



**Law
Commission**
Reforming the law

Eleventh Programme of Law Reform



The Law Commission

(LAW COM No 330)

ELEVENTH PROGRAMME OF LAW REFORM

*Presented to Parliament pursuant to section 3(2) of the Law
Commissions Act 1965*

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THE LAW COMMISSION

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

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The terms of this report were agreed on 27 May 2011.

The text of this report is available on the Law Commission's website at www.lawcom.gov.uk.

LAW COMMISSION
ELEVENTH PROGRAMME OF LAW REFORM
CONTENTS

PART 1: INTRODUCTION	3
Background	3
Protocol between the Lord Chancellor and the Law Commission	3
The Law Commission's project selection criteria	4
Consultation	5
Confirmed projects for the Eleventh Programme	6
Further projects	7
Working with other Law Commissions	7
Wales	8
PART 2: ELEVENTH PROGRAMME PROJECTS	9
Introduction	9
Charity law – selected issues	9
Conservation covenants	10
Contempt	11
Data sharing between public bodies	12
Electoral law	14
Electronic communications code	15
European contract law	16
Family financial orders – enforcement	17
Misconduct in public office	18
Offences against the person	18
Rights to light	19
Taxis and private hire vehicles – regulation	20
Trade mark and design litigation – unjustified threats	21
Wildlife	21

PART 3: OTHER PROJECTS CONSIDERED	23
Projects deferred from the Tenth Programme	23
Other projects considered for the Eleventh Programme	24
APPENDIX A: LIST OF CONSULTEES	38

THE LAW COMMISSION

ELEVENTH PROGRAMME OF LAW REFORM

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

PART 1 INTRODUCTION

BACKGROUND

- 1.1 The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Law Commission is required to receive and consider proposals for law reform and to prepare and submit to the Lord Chancellor, from time to time, programmes for the examination of different branches of the law with a view to reform.
- 1.2 The Coalition Government has set new priorities for Government departments and a spending review designed to reduce the national budget deficit and introduce tighter budgets. The Eleventh Programme has been designed against this background.

PROTOCOL BETWEEN THE LORD CHANCELLOR AND THE LAW COMMISSION

- 1.3 Since the commencement of the Tenth Programme of law reform three significant changes have been introduced with the intention of increasing the number of Law Commission recommendations implemented by Government.
- 1.4 First, the Law Commission Act 2009 has introduced a requirement for the Lord Chancellor to prepare and lay before Parliament an annual report setting out the extent to which Law Commission proposals have been implemented by Government over the preceding year, including reasons why any proposal is not to be implemented or plans for future implementation. The first report was published on 24 January 2011.¹
- 1.5 Secondly, the House of Lords has approved a new procedure for the handling of Law Commission bills.² This procedure was adopted on a trial basis in April 2008 and used for the passage of two Acts deriving from Law Commission reports: the Perpetuities and Accumulations Act 2009 and the Third Parties (Rights Against Insurers) Act 2010. The House of Lords has now formally adopted the new procedure.

¹ Report on the implementation of Law Commission proposals (HC 719).

² Procedure Committee, First Report of 2007-8 (HL Paper 63) and Procedure Committee, Second Report of 2010-11 (HL Paper 30).

- 1.6 Thirdly, the Law Commission Act 2009 gave statutory backing to a Protocol between the Lord Chancellor and the Law Commission, setting out how the Government and Law Commission should work together on law reform. The Protocol was agreed in April 2010.³
- 1.7 The introduction to the Protocol sets out the joint aims of the Lord Chancellor and Chairman of the Law Commission to create law that is fair, modern, simple and accessible and to increase the momentum of law reform. The Protocol lays down the procedure for deciding on projects to be included in a programme of law reform; and on projects referred to the Commission by Ministers. It also sets out the role and procedures to be followed by both the sponsoring Government department and the Law Commission during the currency of a law reform project and after a project is completed.
- 1.8 This is the first programme of law reform to be developed under the terms of the Protocol.

THE LAW COMMISSION'S PROJECT SELECTION CRITERIA

- 1.9 When considering whether to include a project in the next programme of law reform, the Law Commission assesses each proposal against the following broad selection criteria:
 - (1) Importance: the extent to which the law is unsatisfactory (for example, unfair, unduly complex, inaccessible or outdated); and the potential benefits likely to accrue from undertaking reform.
 - (2) Suitability: whether the reform would be suitable to be put forward by a body of lawyers after legal research and consultation (this would tend to exclude subjects where the considerations are shaped primarily by political judgements).
 - (3) Resources: internal and external resources needed, and whether those resources are likely to be available; and the need for a good mix of projects in terms of the scale and timing so as to enable effective management of the programme.
- 1.10 The Protocol also requires consideration of:
 - (1) whether project-specific funding is available (if relevant);
 - (2) the degree of departmental support;
 - (3) whether there is a Scottish or Northern Irish dimension to the project that would need the involvement of the Scottish and/or Northern Ireland Law Commissions; and
 - (4) whether there is a Welsh dimension that would need the involvement of the Welsh Government.

³ Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission, Law Com No 321, 29 March 2010 (HC 499).

- 1.11 The Protocol has established a clearer system for ensuring that departments are supportive of the Law Commission's work in terms of future implementation. Where the Commission is considering including a project in a programme of law reform, the Commission notifies the Minister with relevant policy responsibility and, in deciding how to respond to the Commission, the Minister must bear in mind that, before approving the inclusion of the project in the overall programme, the Lord Chancellor will expect the Minister (with the support of the Permanent Secretary):
- (1) to agree that the department will provide sufficient staff to liaise with the Commission during the currency of the project (normally, a policy lead, a lawyer and an economist); and
 - (2) to give an undertaking that there is a serious intention to take forward law reform in this area (if applicable in the case of the particular project).
- 1.12 In discussion between the department and the Commission, the department will, insofar as is possible at this stage, provide views to the Commission on:
- (a) what it considers to be the most appropriate output for the project (for example, policy recommendations, a draft bill, draft guidance) and the likely method of implementation;
 - (b) any risks associated with that method of implementation which might lead to non implementation or significantly delayed implementation (for example, difficulties in obtaining legislative time if the method of implementation is legislation).
- 1.13 When considering projects for the Eleventh Programme, Law Commissioners did not carry out full impact assessments but considered the nature and extent of the problem identified and the costs, benefits and burdens of options for reform.

CONSULTATION

- 1.14 Consultation for the Eleventh Programme of law reform was opened on 21 June 2010 and ran until 15 October, extending the usual consultation period of three months to allow for the summer vacation. The Chairman wrote to judicial heads of divisions, judicial bodies, practising lawyers and legal academics, representative organisations in the business and voluntary sectors, local government and the police service. Individual letters were also sent directly from the Chairman to Secretaries of State, Ministers and other Members of Parliament, and from the Chief Executive to Permanent Secretaries and legal advisers across Whitehall.
- 1.15 In addition to these direct communications the Commission extended the invitation to a wider audience via the media, placing articles in, for example, Law Society Gazette, Family Law Week and Local Government Lawyer.
- 1.16 Stakeholders already in contact with the Law Commission were told of the consultation and the Commission's legal teams sought opportunities to promote the consultation while attending face-to-face events with potential consultees throughout the summer.

- 1.17 We offered consultees a choice of methods to submit their suggestions. We prepared and distributed a paper questionnaire, as well as providing an electronic version that could be completed on screen and sent to the Commission by email. For the first time, an online facility was also provided on the Law Commission website, allowing consultees to submit their responses directly over the internet.
- 1.18 Wide consultation and the provision of an online questionnaire proved effective in eliciting proposals. Proposals were received from over 200 consultees and most used the online questionnaire. There were a small number of projects proposed by what appeared to be organised groups but the great majority of proposals were made by only one or two consultees.

CONFIRMED PROJECTS FOR THE ELEVENTH PROGRAMME

- 1.19 Commissioners have carefully applied the criteria set out above and selected the following projects, which they believe form a coherent and promising programme of law reform.

Name of project	Lead department	Project key dates
Charity law – selected issues	Cabinet Office	Project to commence late 2012 Consultation paper late 2013 Final report and draft Bill late 2015
Conservation covenants	Department for Environment, Food and Rural Affairs	Project to commence early 2012 Consultation paper late 2012 Final report and draft Bill late 2014
Contempt	Ministry of Justice	Project to commence autumn 2013 Consultation paper winter 2014 Final report winter 2016
Data sharing between public bodies	Ministry of Justice	Project to commence late 2012 Consultation paper summer 2013 Scoping report late 2013
Electoral law	Cabinet Office	Scoping report early 2012 Consultation paper summer 2014 Final Report and draft Bill early 2017.
Electronic communications code	Department for Culture, Media and Sport	Project to commence autumn 2011 Consultation paper autumn 2012 Final report spring 2013
European contract law	Ministry of Justice and Department for Business, Innovation and Skills	Project commenced 1 April 2011 Advice to be published autumn 2011

Name of project	Lead department	Project key dates
Family financial orders – enforcement	Ministry of Justice	Project to commence autumn 2012 Consultation paper autumn 2013 Final report autumn 2015
Misconduct in public office	Ministry of Justice	Project to commence early 2014 Consultation paper early 2015 Final report summer 2016
Offences against the person	Ministry of Justice	Project to commence winter 2012 Scoping paper autumn 2013
Rights to light	Department for Communities and Local Government	Project to commence spring 2012 Consultation paper spring 2013 Final report and draft Bill spring 2015
Taxis and private hire vehicles – regulation	Department for Transport	Consultation paper summer 2012 Final report and draft Bill summer 2014
Trademark and design litigation – unjustified threats	Intellectual Property Office	Project to commence spring 2012 Consultation paper winter 2012 Final report spring 2014
Wildlife	Department for Environment, Food and Rural Affairs	Consultation paper summer 2012 Final report and draft Bill summer 2014

FURTHER PROJECTS

- 1.20 The Commission may undertake additional work during the course of the Eleventh Programme, which will be either projects referred directly by Ministers or advisory work for Government.⁴

WORKING WITH OTHER LAW COMMISSIONS

- 1.21 The Law Commission's jurisdiction covers the law of England and Wales, but not the law of Scotland nor the law of Northern Ireland. In some areas, the existing law operates on a GB or UK basis, and it is appropriate for us to undertake joint projects with the other Commissions when seeking to reform it. In the current programme, for instance, we expect the project on electoral law to be a tripartite joint project with the Scottish and Northern Ireland Law Commissions.

