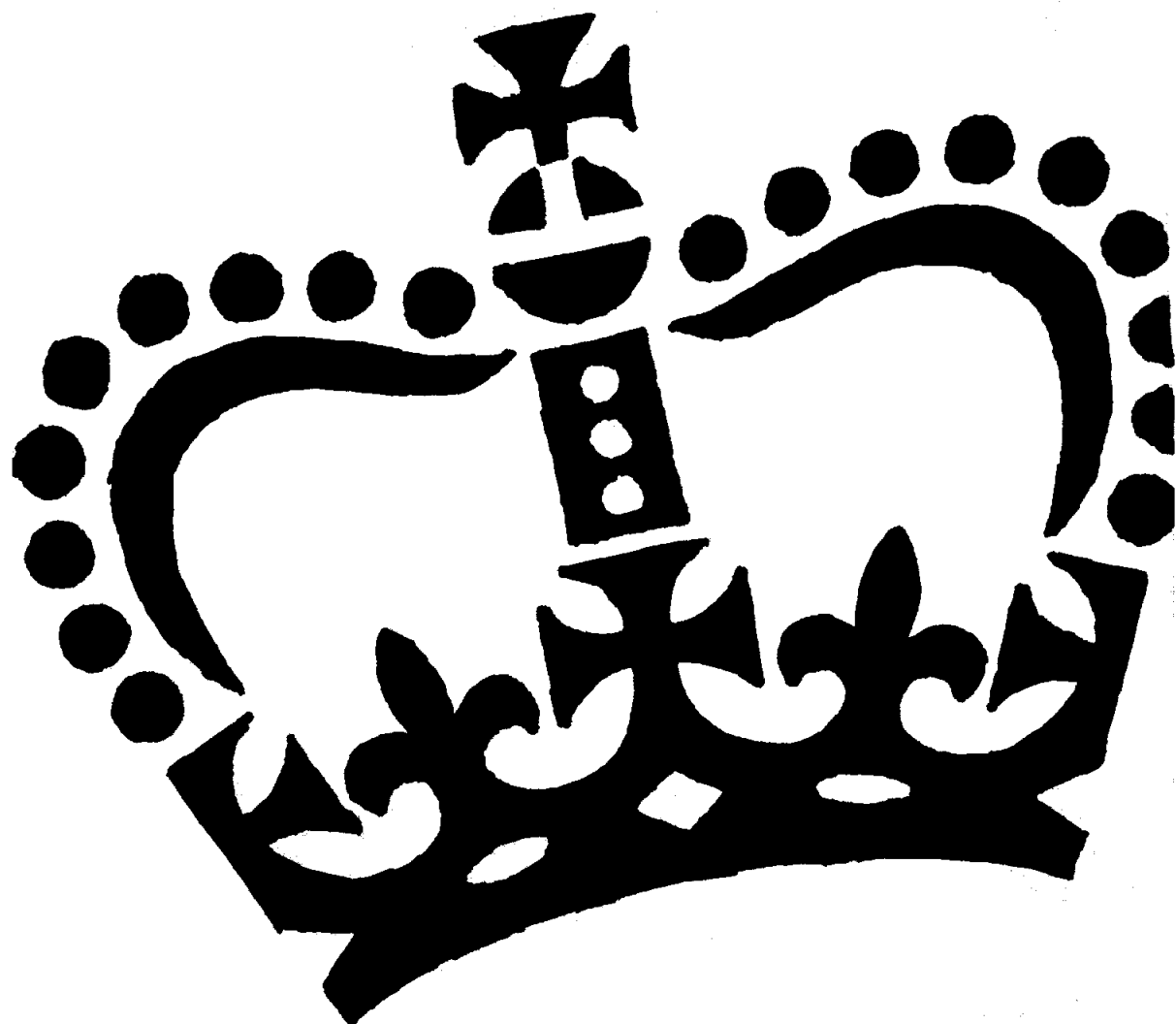




Law Commission

Thirty-sixth Annual Report 2001



THE LAW COMMISSION

THIRTY-SIXTH ANNUAL REPORT 2001

A Year of Achievement

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

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THE LAW COMMISSION

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

The Commissioners are: The Right Honourable Lord Justice Carnwath CVO, *Chairman*
Professor Hugh Beale
Mr Stuart Bridge
Professor Martin Partington
Judge Alan Wilkie QC

The Secretary of the Law Commission is Mr Michael Sayers and its offices are at Conquest House, 37-38 John Street, Theobalds Road, London, WC1N 2BQ.

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

THE LAW COMMISSION

THIRTY-SIXTH ANNUAL REPORT

2001

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THE LAW COMMISSION

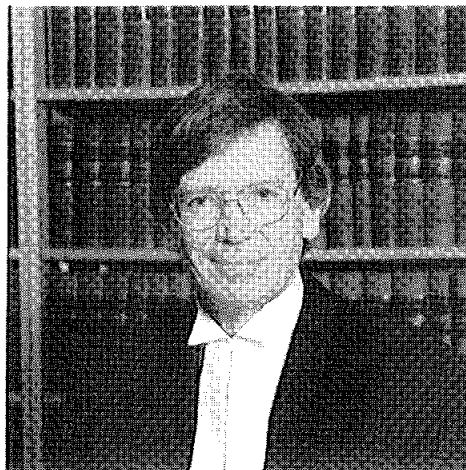
THIRTY-SIXTH ANNUAL REPORT 2001

A Year of Achievement

To the Right Honourable the Lord Irvine of Lairg, Lord High Chancellor of Great Britain

Since this will be my last Annual Report, I am delighted to be able to report a very productive year at the Commission.

The highlight was the completion of the Land Registration Report and draft Bill, as the culmination of a remarkable collaboration, over six years, between the Commission and the Land Registry. The Bill was introduced in Parliament, even before the report had been published. In presenting it, you described it as the single largest project of law reform ever undertaken by the Commission, and "one of the finest". You kindly paid tribute to the work of Charles Harpum, who led the project at the Commission.



We have successfully completed a number of other major projects, including a comprehensive review of the Law of Limitations. Our proposals for reform of the law of Double Jeopardy have attracted particularly wide public interest.

Our law reform programme includes a number of items which give effect to your policy of encouraging closer co-ordination, where possible, with current Government priorities. Thus, our partnership law project, due for completion in 2002, complements the Government's own review of company law, and will lead to a fully modernised law of business associations. We are working closely with the DTLR on reform of housing law and the law of compulsory purchase and compensation. Our renewed work on Codification of the Criminal Law follows the Government's strong support in the White Paper – "Criminal Justice: the Way Ahead."

However, the process of law reform cannot be dictated solely by the political priorities of the time. By that test many valuable reforms would never be able to compete. Our current programme reflects that necessary balance. From time to time the Law Commission should take on projects that address topics in need of reform but which, it must accept, might have to wait for implementation until pressure on the legislative timetable eases or an unexpected gap emerges. At the same time, we remain concerned at the slow progress in implementing even those reports which have been accepted by Government. Unless this problem is addressed, the Government's commitment to modernisation of the law is unachievable.

I must also mention our responsibility for consolidating existing statutes. This is vital, in relation to areas of the law which have been subject to frequent amendment. It depends, not only on close co-operation with the relevant Departments, but also on the law standing still long enough for the work to be completed before it is interrupted or overtaken by legislative developments. As our report indicates, recent problems in meeting these conditions have made it difficult for us to keep our consolidation work on track.

Finally, may I take this opportunity of expressing my gratitude to you and your Department for consistent support throughout my time at the Commission, and to all those with whom I have worked within and outside the Commission. For me, it has been a great privilege.

ROBERT CARNWATH, CHAIRMAN

PART I

SUMMARY OF THE YEAR

A great deal has been achieved by the Commission during 2001, for example:

- We have issued 13 publications including 6 law reform reports, mostly with draft Bills, on subjects ranging from Evidence of Bad Character to Limitation Periods;
- The Commission's largest ever law reform report, the *tour de force* on land registration, was published, together with its 90 page draft Bill – which was introduced in Parliament even before publication;
- We have had 5 new law reform projects formally referred to us,¹ in areas ranging from trust law to housing tenure;
- Our work on codification of criminal law has received new impetus;
- We have agreed with the government a substantial programme of law reform work;
- We have jointly promoted five law reform conferences;
- Two new Commissioners have started their appointments;
- A new law reform team has been established for Housing and Administrative Justice.

¹ A further project has been referred to us in early 2002.

PART II

SOME FEATURES OF THE YEAR

- 2.1 It is the Commission's task to keep the law under review and make recommendations for change. In our law reform work we seek to ensure that the law is as simple, fair, modern and cost-effective as possible. This should be of real benefit to a great number and variety of people. Our methods concentrate on systematic law reform: careful selection of projects, following consultation; close study; comparison with the law in other countries; thorough consultation; and a final report which usually incorporates a draft Bill. A summary of our role and methods appears in Appendix A.

TARGETS FOR 2001 AND 2002

- 2.2 The table at the end of this Part summarises the major targets we had for issuing publications in 2001, with the outcomes. A summary of our main planned publications for 2002 follows it.

OUR PUBLICATIONS IN 2001

- 2.3 2001 has been a productive year at the Law Commission. We issued 13 publications. This included six reports and two consultation papers. The law reform reports consisted of:

Land Registration for the Twenty-First Century;
Limitation of Actions;
Double Jeopardy and Prosecution Appeals;
Evidence of Bad Character in Criminal Proceedings;
Bail and the Human Rights Act 1998;
Third Parties' Rights Against Insurers.

The consultation papers were on:

the Limited Partnerships Act 1907 and
the Illegality Defence in Tort.

More detail can be found in the Parts below.

The publications appear in full and in summary at <http://www.lawcom.gov.uk>.

NEW LAW REFORM WORK

- 2.4 During the year the Government has asked us to undertake additional reviews, of the following six substantial areas of law¹:-

¹ In early 2002 the Government has also asked us to undertake a further piece of work, in connection with perceived abuses of defamation procedures, and internet publication: see para 4.9 below.

- Unfair Contract Terms: see paragraphs 4.3 - 4.4 below.
- Codification of the Criminal Law: see paragraph 5.1.
- Housing: see paragraphs 6.2 - 6.6.
- Compulsory Purchase and Compensation: see paragraphs 6.7 - 6.10.
- Publication of Local Authority Reports: see paragraphs 6.11 - 6.14.
- Trusts: see paragraph 7.8.

POSSIBLE FUTURE LAW REFORM WORK

- 2.5 Three official reports recommended that we review areas of law. First, in March Sir Andrew Leggatt completed the Review of Tribunals which the Government asked him to undertake. Among its 360 recommendations, the report² recommended to the Government that the Law Commission assist, in the context of tribunals dealing with disputes about land, property and housing, in removing the current overlaps of jurisdiction with the courts and the scope for forum-shopping. We are in touch with the Government about this recommendation.³ Professor Martin Partington, who was appointed a Law Commissioner towards the end of the Leggatt Review, was a Specialist Adviser to the Review.
- 2.6 Secondly, the Final Report of the Department of Trade and Industry Company Law Review Steering Group, published in July, recommended that the DTI consult the Lord Chancellor's Department with a view to our being requested to examine the system for registering company charges and security and "quasi-security" generally over property other than land.⁴ There has not been a major change in the system for registering company charges since it was devised in 1900. We are in discussion with the Government about this recommendation and hope to be asked to undertake this work.
- 2.7 A third such recommendation arose in the very different field of pension fund surpluses. In March 2000 the Chancellor of the Exchequer asked Mr Paul Myners to carry out a review of institutional investment in the UK. The Myners Review was published in March 2001. One of its recommendations was that "the Law Commission should be asked to review whether the objective of maximum clarity over ownership of [pension fund surpluses] can be achieved through legal change". The Law Commission has been involved in discussions with Government about this recommendation. We provided informal advice to the Government, who are dealing with the issues. We do not anticipate being asked to undertake this work.

² "Tribunals for Users - One System, One Service".

³ We are currently reviewing aspects of housing law: see paras 6.2 - 6.6 below.

⁴ Modern Company Law for a Competitive Economy, Final Report, URN 01/942. See Chapter 12 for an explanation of the issues involved. In our Seventh and Eighth Programmes we explained the background to this possible work, relating to other aspects of commercial law.

- 2.8 Lord Justice Auld's report, following his review of the criminal courts of England and Wales, was published in October. We expressed our willingness to consider undertaking appropriate work arising from the report. It had included recommendations on codification of the criminal law, double jeopardy, prosecution appeals, and hearsay in criminal proceedings.⁵

IMPLEMENTATION OF LAW COMMISSION WORK

- 2.9 A key feature of the year has been the Government's immediate acceptance of our report on land registration (paragraphs 7.1 - 7.4 below). The Government also accepted our report on perpetuities (paragraph 3.21). We also understand that the Government has in general accepted much in our recommendations on double jeopardy (paragraphs 5.4 - 5.5). The courts have in effect implemented another report (paragraphs 3.38 - 3.39). In addition, there has been renewed Governmental interest in a few of our past reports, such as DTLR⁶ interest in that on business tenancies (paragraph 3.22 below). Even so, there have been very few developments apart from the disappointing eventual outcome of our report on divorce (paragraphs 3.23 - 3.28 below).
- 2.10 The acceptances referred to in the previous paragraph are most welcome. However, the continued delays in deciding whether to accept, in particular, three outstanding reports on damages⁷ is causing serious concern. Also, as the Chairman's Foreword to this Annual Report indicates, while we understand that early implementation cannot be expected for all our reports, we very much hope that others which have been accepted by the Government may be implemented soon – for example, those which we published⁸ on:-

Offences against the Person in 1993, partly accepted in 1997;

Mental Incapacity in 1995, partly accepted in 1999;

Involuntary Manslaughter in 1996, partly accepted in 2000.

