out proposals for a new single legal framework for the regulation of professionals and aims to introduce a consistent legal framework which will better enable the regulators to uphold their duty to protect the public, for example the conduct of fitness to practise hearings.
73. The Commissions' recommendations envisage improvements across professional regulation including robust governance structures for regulatory bodies, enabling innovation in education and leaner processes enabling the regulatory bodies to take swifter action to ensure public protection.
74. The Government published its response on 29 January and intends to legislate to implement the Law Commissions' recommendations at the earliest possible opportunity. However, it did not find time to take forward a Bill in the final session of the 2010-15 Parliament. In the meantime it is making changes in a small number of priority areas where the professional regulators are hampered whilst carrying out their public protection responsibilities. It is also supporting a Private Members Bill sponsored by Jeremy Lefroy MP which would also go some way towards implementing two of the Commissions' recommendations.

Contempt of Court (2): Court Reporting²³

75. On 26 March 2014, the Law Commission published its second report on the review of the law of contempt of court. The report recommends that a new online service be established to help journalists and publishers reporting criminal trials discover whether reporting restrictions are in force and, if so, why.
76. The report recommends that all court reporting postponement orders are posted on a single publicly accessible website. A further restricted service would also be available 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. This would reduce the 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.
77. The Government supports proposals encouraging transparency and openness in the Criminal Justice System, and welcomes these recommendations. We will consider how an online reporting restriction database could be taken forward as existing technology is replaced and updated, and will respond formally when the CLS Common Platform is implemented.

²² Regulation of Healthcare Professionals: Regulation of Social Care Professionals in England (LC345) (02.04.2014).

²³ Contempt of Court (2): Court Reporting (LC344) (26.03.2014).

Rights to Light²⁴

78. A right to light is an easement that gives a landowner the right to receive light through defined apertures in buildings on his or her land. The owner of land that is burdened by the right cannot substantially interfere with it - for example by erecting a building in a way that blocks the light - without the consent of the benefiting owner.
79. Rights to light are valuable: they give landowners certainty that natural light will continue to be enjoyed by a property – increasing its utility, value and amenity. The right may enable landowners to prevent construction that would interfere with their rights or, in some circumstances, to have a building demolished.
80. The Law Commission undertook a project on rights to light because of concerns about a lack of clarity and certainty in the current law, and because of the potential for rights to light disputes to be a major cause of delay and expense in the course of land development. The project considered the balance between competing interests that the law strikes when dealing with rights to light and about improving the way that the law intervenes when that balance is disturbed.
81. The Law Commission published its final report in December 2014 and the Government will provide an interim response six months from publication.

Kidnapping and related offences²⁵

82. The Law Commission published its final report on kidnapping and related offences on 20 November 2014.
83. In line with the model favoured by consultees, the report recommends the creation of two distinct statutory offences to replace the existing common law. The Commission recommends that false imprisonment be replaced with a new statutory offence of unlawful detention (a label which they believe better captures the nature of the offence). The elements of the new offence would closely follow the existing common law. The new statutory kidnapping offence would be somewhat narrower and more focussed than the existing common law offence. Kidnapping would have fewer, more closely defined, elements and a clearer relationship with the offence of unlawful detention.
84. The report also recommends changes to the offences under sections 1 and 2 of the Child Abduction Act 1984.
 - a. the increase of the maximum sentences for these offences from 7 to 14 years' imprisonment, in order to avoid undesirable inconsistency between the most serious instances of these offences and kidnapping offences of a comparable level of seriousness, and
 - b. that the offence under section 1 be extended to cover cases of wrongful retention of a child abroad, in breach of the permission given by another parent (or other connected person) or the court. This extension would close the gap in the law highlighted in the case of *R (Nicolaou) v Redbridge Magistrates' Court*.

²⁴ Rights to Light (LC356) (04.12.14).

²⁵ Simplification of Criminal Law: Kidnapping and Relating Offences (LC355) (20.11.14).

85. The Government is considering the report and will respond in due course.

Patents Trademarks and Design Rights: Groundless Threats²⁶

86. Patents, trade marks and design rights are valuable intellectual property rights and a vital foundation of economic growth. These rights ensure that innovation is rewarded and encouraged. The law provides a means by which they can be effectively enforced; through legal proceedings for infringement. However, making unjustified or groundless threats to sue a competitor for infringement can have unfair and harmful effects on legitimate business activities. Intellectual property law therefore has long-standing provisions which protect certain businesses from being harmed by groundless threats. The Law Commission published its final report recommending that the protection against groundless threats of infringement proceedings should be retained, for patents, trade marks, registered and unregistered design right but it should be reformed.
87. The groundless threats provisions apply to Scotland who have been consulted on this project by the Commission.
88. The Government published its response on 26 February 2015. It welcomed the Law Commission's conclusion that the threats provisions should be retained but reformed, and welcomed many of the detailed suggestions for reform. For just a few recommendations, the Government's acceptance was in some way qualified. The Government looks forward to seeing work on the reforms progress positively.