⁴ Law Commissions Act 1965, ss 3(1)(a) and (e).

WALES

- 1.22 The Law Commission covers the jurisdiction of England *and* Wales. With the advent of devolved government in Wales, we seek to ensure appropriate involvement by the Welsh political institutions and Welsh stakeholders. This is particularly important where the area of policy involved has been devolved, where we may be addressing recommendations for implementing our final report to the Welsh Government as well as to the UK Government. But there may also be specific Welsh dimensions in projects involving largely or wholly devolved law, and we look to the Welsh Government to assist us in identifying and considering these issues.

PART 2

ELEVENTH PROGRAMME PROJECTS

INTRODUCTION

- 2.1 In this Part we set out the new projects we will be undertaking. Some of these projects are already well defined; others will be clarified only after a scoping study. In each case, however, Commissioners have agreed that there is a need for the project with the lead Government department.

CHARITY LAW – SELECTED ISSUES

- 2.2 This project will examine a range of issues concerning the constitution and regulation of charities and their activities. It will involve a targeted review of areas of charity law that have been identified as causing uncertainty and carrying disproportionate regulatory or administrative burdens, and which are suitable for consideration by the Law Commission.
- 2.3 There are about 250,000 charities in England and Wales, with a combined income of over £53 billion and combined investments of over £77 billion.¹ Charity law is made up of a mixture of common law principles and statutory provisions. Charities are often established as trusts for charitable purposes but there are several other possible vehicles. For example, a charity may be structured as an unincorporated association, a charitable company, an industrial and provident society or a corporation. A charitable corporation may currently be established by Royal Charter or by statute.
- 2.4 Part of this project will focus on issues arising in relation to charitable corporations. First, concerns have been raised about uncertainties in the law regarding charitable corporations established by Royal Charter. Clarification is needed in relation to the basis on which such bodies hold property, the means by which the charter is amended and whether the corporate status of such bodies confers limited liability. Secondly, we intend to review the means by which charities with statutory governing documents can have any of the provisions made by the statute amended. This currently requires a positive or negative Parliamentary resolution, leading to cost and delay even when the change is relatively minor; this is a potentially disproportionately burdensome requirement for both the charity and Government departments involved in the change.

¹ There are over 180,000 registered charities (over 160,000 of which are main charities), and it is estimated that there are 80,000 charities which do not have to register with the Charity Commission. The income and investments figures are taken from the Charity Commission's figures for registered charities.

- 2.5 The content of the rest of the project will be informed by the forthcoming review of the Charities Act 2006. The review is due to be initiated by Government this year. Some of the points arising from it may be suitable for investigation by the Law Commission and, on agreement between the Law Commission and the Office for Civil Society in the Cabinet Office, will be referred to us and become part of this project. These will be issues of law reform that require legal research and consultation with a focus on the better working of the law and a balancing of legal and practical considerations as to the impact of the law in practice. For example, issues have been identified in relation to the disposal of charity land and the operation of the charity merger provisions in the Charities Act 2006.
- 2.6 We intend to commence this project in late 2012, and to publish a consultation paper in late 2013. After analysing consultation responses and coming to conclusions on the way forward, we will review the future development of the project with the Office of Civil Society in summer 2014. If both the Commission and Government agree at that point that further work is appropriate, we will aim to produce a final report, with draft bill, by late 2015. If, at the review, either party decides that the project should not continue, we will produce a narrative report of our conclusions in late 2014.

CONSERVATION COVENANTS

- 2.7 Our recent work on the general law of easements, covenants and profits à prendre considered whether it should continue to be the case that a restrictive obligation burdening land must benefit other nearby land. We concluded that it should.
- 2.8 However, there are circumstances where this limitation may not be appropriate. One is where a conservation objective would be met if an obligation to use, or not use, land in a particular way is enforceable against an owner of land despite the benefiting party having no neighbouring land. This project will investigate the case for a new statutory interest in land – a conservation covenant – that would enable such interests to be enforced by a particular body, or class of bodies, rather than by a neighbour.
- 2.9 The project will consider which bodies should be able to enforce conservation covenants in the event that they were introduced; we expect these to include government and public bodies, local authorities and conservation charities. We will also investigate what conservation objectives would be of sufficient importance to bind land. For example, conservation covenants could require the renovation and maintenance of a monument, protect a rare habitat or provide public access to a stately home.

- 2.10 The law already contains some specific provisions enabling covenants to be enforced by specified bodies rather than by the owner of neighbouring land.² These provisions have been implemented on a piecemeal basis and often without a framework establishing precisely how the interest should function or be enforced. Our reform would consider, for England and Wales, whether these are fit for purpose or whether they should be incorporated within a wider, purpose-built, regime.
- 2.11 The benefits of this reform would be felt by the bodies who would be able to take advantage of the regime through a more efficient and flexible system than is available under the existing law. This would, in turn, benefit the public – both the individuals who make use of the sites protected by conservation covenants and, more generally, communities and society at large by protecting cultural, ecological and environmentally important resources.
- 2.12 We intend to commence this project at the start of 2012 and will aim to publish a consultation paper before the end of that year. After analysing consultation responses and coming to conclusions on the way forward, we will review the future development of the project with the Department for Environment, Food and Rural Affairs in summer 2013. If both the Commission and Government agree at that point that further work is appropriate, we will aim to produce a final report, with draft bill, by late 2014. If, at the review, either party decides that the project should not continue, we will produce a narrative report of our conclusions in late 2013.

CONTEMPT

- 2.13 Recent well-publicised cases have highlighted shortcomings in the current law on contempt committed by way of publication of information about imminent or active proceedings. There are two different forms of this type of contempt, one at common law and the other, a strict liability offence, in the Contempt of Court Act 1981. However, despite a number of initiatives, including the Lord Chief Justice's interim guidance on the use of social media in court proceedings, many aspects of the law have failed to keep pace with cultural and technological advances that mean information about trials can be easily published on the internet. This poses particular problems since, once material gets onto the internet, the original publisher can very easily lose control of it, meaning that precautions he or she takes to minimise impact on a trial may be ineffective. In addition, the growth in the use of blogs and social networking sites means that members of the public have the opportunity to publish opinions and information about imminent and on-going criminal proceedings that can reach a wide audience.
- 2.14 The law in this area is further complicated by the fact that there are a number of offences scattered across different statutes relating to publication of specific information in criminal proceedings. The number of and variations between these offences make the law in this area unnecessarily complex.

² Examples can be found in the Ancient Monuments and Archaeological Areas Act 1979, s 17; the Natural Environment and Rural Communities Act 2006, s 7(3); the Forestry Act 1967, s 5; the Conservation of Habitats and Species Regulations 2010 (SI 2010 No 490), reg 16(4); and the Countryside Act 1968, s 15(4).

- 2.15 The powers of the criminal courts to deal with contempt committed in the face of the court or by way of breach of court order are also unsatisfactory. While the powers of the magistrates' courts are found in statute, those of the Crown Court and Court of Appeal come from the common law. There is uncertainty as to the scope of the common law powers, gaps in the statutory provisions and unjustifiable inconsistency between them.
- 2.16 Although the Criminal Procedure Rule Committee has made important progress in clarifying the position, the substantive law remains unclear and the Committee itself referred this topic for consideration by the Law Commission as an item in the Eleventh Programme. The following areas of difficulty have been identified: (1) It is uncertain whether the Crown Court and Court of Appeal have the power to detain or bail a person pending determination of an allegation of contempt. (2) The magistrates' courts do not have the power to deal with contempt in the face of the court the day after it occurred and to compel attendance at such a hearing. (3) While the Crown Court and Court of Appeal have the power to suspend a committal to custody, it is uncertain whether the magistrates' courts have the same power.
- 2.17 This project will consider how the current law on contempt committed by way of publication should be reformed to ensure that it takes into account and deals effectively with the way people use the internet and other modern technology. It will also rationalise and simplify the various criminal offences relating to publications and the existing procedural rules to ensure that the courts have the powers they need to deal most effectively with behaviour amounting to contempt.
- 2.18 This project will commence in the autumn of 2013, with a view to publishing a consultation paper at the end of 2014 and a final report in the winter of 2016.

DATA SHARING BETWEEN PUBLIC BODIES

- 2.19 The Data Protection Act 1998 regulates when and how public authorities can "process" data, which includes sharing data with other public bodies. Data protection is governed by European law. The European Commission is currently reviewing the EU legislation, with a view to revising it shortly. But once it is possible to share data compliantly with the 1998 Act (or any replacement), public bodies nevertheless need a *power* to lawfully share data. Data sharing is a matter of domestic law. A power might be available to a Minister under prerogative powers, or there may be statutory powers. There are persistent reports of problems with data sharing between public bodies. That there is at least the perception of a problem is attested to by the fact that Parliament has on a number of occasions chosen to legislate to create statutory "gateways", giving specified public bodies express powers to share data.
- 2.20 But it is not clear what the nature of these perceived obstacles to data sharing is. It is possible that there are substantive law obstacles to data sharing. However, many of the examples we have seen of failures to share data do not seem to indicate a failure in the substantive law.