NEW GOVERNMENT'S MANIFESTO

- 2.11 The Commission is of course independent of Government. However, we were very interested to note the following⁹ in the General Election manifesto of what became the new Government in June 2001:-

- (a) "We will develop a modern basis for land registration to make conveyancing faster and cheaper", a review which we completed the following month

⁵ See, respectively, paras 5.1, 5.4 - 5.5, 5.4 - 5.7 and 3.11 below.

⁶ The Department of Transport, Local Government and the Regions, many of whose responsibilities lay with the Department of the Environment, Transport and the Regions before the General Election of June 2001.

⁷ (1) Liability for Psychiatric Illness; (2) Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits; and (3) Wrongful Death. See para 3.13 below.

⁸ See paras 3.8, 3.29 - 3.32 and 3.9 below, respectively.

⁹ See, respectively, paras 7.1 - 7.4, 3.9, 4.3 - 4.4 and 5.4 - 5.5 below.

- (b) “Law reform is necessary to make provisions against corporate manslaughter”, a review which we had completed in 1996
- (c) “We will toughen the laws on ... unfair terms in contracts”: we had been asked in January to review the law on unfair terms in contracts
- (d) “We shall continue to implement the recommendations of the Macpherson Report, including the reform of the “Double Jeopardy” rule for murder, a review which we had completed in March.

PROGRAMMES OF LAW REFORM

- 2.12 In July we submitted our Eighth Programme of Law Reform¹⁰ to the Lord Chancellor. Both he and the Ministerial Committee on Law Reform¹¹ approved it and it runs from 1 August 2001.

WORK ON HOUSING LAW, ADMINISTRATIVE JUSTICE AND COMMERCIAL LAW

- 2.13 We describe below¹² how we have come to form a team to deal with housing and administrative justice, in place of our Company and Commercial Law Team. Our work in the field of commercial law is mainly being undertaken in our Common Law Team.

CATCHING THE EYE OF GOVERNMENT

- 2.14 “Law Reform: Catching the Eye of Government” was the title of a seminar we held in March. It centred on methods of achieving law reform and overcoming difficulties such as the lack of legislative time. Some speakers presented their views and experiences of how would-be reformers can best attract the attention and support of government to particular reforms. Others explored alternative strategies to primary legislation, the extent to which judicial law reform is feasible and the opportunities presented by what is now the Regulatory Reform Act (paragraphs 2.15 - 2.16 below). The speakers were:-

Lord Bach, then Parliamentary Under-Secretary in the Lord Chancellor’s Department

Simon Rea, Cabinet Office

Penny Letts, Policy Adviser, Mental Health and Disability, The Law Society

Chris Holmes, Director of Shelter

Lord Hope of Craighead, Law Lord

Philip Bovey, Legal Adviser to the Regulatory Impact Unit, Cabinet Office.

¹⁰ Law Com No 274.

¹¹ Described in paras 1.59 - 1.60 of our Annual Report for 2000, Law Com No 268.

¹² Para 6.1.

The seminar was chaired by Professor Dawn Oliver, Professor of Constitutional Law at University College London, and by our Chairman. It was attended by a wide range of participants with an interest in law reform. We held the seminar jointly with the University College London Faculty of Laws, at the Institute of Advanced Legal Studies. We are extremely grateful to them and to all the speakers and participants. The conference papers can be obtained from us.

REGULATORY REFORM ACT 2001

- 2.15 Our last Annual Report referred¹³ to what is now the Regulatory Reform Act 2001 (RRA). Most Bills which we draft to reform the law need consideration on the floor of each House of Parliament, because of the importance of their topics. However, in the light of the continuing backlog of Law Commission legislation awaiting introduction in Parliament or Government decisions, we would welcome a procedure which provides a means for Parliamentary consideration of appropriate Law Commission legislation without the need to await the opportunity for full Parliamentary procedures (paragraph 3.35).
- 2.16 The RRA basically confers a power to make provision by Order to reform legislation which has imposed burdens - with a view, for example, to reducing those burdens or removing inconsistencies and anomalies. We have considered the extent to which the Act may assist the implementation of Law Commission legislation and we shall work with Government to apply the Act whenever appropriate. However, for a number of reasons we believe that the RRA's application to Law Commission legislation may be limited.¹⁴ For example, as finally enacted, the RRA is basically aimed at reforming previous legislation, rather than common law - and a significant proportion of our work relates to common law. Also, the RRA procedure can only be used if the new Order would remove or reduce burdens. This would not, it seems, include an Order which merely removed inconsistencies and anomalies or rationalised the law in other ways, without removing significant burdens. It would apparently not apply either when, as the result of the proposed amendment to primary legislation, some other burden under other secondary legislation could be removed by the revocation of the other secondary legislation, since that would not be done by the Order itself.

MODERNISING GOVERNMENT

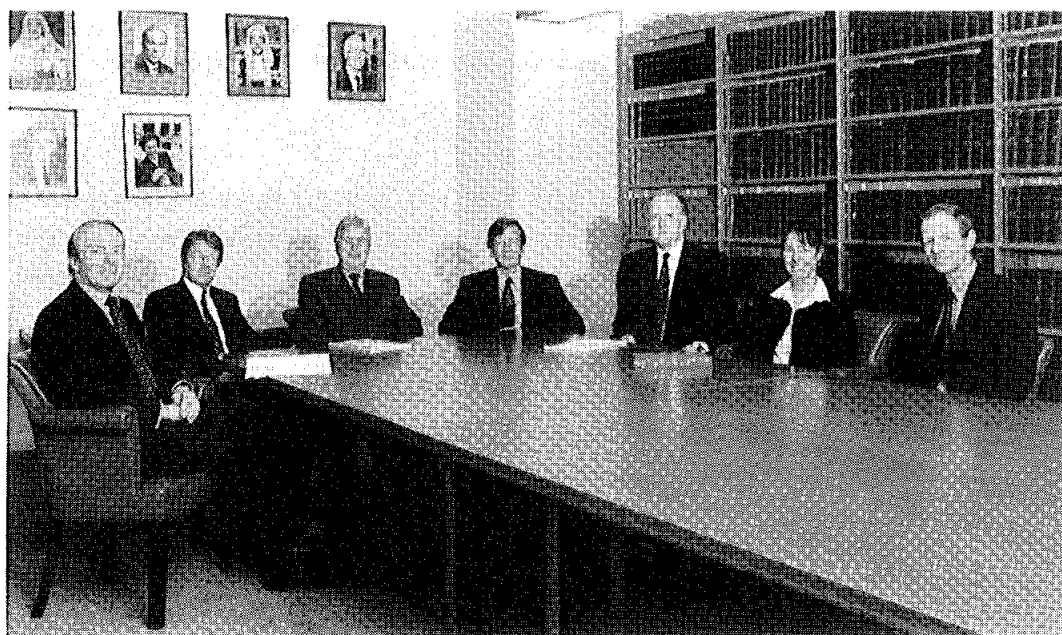
- 2.17 We continue to pursue the objectives of the Modernising Government programme, while maintaining our independence from Government. This is manifested in a variety of the Law Commission's activities.¹⁵ For example, we prioritise areas of law which are most in need of review and which have greatest contemporary relevance, such as our work on land registration, housing tenure,

¹³ Foreword and paras 1.61-1.63.

¹⁴ The Government's Regulatory Reform Action Plan was published in February 2002. It indicates that the RRA procedure will be used, in 2003, to implement our report on execution of deeds (see para 3.17 below) and that the RRA procedure may be used, by early 2002, for reform of business tenancies' legislation (see para 3.22 below.)

¹⁵ We mentioned several in our Annual Report for 2000, at paras 1.64 - 1.66.

consumers' contracts and electronic commerce. In a very different field, the Commission has been working hard to meet the 2004 target for Electronic Records Management.



THE CHAIRMAN, OTHER COMMISSIONERS AND THE SECRETARY

COMMISSIONERS

The Chairman

- 2.18 It was announced in September that our Chairman, Mr Justice Carnwath, was to be appointed as a Court of Appeal Judge (Lord Justice of Appeal). The appointment was from January 2002 but he will remain as Chairman for several months thereafter.

Next Chairman

- 2.19 The Lord Chancellor has appointed Sir Roger Toulson, a Judge of the Queen's Bench Division of the High Court, to be the tenth Chairman of the Law Commission.¹⁶ We look forward to welcoming Mr Justice Toulson as the next Chairman.

Charles Harpum

- 2.20 Charles Harpum's term of appointment ended in May after over seven years as a Law Commissioner. Charles came to the Commission after teaching law at Cambridge University. He led our work on Property and Trust Law, fields in which he is an acknowledged master. This work had a remarkable record of achievement in his time, with nine publications, leading to the introduction of a range of new legislation: it included not only modernisation of the law of trusts and trustees but also the Land Registration Report and draft Bill, the

¹⁶ Announced on 12 February 2002.

Commission's single largest project of law reform ever, which will completely revolutionise conveyancing and a 75 year old system of land registration. He advised Government on the passage of several Commission Bills, to which his personal contribution was acclaimed in Parliament on several occasions. He was also an enthusiastic ambassador for the Commission. On leaving the Commission, he went into practice at the Bar.

Stuart Bridge

- 2.21 In July 2001 Mr Stuart Bridge, Commissioner for the Property and Trust Law Team, succeeded Mr Charles Harpum. Stuart Bridge has been a Lecturer in Law at Cambridge University since 1990.

Code of Best Practice for Law Commissioners

- 2.22 In accordance with Government policy for all non-departmental bodies, we have a written code for Law Commissioners, agreed with the Lord Chancellor's Department. It incorporates the Seven Principles of Public Life and covers matters like the role and responsibilities of Commissioners. Copies are available from the Law Commission.

MAJOR TARGETS FOR 2001

Outcome

To complete reports on:

- land registration^o
- double jeopardy
- prosecution appeals against judges' rulings
- Third Parties (Rights against Insurers) Act 1930^{*}
- bail and the Human Rights Act 1998
- limitation of actions
- evidence of previous misconduct

To complete consultation papers on:

- limited partnerships^{*}
- property rights of those who share homes
- unfair contract terms^{*}

To complete:

- paper following scoping study on aspects of housing law
- paper following scoping study on compulsory purchase
- paper on electronic commerce
- paper on illegality in tort
- Annual Report for 2000
- Eighth Programme of Law Reform

^{*} jointly with the Scottish Law Commission

^o jointly with HM Land Registry

ALL TARGETS WERE SUBJECT TO AVAILABILITY OF RESOURCES

- published in July
- published in March
- published in March
- published in July
- published in June
- published in July
- published in October

- published in November
- delayed: see para 7.5
- delayed: see para 4.4

- published in March
- published in March
- published in December
- published in June
- published in March
- published in October

MAJOR TARGETS FOR 2001

To complete reports on:

- fraud offences

To complete consultation papers on:

- unfair contract terms*
- compound interest
- publication of local authority reports
- housing law – tenure
 - succession
- property rights of those who share homes
- trustee exemption clauses
- non-accidental injury to children[#]

To complete:

- consultative report on compulsory purchase orders
- scoping study on perceived abuses of defamation procedures[°]
- consolidation of legislation on Parliamentary and local government elections

* jointly with the Scottish Law Commission

or in early 2003

° we were requested early in 2002 to undertake this work

Each of the above topics is described in more detail elsewhere in this report, generally with a more specific timetable.

ALL TARGETS ARE SUBJECT TO AVAILABILITY OF RESOURCES

PART III

IMPLEMENTATION OF LAW COMMISSION REPORTS

INTRODUCTION

3.1 Most of the Commission's law reform reports include recommendations for changing the law. The most frequent method of implementing those recommendations is

- By Act of Parliament, if the Government and Parliament accept the recommendations.

However, a small but increasing number of our reports

- Do not call for legislation at all, for example because they do not recommend any change in the law or because they are intended as advice or guidance rather than as vehicles for law reform: examples are our report on bail and the Human Rights Act; and our advice on e-commerce;
- Are in effect implemented by the courts;
- Could possibly be implemented by Statutory Instrument; or
- Are scoping studies: those on housing and on compulsory purchase are mentioned in this report.

This Part sets out the position on implementation,¹ referring first to action taken during 2001 and then to the overall position.

ACTION DURING 2001

Summary

3.2 At the beginning of 2001:

- (i) Nine of our reports had been accepted by the Government, in full or in part, and legislation had yet to be introduced and
- (ii) Twelve other reports of ours awaited decisions by the Government.