Level Crossings²⁷

89. The report was a joint Law Commission and Scottish Law Commission report and examined the legal framework governing level crossings. It made recommendations to modernise, simplify and clarify the law so as to make the framework more coherent, accessible and up-to-date. In turn this would allow for better regulation, better co-operation between those with duties at level crossings, improving the balance of convenience between all users and making it easier to close level crossings where appropriate, thereby reducing risk. In September 2013, the Commission published a report, including 86 recommendations which were accompanied by a draft Bill and supporting Regulations.
90. The Government provided a final response to the Law Commissions' report in October 2014. This indicated that it accepted both the case for reform and a majority of the recommendations. However, the response also noted a number of areas where the Government believes additional policy and legal consideration is required. These areas were outlined in the Government's Level Crossing Reform Action Plan, which was developed in conjunction with the Law Commissions and other stakeholders, and explains how this work is being taken forward. The Action Plan was circulated to stakeholders in December 2014.

²⁶ Patents, Trade Marks and Design Rights: Groundless Threats (LC346) (15.04.14).

²⁷ Level Crossings (LC 339) (25.09.2013).

Making Land Work: Easements, Covenants and Profits à Prendre²⁸

91. The Law Commission's 2011 report on easements, covenants and profits à prendre contained reforms which would simplify and clarify the rules relating to the acquisition of easements by prescription (or long use of land) and implication, as well as the termination of easements by abandonment. Furthermore, the reforms would give greater flexibility to developers when building estates where there would be multiple owners and users. The reforms also included a proposal to extend the jurisdiction of the Lands Chamber of the Upper Tribunal to allow for the discharge and modification of certain easements and profits created post-reform.
92. The recommendations are designed to make the law relating to easements, covenants and profits à prendre fit for the needs of the twenty-first century and a modern registration system.
93. The Government stated in the 2012-2013 report that it intended to respond in 2014. However, although good progress has been made in analysing the recommendations, the Government has not yet reached final conclusions in relation to these recommendations. A decision will be made as soon as practicable in 2015.

Public Services Ombudsman²⁹

94. The Law Commission's 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.
95. 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.
96. The Government is considering the report and will respond shortly.

The High Court's Jurisdiction in relation to Criminal Proceedings

97. The Law Commission's 2010 report makes recommendations clarifying the limits on the availability of judicial review of decisions in a trial on indictment to ensure it is barred from the time the case goes to the Crown Court for trial to the end of the trial, with the exception of where the judge refuses bail.
98. The report also recommends the abolition of appeal by case stated from the Crown Court to the High Court and the creation of two new statutory appeals. The first of these would be available to a child or young person, where the trial judge refuses to restrict reporting to protect his or her identity. The second would apply where the trial judge's ruling entails a real and immediate risk to a person's life.
99. The Government is considering these recommendations in consultation with the Law Commission, and will take account of any relevant recommendations in Sir Brian Leveson's Review of Efficiency in Criminal Proceedings.

²⁸ Making Land Work: Easements, Covenants and Profits à Prendre (LC 327) (08.06.2011).

²⁹ Public Services Ombudsmen (LC 329) (14.07.2011).

Property Rights for Cohabitants³⁰

100. The Law Commission published its report *Cohabitation: the Financial Consequences of Relationship Breakdown* in July 2007. This report recommended the creation of a statutory scheme giving property rights to qualifying cohabiting partners against each other on relationship breakdown. The Law Commission's report *Intestacy and Family Provision Claims on Death*, published in December 2011, also included recommendations relating to cohabiting partners. In particular, that report recommended giving qualifying cohabitants the same entitlement as a spouse or civil partner on intestacy and giving cohabiting partners more rights under the Inheritance (Provision for Family and Dependents) Act 1975.
101. The Government announced in September 2011 that it did not intend to take forward the recommendations in the Law Commission's 2007 report in the current Parliament (2010-2015) because of major reforms already planned for the family justice system. In March 2013, the Government made a similar announcement regarding the cohabitation related recommendations in the 2011 report.

Termination of Tenancies for Tenant Default³¹

102. The Law Commission published this report in 2006 and it contains recommendations to reform the means by which a landlord can terminate a fixed term commercial or residential tenancy where the tenant has not complied with his or her obligations.
103. This is an important issue for many landlords and tenants of residential and commercial properties. With regard to commercial tenancies, the current law is difficult to use, especially for the lay person and the unwary practitioner. It does not support negotiated settlement and provides little protection for mortgagors and chargees.
104. The Government stated in the 2013-2014 report that it intended to reach a final decision on these recommendations in 2014. However, discussions with some stakeholders have highlighted concerns about the summary termination procedure proposed by the Commission. The Government is considering how these concerns might be overcome and intends to reach a conclusion as soon as practicable in 2015.

³⁰ *Cohabitation: The Financial Consequences of Relationship Breakdown* (LC307) (03.07.2007).

³¹ *Termination of Tenancies for Tenant Default* (LC 303) (31.10.2006).

Decisions taken not to implement

Administrative Redress: Public Bodies and the citizen³²

105. The purpose of this project was to review the law in relation to redress from public bodies for substandard administrative action. A key objective was to achieve the correct balance between fairness to aggrieved citizens and appropriate protections to public bodies and the public funds they use.
106. The Law Commission recommended that the Government collate and publish data on compensation paid by public bodies subject to a successful pilot. The Government has conducted a pilot with two departments. Based on the outcome of the pilots and wider changes to the Government's approach to reporting through the Simplifying and Streamlining Annual Report and Accounts project the Government will not be mandating that departments publish this information in their annual report and accounts. Where this information is of interest to the user of the annual report and accounts departments will, however, be encouraged to report on it.

³² Administrative Redress: Public Bodies and the Citizen (LC 322) (26.05.2010).

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