- 2.21 Another explanation may be that, even if the substantive law does allow for appropriate sharing, it is subject to such widespread misunderstanding and misapplication that we should conclude that there is something fundamentally wrong with the *form* of the law.
- 2.22 Or it might be the case that there is simply a gap in education, guidance and advice on the law.
- 2.23 Before any appropriate remedial law reform action can be taken, therefore, it is necessary to investigate and understand whether there is a problem and, if there is, what the nature of that problem is. Some of the answers to these questions can be resolved by detailed legal research. However, much relies on the resolution of factual questions.
- 2.24 We will therefore undertake a consultative scoping project, with the aim of clarifying the existence and nature of the problem, and recommending further action.
- 2.25 In the case of other projects, we may be persuaded that there is a problem which will need to be addressed by law reform, but embark on a scoping exercise to delineate the exact parameters of a substantive law reform project. In this case, however, the scoping exercise must establish whether there is a problem, and if there is, its nature. Further, it is impossible to say in advance of the scoping project whether the remedial action necessary is appropriate for the Law Commission or should be undertaken by another body. Accordingly, this Programme of Law Reform proposes only a consultative scoping project. If that project recommends a further, substantive law reform project, we would expect that to be carried out on a reference from the Ministry of Justice.³
- 2.26 There is some evidence that successful data sharing by public bodies can lead to economies. But, on the basis described above, we do not know in advance of the project whether these benefits could accrue without changes in the law or not. The collection of data on the costs and benefits of possible reforms will form part of the subject matter of the project.
- 2.27 As a scoping exercise, the project can be adequately carried out on an England and Wales only basis. There will be other jurisdiction issues, to the extent that many public bodies are UK or GB wide, and others operate solely in either Scotland or Northern Ireland, in a full-scale law reform project. Those issues would be addressed if the time came for the reference of such a project.
- 2.28 The project will commence in late 2012 and last for about a year, with a consultation exercise taking place in 2013 and a scoping report at towards the end of 2013.

³ Under the Law Commissions Act 1965, section 3(1)(a).

ELECTORAL LAW

- 2.29 The law relating to elections is fragmented between multiple statutes governing different types of elections and different aspects of the electoral process. As an example, the May 2010 elections required electoral administrators to be familiar with up to 25 different pieces of legislation, some of which were UK wide and others which related only to component parts of the UK. When elections are held together, as they frequently are, complicated combination rules govern which processes must be combined and how the combination should operate. The Electoral Commission's guidance on the legislative framework runs to many hundreds of pages. This complexity can lead to problems in properly amending the law. In 2006, for instance, one set of rules was amended to allow a joint description where a candidate was standing for two parties but the corresponding rules on emblems (party logos on the ballot paper) were not amended. This meant that candidates standing jointly were deprived of emblems. Similarly, the history of amendments to move to a "rolling register" has involved four different Acts, with the end result that glitches still remain.
- 2.30 There are pointless inconsistencies or duplications between different elections. The core problem is that each type of election is independently legislatively created. The result is different rules about matters such as the number of nominees for candidates and on the verification of ballot papers and counts.
- 2.31 There remain difficulties of interpretation with some basic concepts in electoral law, such as the notion of "residency", and the ambit of the duty of registration officers in conducting the annual electoral roll canvass.
- 2.32 The procedures for electoral criminal offences, where proceedings are initiated by individuals on a petition, are unique and appear outdated, as are the mixture of orders available to the court. It may well be appropriate to distinguish between true electoral criminality, and provide for its prosecution using the ordinary processes of the criminal law, and essentially public law functions, which could be dealt with by way of judicial review or statutory appeal.
- 2.33 There are questions as to the appropriateness of the balance between primary and secondary legislation. One example is that the rules relating to Parliamentary elections are scheduled to an Act, with all the concomitant difficulty of amendment, whereas those for the Scottish and Welsh devolved legislatures and for local government elections are in secondary legislation.
- 2.34 Finally, much of the legislation does not take account of technological advance, requiring that various things be done in person or by hand, when there is now no obvious necessity for such steps.
- 2.35 There will be monetised costs in the creation of guidance on the law, the provision of legal advice at both national and local levels, staff costs in administering complex, confusing and unnecessary rules and litigating difficult or unclear provisions. A move from a fragmented, difficult to understand and illogical system to a simplified, modern system should therefore be capable of achieving savings.

- 2.36 However, we would not undertake a project in the area, let alone one on this scale, on the basis of savings in administrative functions. Fundamentally important are the real, but not-monetisable, costs of the current system and benefits of a modern system. These include the alienation of the electorate if it is hard or complicated to register to vote, to receive a postal or proxy vote, or to vote at all, or to have to use a confusing or misleading voting paper. Should there be a serious breakdown in electoral administrative arrangements, it could have very serious reputation costs; and in some circumstances could lead to or accentuate political uncertainty.
- 2.37 The Government is currently undertaking significant legislative changes to various elements of the electoral system, and these are unlikely to be completed before early 2014. We will, however, know well in advance the likely direction of Government policy, and by and large the fundamental problems are unaffected by the legislative programme.
- 2.38 We will therefore be undertaking a project in three main phases, with review points between phases. The first phase will be a comprehensive scoping exercise, incorporating a consultation phase. The consultation period will be in the second half of 2012, with a scoping report published at the end of that year.
- 2.39 If both the Commission and the Government decide at that point to move to a substantive project, we will aim to produce a detailed consultation paper for consultation after the May 2014 elections, at which time the Government's immediate changes to the system will have been enacted. We will then finalise our substantive law reform recommendations in mid-2015. There would then be a further review point. If both Commission and Government decide to continue with the project, we will instruct counsel at the end of 2015, with a view to publishing a final report and bill in early 2017. This timetable should allow for pre-legislative scrutiny of the resulting bill during the 2016 to 2017 Parliamentary session, with final legislation in the session starting in May 2017, allowing implementation well in time for a general election in May 2020.
- 2.40 There are important and distinctive issues in relation to elections in both Scotland and Northern Ireland, including devolved elections in Scotland. We therefore expect the project to be a tri-partite joint project with the Scottish and Northern Ireland Law Commissions. There is also a significant Welsh dimension which will require close engagement with the Welsh Government.

ELECTRONIC COMMUNICATIONS CODE

- 2.41 The Electronic Communications Code sets out a statutory regime that governs the rights of electronic communications network providers, and the providers of network conduits, to install and maintain infrastructure on public and private land.
- 2.42 Often, the necessary rights to access private land are agreed with the landowner. However, the provider has the power to apply to the court for an order to dispense with the need for agreement. The court can determine the scope of the rights in favour of the provider and make a financial award in favour of the landowner.

- 2.43 This project will be a general review of the Code and examine whether the Code remains fit for purpose. In particular, it will address two key issues. First, the current drafting of the Code has been criticised by the courts and practitioners as being unclear and inaccessible. The project would aim to identify and overcome these problems, so as to provide a more transparent and user-friendly system. The project would also consider the means by which disputes are resolved, with a view to offering a proportionate and efficient process delivering timely outcomes.
- 2.44 The Law Commission's work will form part of Government's wider review of the Communications Act 2003 and how best to deliver the Government's target of creating the best superfast broadband network in Europe by 2015.
- 2.45 The Electronic Communications Code applies across the UK. Our review will be confined to England and Wales only, but with the intention of obtaining and passing on to Government information on any Scottish or Northern Irish issues. We will be liaising with the Scottish and Northern Irish Law Commissions as to how that can best be achieved.
- 2.46 We intend to commence this work in September 2011 and publish a consultation paper around 12 months later. We will publish a report of our recommendations to the Department for Culture, Media and Sport in spring 2013.

EUROPEAN CONTRACT LAW

- 2.47 The European Commission is concerned that differences in contract law between member states impede the workings of the internal market. It is thought that legal differences make it difficult for small businesses to set up websites to sell across borders. Furthermore, small businesses from different countries who wish to do business with each other may argue about which system of law should govern their contract.
- 2.48 The European Commission has therefore assembled an expert group to produce an optional instrument (OI) to serve as a 29th set of applicable law under which parties can contract. The Expert Group published its findings in May 2011, and the European Commission will likely reach a decision on its implementation by the end of 2011.
- 2.49 The adoption of a European OI would have potentially dramatic consequences. Firstly, the OI is designed to bypass existing rules of private international law which preserve mandatory rules in member states. It is therefore important to assess the extent to which the OI would undermine UK consumer protection law. Secondly, the principles would need to be tested in the courts: there is concern that contract principles would evolve differently between states, with consistency only being achieved once the case reaches the Court of Justice of the European Union. More widely, the OI may deviate from English contract law in some long-settled areas, and this would have implications for both consumer and business-to-business contracts.
- 2.50 This project is being conducted jointly with the Scottish Law Commission. The MoJ and BIS have asked the two Commissions to provide an Advice on the advantages and disadvantages of an OI for UK law, to enable the UK to negotiate

constructively with its European partners. The project started in April 2011 and will be completed in October 2011.

FAMILY FINANCIAL ORDERS – ENFORCEMENT

- 2.51 This project will consider the various means by which court orders for financial provision on divorce or the dissolution of a civil partnership and orders concerning financial arrangements for children are enforced. It will not touch upon the basis for claims, but will consider the legal tools available to force a party to comply with the financial orders made under the Matrimonial Causes Act 1973, the Civil Partnership Act 2004 and the Children Act 1989.
- 2.52 The current law has been described as “hopelessly complex and procedurally tortuous”.⁴ The available enforcement mechanisms are contained in a wide range of legislation. Members of the public, legal practitioners and at times even the courts have difficulty understanding their interaction, and the current law prevents some sensible arrangements being put in place.
- 2.53 The aim of the project would be to offer a clear set of rules and the opportunity to access the full range of enforcement options in the same court and without the need for multiple hearings. It is important that the court has the ability to consider enforcement against a wide range of assets and that the enforcement regime works effectively when small amounts are owed, so that parties are not forced to wait until large arrears are due before enforcing orders in their favour.
- 2.54 In 2010, the courts disposed of more than 80,000 applications for ancillary relief (the settlement of property and financial matters related to a divorce or the dissolution of a civil partnership). In many cases, orders for financial provision are obtained at significant financial and emotional cost to the parties involved. Further, and sometimes long-term, financial hardship is caused to adults and children if orders cannot then be enforced. Difficulty in enforcing these orders also diminishes individuals’ faith in the justice system and risks bringing the system into disrepute.
- 2.55 The aim of reform would be to ensure that money that has been ordered to be paid for the support of children and adults is paid. It would also be to limit the damaging effects of ongoing litigation on families, enabling couples who are divorcing or separating to move on with their lives. Reform that made the enforcement process easier and more intuitive would assist individuals and has the capacity to ease pressure on the court system and legal advice agencies.
- 2.56 We will commence this project on completion of our work on Marital Property Agreements. We aim to publish a consultation paper 12 months after commencement. We will review, in discussion with the Ministry of Justice, how to take the project forward in the light of consultation responses around three months after the close of consultation. If the Commission and Government agree at that point that further work is appropriate, we will aim to produce a final report, with draft bill, within a further 18 months. If, at the review, either party decides that the project should not continue, we will produce a narrative report of our conclusions.