3.3 At the end of 2001:

- (i) One new Law Commission reforming Bill was accepted by the Government and introduced in Parliament and one other was in effect implemented by the courts: see paragraphs 3.38 - 3.39 and 7.1 - 7.4

¹ We are here referring to implementation of our work/reports on law reform, rather than on consolidation or statute law revision.

below; an Act implementing one of our reports, on Trustees' Powers and Duties, was brought into effect

- (ii) Twelve of our reports had been accepted by the Government during or before the year, in full or in part, and legislation had yet to be introduced, and
- (iii) Fifteen other reports of ours awaited decisions by the Government.

(A) IMPLEMENTATION IN 2001

Land Registration

- 3.4 The Government introduced our Land Registration Bill in Parliament in June, the month before we published it. We give details at paragraphs 7.1 - 7.4 below.

Trustees' Powers and Duties

- 3.5 The Trustee Act 2000, which substantially implemented our report on Trustees' Powers and Duties ((1999) Law Com No 260), was brought into force in February 2001. We welcome the fact that the Trustee Act (Northern Ireland) 2001 received Royal Assent, as it reforms the law to similar effect to the Act of 2000 for England and Wales.

(B) GOVERNMENT DECISIONS ON OUR REPORTS IN 2001

Double Jeopardy

- 3.6 The Government has announced that there will be legislation which would make it possible to retry someone who has been acquitted of murder where there is compelling new evidence of guilt. This was one of the main recommendations in our report on Double Jeopardy and Prosecution Appeals, though the Government has not yet indicated whether it accepts all the recommendations we made.

(C) CURRENT POSITION OF SOME OF THE LAW COMMISSION REPORTS AWAITING IMPLEMENTATION

- 3.7 At the end of 2001 there were some 27 reports which awaited implementation. They are shown in the list at Appendix C. Some have been accepted at some time by the Government and await legislative opportunities. Some await decision by the Government; for some, there are good reasons why the Government should not give a decision at present, for example because of their link with the recommendations of the Company Law Review. For others, we shall continue to urge Government to make progress. We can report as follows.

(i) Offences Against the Person

- 3.8 It was eight years ago that we published our report recommending an extremely important overhaul of the current legislation, which dates back to 1861 (Law Com No 218). In 1998 the Home Office published a consultation paper ("Violence: Reforming the Offences Against the Person Act 1861") setting out their initial proposals for reforming the law in this area, based on our report. In view of the Government's stated commitment to codification of the main criminal

offences, we are hopeful that such legislation will be introduced in the current Parliament.

(ii) Involuntary Manslaughter

- 3.9 In 1996 we published a report on involuntary manslaughter,² in which we recommended the replacement of the existing common law offence with statutory offences of “reckless killing” and “killing by gross carelessness”, plus a new offence of corporate killing. In May 2000 the Home Office published a consultation paper³ containing proposals which were based upon our recommendations but diverged from them in certain respects. In Written Answers on 26 June, 4 July and 17 December 2001, the Government said that it would legislate on corporate manslaughter as soon as Parliamentary time allowed, and would publish final proposals for the reform of the law on involuntary manslaughter as soon as it has completed consideration of the responses to the consultation exercise. There was a brief Parliamentary debate on the subject in Westminster Hall on 10 July 2001.

(iii) Corruption Offences

- 3.10 In 1998 we published a report⁴ in which we recommended the creation of four new offences to replace those in the Prevention of Corruption Acts 1889–1916. In June 2000 the Home Office published its own proposals in a White Paper⁵ which accepted nearly all our recommendations but took them further in some respects. The Queen’s Speech of 20 June 2001 promised legislation on corruption in the 2001/2002 Session. On 9 November, the Home Secretary announced that measures to be included in the Anti-Terrorism, Crime and Security Bill would “outlaw acts of bribery by UK nationals and companies abroad in the same circumstances as they are outlawed here”, and “amend the existing law to put beyond doubt that the law of bribery applies to acts involving foreign public officials, Ministers, MPs and judges, and take jurisdiction over crimes of bribery committed by UK nationals and UK companies overseas. ... This is in advance of a major reform of the present law of corruption following [the] Law Commission report”. The Bill was enacted in December 2001.⁶

(iv) Hearsay in Criminal Proceedings

- 3.11 In 1997 we published a report⁷ in which we made recommendations for the reform of the law governing the admissibility of hearsay evidence in criminal proceedings and certain related issues. The Government accepted all our recommendations in December 1998. One of them (the repeal of section 69 of the

² Legislating the Criminal Code: Involuntary Manslaughter, Law Com No 237.

³ Reforming the Law on Involuntary Manslaughter: the Government’s Proposals.

⁴ Legislating the Criminal Code: Corruption, Law Com No 248.

⁵ Raising Standards and Upholding Integrity: The Prevention of Corruption (Cm 4759).

⁶ These provisions came into force on 14 February 2002.

⁷ Evidence in Criminal Proceedings: Hearsay and Related Topics, Law Com No 245.

Police and Criminal Evidence Act 1984, relating to evidence generated by computers) was implemented by section 60 of the Youth Justice and Criminal Evidence Act 1999. The remainder still await implementation. In his report on the Criminal Courts, Lord Justice Auld recommended further consideration of the reform of the rule against hearsay with a view to making it generally admissible, subject to the principle of best evidence. The Government is reflecting on whether, and if so to what extent, this might necessitate revisiting its acceptance of our recommendations.

(v) Aggravated, Exemplary and Restitutionary Damages

- 3.12 The Government announced in November 1999 that it accepted our recommendations on aggravated and restitutionary damages in our Report (1997, Law Com No 247) and that it would legislate when a suitable opportunity arose. A legislative opportunity is awaited. At the same time the Government announced that it rejected our recommendations on exemplary damages in the absence of a clear consensus as to whether to have a complete legislative overhaul or to abolish such damages.

(vi) – (viii): (a) Liability for Psychiatric Illness; (b) Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits; and (c) Wrongful Death

- 3.13 In November 1999 the Government announced that it had carefully considered the recommendations contained in these Reports (1998, Law Com No 249; 1999, Law Com No 262; 1999, Law Com No 263), and that it would undertake a comprehensive assessment of the individual and aggregate effects of those recommendations. The Government hoped that the full assessment would be available to inform their final decision on our recommendations early in 2000. We understand that work on the assessment is continuing.

(ix) Damages for Non-Pecuniary Loss

- 3.14 Most of the recommendations in our Report (1999, Law Com No 257) recommended an increase in the level of such damages and were dealt with by the Court of Appeal in February 2000. Still outstanding are our recommendations to reduce the role of juries in the assessment of damages.

(x) Company Directors' Duties

- 3.15 Our Report (1999, Law Com No 261), prepared jointly with the Scottish Law Commission, recommended the introduction of a statutory statement of directors' duties. It was considered as part of the Company Law Review. The Final Report of the Review⁸ broadly accepted our recommendations. We anticipate that this may be reflected when legislation to implement that Review is introduced.

⁸ See para 2.6 above.

(xi) Shareholder Remedies

- 3.16 Our Report (1997, Law Com No 246), prepared in consultation with the Scottish Law Commission, was also considered as part of the Company Law Review. The Final Report of the Review⁹ accepted our recommendations in part.

(xii) Execution of Deeds and Documents

- 3.17 The Government announced in July 1999 that it accepted all the recommendations in our Report (1998, Law Com No 253).¹⁰

(xiii) Structural Settlements

- 3.18 The recommendations in our Report (1994, Law Com No 224) were mainly enacted, particularly through the Damages Act 1996. In June 2001 the Lord Chancellor exercised the power under section 1 of that Act to set the discount rate to be applied in assessing damages for pecuniary loss.

(xiv) Landlord and Tenant: Responsibility for State and Condition of Property

- 3.19 The Department of the Environment, Transport and the Regions (now the Department of Transport, Local Government and Regions (DTLR)) published a consultation paper in March 2001.¹¹ It stated that Ministers welcomed the recommendation of the Law Commission¹² that there should be an implied covenant in all residential leases granted for less than seven years, making the landlord responsible for ensuring that the property is “fit for human habitation” for the whole period of the lease.
- 3.20 The DTLR said that the Law Commission’s proposal was consistent with the principle of a minimum standard of acceptability in their consultation paper. The DTLR are working together with the Law Commission and other interested bodies to establish the appropriate civil redress in respect of the increased rights that would be available to tenants.

(xv) The Rules Against Perpetuities and Excessive Accumulations

- 3.21 On 6 March the Lord Chancellor replied to a Parliamentary Question about when the Government would make an announcement on our Report on the Rules against Perpetuities and Excessive Accumulations (1999, Law Com No 251). He said that the Government accepted the Law Commission’s recommendations and would legislate when Parliamentary time allowed.

⁹ See para 2.6 above.

¹⁰ The Government plans to have legislation in place in 2003: see para 2.16 above.

¹¹ Health and Safety in Housing: Replacement of the Housing Fitness Standard by The Housing Health and Safety Rating System.

¹² Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238.

(xvi) Business Tenancies

- 3.22 In March 2001, the Department of the Environment, Transport and the Regions (now the Department for Transport, Local Government and Regions (DTLR)) issued a consultation paper.¹³ It proposed the use of the Order-making procedure under the Regulatory Reform Act 2001 to implement a package of reforms substantially based on our Report.¹⁴ The DTLR has completed an analysis of responses to that paper. It is now likely that implementation of the Report will be by way of Order: see paragraph 2.16 above.

(xvii) Divorce Law

- 3.23 Early in the year the Government announced that it would not be implementing the divorce provisions in Part II of the Family Law Act 1996. It proposed to invite Parliament to repeal the relevant sections once a suitable legislative opportunity occurred.¹⁵
- 3.24 In 1990, following extensive study, research and consultation, the Law Commission had published its report, the Ground for Divorce, which made detailed recommendations for reform of divorce law and included a draft Bill to implement them. We particularly recommended that it should no longer be possible to obtain a divorce quickly and easily by the simple but often unjust and painful expedient of one party claiming that the other had committed adultery or behaved intolerably. We recommended that the parties should instead have a period of at least one year during which they could decide whether or not their marriage had irretrievably broken down and, if so and they were to be divorced, what arrangements were needed for an orderly and preferably amicable outcome.
- 3.25 Following publication by the then Government of its own consultation paper and a White Paper, Parliament enacted new legislation for divorce in Part II of the 1996 Act. Although the legislation for divorce itself was largely based on our recommendations, several other measures were added: they included a requirement that those considering divorce proceedings should attend individual information meetings designed, among other things, to save saveable marriages and, where this was not possible, to promote mediation in divorce as an alternative to adversarial litigation.
- 3.26 Before bringing the legislation into force, the Government had research conducted to evaluate pilot information meetings. That research concluded that none of the models tested for those meetings was good enough. For that and other reasons, the Government decided not to implement the legislation on divorce. The Government is, however, committed to the principles of Part I of the Act,

¹³ Business Tenancies Legislation in England and Wales: the Government's proposals for reform.

¹⁴ Landlord and Tenant: Business Tenancies - A Periodic Review of the Landlord and Tenant Act 1954 Part II (1992) Law Com No 208.

¹⁵ Written Answer, *Hansard* (HL) 16 January 2001, vol 620, col WA126; (HC) 16 January 2001, vol 361, col 219 W.

including saving saveable marriages and, where marriages break down, bringing them to an end with the minimum distress to the parties and children affected.

3.27 We understood why the provisions as enacted had been rejected. The simple scheme recommended by the Commission in our final report had subsequently become extremely complicated, uncertain and costly. However, the problems identified by the Commission cannot be ignored.¹⁶ As the Advisory Board on Family Law, an expert body established to provide the Lord Chancellor with independent advice on the implementation and operation of the Act, said “The decision not to implement Part II of the Act is a considerable disappointment to the Board. As we have consistently reported, our view has been that the Act in the form in which it finally reached the Statute Book was far from perfect. However, we felt that it was “good enough” to put into effect and subsequently refine; and, given the difficulties inherent in introducing new legislation on a topic of this sensitivity, we firmly believed that this course was preferable to an indefinite continuance of the status quo” (Annual Report 2000/2001, Foreword). “Now that the Government has decided on the repeal of Part II of the Family Law Act, consideration must be given to a replacement for the surviving adversarial, partially fault-based regime. The serious defects of the pre-existing arrangements, which led the Law Commission to propose reform in the first place, remain” (Annual Report 2000/2001, page 28).

3.28 Our essential aim was to remove the unjust, divisive and corrosive features of the present law, while ensuring so far as possible that couples had made arrangements to fulfil the responsibilities remaining from one marriage, particularly to their children but also to one another, before being free to enter another. The present system does not achieve this and is still in urgent need of reform.

(xviii) Mental Incapacity

3.29 There is a serious and growing need for a single, comprehensive piece of legislation to provide for the personal welfare, healthcare and financial affairs of those who lack mental capacity. At present there is a real gap in the law for the ordinary needs of a significant and ever-increasing number of people. We published our report and draft Bill as long ago as 1995 (Law Com No 231). Most of our recommendations have found favour with most of those who have commented on them. In December 1997 the Government published a Green Paper.¹⁷ In October 1999 the Government published its plans to reform the law in this area.¹⁸ That Policy Statement clearly accepted the majority of our recommendations, even although the Government has not wholly followed all of them: for example, the Government has omitted any proposals on advance statements about healthcare, sometimes described as living wills or advance

¹⁶ The Government is taking a number of non-legislative steps to try to assist. For example, it continues to provide funding, £4.5m in 2001/02, to marriage and relationship support services.

¹⁷ Who Decides? Making Decisions on Behalf of Mentally Incapacitated Adults (Cm 3803).

¹⁸ Making Decisions, Cm 4465. The Scottish Parliament enacted new legislation in 2000.

directives. They have also made no commitment to take forward our recommendations for public law protection for vulnerable people.

- 3.30 The Government has said that it recognises the need for a fundamental reform of mental incapacity law¹⁹ and that it is committed to reforming mental incapacity law when Parliamentary time allows. If practicable, it will publish draft legislation in advance of the Bill's introduction in Parliament.²⁰
- 3.31 Beyond legal reform, the Public Guardianship Office (PGO) replaced the Public Trust Office from April 2001. The PGO was established to provide services that promote the financial and social well-being of people with mental incapacity.
- 3.32 The Lord Chancellor's Department also wishes to enable people to have more local access to courts when, for example, they are seeking to become official financial guardians on behalf of people with mental incapacity. Consistently with one of the recommendations in our 1995 report, LCD has been piloting a scheme for the Court of Protection²¹ to sit outside London. If it is successful, judges may be appointed to hear Court of Protection cases in every court Circuit in England and Wales. This would be of considerable benefit to family members, attorneys and receivers. In addition, the Lord Chancellor's Department has formed an Inter-Departmental Working Group on Mental Incapacity, a high-level group of officials from various Government departments and agencies.

GENERAL

(1) Implementation by Act of Parliament

- 3.33 Over two-thirds of our law reform reports have been implemented by Parliament, in full or in part.²² The 1992–1997 Parliament implemented the most, twenty-six, largely because of a record of nine in 1995 and eight in 1996. The next Parliament, which ended in 2001, only implemented four. A list of implemented reports appears at Appendix B. All our reports on consolidation and statute law revision have been implemented.

(2) Implementation by Statutory Instrument

- 3.34 Over the years Law Commission recommendations have mainly been implemented by Acts of Parliament. That is likely to remain the single most frequent method of implementation. However, the recommendations in some of our reports, which deal with more detailed or technical areas of law, may lend themselves to implementation by subordinate legislation.

¹⁹ Written Answer, *Hansard* (HC) 3 July 2001, vol 371, col 144W.

²⁰ Written Answer, *Hansard* (HC) 11 December 2001, vol 376, col 841W.

²¹ The Court of Protection, with the PGO, oversees the property and financial affairs of over 20,000 mentally incapacitated people and, for example, deals with over 12,000 applications each year to register enduring powers of attorney for people beginning to suffer from senile dementia.

²² That proportion would be even higher were it not for the inevitable gap between publication of our report and implementation by Parliament.

- 3.35 In recent years we have explored the possibility of more of our reports being implemented in this way where appropriate, for example under the Deregulation and Contracting Out Act 1994.²³ We have also worked with the Land Registry to assist the Lord Chancellor's Department on the preparation of a draft Order under the Electronic Communications Act, to enable electronic conveyancing to be introduced.²⁴ We have also taken considerable interest in the draft legislation which has been enacted as the Regulatory Reform Act 2001,²⁵ as described at paragraphs 2.15 - 2.16 above.

(3) The Courts' Implementation and Use of Law Commission Proposals

- 3.36 Legislation should not be taken as the only measure of our success, and some of our recommendations can be implemented without legislation. In recent years the courts have increasingly given effect to our recommendations. As we have mentioned on several occasions in the recent past,²⁶ our reports have also had a significant effect in changing views on particular subjects and in leading to a gradual change in the law by developments through the courts or other means.²⁷
- 3.37 For example, our reports can have a significant effect in providing assistance to the courts. To take just the year 2001, the House of Lords or Court of Appeal referred to Law Commission works, such as Consultation Papers or Reports, in 33 decisions. We outline one example below.
- 3.38 The case related to chancel repairs. Owners of certain pieces of land have had a liability, of mediaeval origin, to repair the chancels of some parish churches, even if they were unaware of that liability when they purchased the land. In a report in 1985²⁸ we recommended that this liability should be phased out, over a 10 year period. In 1982 the Church of England had supported phasing out the liability. We continued discussions with the Government over the years since our report, not least pressing that the liability contravened the European Convention on Human Rights. In the event, the Government rejected our report. This was on the basis that, although the liability can cause hardship, it is often reflected in the sale price and is enforced in relatively few cases, and any scheme to bring the liability to an end might encourage enforcement where it still existed; and, although continuing the liability carried the risk of breaching the ECHR, so would its abolition.²⁹

²³ See our Eighth Programme of Law Reform, para 2.10.

²⁴ Our Annual Report for 2000, at para 5.3.

²⁵ *Ibid*, at paras 1.61 – 1.63.

²⁶ Seventh Programme of Law Reform (1999) Law Com No 259 at para 2.1; Annual Report for 1999, Law Com No 265 at paras 1.10 and 1.26; Annual Report for 2000, Law Com No 268 at paras 1.7, 1.28, 1.52 and 1.53; Eighth Programme of Law Reform (2001) Law Com No 274 at paras 2.11 - 2.21.

²⁷ Judicial law reform was the subject of Professor Beale's Upjohn Lecture (para 9.16 below) and was one of the topics explored at the seminar we mention at para 2.14 above.

²⁸ Liability for Chancel Repairs (1985) Law Com No 152.

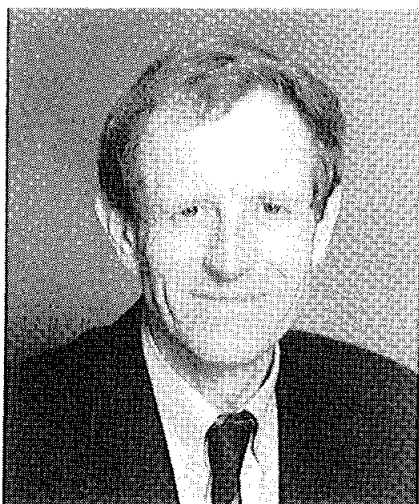
²⁹ Written Answer, *Hansard* (HC) 29 July 1998, vol 592, cols 201-2 W.

- 3.39 This year, in *Aston Cantlow PCC v Wallbank*,³⁰ under the Human Rights Act, the Court of Appeal struck down chancel repair liability, effectively implementing our main recommendation. We understand that an application for leave to appeal to the House of Lords is pending.

³⁰ [2001] 3 WLR 1323.

PART IV

COMMON LAW AND COMMERCIAL LAW



Professor Hugh Beale
(Commissioner)

TEAM MEMBERS¹

Government Legal Service

Ian Walker (*Team Manager*)

Helen Hall, James Robinson, Simon Tabbush,
Leigh White

Research Assistants

Mark Baumohl, Lowri Griffiths, Michelle Powell
Nathalie Stewart, Alison Williams

Limitation of Actions

- 4.1 In July we published a Report and draft Bill on the Limitation of Actions.² For example, it is not always clear how a particular claim should be treated for limitation purposes, and there have been problems relating to claimants' knowledge of the facts, deliberate concealment, claimants under a disability, and personal injury claims. We recommended that the Limitation Act 1980 be replaced by a single, core, limitation regime to apply as far as possible to all claims for a remedy for a wrong or for the enforcement of a right and to claims for restitution.³ The core regime would consist of:-

- A primary limitation period of three years starting from the date on which the claimant knows, or ought reasonably to know, the relevant facts.
- A long-stop limitation period of ten years, starting from the date on which the relevant events took place.

This regime would be modified for certain types of claim eg personal injury claims.

¹ As at the end of 2001.

² Law Com No 270. The Lord Chancellor has been considering the recommendations and will announce his decision before Summer 2002: Written Answer, *Hansard* (HC) 29 January 2002, vol 379, col 257 W.

³ There are important exceptions, for example in relation to claims in respect of personal injury and claims to recover land. In certain circumstances one or both of the limitation periods will be extended, for example where the claimant is under 18.

Illegal Transactions

- 4.2 The law relating to illegal transactions is unclear and, arguably, unfair. For example, it is unclear whether money may be recovered if it has been transferred under a contract which contravenes the law. Our aim is to make the law relating to illegal transactions both clearer and fairer. We have published two Consultation Papers, the first dealing with contract and trusts,⁴ the second with tort.⁵ We are in the process of formulating our final proposals to be included in a Report to be completed in 2003.

Unfair Contract Terms

- 4.3 We are, jointly with the Scottish Law Commission, undertaking a project to revise the law governing unfair contract terms. The validity of terms in contracts confronts both customers and businesses on a daily basis. The present law is extremely confusing because there is an overlap between the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999, yet the two use significantly different criteria and produce significantly different results. Business has complained that compliance with the two regimes is costly. Our aim is to reduce that confusion and to make the law more easily understood, and also to consider extending its protection to small businesses.
- 4.4 We are preparing a joint Consultation Paper which we shall publish during 2002. The work has taken rather longer than we had anticipated, for a number of reasons, including the need to give priority to concluding other projects. We intend to publish our final Report and draft legislation in late 2003 or early 2004.

Compound Interest

- 4.5 There has been concern that the courts' limited ability to award compound interest results in injustice to claimants and provides little incentive for defendants to conclude litigation early. It is also regarded as anomalous that arbitrators have been given the power to award compound interest but the courts have not. The possibility of reform through the courts has been rejected by the House of Lords.⁶ We are therefore examining what powers the courts should have to award compound interest. We intend to publish a Consultation Paper in late 2002.

Third Parties (Rights against Insurers) Act 1930

- 4.6 In July we and the Scottish Law Commission published a joint Report and draft Bill on Third Party Rights Against Insurers.⁷ Although the Third Party (Rights against Insurers) Act 1930 remains valuable to third parties, it had long been recognised that it is seriously flawed. For example, a third party's case must be established in proceedings before obtaining any rights against the insurer: this can

⁴ Consultation Paper No 154.

⁵ Consultation Paper No 160.

⁶ *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669.

⁷ Law Com No 272; Scot Law Com No 184.

lead to wasteful duplication and delay. The Report recommended that the 1930 Act should be replaced by a new regime which would:-

- Introduce a new streamlined procedure to avoid wasteful litigation.
- Improve the claimant's right to information about the insurance policy.
- Cover legal expenses insurance and health insurance.
- Cater properly for cases involving voluntary arrangements.

4.7 We are very grateful to Professor Harry Rajak, Dean of the School of Legal Studies at the University of Sussex, and to the Association of Business Recovery Professionals, for their assistance in relation to the insolvency aspects of this project.⁸

Electronic Commerce

4.8 In December we published an Advice to Government in relation to Electronic Commerce and Formal Requirements in Commercial Transactions. The Advice was prepared to assist Government in the context of the work which it was undertaking in relation to Article 9 of the Electronic Commerce Directive⁹ and the making of orders under section 8 of the Electronic Communications Act 2000. In the light of the Advice and other developments, the Government has modified its approach to updating the law to authorise or facilitate electronic communication.^a We are very grateful to Professor Chris Nicoll of the University of Auckland who acted as consultant to this project.

Perceived Abuses of Defamation Procedures; Internet Publication

4.9 In January 2002 the Lord Chancellor asked us to undertake some preliminary work in the following areas:-

- (1) Perceived abuses of defamation procedures: "gagging writs" and "gagging letters" (without the victim of the alleged defamatory statement intending to pursue the matter) may prevent further comment, due to concerns that the innocent dissemination defence might no longer be available under the Contempt of Court Act 1981 or the Defamation Act 1996 and that a party might become liable for aggravated damages. We are undertaking a small scoping study to consider whether such devices are being abused and, if so, how that abuse might be prevented. We intend to publish a short Scoping Paper by the end of March 2002.
- (2) Internet publication: a number of defamation and contempt of court issues arise from publication on the internet and the maintenance of on-line

⁸ The Chairman had the lead responsibility for this project.

⁹ Directive 2000/31/EC.

^a Written Answer, *Hansard* (HC) 10 January 2002, vol 377, col 971W.

archives. We shall be undertaking some preliminary work, to consider whether there should be a scoping study for a review of this area of law.

Partnership law

- 4.10 In September 2000 we published, jointly with the Scottish Law Commission, a consultation paper on the law on general partnerships.¹⁰ The paper attracted a large number of responses which have been fully analysed. This is an important field as there are 700,000 partnerships in the UK, employing nearly 3 million people, and the legislation dates from 1890.
- 4.11 We published another joint consultation paper, on reform of the Limited Partnerships Act 1907¹¹, in November 2001.¹² Comments were requested by 11 January 2002. We hope to analyse responses and formulate policy in the first half of 2002. The two Commissions aim to develop policy in the light of the responses to the two consultation papers, and then to complete the review of both subjects, with draft legislation, during 2002. Our Chairman is our lead Commissioner on this project.



MEMBERS OF THE COMMON LAW TEAM

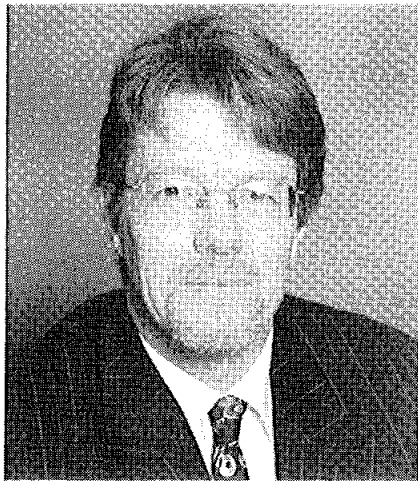
¹⁰ Consultation Paper No 159; Discussion Paper No 111.