⁴ Family Law Bar Association response to the 11th Programme Consultation.

MISCONDUCT IN PUBLIC OFFICE

- 2.57 Misconduct in public office is a common law offence but there is no exhaustive definition. As a result the boundaries of the offence are uncertain and despite there being relatively few prosecutions each year a disproportionately high number of those cases are the subject of appeal. Areas of uncertainty identified in recent appeals include, the fact that the fault element of the offence varies according to the conduct that is the subject of prosecution and that there is uncertainty as regards the liability of private individuals who discharge public functions.
- 2.58 In 2010 the Committee on the Issue of Privilege (Police Searches on the Parliamentary Estate) recommended that the Law Commission revisit its 1997 proposal to create a statutory offence.
- 2.59 This project is most suitable for treatment by the Law Commission. It will involve the simplification, clarification and codification of a common law offence. It will also ensure that the law takes into account practices whereby traditionally public functions are discharged by private individuals and volunteers to ensure that the scope of the offence is neither over- nor under-inclusive.
- 2.60 Work will commence in early 2014. A consultation paper will be published in early 2015 and a final report in the summer of 2016.

OFFENCES AGAINST THE PERSON

- 2.61 The Offences Against the Person Act 1861 is widely recognised as being outdated. It uses archaic language and follows a Victorian approach of listing separate offences for individual factual scenarios, many of which are no longer necessary (see for example the section 17 offence of impeding a person endeavouring to save himself from a shipwreck).
- 2.62 The structure of the Act is also unsatisfactory as there is no clear hierarchy of offences and the differences between sections 18, 20 and 47 are not clearly spelt out in the Act. Section 20 (maliciously wounding or inflicting grievous bodily harm) is seen as more serious than section 47 (assault occasioning actual bodily harm) but the maximum penalty (five years) is the same. Furthermore the *actus reus* for sections 18 (intentionally wounding or causing grievous bodily harm) and 20 appear to be the same apart from the distinction between “causing” and “inflicting”, which is notoriously difficult to draw.
- 2.63 This project will therefore aim to restructure the law on offences against the person, probably by creating a structured hierarchy of offences, as well as modernising and simplifying the language by which these offences are defined. A further possibility would be to tie this new hierarchy of offences to mode of trial in order to clear up some of the procedural discrepancies.
- 2.64 The Ministry of Justice has asked the Commission to carry out a scoping exercise as a first step towards a project to reform the law on offences against the person. Work will commence in the winter of 2012 with the aim of presenting a scoping paper in the autumn of 2013.

RIGHTS TO LIGHT

- 2.65 A “right to light” is an easement that gives a landowner the right to receive light through defined apertures (most commonly windows) in buildings on their land. As with all easements, a right to light can be said to benefit the property that receives the light and burden one or more other properties over which the light passes. The owners of the burdened properties cannot substantially interfere with the right – for example by erecting a building on their land in a way that blocks the light – without the consent of the benefiting owner.
- 2.66 Rights to light will often have been acquired by prescription; in other words, over time and without a formal grant. The enjoyment of the light through a window, without interruption or consent, for a period of 20 years will, in most cases, give rise to the right.
- 2.67 Rights to light are valuable: they give landowners, and their purchasers, certainty that natural light will continue to be enjoyed by their properties – increasing its utility, value and amenity. However, because they can arise by prescription, it may be that those burdened by them (and indeed those benefiting from them) are unaware of their existence.
- 2.68 The existence of a right to light is most often an issue where a burdened landowner develops, or plans to develop, the property. Where a development interferes, or would, if constructed, interfere with a neighbour’s right then the benefiting owner is likely to be able to prevent its construction or, in some circumstances, to have the development demolished. Where a development has taken place, but a court does not order its demolition, the court may award substantial damages to the benefiting owner instead. These remedies are available regardless of whether the development has planning permission.
- 2.69 We examined the general law of easements in our recent project, “Making Land Work: Easements, Covenants and Profits à Prendre”. This project will examine specific issues arising in relation to rights to light.
- 2.70 In particular, it will investigate whether the current law by which rights to light are acquired and enforced provides an appropriate balance between those benefiting from the rights and those wishing to develop land in the vicinity. It will examine the interrelationship between the planning system and rights to light, and it will examine whether the remedies available to the courts are reasonable, sufficient and proportionate.
- 2.71 We intend to commence this project in early 2012, publishing a consultation paper in early 2013. We will, in discussion with the Department for Communities and Local Government, review how the project should be taken forward at the time of publishing our preliminary proposals and after analysing the responses to our consultation. If both the Commission and Government agree that further work is appropriate, we will aim to produce a final report, with draft bill, in late 2014 or early 2015. If either party decides at an earlier stage that the project should not continue, we will produce a narrative report of our conclusions.

TAXIS AND PRIVATE HIRE VEHICLES – REGULATION

- 2.72 Taxi-cabs (“hackney carriages”) are a highly regulated market, and have been since Victorian times (or earlier – some controls were first imposed under the Stuarts). Private hire vehicles have been regulated since the 1970s. There are distinct legal systems for London, Plymouth and the rest of England and Wales; and different systems for taxi-cabs and private hire vehicles. Outside London, local authorities are the licensing authorities for both taxi-cabs and private hire vehicles. In London, licensing is now the responsibility of Transport for London. Licensing authorities regulate the quantity of taxi-cabs and the fares they can charge, and, for both taxi-cabs and private hire vehicles, the quality of services, including the safety of vehicles and the fitness of drivers. Drivers and vehicles must be licensed, and, in respect of private hire vehicles, there must also be a licensed operator.
- 2.73 The first level of reform would be to reduce the sheer bulk, complexity and inconsistency of the regulatory systems. Central concepts like “plying for hire” have caused considerable problems in the past. There are pointless geographical inconsistencies on such matters as whether a taxi-cab driver needs a separate private hire licence, and whether the vehicle can be used for leisure purposes by its owner/driver. Secondly, there is a need to modernise to reflect technological change – private hire licensing, for instance, is posited on a geographically fixed operator with premises where bookings are made. Finally, the fundamental features of the regulatory system are in need of reconsideration – the separate systems for taxi-cabs and private hire vehicles, the identity of the licensing authorities, the number and nature of licenses and whether all forms of regulation are still necessary.
- 2.74 This project engages economic and regulatory theory. It will be fundamentally de-regulatory, in the sense that it will seek to question the necessity for the various strands of the current regulatory regime, and seek to reformulate those that are necessary in the light of modern understandings of the most efficient and efficacious forms of regulation.
- 2.75 The taxi and private hire vehicle market had an annual turnover of above £2.2 billion in 2003. It is likely that a modernised and simplified system of licensing will reduce the costs of the licensing system to both local authorities and market participants themselves. However, the realisation of these potential savings would depend on decisions to be taken on the key regulation reform issues which will constitute the substance of the project.
- 2.76 We expect the project to take three years, with a consultation period in the second half of 2012.
- 2.77 The project will require close working with the Welsh Government, which is responsible for local government generally and for transport facilities.

TRADE MARK AND DESIGN LITIGATION – UNJUSTIFIED THREATS

- 2.78 It is important for the law to provide a balance between those who seek to protect their intellectual property rights and those who receive unjustified threats of intellectual property litigation. To this end, the law currently seeks to protect traders against some unjustified threats of trade mark or design litigation, especially where threats are made to third parties who may decide not to stock a product rather than become embroiled in expensive litigation. However, these protections have become problematic. The relevant statutory provisions use a wide concept of a “threat”. It is difficult to discuss whether an IP right has been violated without that being deemed a tacit threat. This serves to encourage litigation, in contrast to the culture promoted by the Civil Procedure Rules, which seek to promote settlement and frank pre-action conduct between parties.
- 2.79 Moreover, not only are rights holders themselves potentially liable, their legal advisors and employees too are liable for making threats. In the case of legal advisers, the rules create an unhelpful ethical dilemma that may impede their ability to give effective advice to their clients.
- 2.80 This project will consider whether to repeal, reform, or extend four provisions that impose liability to pay damages on the makers of an unjustified threat of certain types of intellectual property (IP) litigation. The provisions are: section 26 of the Registered Designs Act 1949; section 253 of the Copyright, Designs and Patents Act 1988; section 21 of the Trade Marks Act 1994; and paragraph 6 of The Community Trade Mark Regulations 1996.⁵
- 2.81 The threat provisions in patent litigation were reformed in 2004, amending section 70(4) of the Patents Act 1977, and we will consider how these reformed provisions are operating in practice.
- 2.82 We will work closely on this project with the Intellectual Property Office in consulting on the operation of the provisions and making recommendations for reform. The project will not draft legislation. It is intended to start in April 2012 and finish in March 2014.

WILDLIFE

- 2.83 The current law regulating human dealings with wildlife is spread over many statutes going back to (at least) the early nineteenth century. Initially, the law was primarily concerned with hunting and fishing (and poaching). As time has advanced, it has also dealt with habitat modification (burning and clearing), the control of pest species, protection from cruel methods of capture and killing, and now conservation (including the re-introduction of departed native species and the removal of non-native species).

⁵ SI 1996 No 1908.