¹¹ A limited partnership is extremely useful for certain types of business. It is particularly useful for venture capitalists, both for United Kingdom funds and for European funds. The venture capital industry in the United Kingdom is the largest and most developed in Europe, accounting for almost half of the total European venture capital investment in 1998. Limited partnerships are also popular for property investment, institutional investors such as pension funds and insurance companies.

¹² Consultation Paper No 161; Discussion Paper No 118.

PART V

CRIMINAL LAW, EVIDENCE AND PROCEDURE



His Honour Judge Alan Wilkie QC
(Commissioner)

TEAM MEMBERS¹

Government Legal Service

Jacques Parry (*Team Manager*)
Raymond Emson, Elizabeth Finlason
Nasrin Khan, Flora Page

Research Assistants

Benjamin Dean, Tamsin Stubbing,
Gurion Taussig

Codification of the Criminal Law

- 5.1 In its White Paper “Criminal Justice: The Way Ahead”, published in February,² the Government gave, as one of its key ideas, reform and codification of the criminal law, which has long been an objective of this Commission.³ After discussion with the relevant Departments it was agreed that we could assist in its achievement by reviewing and revising what was said about the general principles of the criminal law in Part I of our Draft Criminal Code of 1989.⁴ As consultants on this project we have engaged the surviving members of the academic team that advised the Commission on the 1989 Code, Professor Sir John Smith CBE QC FBA of the University of Nottingham and Professor Ian Dennis of University College London, together with Sir Roy Beldam (who was then Chairman of the Commission) and Mr Justice Mitchell. We are also setting up a wider consultative group so that the views of judges, magistrates, practitioners and other interested parties can be fully canvassed. We hope to submit our report by 2004.

Bail and the Human Rights Act 1998

- 5.2 In June we published a report⁵ examining the impact of the Human Rights Act 1998 on the law governing decisions taken by the police and the courts to grant or refuse bail in criminal proceedings. Our primary object in this project was not to

¹ As at the end of 2001.

² Cm 5074.

³ Lord Justice Auld’s report strongly supported codification of the criminal law: see para 2.8 above.

⁴ Criminal Law: A Criminal Code for England and Wales (1989) Law Com No 177.

⁵ Bail and the Human Rights Act 1998 (2001) Law Com No 269. We had published a consultation paper on the subject (No 157) in December 1999.

reform the existing legislation but to determine whether it can be applied in a way which is compatible with the European Convention on Human Rights. We concluded that it can, though we also suggested ways in which it might be clarified so as to minimise the risk of the Convention being infringed.

- 5.3 A secondary purpose of the report was to help bail decision-takers ensure that their decisions comply with the Convention. We therefore summarised our conclusions as a separate document of guidance, which was published in the journal *Justice of the Peace* and in “Bench Books” issued to judges by the Judicial Studies Board.

Double Jeopardy and Prosecution Appeals

- 5.4 In July 1999 the Home Secretary asked us to consider the rule against double jeopardy, which states that a person acquitted or convicted of an offence cannot be prosecuted again for the same offence.⁶ In October 1999 we published a consultation paper.⁷ In May 2000 the Home Secretary asked us to consider in addition whether there should be a right of appeal against a ruling by the judge in a trial on indictment which results in premature termination of the trial. We published a consultation paper on this latter issue in July 2000.⁸
- 5.5 On 6 March we published a report dealing with the issues raised by both these issues.⁹ We recognised the fundamental importance of the general rule against a subsequent prosecution for the same offence, and recommended that it be put on a statutory basis. We concluded, however, that a very limited exception to the rule should be introduced – namely that, in murder cases only, the Court of Appeal should have power to quash an acquittal (thus permitting a retrial) where there is reliable and compelling new evidence of guilt and a retrial would be in the interests of justice. The new exception would apply equally to acquittals which had already occurred before the new law came into effect.¹⁰
- 5.6 We further recommended that the prosecution should be able to appeal against an acquittal which results directly from (a) any ruling made by the judge up to the

⁶ This followed recommendation 38 of the Macpherson report on the inquiry into the Stephen Lawrence case, that consideration should be given to permitting prosecution after acquittal when fresh and viable evidence is presented. Our terms of reference also asked us to take account of the powers of the prosecution to reinstate criminal proceedings, and the United Kingdom’s international obligations.

⁷ Double Jeopardy (1999) Consultation Paper No 156. The Home Affairs Select Committee of the House of Commons subsequently decided to conduct its own investigation of this issue, and published its report on 8 June 2000 (HC 190). The report was discussed in a Parliamentary debate in Westminster Hall (*Hansard* (HC) 26 October 2000, vol 355, col 115 WH). In developing our final recommendations we took full account of both the Committee’s report and the points made by MPs in the course of the debate.

⁸ Prosecution Appeals Against Judges’ Rulings (2000) Consultation Paper No 158.

⁹ Double Jeopardy and Prosecution Appeals (2001) Law Com No 267.

¹⁰ The report also recommended a number of reforms to the “tainted acquittal” procedure, which permits a retrial where an acquittal has been secured by intimidating, or otherwise interfering with, jurors or witnesses.

conclusion of the prosecution's case, or (b) a ruling at the close of the prosecution's case that there is no evidence of the alleged offence.¹¹ This right of appeal would, however, be available only in cases where, had the defendant been convicted, the Attorney-General would have had power to refer the sentence to the Court of Appeal as being unduly lenient.¹²

- 5.7 The Government's White Paper "Criminal Justice: The Way Ahead" (see paragraph 5.1 above) promised a "new prosecution right of appeal against a range of adverse judicial rulings". Lord Justice Auld's report (see paragraph 2.7 above) recommended changes to the double jeopardy rule, in line with our recommendations but to be applied also to other grave offences. The report also recommended changes to the current law on prosecution appeals. The Government has said that there will be legislation on double jeopardy. The Government has repeated this commitment, in respect of murder cases.¹³

Evidence of bad character in criminal proceedings

- 5.8 In October we published a report and draft Bill on the admissibility in criminal proceedings of evidence of bad character, including previous convictions.¹⁴ We rejected the suggestion, made by a number of respondents to our consultation paper,¹⁵ that defendants' criminal records should be routinely disclosed to fact-finders. Instead we recommended that, with certain exceptions, evidence of the bad character of any person should be admissible only with the leave of the court, and that such leave should be granted only in certain defined circumstances. In the case of evidence of a *defendant's* bad character, the court could normally¹⁶ grant leave only if satisfied that the interests of justice required the evidence to be admitted notwithstanding any risk of prejudice. In determining this question the court would be required to have regard to a number of factors set out in the draft Bill annexed to the report. Our consultant on this project was Professor Diane Birch, of the University of Nottingham.

Fraud

- 5.9 We have been examining the law of fraud and in particular the possibility of introducing a general offence of fraud. Our consultation paper¹⁷ provisionally

¹¹ That is, a ruling under the first limb of *Galbraith* [1981] 1 WLR 1039 – but *not* a ruling under the second limb, viz that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it.

¹² We also recommended certain extensions to the existing power to hold a preparatory hearing. Rulings made in such hearings are already subject to appeal by either side.

¹³ "The Government's manifesto included a commitment to reform the double jeopardy rule in cases involving murder and we will do so when parliamentary time allows." (Written Answer, *Hansard* (HC) 3 July 2001, vol 371, col 101 W). This commitment was repeated in the Government's First Statement on 8 October in response to the Auld Report. See also paras 2.8 and 3.6 above.

¹⁴ Evidence of Bad Character in Criminal Proceedings (2001) Law Com No 273.

¹⁵ Evidence in Criminal Proceedings: Previous Misconduct of a Defendant (1996) Consultation Paper No 141.

¹⁶ Except where it is another defendant who seeks to adduce the evidence.

¹⁷ Fraud and Deception (1999) Consultation Paper No 155.

concluded that such an offence would go further than was justifiable, whether it was based on the concept of dishonesty or on that of deception, but that the existing deception offences should be extended in various ways. We have been reconsidering these conclusions in view of the responses, and hope to publish our final recommendations in the Spring of 2002. Our consultant is Professor Sir John Smith CBE QC FBA, of the University of Nottingham.

- 5.10 One of the issues discussed in our consultation paper was the problem arising, in cases of multiple fraud, from the decision in *Kidd*,¹⁸ to the effect that a defendant convicted only on specimen counts could not be sentenced for other offences which he denied. We have decided, however, to deal with this issue in a separate report. This is partly because the problem is arguably not confined to fraud offences, and partly because it might be affected by changes to the trial process which may result from the Auld report. To assist us with our latest thinking on this difficult subject, we have consulted those who responded to our earlier consultations. We have in mind ensuring that any recommendations will be workable, in the light of any change to the court system arising from the Government's response to the Auld Report.

Misuse of trade secrets

- 5.11 We had considered the possibility of creating an offence of misusing a trade secret.¹⁹ We postponed further work pending the conclusion of our work on fraud, and hope to take it forward once our report on that subject is published in 2002.

Assisting and encouraging crime

- 5.12 We had considered in the past²⁰ the scope and structure of the law relating to the liability of those who assist or encourage others to commit offences. That law is complicated, uncertain and anomalous, and the policy decisions that it raises are both important and difficult. We resumed work on this project during 2001, and hope that our report will follow in 2003.

Non-accidental injury to children

- 5.13 Work will start shortly on a new project concerning non-accidental injury to children caused by their parents or carers. This project has arisen from our work on criminal liability for assisting and encouraging crime.
- 5.14 The problem it addresses is how to establish criminal liability in a case where it is apparent that one or both defendants must have committed the crime but there is no evidence which will allow the court to identify which, so as properly to apportion blame. At present it appears to be the law that a parent will be guilty of an offence where violence against their child is committed by another if (s)he fails to intervene by taking reasonable steps to prevent the harm where (s)he is able to

¹⁸ [1998] 1 WLR 604.

¹⁹ Legislating the Criminal Code: Misuse of Trade Secrets (1997) Consultation Paper No 150.

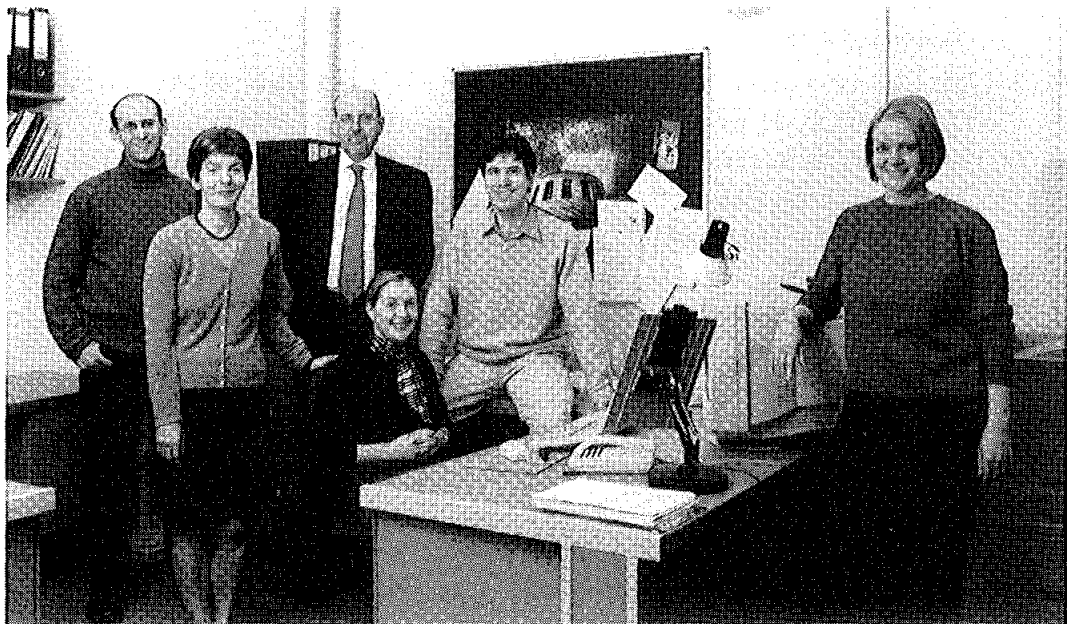
²⁰ Assisting and Encouraging Crime (1993) Consultation Paper No 131.

so do.²¹ However, if there is no evidence as to which parent or carer was responsible and no evidence to establish the presence of both parties at the scene of the assault, there may be no basis for a finding of guilt in respect of either.

- 5.15 Accordingly, we will investigate whether there are any changes to the law, whether substantive or procedural, which would allow the conviction of those guilty of violent offences (or neglect) towards children for whose care they are responsible in circumstances where, presently, the courts are obliged to acquit them, and to make recommendations for changes in the law where it is thought to be appropriate. We hope to complete a consultation paper in late 2002 or early 2003.