- 2.84 The result is a legal structure made up of succeeding geological strata of legislation with no coherent design. Older legislation reflects previous policy standpoints, often very much at variance with modern approaches. There is a preponderance of primary legislation, much of which has not been amended to reflect modern conditions. Conversely, the principal modern Act – the Wildlife and Countryside Act 1981 – has become so amended as to be difficult for the non-lawyer to use.
- 2.85 Law reform in this area would seek to provide a modernised and simplified framework, with an appropriate balance between primary and secondary legislation, and guidance. It would involve some consideration of criminal offences associated with the regulation of wildlife. There will also be a significant European Law dimension. It is necessary to ensure both that the current law is compliant with EU law requirements and that it is capable of easy amendment to reflect new requirements.
- 2.86 Wildlife law touches on considerable economic interests, and therefore inefficiency in its operation can have widespread economic impacts. Natural England estimate that game shooting alone contributed about £1.6 billion to the UK economy and supported the equivalent of 70,000 full time jobs in 2006. If there are significant inefficiencies in the means by which some animals are protected, they would have important impacts. A better system of licensing in relation to wildlife would be likely to result in administrative savings for Natural England. The annual budget for these services is currently £3 million. Filling in applications for licences is expensively time consuming for farmers and members of the public.
- 2.87 After an initial internal scoping process, we will produce a consultation paper in the second half of 2012. After analysing the results and coming to conclusions on the way forward, we will share the results with Department for Environment, Food and Rural Affairs with a view to reviewing the future development of the project in March or April 2013. If both Commission and Government agree at that point that the project should continue, we will aim to produce a final report, with draft bill, by mid-2014. If, at the review, either party decides that the project should not continue, we will produce a narrative report of our conclusions in about May 2013.
- 2.88 This project concerns the law of England and Wales. Some aspects of the law relating to wildlife is devolved to Wales while some remains the responsibility of the UK Government. We will aim to work closely with the Welsh Assembly Government on the development of our proposals.

PART 3

OTHER PROJECTS CONSIDERED

PROJECTS DEFERRED FROM THE TENTH PROGRAMME

- 3.1 Two projects were deferred from the Tenth Programme of law reform in 2008 for consideration as part of the Eleventh Programme of law reform: feudal land law and the transfer of title to goods by non-owners. Both of these projects were considered again by Commissioners for inclusion in the Eleventh Programme of law reform and Commissioners decided not to include either project.

Feudal land law

- 3.2 This project formed part of the Law Commission's Ninth Programme. The project was to consider the residual feudal elements that remain part of the law of England and Wales. The project was left out of the Tenth Programme on the basis that, although Commissioners remained of the view that this is an important area of the law suitable for consideration by the Law Commission, the extent and nature of the problems presented by competing law reform work suggested that greater public benefit would flow from conducting those projects before a review of feudal land law. The project was therefore deferred for consideration as part of Eleventh Programme.
- 3.3 Commissioners have again taken the view that other proposed law reform projects offer the potential for greater public benefit than work on feudal land law.

Transfer of title to goods by non-owners

- 3.4 This project was also included in our Ninth Programme. The project would consider circumstances where a person buys an item in good faith only to discover that the seller did not own it, or that it is subject to a claim by a third party. The basic rule is summed up by the maxim "*nemo dat quod non habet*" (one cannot give what one does not have). However, the rule is subject to an array of piecemeal exceptions and has been criticised as overly harsh on innocent buyers. The issues involved in this project remain controversial.
- 3.5 The project was not taken up in the Tenth Programme as there was little enthusiasm within Government or industry for reform, following the Companies Act 2006. This remains the case.
- 3.6 These projects will not be deferred for consideration as part of the Twelfth Programme of law reform. They may, of course, be proposed afresh at that stage.

Other projects

- 3.7 Of the projects considered for the Tenth Programme, five met the criteria for importance and also had strong support, but could not be included. At that time, we reported that some of these projects merited consideration for the Eleventh Programme although these projects were not formally deferred to the Eleventh Programme. The projects were:

- (1) Shari'a compliant home purchase products.

- (2) Ancillary relief on divorce; section 25 of the Matrimonial Causes Act 1973.
- (3) Agency workers.
- (4) Intellectual property law.
- (5) Estate agency regulation.
- (6) Security interests granted by unincorporated businesses.

3.8 Where fresh proposals were submitted to consider these projects for the Eleventh Programme, they were investigated and considered by Commissioners, but not otherwise. No proposals were received to review the law relating to the regulation of estate agents or security interests granted by unincorporated businesses. Islamic finance was referred to by HM Land Registry as part of a long list of issues that could be considered as part of a comprehensive review of mortgage law.

3.9 Commissioners considered a review of ancillary relief on divorce, but reached the same decision as they had done when formulating the Tenth Programme. A reform project in this area would be a substantial undertaking and we do not consider the project suitable for the Law Commission without strong Government support.

3.10 Several projects were proposed in the field of intellectual property law, including the extension of the law of conversion to intellectual property rights and extending representative actions to enforce intellectual property rights. The Intellectual Property Office gave priority to reform of the law of unjustified threats in trademark and design litigation and that project will be taken forward in the Eleventh Programme.

3.11 Reform of aspects of employment law and employment tribunal procedure was proposed by a number of consultees, including a review of the law relating to agency workers. Although this is an important area and may well be suitable for Law Commission reform, the Department for Business, Innovation and Skills are currently undertaking a review of employment law and all proposals have been passed on to them for consideration.

OTHER PROJECTS CONSIDERED FOR THE ELEVENTH PROGRAMME

3.12 In this section we outline a number of notable proposals that the Law Commission has not been able to take forward and explain the reasons why that is the case.

3.13 It may prove possible during the course of the programme to address one or more of the projects rejected solely on the grounds of capacity in the event that Eleventh Programme projects finish earlier than anticipated. Any decision to accept such work as new references during the course of the programme would be made in accordance with the Law Commission's protocol with Government and in the light of other emerging priorities.

Simplification of sentencing law

Project in brief

- 3.14 The proposal was that the Law Commission would make recommendations to simplify and consolidate all sentencing legislation.

The case for the project

- 3.15 The current law on sentencing is contained in a large number of different statutes, many of which have quite different structures and approaches. This, as well as the sheer volume of legislation, creates unnecessary complexity in sentencing law and makes fixing tariffs and sentences an unduly difficult task.
- 3.16 The number of sentences appealed or referred to the Court of Appeal has risen in recent years. In 2008-2009, for example, 4,236 applications to appeal against sentence were made: of these 1,266 (approximately 29%) were granted and a further 501 were referred by a single judge or registrar. Approximately 74% of the appeals actually heard were successful, as well as 75% of all Attorney General's references. These high success rates suggest that judges often get sentencing wrong and their decisions have to be reversed by the Court of Appeal. Furthermore, this is without taking into account the additional cases that are dealt with under the "slip rule"; it is not known to how many cases this rule applies but it is frequently invoked. Sentencing legislation therefore ought to be much clearer and easier to follow so as to reduce the amount of court time that is wasted on correcting sentences.
- 3.17 The Government's Sentencing Bill will add yet another statute, increasing the problems associated with the already huge volume of sentencing legislation. This strengthens the case for simplification and consolidation.

Support for the project

- 3.18 The proposal was made to us by Lord Justice Leveson, head of the Sentencing Council; Steven Parish (Crown Court Recorder); and two private individuals. Lord Justice Thomas has also expressly given his support.
- 3.19 Academic commentators have advocated reform and simplification of sentencing law: see for example J Spencer "The Drafting of Criminal Legislation: Need it be so Impenetrable?" (2008) 67 *Cambridge Law Journal* 585; and Editorial, "New Legislation?" [2010] *Sentencing News* 8.
- 3.20 A number of judges have recently expressed serious dissatisfaction with the state of sentencing law: see for example Lord Carswell in *Wells v Parole Board* where he says that "this case provides yet another example of the problems caused by over-prescriptive sentencing legislation".¹ See also *R (Noone) v Governor of Drake Hall Prison* in which Lord Chief Justice Judge said:

¹ [2009] UKHL 22 at [23].

for too many years now the administration of criminal justice has been engulfed by a relentless tidal wave of legislation. The tide is always in flow: it has never ebbed... It is outrageous that so much intellectual effort, as well as public time and resources, have had to be expended in order to discover a route through the legislative morass to what should be, both for the prisoner herself, and for those responsible for her custody, the prison authorities, the simplest and most certain of questions – the prisoner's release date.”²

- 3.21 However, the Lord Chancellor has indicated that he would not support a simplification/consolidation project of sentencing legislation at this time, although he has indicated that a project of this nature may be requested by the Government in the future.

Age of criminal responsibility

Project in brief

- 3.22 This project would have involved analysis of comparative jurisdictions and empirical research with a view to making recommendations for an appropriate age of criminal responsibility in England and Wales. The project could also have included consideration of the arrangements for dealing with children in relation to criminal allegations more generally.

The case for the project

- 3.23 The minimum age of criminal responsibility in England and Wales is 10, well below the European average of 14. The European Committee of Social Rights has declared that this minimum age is “manifestly too low” and is not in conformity with article 17 of the European Social Charter.³ The Council of Europe’s Human Rights Commissioner has also expressed concern and recommended that the age ought to be raised to bring it into line with other European countries.⁴
- 3.24 In *T and V v UK*⁵ the European Court of Human Rights declined to say that the UK’s low age of criminal responsibility in itself breached the European Convention on Human Rights, given the lack of consensus across member states. However, it held that the trial of the 11 year olds Venables and Thompson had breached article 6 of the Convention as they were unable to understand and participate in the proceedings against them. The Court emphasised that “it is essential that a child charged with a criminal offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual capacities, and that steps are taken to promote his ability to understand and participate in the proceedings”.

² [2010] UKSC 30 at [80] to [87].

³ European Committee of Social Rights, Conclusions XVII-2 2005 at page 30.

⁴ Memorandum addressed to the British authorities, 17 October 2008.

⁵ [2000] 30 EHRR 121.

- 3.25 The current law may contravene other international obligations. A fixed minimum age is required by both article 40.3(a) of the United Nations Convention on the Rights of the Child 1989 (UNCRC) and by rule 4.1 of the “Beijing Rules”.⁶ Rule 4.1 further requires that the minimum age “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.
- 3.26 Article 3 of the UNCRC provides that in all actions concerning children, including legal proceedings, the best interests of the child shall be a primary consideration. It is hard to see how a full adult trial and potential detention could ever be in the best interests of a child of 11. The UN Committee on the Rights of the Child⁷ expressed particular concern at the low minimum age and recommended that it be raised to at least 12 (as it now has been in Scotland).⁸

Support for the project

- 3.27 Calls to raise the age have come from a variety of people. We received a proposal on this topic from Dr Eileen Vizard on behalf of a total of 33 signatories, a mixture of medical and legal practitioners, academics, members of Parliament and the heads of organisations, including the NSPCC and the Children’s Society. Proposals also came from Professor Rebecca Probert on behalf of the Society of Legal Scholars, family law section; and from two private individuals.
- 3.28 The Howard League for Penal Reform has recommended that the age be raised.⁹ The Prison Reform Trust¹⁰ has also recommended that the age should be raised to at least 12 and preferably to 14; that the presumption of *doli incapax* should be re-established; and that welfare disposals should replace imprisonment for those under 14. However, the Ministry of Justice do not support this project and Ministers and the Justice Secretary have made it clear that they do not intend to raise the minimum age.

Homicide in joint enterprise

Project in brief

- 3.29 The aim of this project would have been to clarify and rationalise the law to ensure fair outcomes in cases involving homicide in joint enterprise.

The case for the project

- 3.30 Since March 2010 there have been seven Court of Appeal decisions on joint enterprise murder, many of these arising out of trials presided over by a High Court judge with written directions agreed by a number of experienced QCs. These cases show that experienced practitioners are finding the existing law very difficult to apply.

⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985.

⁷ Findings published on 3 October 2008, paras 77 and 78.

⁸ Criminal Justice and Licensing (Scotland) Act 2010, s 52.

⁹ “Punishing Children: A survey of criminal responsibility and approaches across Europe” 2008.

¹⁰ “Vulnerable Defendants in the Criminal Courts” 2009.

- 3.31 In one of these, *Gnango*,¹¹ permission has been granted to appeal to the Supreme Court and it is due to be heard this year. However, the case relates to a fairly narrow point (whether two people can be parties to a joint enterprise where they have opposing or antagonistic intentions) and thus it is unlikely to be an opportunity for the Court to resolve any of the wider problems with the law or to take it in a new direction. Legislative reform is therefore needed.
- 3.32 A number of aspects of the current law are unclear, including the extent to which a common purpose is required; when an act can be said to be “fundamentally different” from that intended or contemplated by D; to what extent D must foresee that P will commit that act with the requisite *mens rea*; and whether joint enterprise liability is a form of secondary liability at all.¹² A recent study has also shown that understanding and attitudes among members of the public do not correspond with the current law, and that a majority do not favour a murder conviction even where D foresaw that P might kill with intent.¹³

Support for the project

- 3.33 The proposal was made by Adrian Waterman QC. There has also been much recent support for reform from academics: see for example A Turner “Killing by degrees” (2010) 174 *Criminal Law and Justice Weekly* 578; S Foster, “Joint Enterprise Liability” (2009) 173 *Criminal Law and Justice Weekly* 501 and (2010) 174 *Criminal Law and Justice Weekly* 568; J Horder, “Joint criminal ventures and murder: the prospects for law reform” (2009) 20 *King’s Law Journal* 379; W Wilson, “A rational scheme of liability for those participating in crime” [2008] *Criminal Law Review* 3.
- 3.34 The Law Commission has already recommended reforms to the law on joint enterprise in relation to murder in our report, “Murder, Manslaughter and Infanticide”, published in 2006, and on secondary participation generally in “Participating in Crime” in 2007. The Government recently rejected our 2006 recommendations in relation to homicide in joint enterprise and indicated that it would be unlikely to implement our 2007 recommendations on secondary participation. It has indicated that it would not support our taking on a new project on joint enterprise.

Fraud/corporate liability/economic crime agency powers

Project in brief

- 3.35 The proposal was for the Law Commission to review obligations on companies to detect and report corporate fraud.

¹¹ [2010] EWCA Crim 1691, [2011] 1 All ER 153.

¹² A P Simester “The Mental Element in Complicity” (2006) 122 *Law Quarterly Review* 578; G R Sullivan, “Complicity for First Degree Murder and Complicity in an Unlawful Killing” [2006] *Criminal Law Review* 502. Cf *R v Mendez* [2010] EWCA Crim 516 at [17].

¹³ B Mitchell and JV Roberts, “Public Opinion and Sentencing for Murder: An Empirical Investigation of Public Knowledge and Attitudes in England and Wales” (Report for the Nuffield Foundation, October 2010) at p 37 onwards.

The case for the project

- 3.36 The report of the Fraud Advisory Panel, “Fraud reporting in listed companies: a shared responsibility”, identifies a need for reform of obligations to prevent and detect fraud within listed companies, which currently are often disparate and not tied to any explicit statement of principle. It recommends introducing more consistent definitions; greater emphasis on educational initiatives; enhancement and extension of legal and regulatory frameworks for whistle-blowing; and enhanced obligation and/or opportunities for companies to report known fraudsters to the industry and to national crime prevention databases.
- 3.37 A recent survey by PricewaterhouseCoopers¹⁴ found that almost half of UK respondent companies had experienced fraud in the last 12 months – higher than other global respondents for whom the figure was about a third – and an estimated £30.5 billion worth of fraud took place in Britain in 2008 according to official figures.¹⁵ As the Fraud Advisory Panel report points out, “these statistics may only represent the tip of a very large iceberg; it is believed that much fraud still goes undetected and unreported”.¹⁶ The problem is therefore clearly a serious one. While the creation of an Economic Crime Agency will hopefully help to combat this, it is our opinion that a longer term project looking into the law in this area would be beneficial.

Support for the project

- 3.38 This project was proposed to the Law Commission by Richard Alderman, director of the Serious Fraud Office. This is supported by a Special Project Group of the Fraud Advisory Panel, chaired by Jonathan Fisher QC, who submitted their report “Fraud reporting in listed companies: a shared responsibility”. See also “Fighting Fraud and Financial Crime” by Jonathan Fisher QC¹⁷ in which, as well as supporting the creation of a unified agency, he advocates introducing US-style penalties such as deferred prosecution agreements; allowing employers to be held vicariously liable for fraud by employees; and granting new powers to Crown Courts to adjust property rights, confiscate assets and make serious crime prevention orders.
- 3.39 The Ministry of Justice have indicated that there would be insufficient time for the Law Commission to consider this area before introduction of the legislation setting up the Economic Crime Agency. However, in the longer term they have indicated that there may be work suitable for the Commission relevant to the new agency but that this cannot be confirmed in time for the Eleventh Programme.

¹⁴ PricewaterhouseCoopers, “Global economic crime survey: UK report” 2009.

¹⁵ National Fraud Authority, *Annual fraud indicator* 2010, available at http://www.attorneygeneral.gov.uk/nfa/GuidetoInformation/Documents/NFA_fraud_indicator.pdf.

¹⁶ At para 7.7.

¹⁷ March 2010, available at http://www.policyexchange.org.uk/assets/Fighting_Fraud_-_Mar_10.pdf.

Bills of sale

Project in brief

- 3.40 We received two proposals to review the law on bills of sale. A “bill of sale” is a way in which an individual may use their existing goods as security for a loan. For example, a consumer may borrow against a car they already own or a sole trader may borrow against valuable tools. This sort of security arrangement is problematic, and the Victorians enacted a series of protective measures, most notably the Bills of Sale Act 1878 and an amendment Act of 1882. These Acts continue to govern the area.
- 3.41 In 2002, we published a consultation paper on security interests, which described the Victorian legislation on bills of sale as complex, riddled with technical pitfalls, out-of-date and unfair.¹⁸ Although our final report focused on company charges, rather than security interests given by individuals, we recommended that the Department of Trade and Industry should review bills of sale legislation as part of its review of consumer credit legislation.¹⁹

Support for the project

- 3.42 Two proposals were made in response to the Eleventh Programme consultation exercise recommending reform of the law in this area. In December 2009, the Department for Business, Innovation and Skills opened a consultation on whether to ban bills of sale.
- 3.43 The Government has decided not to reform bills of sale legislation for the time being. In January 2011, the Government decided against statutory measures, on the grounds that “the industry should have an opportunity to put its own house in order first”.²⁰
- 3.44 We have not, therefore, included a project on bills of sale in this work programme. However, the Government also stated that “a legislative response may ultimately be necessary”. We do not think that the Victorian legislation can be justified, and there remains a need for reform. We hope we may have the chance in the future to consider this important area.

Third party fraud against insurers

Project in brief

- 3.45 If an individual fraudulently exaggerates a claim against their own insurer, they risk losing the whole claim. However, if a road accident victim fraudulently exaggerates a claim against someone else’s insurer, they do not suffer the same penalties. They risk losing only the exaggerated amount: not the full claim. There were several calls to examine the law in this area.

¹⁸ Law Commission, Registration of Security Interests: Company Charges and Property other than Land (CP 164), Part 9.

¹⁹ Company Security Interests (2005) (LC 296), para 1.53.

²⁰ <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/g/11-516-government-response-proposal-ban-bills-of-sale.pdf>, para 43.

Support for the project

- 3.46 In the Law Commission's Issues Paper 7, *The Insured's Post-Contract Duty of Good Faith*, as part of the project on insurance contract law, we examined the law on fraud by the insured where the perpetrator is the first party of the insurance contract. In response to that paper, Keoghs LLP (a law firm), QBE (an insurer), and the Forum of Insurance Lawyers suggested that third party fraud should be included in this review. The Forum of Insurance Lawyers specifically suggested that where the remedy of forfeiture of the whole claim would have been made available if the fraud had been perpetrated by a first party, it should be available against a first party. However, the Ministry of Justice do not support a project in this field, on the ground that there was insufficient support for a change in the law.

Employment law

Projects in brief

- 3.47 We received several suggestions for wide-ranging projects to review employment law and the Employment Tribunal. The British Chamber of Commerce proposed a series of changes to substantive employment law and to procedural law in the Employment Tribunal. The Employment Lawyers' Association, from a different perspective, also proposed numerous changes in this field. Regional Employment Judge Hildebrand proposed simplification and consolidation of employment law and an extension to the jurisdiction of the Employment Tribunal. Three consultees, including Birmingham Law Society's Employment Law Committee, proposed a review of aspects of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

Support for the projects

- 3.48 There was substantial support for a review of employment law and procedure. Regional Employment Judge Hildebrand, the Employment Lawyers' Association, Birmingham Law Society's Employment Law Committee and two members of the public all proposed projects. This is an important area, which is ripe for review.
- 3.49 The Government made a commitment in the Coalition Agreement to review employment and workplace law and an Employment Law Review is underway at the Department for Business, Innovation and Skills. The Department agreed to consider the suggestions made to the Law Commission as part of their project.