Consent as a defence

- 5.16 In February 2000 we produced a special report on Consent in Sex Offences, which was later published as an appendix to the report of the Home Office's Sex Offences Review.²² Our report did not deal with another of the main issues discussed in our two consultation papers on consent as a defence²³ – namely the circumstances, if any, in which it ought to be a defence to an offence of inflicting personal injury that the injured person consented to what was done. Bearing in mind the amount of work that would be required to reach conclusions on the very difficult and sensitive issues involved, and the improbability of any consensus being reached, we have now decided that it would not be worthwhile for us to produce any further report on this topic. It therefore does not appear in our Eighth Programme of Law Reform.



MEMBERS OF THE CRIMINAL LAW TEAM

²¹ *R v Russell and Russell* (1987) 85 Cr App R 388 (CA).

²² *Setting the Boundaries: Reforming the law on sex offences* (2000).

²³ *Consent and Offences Against the Person* (1994) Consultation Paper No 134; *Consent in the Criminal Law* (1995) Consultation Paper No 139.

PART VI

HOUSING AND ADMINISTRATIVE JUSTICE



Professor Martin Partington
(Commissioner)

TEAM MEMBERS¹

Government Legal Service

Richard Percival (*Team Manager*)
Christina Hughes, Helen Carr, Wayne Mitchell
Matthew Waddington, Tahnee Woolf

Research Assistants

Lee Farrington, Claire Macmillen
Sherry Nobeen, Lucy-May Owen

A NEW TEAM

- 6.1 The team was established at the beginning of the year as the Administrative Justice Team, in line with the planned realignment of the Law Commission's work explained in our Annual Report for 2000.² Organisationally, the new team took over from the Company and Commercial Law Team, and inherited one of its projects, that on partnership law.³ From April 2001, once the Government had asked us to undertake a substantive housing law project, the team became known as the Housing and Administrative Justice Team.

Housing law reform

- 6.2 The central task of the new team is a major law reform exercise relating to housing law and the regulation of the residential landlord-tenant relationship. In March 2001, we published the report of our scoping study on housing law. The purpose of the study was to identify what was needed in law reform terms to simplify and modernise housing law.⁴
- 6.3 The scoping report identified the key failing of the existing law as its illogical and unnecessary complexity. The point may be illustrated by the fact that there are at least thirteen different ways in law for a tenant to occupy a dwelling, with

¹ As at the end of 2001.

² Para 1.51.

³ See paras 4.10 - 4.11 above. The Company and Commercial Law Team project on third party rights against insurers was transferred to the Common Law team: see paras 4.6 - 4.7 above.

⁴ Reform of Housing Law: A Scoping Paper (March 2001). See also our Annual Report for 2000, para 1.46.

significant differences on key issues such as security of tenure and the formalities for creating and ending tenancies. Three distinct codes regulate when landlords can gain possession of a property, between them containing a total of 56 separate grounds for possession. A tenant who has been unlawfully evicted or harassed by his or her landlord faces a bewildering range of remedies of different sorts with different outcomes. The result is that there is simply too much law, it is too difficult to understand, and using it costs too much.

- 6.4 Accordingly, the scoping paper proposed a two stage process to simplify and modernise the law. The first phase was to consist of a single project to reform the law of housing tenure, with the aim of providing a single tenancy form with long-term security of tenure for use primarily, but not exclusively, in the social housing sector,⁵ complemented by another tenancy with short-term security of tenure, for use primarily but not exclusively in the private sector. The second phase, it was envisaged, would consist of two projects, undertaken at the same time, on the rules for statutory succession and on harassment and unlawful eviction. It subsequently became clear that succession and related matters would be better dealt with as part of the first phase. The Government agreed, and we will produce a separate consultation paper on this in summer 2002.
- 6.5 On the same day that the scoping report was published, the Department of the Environment, Transport and the Regions⁶ referred the first phase to the Commission. An accelerated timetable has been agreed with the DTLR, that will see the consultation paper published in about March 2002 and the final report and draft Bill in July 2003. To help meet this demanding timetable, resources have been made available by the DTLR and additional staff recruited.
- 6.6 In undertaking this project, which is unusual in both size and scope, it was felt that it would be important to be aware of the views of the major interests involved from the earliest stages of formulating the consultation paper. We therefore expanded the advisory group that had been involved in the drafting of the scoping report and have received considerable assistance from the members, both collectively and, in many cases, individually. The members are Stephen Brockway (Housing Corporation), Julian Welham (Housing Corporation), John Bryant (National Housing Federation), Duncan Campbell and John Daniels (DTLR), Russell Campbell (Shelter), David Fotheringham (Chartered Institute of Housing), Gareth Hardwick (National Federation of Residential Landlords), Richard Lambert (British Property Federation), Phil Morgan (Tenant Participation Advisory Service), Sally Morshead (The Law Society), Peter Owen and Maureen Haire (National Assembly for Wales), Richard Smallman (Tenants and Residents Organisations of England), John Tanner and Chris Morter (Lord Chancellor's Department), Celia Tierney (Local Government Association), Andrew Heywood (Council of Mortgage Lenders), and Richard Grant (Scottish Executive).

⁵ Housing provided by local authorities, housing associations and other registered social landlords.

⁶ Now the Department of Transport, Local Government and the Regions (DTLR).

Compulsory Purchase Orders

- 6.7 In December 2000 the then Department of the Environment, Transport and the Regions (DETR) and the Lord Chancellor's Department approved terms of reference for a preliminary study to identify the scope for simplifying, consolidating and codifying compulsory purchase legislation. That step followed the publication in July 2000 of the DETR's Fundamental Review of law and procedure in this area in the context of the Government's desire to expedite urban regeneration in England and Wales and to facilitate the re-use of 'brownfield' land by local authorities and other public bodies through more effective use of compulsory land acquisition powers. The Review described the law as "an unwieldy and lumbering creature".
- 6.8 The Commission's Scoping Paper was published in March 2001 and set out a preliminary draft framework for a new Compulsory Purchase Order Code. Initial work was to be focused on some of the problem areas – in particular, the extent to which the scheme of acquisition should be disregarded in assessing compensation. Much of this area of practice is based on elderly (and in some cases conflicting) case law and opaque statutory provision. The paper was followed by a first Discussion Paper on the "No Scheme" issue published for comment in October 2001. Publication was planned to coincide with a special joint Institute of Advanced Legal Studies/Law Commission seminar to which professionals working in the field were invited.
- 6.9 Comments on the Discussion Paper are presently being analysed and thought is now being given to the different legislative options which might follow. In parallel with that work, effort is being invested in reviewing the existing law relating to implementation of CPOs and in finding ways in which the mechanisms (some of which date back to 1845) can be enhanced and modernised.
- 6.10 We shall complete our consultative report by late July 2002.

Publication of local authority reports

- 6.11 In February 2000 Sir Ronald Waterhouse published the results of the inquiry he chaired into abuse of children in North Wales.⁷ One of the concerns expressed in the Waterhouse Report was that in some circumstances local authorities may be unduly constrained by threat of legal action or loss of insurance cover from making public, acting on, and identifying necessary reforms in the light of the results of inquiries conducted by them, or on their behalf. In particular, it was said that the authority's insurers feared actions for defamation if reports were published, and that publication might also amount to an admission of liability and the waiver of legal rights.
- 6.12 The report recommended that the Law Commission look at the legal issues surrounding the publication of local authority inquiry reports. In February 2001 the Government asked us to undertake this work. Our terms of reference also

⁷ *Lost in care*: Report of the Tribunal of Inquiry into the abuse of children in care in the former County Council areas of Gwynedd and Clwyd since 1974 (HC 201).

include recommending courses of legislative and/or administrative action that would better enable local authorities to take effective action in response to matters of serious public concern contained in such inquiries, and to do so in as open a way as appropriate.

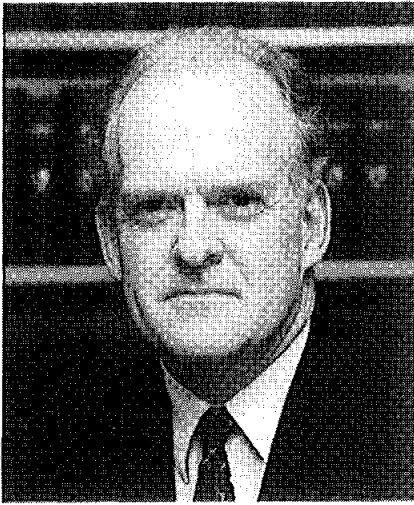
- 6.13 We plan to publish a consultation paper on these issues in spring 2002, and a report in 2003. One of the facts that needs to be established is the extent to which local authorities alter or suppress such reports, and why, on which very little hard information is currently available. To this end, we shall look forward to seeing the results of a questionnaire which a review group conducted by the Society of Local Authority Chief Executives and Senior Managers is sending to local authorities about their use of ad hoc inquiries. In the light of this and the responses to our consultation paper we shall be considering a range of issues, such as whether there need to be special legal privileges which attach to the publication of such reports.
- 6.14 We were asked to undertake this work following discussions with the Department of the Environment, Transport and the Regions and the Lord Chancellor's Department. We have also held useful meetings with, among others, the Local Government Association, the Council on Tribunals and the Association of British Insurers.



MEMBERS OF THE HOUSING AND ADMINISTRATIVE JUSTICE TEAM

PART VII

PROPERTY AND TRUST LAW



Stuart Bridge
(Commissioner)

TEAM MEMBERS¹

Government Legal Service

Elaine Brown (*Team Manager*)
Hugh Boileau, Julia Jarzabkowski

Research Assistants

Kathleen Donnelly, Daniel Hubbard,
Alice Ripley

LAW OF PROPERTY

Land Registration

- 7.1 The Law Commission and HM Land Registry published their final recommendations on the reform of land registration in a major report.² It also contained a draft Land Registration Bill together with a detailed commentary on it. Entitled “Land Registration for the Twenty-First Century – A Conveyancing Revolution”, the report was the outcome of several years’ joint work with HM Land Registry³ and is the largest single law reform project ever undertaken by the Law Commission. The Government introduced the Bill in Parliament on 21 June 2001. The Bill is progressing through Parliament and, when enacted, will replace in its entirety the Land Registration Act 1925.
- 7.2 The present legislation governing land registration is based entirely on the idea that dealings with land are conducted in paper form. The new legislation heralds a progressive move towards electronic conveyancing and provides the framework for its operation. This is likely to be the most revolutionary change that has ever taken place in the conveyancing system in England and Wales.
- 7.3 Land registration underpins the property market in England and Wales and guarantees title to some £2000 billion worth of property. Over 80% of titles are now registered, and the great majority of the 3 million property transactions each

¹ As at the end of 2001.

² Law Com No 271.

³ In 1998 the Law Commission published a consultation document – Land Registration for the Twenty-First Century – A Consultative Document (1998) Law Com No 254.

year involve registered land. The present long outdated legislation governing registration of title is complex and confusing. The new legislation would:-

- (1) allow dealings with registered land to move from a paper-based system to an all-electronic system within a few years;
- (2) completely replace the existing legislation to allow land registration to be faster, clearer and simpler;
- (3) establish an accurate register that would give buyers more certainty by giving fuller information about the rights and responsibilities which the owner has;
- (4) improve the security of property rights in and over registered land by providing better means of protecting them; and
- (5) provide better protection for the owners of registered land against the claims of squatters.

- 7.4 Although the new system would take some time to introduce, when fully up and running it should lead to quicker and less stressful ways of buying and selling land.

Property rights of those who share homes

- 7.5 This project is concerned with the property rights of all those who share a home except where their relationship is a “commercial” one, as for example where the occupation is in accordance with a tenancy agreement or a contractual licence. We anticipate that the consultation paper will be published in summer 2002. Unfortunately it was not possible to publish it at the time anticipated in our last annual report. This was because of the more pressing and urgent demand to publish the report on land registration.

Termination of Tenancies

- 7.6 Work on this project is continuing. It is intended that recommendations and a draft Bill will be published in 2003. These will take account of and reflect the responses received following the separate consultation on physical re-entry.⁴ The previous draft Bill will also have to be amended and re-drafted to take into account subsequent rulings in caselaw⁵ and the implementation of legislation such as the Human Rights Act 1998 and the Civil Procedure Rules.

Easements and Analogous Rights and Land Obligations

- 7.7 The law of easements has never been subject to a comprehensive review, and many aspects of the law are now outdated and a cause of difficulty. We intend to

⁴ The Law Commission published a draft Termination of Tenancies Bill in 1994: see Law Com No 221. The aim of the present exercise is to produce a revised Bill in light of further consultation on the issue of peaceable re-entry and other developments in the law that have taken place since 1994.

⁵ A recent example being the case of *Bland v Ingrams Estates* [2001] 2WLR 1638.

conduct a full review of the current law and we hope to propose a coherent scheme of land obligations which may draw upon the Law Commission's earlier work in this area. We have had to delay this project as a result of the need to concentrate on other priorities and also because of developments in the area of Commonhold. We hope to start work in the course of this year and produce a Consultation Paper before the end of 2003.

LAW OF TRUSTS

7.8 During the enactment of the Trustee Act 2000 there was pressure for further reform of the law in this area. The Lord Chancellor subsequently referred three aspects to the Law Commission, namely:-

- (1) trustees' exemption clauses;
- (2) apportionment of capital and income; and
- (3) the rights of creditors against trustees and trust funds.

Reviews of these aspects of trust law are being undertaken as separate projects and work has started on Trustee Exemption Clauses. Many modern trust deeds include a clause excluding or restricting trustees' liability for breach of trust. It is widely considered, and there is judicial acknowledgement,⁶ that some of these clauses are too widely drawn and that trustees who charge for their services should not be able to exclude liability for gross negligence. It is anticipated that a consultation paper will be issued in 2002 after which detailed work will commence on Apportionment.



MEMBERS OF THE PROPERTY AND TRUST LAW TEAM

⁶ *Armitage v Nurse* [1998] Ch 241.

PART VIII

STATUTE LAW

TEAM MEMBERS¹

Consolidation

The Chairman, Helen Caldwell, Douglas Ramsay, Mark Hudson,
Bernadette Walsh

Statute Law Revision (including Local Legislation)

The Chairman, John Saunders, Elizabeth McElhinney, Carol Aitken

CONSOLIDATION

- 8.1 The Law Commission has a duty to keep under review all the law with which it is concerned, with a view to reducing the number of separate enactments and generally simplifying and modernising the law. An important aspect of this function is consolidation. The need for this arises when, over a period of time, separate statutes are enacted on the same general subject matter or particular legislation is repeatedly amended. In either case, the law can become difficult to piece together.
- 8.2 Consolidation consists of drawing together different enactments on the same subject matter to form a rational structure and of making more intelligible the cumulative effect of different layers of textual amendment. Usually this is done by means of a single statute. However, in the case of a large consolidation, it may be done by means of several statutes. This makes the law more comprehensible, both to those who apply it and to those affected by it.
- 8.3 If anomalies are revealed in the process of consolidation, various devices (such as amendments recommended by the Law Commission) are available to rectify them. If a change needed to rectify an anomaly is of such a nature that it ought to be made by Parliament in the normal way, a paving Bill is required or else the anomaly has to be reproduced.
- 8.4 The process of consolidation requires the support and participation of the government department within whose responsibility the subject matter falls.
- 8.5 A consolidation of the law relating to European Parliamentary elections was introduced in the House of Lords on 23 July 2001. At the time of finalising this report, the Bill is awaiting Second Reading.
- 8.6 Work began in June 2000 on a consolidation of the law relating to Parliamentary and local government elections. As mentioned in our Eighth Programme of Law Reform,² after the General Election in 2001, functions relating to elections were

¹ As at the end of 2001.

² Para 1.18.

transferred from the Home Office to the Department of Transport, Local Government and the Regions. This led to a period of uncertainty about how the work would be supported at the departmental level. But work on the consolidation has recently re-started. Although there is still a considerable amount of work to do on this consolidation, it is hoped that it will be possible for a consolidation Bill to be introduced before the end of 2002.

- 8.7 Work on the consolidation of the provisions relating to the functions of the criminal division of the Court of Appeal³ has now ceased, despite the fact that a considerable amount of time had been spent on it. Our Eighth Programme⁴ mentioned that the consolidation was likely to be delayed because of the Auld Review of the Criminal Courts. It has since become apparent that it would be unwise to devote further resources to the consolidation until any changes in the law resulting from that Review have been made.
- 8.8 Our Annual Report for 2000 mentioned that work had begun on a consolidation of the legislation relating to wireless telegraphy. But, as explained in our Eighth Programme,⁵ work on this consolidation was suspended in the light of the announcement in the Queen's Speech in June 2001 that a Bill would be published to create a single regulator for the media and communications industries and to reform the broadcasting and telecommunications regulations. It is hoped that it will be possible to resume work on this consolidation in 2002, but it seems unlikely at present that it will be possible to complete it before the end of 2002.
- 8.9 When it became apparent that each of the consolidations (except European Parliamentary Elections) was, for different reasons, under threat, the team started looking for small consolidations to work on until the uncertainties were resolved. Unfortunately, although there is no shortage of areas of legislation which could benefit from consolidation, it proved impossible during 2001 to identify a small consolidation that could be supported at short notice by the relevant government department.

STATUTE LAW REVISION

- 8.10 The principal purpose of statute law revision is to repeal statutes that are obsolete or which otherwise no longer serve any useful purpose, so modernising the statute book and leaving it clearer and shorter. This helps to save the time of lawyers and others who need to use it. Our work is carried out by means of Statute Law (Repeals) Bills which we publish periodically in our Statute Law Revision reports. There have been 16 such Bills since 1965. All have been enacted, so repealing more than 2000 Acts in their entirety and achieving partial repeals in thousands of other Acts.
- 8.11 During 2001 we have completed work on a number of projects. The largest of these has been in the area of the administration of justice and has included

³ See our Annual Report for 2000, at para 6.9.

⁴ Para 1.23.

⁵ Para 1.21.

obsolete provisions in the Courts Act 1971 whereby the ancient system of assizes, quarter sessions and local courts was replaced by the modern Crown Court system. The project also covered the overseas jurisdiction of the Judicial Committee of the Privy Council where several outdated provisions will be recommended for repeal. Our project on banking law researched a number of ancient privileges vested in the Bank of England. Our examination of the law of betting, gaming and lotteries uncovered the Art Unions Act 1846, a measure to enable struggling artists to raise money for their works without contravening the 19th century prohibition on lotteries. Researches into the law of allotments and smallholdings led us to the Small Holding Colonies Act 1916 which was a largely unsuccessful attempt to provide work for ex-servicemen during and after the Great War. Finally our study into the law of animals produced some obsolete provisions for taxing persons hunting game and for penalising those poaching it. Other projects completed during 2001 have included the law of aviation, companies, employment and medicine.

- 8.12 Work in hand at present includes an examination of local government law and a project that is designed to clear the statute book of defunct statutory bodies. The statute book is littered with the remains of statutory provisions that either established or abolished a wide range of corporations, councils, committees and other institutions. These provisions no longer serve any useful purpose. A search of our computerised databases has produced a selection of promising candidates which we shall be considering over the coming months.



MEMBERS OF THE STATUTE LAW REVISION TEAM

- 8.13 In all our work we produce a consultation document inviting comments on our research findings. These documents are then circulated to Departments and to other interested bodies and individuals. Subject to the response that we receive, we hope to include repeals relating to all the projects mentioned above in our next Statute Law Revision report which is due in 2003.

- 8.14 Much of our work on statute law revision is conducted jointly with the Scottish Law Commission. In March the head of the statute law revision team at the Scottish Law Commission joined members of our team for a meeting in London to plan future work on joint projects. The establishment of the Scottish Parliament will alter the way that the statute law revision proposals of the two Commissions are presented and implemented. In particular the repeal of statutory material that is exclusively Scottish will in future be dealt with by the Scottish Parliament alone unless it relates to a matter reserved to the United Kingdom Parliament by virtue of the Scotland Act 1998.
- 8.15 Because our Statute Law (Repeals) Acts extend throughout the United Kingdom and the Isle of Man, we liaise regularly on our proposals not only with the Scottish Law Commission but also with the authorities in Wales (the Office of the Secretary of State for Wales and the Counsel General to the National Assembly for Wales) and with the authorities in Northern Ireland and in the Isle of Man. We much appreciate their help and support in considering and responding to our proposals.

PART IX

EXTERNAL RELATIONS

- 9.1 We regard it as very important that we have strong links with a wide range of organisations and individuals who have a concern for, or expertise in, the reform of the law. The following are some of our notable external relations in 2001.

Parliament, Ministers and Government Departments

- 9.2 We have continued to enjoy close links with the Lord Chancellor's Department, our sponsor department. The Chairman had regular meetings with the Lord Chancellor. He also had useful contact, both with David Lock MP, when he was Parliamentary Secretary at the LCD with responsibility for law reform, and then with his successor, Baroness Scotland, who visited the Commission in July.
- 9.3 Following other changes in LCD, we also welcome Jonathan Spencer to the post of Director-General, Policy and Andrew Frazer as Head of the Civil Law Development Division. The Commission is indebted to their predecessors, Joan MacNaughton and Hugh Burns respectively, for their co-operation and support in the past.
- 9.4 The Commissioners and staff have frequent contact with a number of Ministers and officials in other Government Departments. This year we have had meetings and other contact in particular with the Home Secretary (David Blunkett) and the Home Office, the Solicitor-General (Harriet Harman QC), Parliamentary Under-Secretary (Sally Keeble) and the Department of Transport, Local Government and the Regions (and its predecessor, the DETR) and Parliamentary Under-Secretary (Melanie Johnson) and the Department of Trade and Industry. The Chairman is also a member of the Lord Chancellor's Advisory Committee on Statute Law. The Commission was also pleased to receive visits from the Solicitor-General and from the Treasury Solicitor, Juliet Wheldon QC.

Consultation and consultants

- 9.5 We consult at key stages of our law reform work. The most conspicuous form this takes is our Consultation Papers which almost always precede our final Reports. Feedback comes from all quarters but opinion is particularly sought from those with particular interest or expertise in the subject of the project. We are most grateful to all those who contribute in this way.
- 9.6 In addition, we frequently engage experts in particular areas of law to help us as consultants. Notable examples this year have been with Professor Sir John Smith, Professor Ian Dennis, Sir Roy Beldam and Mr Justice Mitchell on Criminal Codification, Mr Rod Banks on Partnership Law and Professor Sir John Smith on Fraud and Deception, Professor Chris Nicholl on Electronic Commerce, Professor Di Birch on Evidence of Bad Character and Professor Harry Rajak on Third Party Rights' against Insurers.

- 9.7 For our review of housing law we have established an advisory group of 19 members from external, interested organisations.¹ There is a joint DTLR/Law Commission working group assisting our work on compulsory purchase.

Seminars

- 9.8 This year we made particular use of seminars. We arranged several, jointly with others:-

Catching the Eye of Government;

Partnership Law (London and Manchester);

Compulsory Purchase: Compensation: Disregarding the Scheme;

The Illegality Defence in Tort, jointly organised with the Society of Advanced Legal Studies, and the Torts Section of the Society of Public Teachers of Law (SPTL).

Commissioners spoke at several sessions of the SPTL annual conference.

Socio-legal research

- 9.9 We find socio-legal, economic and empirical research of great benefit in some of our law reform projects. It can form an invaluable source of evidence on which to base our conclusions, whether we use existing research or have new research undertaken. For example, socio-legal research greatly informed our work on evidence of bad character.² We are considering commissioning such work in our reviews of the law of housing and of trustee exemption clauses. We also have strong links with the socio-legal community. For example, the Socio-Legal Studies Association (SLSA) is represented at our annual meeting with the Society of Public Teachers of Law; Professor Partington and the Secretary of the Commission spoke at the SLSA's annual conference; and the Commission is represented on the Socio-Legal Research Users Forum, which is also chaired by Professor Partington.

International co-operation

- 9.10 We have regular contact with law reform bodies elsewhere. Pre-eminent are our relations with the Scottish Law Commission, with whom in particular we are conducting several law reform projects jointly. During the year, Commissioners, the Secretary and several other legal staff had meetings with their Scottish Law Commission counterparts. Professor Beale is a member of the Steering Group and Drafting Group of the Study Group for a European Civil Code. We also received a significant number of visitors from overseas, as shown at Appendix D. These discussions are of considerable benefit and interest to us.
- 9.11 The Government has taken the next steps towards establishing a Law Commission for Northern Ireland. This has followed from the recommendations

¹ See para 6.6 above.

² See para 5.8 above.

of the Review of the Criminal Justice System in Northern Ireland, which itself was part of the Good Friday Agreement. In November the Government published a draft Justice (Northern Ireland) Bill, and an Implementation Plan. The establishment of a Northern Ireland Law Commission (“NILC”) was among the wide range of proposals. The Government has introduced the legislation during the 2001/02 Parliamentary Session.

- 9.12 In most respects the provisions for the NILC would be very similar to those for our Commission. There would be additional features which would have an effect upon us. First, the legislation would remove our remit for any law for Northern Ireland.³ Secondly, in performing its duties the NILC would have to consult us, the Scottish Law Commission and the Irish Law Reform Commission. Thirdly, under the draft Bill, in performing our duties we would in future need to act in consultation with the NILC, as is currently required with regard to the Scottish Law Commission.
- 9.13 We welcomed the proposed establishment of a Law Commission for Northern Ireland. We emphasised our willingness to assist in any way we can from our experience, for example with advice about the establishment, organisation or running of the NILC. We have excellent working relations with the current, non-statutory Law Reform Advisory Committee for Northern Ireland, and we have no doubt we shall have equally good relations with the NILC when it in effect replaces the Committee

Other contacts

- 9.14 We continue to have important contacts with the Bar, The Law Society, and the Society of Public Teachers of Law and the Association of Law Teachers, and with their members and committees. We also have very helpful contacts with the judiciary at many levels, including the Council of Circuit Judges, and Commissioners contribute to the Judicial Studies Board and speak at their courses. Additionally, we had a number of distinguished speakers to address Commissioners and staff, including Sir James Nursaw about the Regulatory Reform Bill,⁴ Rabinder Singh and Karon Monaghan about discrimination and law reform, and Susan Zimmerman about the Law Commission of Canada.
- 9.15 The following are among the talks given by the Commission. The Chairman gave the inaugural law reform lecture established by the Law Reform Committee of the Bar, entitled “Law Reform: The Art of the Possible”. Professor Partington addressed the Law Society Housing Conference on “The Reform of Housing Law”.