Defamation law

Projects in brief

- 3.50 We received four proposals to review the law on defamation. The President of the Supreme Court suggested a review of the law on "fair comment". Mr Justice Tugendhat proposed a review of defamation over the internet, in particular the multiple publication rule. Lord Avebury proposed the reform of libel law, in particular the ease with which applicants can commence an action in libel in England and Wales with the result of "libel tourism". A fourth proposal recommended the abolition of jury trials in defamation cases.

- 3.51 These issues are important and Government recognises the need for review. The Ministry of Justice is therefore undertaking its own review of the law relating to defamation, and a Government Defamation Bill received its second reading in the House of Lords on 9 July 2010.

Parental responsibility: consequences of criminal convictions

Project in brief

- 3.52 Several consultees suggested that the Law Commission should consider whether the criminal courts should be given powers to make orders affecting the parental responsibility of a convicted person. Under the current law, a parent who has been convicted of a serious offence against his or her child (for example, physical or sexual abuse) retains parental responsibility. The other parent can make an application to the civil courts for an order prohibiting the convicted parent from taking certain steps in exercise of his or her parental responsibility.²¹ But that requires the innocent parent to take the initiative and obtain legal advice, which may be costly and distressing.
- 3.53 Commissioners considered this project on the basis that the criminal courts are not the appropriate venue for applications for the full range of orders that could be made under the Children Act 1989. Should, though, the court be able – or perhaps obliged – to make an order preventing a parent convicted of certain offences from exercising his or her parental responsibility until a further order is made? This would throw the onus on the convicted parent to bring proceedings rather than the innocent parent.

Support for the project

- 3.54 The project was proposed by a number of members of the public who had personal experience of the problems presented by a convicted parent retaining parental responsibility.
- 3.55 The number of cases of parental abuse that reach the criminal courts and result in a conviction is small. Nevertheless, in relevant cases, the issue is very important to those affected. The knowledge that the offender continues to be able to exercise parental responsibility can cause deep distress to the innocent parent. Commissioners took the decision not to include this project in the Eleventh Programme because they felt that wider benefit could be generated by work on the enforcement of family financial orders project, another area that can cause deep distress to those involved. Government supported this decision.

²¹ Children Act 1989, s 8.

Access to adoption information

Project in brief

- 3.56 This project would have considered a number of issues that arise when people who have been adopted, their descendants, or members of their birth family seek information about the adoption. It would have focused in particular on two questions: whether the data protection rules are hampering individuals' ability to access adoption information; and whether the descendants of adopted persons should have access to the same services as the adopted person or members of the adopted person's birth family.

Support for the project

- 3.57 The project was proposed by the British Association for Adoption and Fostering. It was supported by the Department for Education. Commissioners recognise that this is an important area, and the technical issues raised are suitable for the Law Commission. The project is not being taken forward solely on the grounds that the Commission does not have the capacity to include this work in its Eleventh Programme.

Park homes

Project in brief

- 3.58 We received a wide range of responses outlining problems experienced by those living in park homes. The main problems identified were:

- (1) the licensing of site owners;
- (2) intimidation with an intention of forcing sales (by criminal activity and by apparently legal, but oppressive, means);
- (3) misuse of the site owner's power to veto sales and consent to improvements leading to sales at significant undervalues; and
- (4) abuse of monopoly rights to supply goods and services.

- 3.59 Although not all of the complaints listed by consultees are suitable for Law Commission review, it would be possible to formulate a law reform project for the Commission, focusing on regulation, the current statutory regime and investigating parallels with leasehold tenure.

Support for the project

- 3.60 17 consultees submitted formal proposals for reform in this areas and a number of others contacted the Law Commission about these issues. Lord Graham of Edmonton, Secretary to the All-Party Parliamentary Group on Mobile Homes, made one of the proposals.

- 3.61 The Minister of Housing and Local Government recently announced the Government's intention to consult on a range of measures relating to park homes.²² The Department for Communities and Local Government has decided to undertake that consultation rather than involve the Law Commission directly at this stage. The Commission has concluded in light of that decision that there is insufficient governmental support for the Law Commission conducting work in this area to enable us to take on a project on park homes.

Testamentary capacity

Project in brief

- 3.62 The proposed project would have focused on three distinct questions:
- (1) What is the test for capacity to make a will?
 - (2) When should a professional who prepares a will take steps to establish that a testator had capacity and what should those steps be?
 - (3) Is it possible to reduce the incidence of litigation over capacity?

Support for the project

- 3.63 Work in this area was supported by two Law Society Committees and the Association of Contentious Trust and Probate Specialists (ACTAPS). However the Ministry of Justice did not support this proposal, in light of the more pressing need for family law reform, for which that Department is also responsible.

Burial law

Project in brief

- 3.64 The Commission was urged to review the Burial Act 1857 on the basis that the current licensing system for the excavation of human remains poses significant problems for archaeological excavation. A range of other issues could be included in a review of burial law.

Support for the project

- 3.65 This project was proposed in a letter signed by 40 senior professors. However, the Ministry of Justice has said that it considers that existing legislation can be applied more flexibly and is discussing with English Heritage and leading archaeological organisations how to do this.

Trust law arbitration

Project in brief

- 3.66 Arbitration is a method of settling legal disputes privately, without going to court. The parties are bound by the arbitrator's decision, with only limited rights of appeal, and usually cannot otherwise take the dispute to court.

²² Written Statement, *Hansard* (HL), 10 February 2011, vol 523, col 14WS.

- 3.67 Some trust disputes may be suitable for arbitration. At present two or more people can enter into a valid arbitration agreement. However, any award that is made will not bind other interested parties, such as other beneficiaries (who may be under-age and therefore not able to enter into a binding arbitration agreement).
- 3.68 This means that it is not feasible for those who create trusts governed by the law of England and Wales to require that trustees and beneficiaries have resort to arbitration to resolve their differences, rather than litigation. However, other jurisdictions such as Guernsey and the state of Florida have enacted legislation that enables binding trust law arbitration. Practitioners and other stakeholders interested in this area of law have argued that it would be beneficial for this jurisdiction also to introduce such reforms.

Support for the project

- 3.69 This project was proposed by the Trust Law Committee, a group of academics and practitioners in the field of trust law. The Department for Business, Innovation and Skills supported the Law Commission conducting research and consultative work investigating the feasibility of extending the legislative framework for arbitration to cover disputes concerning trusts.
- 3.70 The Law Commission recognises the great importance of the trust industry, and that work in this area would have the potential to generate a range of benefits. The technical nature of the work makes it suitable for the Law Commission. The project has not been taken forward solely on the grounds that the Commission does not have the capacity to include this work in its Eleventh Programme.

Private retirement housing

Project in brief

- 3.71 Retirement developments can contain a mixture of flats (which are sold on a leasehold basis) with houses and bungalows (which can be sold on either a freehold or leasehold basis). Many leases in the retirement housing market contain provisions requiring a payment on the leaseholder's disposal of the property, either by assignment or by sub-letting – a so-called "exit fee". These may become payable to the landlord by the leaseholder's estate on the death of the leaseholder or where the leaseholder has to enter a care home or hospital and the property is then sold.
- 3.72 Some firms in the retirement homes market have been under investigation by the Office of Fair Trading since September 2009 to consider whether exit fees are unfair for the purposes of the Unfair Terms in Consumer Contracts Regulations 1999. As of May 2011, this investigation is ongoing.
- 3.73 The project would have considered the fairness of the imposition of exit fees by landlords and investigated whether there are other areas in which leaseholders of retirement homes may be being treated inequitably.

Support for the project

- 3.74 The project was proposed by the Department for Communities and Local Government.

- 3.75 Commissioners recognise the importance of the issues raised in relation to retirement housing, both in terms of financial value, and the impact on vulnerable people (in particular, the elderly and the bereaved). However, it is not possible properly to assess the suitability of this project, and the need for reform, until the outcome of the Office of Fair Trading investigation is known. Commissioners have therefore decided not to take on this work at this stage.

Authorised guarantee agreements

Project in brief

- 3.76 The Landlord and Tenant (Covenants) Act 1995 provides that on an assignment of a lease created after 1 January 1996 the tenant is automatically released from liability under its covenants contained in the lease. The 1995 Act contains a comprehensive anti-avoidance provision; agreements that frustrate the operation of these provisions are void.
- 3.77 As an exception to that provision, authorised guarantee agreements (AGAs), are specifically permitted by the 1995 Act. By an AGA, a tenant guarantees the performance of the tenant covenants in the lease by its assignee. Problems, however, arise when the outgoing tenant's lease was guaranteed – for example, by a parent company, or a director of the tenant. The 1995 Act provides that upon a tenant's release from liability under the leasehold covenants, any third party who has guaranteed the performance of the tenant's obligations is also released. This can be problematic in practice. If a tenant wishes to assign the lease and the landlord requires it to enter into an AGA, then the landlord is likely to want any original guarantor either to guarantee the assignee's obligations (a direct guarantee) or guarantee the outgoing tenant's obligations under the AGA (a sub-guarantee).
- 3.78 The recent case of *Good Harvest Partnership LLP v Centaur Services Limited*²³ decided that a guarantor's liability continuing by way of direct guarantee is contrary to the anti-avoidance provisions of the 1995 Act and therefore void. It is unclear whether the same is true for a sub-guarantee. Following the *Good Harvest* decision, landlords may be reticent to let a property to a tenant who is reliant upon a guarantor without applying strict controls on future assignment, or requiring another form of security. Where another form of security is not available, some prospective tenants may be unable to participate fully in the leasehold market.
- 3.79 This project would have primarily comprised an investigation into whether a guarantor should be able to provide a direct and/or sub-guarantee in an AGA.

Support for the project

- 3.80 This project was proposed by a practitioner and supported by the Department for Communities and Local Government. Commissioners consider the issues raised to be very important, and suitable for Law Commission review. The project has not been taken forward solely on the grounds that the Commission does not have the capacity to include this work in its Eleventh Programme.

²³ [2010] EWHC 330 (Ch), [2010] Ch 426.

Mortgage law

Project in brief

- 3.81 A project on mortgage law could take a wide range of forms. There could be a wholesale review of the legal basis for mortgages and their enforcement. A project could look at specified areas – either generic areas (for example, enforcement) or individual problems (for example, Law of Property Act receivers). The project could take in (or focus exclusively on) the related area of charging orders.

Support for the project

- 3.82 The suggestion that the Law Commission might look at mortgage law appeared in the previous administration's July 2009 paper "A Better Deal for Consumers" which stated that "We are asking the Law Commission to conduct a review of the fundamental principles of residential mortgage law". HM Land Registry responded to our Eleventh Programme consultation identifying a number of problems with the current law. However, it has not been possible to gain sufficient Government support for work on mortgages to enable the Commission to carry out work in this area.

Relocation of children

Project in brief

- 3.83 This project would have considered an issue that arises where parents separate and one wishes to move permanently with the child or children of the family but the other opposes the relocation. The dilemma facing the courts is whether to allow the relocating parent to move with the children.
- 3.84 There is growing dissatisfaction that the current case law requires the courts to give undue weight to the wishes of the relocating parent. It is claimed that the courts overestimate the impact of a happy relocating parent on the child's welfare. The project would have considered relocation within the United Kingdom and international relocation. It would not have covered child abduction.

Support for the project

- 3.85 Although the Ministry of Justice supports work in this area, it considers the project on the enforcement of family financial orders that has been included in the programme a higher priority at the current time.

(Signed) JAMES MUNBY, Chairman
ELIZABETH COOKE
DAVID HERTZELL
DAVID ORMEROD
FRANCES PATTERSON

MARK ORMEROD, Chief Executive
27 May 2011

APPENDIX A

LIST OF CONSULTEES

Proposals were received from the following:

Richard Alderman, Serious Fraud Office
Dounne Alexander
Raymond Arthur, School of Social Sciences and Law, Teeside University
Sue Ashtiany, Lawyer
Sheila Austin
Lord Avebury, House of Lords
Alison Banks
Felicity Banks, Institute of Chartered Accountants
Derek Barnett, Police Superintendents' Association of England and Wales
Sophie Barrett-Brown, Immigration Law Practitioners Association
Dr Anthony Barton, Lawyer
Vaskor Basak
Marc Beaumont, Windsor Chambers
Lucy Beckett, Traveller Law Reform Project
Stephen Bickford Smith, Landmark Chambers
Birmingham Law Soc, Birmingham Law Society Employment Committee
Jonathan Bishop
Alexandra Boardman, Domestic Abuse Advocacy Project, Plymouth City Council
Professor Michael Bohlander, Durham Law School, Durham University
Peter Bott
Jenny Bracey, Magistrates Association
Christine Braithwaite, Council for Healthcare Regulatory Excellence
Prof Susan Bright, New College, Oxford
Pat Brooks, Breach Barns Residents Association
George Brown, Barrister (retired)
Edna Burton
KP Byass, Moss Solicitors
Jan Bye, Bar Council
Derek Canning
Michael Cardwell
James Carroll, Russell-Cooke LLP
Norma Cartwright
DJ Richard Chapman, Association of HM District Judges
Louis Charlebois
Sue Chatterton
Jane Chisolm, Motorcycle Action Group
Yasmin Choudhury
Caroline Clarke-Jervoise, Lawyer
Margaret Clough
John Clucas, Lancashire Policy

Luciana Coffey
Mark Colquhoun, West Mercia Police
Amanda Cooper, ACPO, Thames Valley Police
Nick Cotton
Nicholas Cowen, Backlash
Val Cowley
Stephen Crosby
Angela Crowley
Dan Cutts, Forum of Insurance Lawyers
John Dalton, NORM-UK
Ian Davidson, Derbyshire Constabulary
Janet Davis, The Ramblers
Brian Dickinson, Department for Transport
Brian James Doick, National Association for Park Home Residents
Charlotte Donohue, School student
Robin Draper
Christopher Draycott, Newgate Chambers
Helen Dudden
Andrew Egbers
Suzanne English
Barbara Esam, NSPCC
Alan and Diana Farnworth
Julia Feast, British Association for Adoption and Fostering
Catrin Fflur Huws, Centre for Welsh Legal Affairs, Department of Law and Criminology,
Aberystwyth University
Martin Fisher, Trading Standards Service, Cornwall Council
Alex Fisher
Katherine Fleay, Winkworth Sherwood Solicitors
Rowan Freeland, Intellectual Property Lawyers' Association
Richard Frimston, Russell-Cooke LLP
Samuel Fry
Michael Fuller, HM Crown Prosecution Service Inspectorate
Toby Ganley, Public Fundraising Regulatory Association
Paul Garnell
Robert Goymour
Ellen Grace
Patrick Graham
Lord Graham of Edmonton, All Party Parliamentary Group for Mobile Homes
Sarah Green, St Hilda's College, Oxford
Angela Greenway
Tina Greenwood, independent mortgage broker
David A Greenwood, Jordans Solicitors
Susan Griffiths
Baroness Hale, Justice of the Supreme Court
Michael Hall, Lawyer
Scott Hall

Ronald Hall
Nick Harvey MP
David Haynes, Davies Morgante Law Ltd
Tobias Haynes, Law Student
Alice Hedges
The Rev Canon John Herve
David Hewett, Association of Residential Managing Agents
Peter Hildbrand, Regional Employment Judge
Gregory Hill, Ten Old Square
Ruairi Hipkin
Lord Justice Hooper, Criminal Procedure Rule Committee
Lord Hope of Craighead, Deputy President of The Supreme Court
Christina Hughes, Law Commission
Richard S Jackson MBE, Rescare
Christopher Jessel, Lawyer
Mrs K
Stuart Keel, ACPO Crime Business Area
Shamim Khaliq
Claire Khaw
Anthony Kilner, Association of Council Secretaries and Solicitors
Richard King, City of London Law Society
Jacqueline King
Janet King, Parish Councillor
Margaret Kirkman
Dr Paul Knapman, Coroner, Westminster Coroner's Court
Raymond Knight
HHJ Paul Lambert
Paul Lankester
Andrew Lansley, Secretary of State for Health
Andrew Layton, Department for Business, Innovation and Skills
Benjamin Ledingham
David Lees
Dr Antony Lempert, Secular Medical Forum
Bernard Leverett
Lord Justice Leveson, Sentencing Council
Jeannie Lewis, Law Programme, Open University
Stephen Linehan QC, St Phillips Chambers
Lindesay Low, Scotch Whisky Association
Barry Lycett
Jon Male
James de la Mare
Francis Marlow, Department for Environment, Food and Rural Affairs
Philip Marshall, Family Law Bar Association
Felix Martin
Sir Ian McCartney MP
Amy McInerney

Adam McLeod
Maria Miller
Chris Miller, Hertfordshire Constabulary
Brian Moore, ACPO, Wiltshire Police
Roger Morris
Abigail Morris, Chamber of Commerce
Sir Andrew Morritt, Chancellor of the High Court
Martyn Naylor, Law Commission
Lord Neuberger, Master of the Rolls
Debbie Norley
Tina Norman
James O'Connell, Institute of Paralegals
Richard Ottaway MP
Gwilym Owen, School of Law, Bangor University
Sophie Palmer
Stephen Parish, Crown Court Recorder
David Parker
Mark Pelling QC, Chancery Judge
Clive Phillips, East Kent Trading Standards
Lord Phillips, President of the Supreme Court of the United Kingdom
Colin Port, Avon and Somerset Constabulary
Bob Posner, Electoral Commission
Charles Pragnell, Advocacy for Children and Families
Prof Rebecca Probert, Society of Legal Scholars, Family Law Section
Richard Rawlins
Polly Rendall
Stephen Roberts, Charity Commission
Dr Jonathan Rogers, Faculty of Laws, Univeristy College London
Jennifer Russ, Tony Roe Solicitors
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Dr Duncan Sayer, School of Forensic and Investigative Science, University of Central
Lancashire
Dr Prakash Shah, Department of Law, Queen Mary University of London
Dr Anish Shah, Department of Ophthalmology, East Surrey Hospital
Katie Sharp Fisher, Bromsgrove District Council
Paul Sharpe, Institute of Professional Willwriters
Jeffrey Shaw, Solicitor
Julian Sheather, British Medical Association
Michael Shiatis
Mrs Glen Skinner
Geoffrey Smith
George G Smith
Bob Smytherman, Federation of Private Residents Associations
Amanda Snook
John Spencer, Motor Accident Solicitors Society
Tim Spencer Lane, Law Commission

Benjamin Emmanuel Stanley
Yvonne Stewart-Taylor
Mark Stobbs, Law Society
Dr M W Stockdale, Centre for Criminal and Civil Evidence and Procedure, Northumbria
Law School, Northumbria University
Doreen Strettle
Jane Swinburne, Hertfordshire Constabulary
Vernon Taylor
Chris Theobald
Jemma Thomas, Withers LLP
Lord Justice Thomas, Vice-President of the Queen's Bench Division
Johnny Timpson, Insurer
Mr Justice Tugendhat
Nicholas Turner
Christopher Turner
John Turner, Association of Electoral Administrators
Neil Tuxford
Francis Twambley, HM Land Registry
Emma Venturi, Ashford Borough Council
Dr Eileen Vizard, Psychiatrist
Mr Justice Vos
Anthony Ware
Patricia Wass, Foot Anstey Solicitors
Adrian Waterman QC, KBW Chambers
Michael West, Department of Health
John Whatley
Andrew White
David Whiteley
Roger Whitfield
Peter Williams, Eversheds LLP
Richard Williams
John Williams
Mark Wilson, Department of Health
John Wood, Trust Law Committee
Michael Wood, ACPO, Metropolitan Police Service
Lindsey Woods, Employment Lawyers' Association
Geoffrey Woollard
Kay Young



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