³ Section 1(5) of the Law Commissions Act 1965.

⁴ See paras 2.15 - 2.16 above.

9.16 Professor Beale gave the following talks:

The Law Commission and Judicial Law Reform – the Lord Upjohn Lecture given to the Association of Law Teachers;

Civil Codes Reform in the European Context: a View From England – at a Seminar of the Chamber of Deputies in Rome;

Insurance Contract Law: Winds of Change: The Merits of Codes on the Law of Contract – at the Cambridge University Centre for Corporate and Commercial Law;

Illegality in Tort – Personal Injuries Bar Association Annual Conference;

Development of European Contract Law: Towards a European Civil Code – Conference on Hungarian Civil Law in the Mainstream of the Development of European Law;

Contract Law Harmonisation – Society of European Contract Law;

Limitation and Insurance – British Insurance Law Association.

9.17 Other Commissioners, the Secretary and other legal staff gave a number of other talks to a wide variety of audiences.

9.18 Professor Partington is a member of the Civil Justice Council and chairs its ADR Sub-Committee. He is also a member of the Employment Tribunal working party.

Publications

9.19 Most of our publications are either consultation papers or reports about law reform. Others are about consolidation or statute law revision. This year we also published scoping studies into housing law and compulsory purchase orders: we expect them to pave the way towards the publication in 2002 of consultation papers on these two subjects. We also published a new programme of law reform.

9.20 We continue to publish in traditional hard copy format,⁵ while at the same time also making all our publications available electronically on the Internet.⁶ Our website contains the full text of all the consultation papers and reports we have issued since March 1997, together with executive summaries of most of them. Some earlier publications have also been added.

9.21 Our website contains details of all our current law reform projects, and other background information about the Commission, including information about the law reform, statute law revision and consolidation teams. We are working to improve our website and would welcome users' suggestions.

⁵ We are grateful to the Stationery Office for their assistance in publishing our consultation papers and reports.

⁶ Our website address is <http://www.lawcom.gov.uk>. We are grateful to the Office of Government Commerce (formerly the Central Computer and Telecommunications Agency) for hosting our website over the past five years.

- 9.22 As part of our ongoing work to review our methods of working, we considered the design of our publications and other written materials. One result was the development of a new logo for the Commission, which we have been introducing into all our public materials, including our publications. We believe that the new design and logo convey the Commission's identity in a more modern way.
- 9.23 For over fourteen years we have published a bulletin entitled "Law under Review". It includes details of a range of Government or Government-sponsored law reform projects, including our own. It also gives a list of our reports which are awaiting implementation. The bulletin is available on our Internet website, free of charge, and is published three times a year. The latest edition summarises about 150 current projects.
- 9.24 We have available, on request, a list of the publications we have issued since 1965, which briefly sets out the reports which resulted from consultation papers, and the enacted legislation which resulted from reports. An extract from the list, showing implemented reports since 1985, is reproduced at Appendix B to this report.

PART X

STAFF AND RESOURCES

Staff

- 10.1 Again this year the Commissioners have enjoyed loyal and expert support from all the staff, for which they are very grateful. As is usual, a number of staff left the Commission during the year and we thank them in particular for their work at the Commission. The names of all the staff in post at the end of 2001 are set out at the beginning of Parts IV to VIII above or in Appendix E.



AN OVERVIEW OF THE COMMISSIONERS AND THE STAFF

(a) Legal Staff

- 10.2 The Commission's main legal staff are part of the Government Legal Service, consisting of barristers and solicitors drawn from a wide variety of professional backgrounds, including academia. They are mainly recruited following public advertisement. We welcome those who have joined us during the year. We have been asked to undertake several additional law reform projects this year and have therefore recruited additional lawyers. As a result, currently we probably have

more legally qualified staff than ever before. Those who left the Commission in 2001 were Georgina Field, Nicola Pittam and Wayne Mitchell.

- 10.3 The Office of the Parliamentary Counsel seconds to the Commission a team of draftsmen who prepare the draft Bills attached to our law reform reports and who undertake the consolidation of existing legislation. Their skilled and committed work is greatly appreciated. Since May the team has been led by Helen Caldwell, who succeeded John Sellers. The secondments of two of the team, Godfrey Lyne and David Sprackling, ended during the year.

(b) Research Assistants

- 10.4 To assist the teams with research, drafting and associated work, a dozen or more well-qualified graduates are recruited annually. They generally spend a year here before moving on to the next stage of their legal training. Many former research assistants have been extremely successful in their subsequent careers. The Commission recognises the important contribution they make to its work, not least through their valuable ideas, enthusiasm and ability. We express our thanks to the research assistants who left us in 2001 to work in firms of solicitors, chambers and elsewhere.

(c) Corporate Service Team

- 10.5 The Commission also recognises, and is grateful for, the contribution made by the small Corporate Service Team of non-legal staff. Between them, these staff provide the services needed to enable the Commission to function effectively, in many cases with the assistance of their colleagues in the Lord Chancellor's Department (with whom they have harmonious working relations). These include accommodation, finance, human resources, information technology, publishing, records management, secretarial assistance and security. Two of them, Norma Spence and Pat Wickers, retired during the year, after some 18 and 10 years' loyal service at the Commission respectively. Also, John Davies moved elsewhere after about 8 years' similarly loyal service.



MEMBERS OF THE CORPORATE SERVICE TEAM

(d) Recruitment and Working Patterns

- 10.6 The type of work which the Commission undertakes is of great interest to those who would like to participate in some way in improving the law. While that tends to attract staff to the Law Commission, we also take great pains to recruit, retain and develop suitable staff. Apart from a range of recruitment activities and arrangements (eg we welcome appropriate secondments and short-term fixed contracts), we have introduced a large number and variety of work/life balance arrangements for such a small workforce, including many flexible working arrangements (eg home-working). The Commission's staff are committed to ensuring that equality and diversity issues are taken fully into account in personnel matters. Vacancies at the Commission are advertised on our website, with brochures and application forms available there, when posts are open to non-civil servants.

(e) Investors in People

- 10.7 The Lord Chancellor's Department and offices such as the Law Commission were awarded accreditation as an Investor in People (IiP) in 1998 and have continued to meet the requirements of the IiP National Standard since then. This demanding national scheme involves a thorough assessment of methods of staff induction, training and appraisal, and also planning and communications; a review will take place in 2003.

Resources

(a) Library

- 10.8 Our library service continues to provide a vital information service in support of the legal work of the Commission. We make use, reciprocally, of a number of other libraries in our work and particular thanks are due to the libraries of the Supreme Court, the Lord Chancellor's Department and the Institute of Advanced Legal Studies. Our library makes full use of the Internet and other electronic services and databases; where possible, these are also made available via each individual desktop PC. In addition, a large collection of printed sources is available for research. Our library staff also provide training and advice in all areas of legal information research.

(b) Finance

- 10.9 The cost of the Commission is summarised in Appendix F. The Commission received a small increase in the funds allocated to it by the Lord Chancellor's Department (our sponsoring department) for the financial year 2000/2001 - for which we are grateful. We have again secured contributions from other Government departments to help fund particular pieces of work which we could not otherwise have undertaken - for which we are also most grateful. We would again like to thank the many individuals and organisations who contribute to our work without payment, particularly those who respond to our consultations.

The Law Commission has recently transferred over to an accrual-based accounting system, which – as others have also found – has been a challenging new development.

(Signed) ROBERT CARNWATH, *Chairman*
HUGH BEALE
STUART BRIDGE
MARTIN PARTINGTON
ALAN WILKIE

MICHAEL SAYERS, *Secretary*
14 February 2002

APPENDIX A

(Para 2.1)

THE LAW COMMISSION'S ROLE AND METHODS

The Law Commission has now been in operation for 36 years. It was established by the Law Commissions Act 1965 to review the law of England and Wales with a view to its systematic development and reform. A number of specific types of reform were mentioned:

- ◆ codification
- ◆ removal of anomalies
- ◆ repeal of obsolete and unnecessary enactments
- ◆ consolidation
- ◆ generally the simplification and modernisation of the law.

Law reform projects may be included in a programme of work submitted to the Lord Chancellor, or be referred to the Commission usually by a Government department. The current programme of work is the Eighth Programme, approved in 2001. The Commission initiates or accepts a law reform project according to its assessment of the relevant considerations, the most significant of which are the importance of the issues, the availability of resources in terms of both expertise and funding and the suitability of the issues to be dealt with by the Commission. The Commission's general aims for law reform are to make the law simpler, fairer, more modern and cheaper to use.

The Commission's work is based on thorough research and analysis of case law, legislation, academic and other writing, law reports and other relevant sources of information both in the United Kingdom and overseas. It takes full account both of the European Convention on Human Rights and of other European law. It acts in consultation with the Scottish Law Commission. It normally publishes a consultation paper inviting views before it finalises its recommendations. The consultation paper describes the present law and its shortcomings and sets out possible options for reform. The views expressed in response by consultees are analysed and considered very carefully.

The Commission's final recommendations are set out in a report which contains a draft Bill where the recommendations involve primary legislation. The report is laid before Parliament. It is then for the Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless a Private Member or Peer does so. After publication of a report the Commission often gives further assistance to Government Ministers and departments, so as to ensure that the best value is obtained from the effort and resources devoted to the project by the Commission and others.

The Commission also has the task of consolidating statute law, substituting one Act, or a small group of Acts, for all the existing statutory provisions in several different Acts. In addition, the Commission prepares legislation to repeal statutes which are obsolete or unnecessary.

APPENDIX B

(Paras 3,33 and 9.24)

THE LAW COMMISSION'S IMPLEMENTED REPORTS SINCE 1985

Publications which have been laid before Parliament under section 3(2) of the Law Commissions Act 1965 and publications which have been presented to Parliament as Command Papers, excluding reports on consolidation, showing implementation. The date shows the year in which the report was published. Those marked + are the result of a reference under section 3(1)(e) of the Act.

Law Com No	Title	Implementing Legislation
1985		
138+	Family Law: Conflicts of Jurisdiction Affecting the Custody of Children (Joint Report - Scot Law Com No 91) (Cmnd 9419)	Family Law Act 1986 (c 55), Part I.
141	Codification of the Law of Landlord and Tenant: Covenants Restricting Dispositions, Alterations and Change of User (HC 278)	In part by Landlord and Tenant Act 1988 (c 26).
146	Private International Law: Polygamous Marriages. Capacity to Contract a Polygamous Marriage and Related Issues (Joint Report - Scot Law Com No 96) (Cmnd 9595)	Private International Law (Miscellaneous Provisions) 1995 (c 42).
147	Criminal Law: Report on Poison-Pen Letters (HC 519)	Malicious Communications Act 1988 (c 27).
148	Property Law: Second Report on Land Registration: Inspection of the Register (HC 551)	Land Registration Act 1988 (c 3).
150	Statute Law Revision: Twelfth Report (Joint Report - Scot Law Com No 99) (Cmnd 9648)	Statute Law (Repeals) Act 1986 (c 12); Patents, Designs and Marks Act 1986 (c 39).
151+	Rights of Access to Neighbouring Land (Cmnd 9692)	Access to Neighbouring Land Act 1992 (c 23).
1986		
157	Family Law: Illegitimacy (2nd Report) (Cmnd 9913)	Family Law Reform Act 1987 (c 42).
1987		
160	Sale and Supply of Goods (Joint Report - Scot Law Com No 104) (Cm 137)	Sale and Supply of Goods Act 1994 (c 35)
161	Leasehold Conveyancing (HC 360)	Landlord and Tenant Act 1988 (c 26).
163	Deeds and Escrows (HC 1)	Law of Property (Miscellaneous Provisions) Act 1989 (c 34).
164	Transfer of Land: Formalities for Contracts for Sale etc of Land (HC 2)	Law of Property (Miscellaneous Provisions) Act 1989 (c 34).
165	Private International Law: Choice of Law Rules in Marriage (Joint Report - Scot Law Com No 105) (HC 3).	Foreign Marriage (Amendment) Act 1988 (c 44).
166	Transfer of Land: The Rule in <i>Bain v Fothergill</i> (Cm 192)	Law of Property (Miscellaneous Provisions) Act 1989 (c 34).
1988		
172	Family Law: Review of Child Law: Guardianship and Custody (HC 594)	Children Act 1989 (c 41).
174	Landlord and Tenant Law: Privity of Contract and Estate (HC 8)	Landlord and Tenant (Covenants) Act 1995 (c 30).
1989		
179	Statute Law Revision: Thirteenth Report (Joint Report - Scot Law Com No 117) (Cm 671)	Statute Law (Repeals) Act 1989 (c 43).
180	Criminal Law: Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC 318)	Criminal Justice Act 1993 (c 36) Part I.
181	Transfer of Land: Trusts of Land (HC 391)	Trusts of Land and Appointment of Trustees Act 1996 (c 47)
184	Property Law: Title on Death (Cm 777)	Law of Property (Miscellaneous Provisions) Act 1994 (c 36)
186	Criminal Law: Computer Misuse (Cm 819)	Computer Misuse Act 1990 (c 18).
187	Family Law: Distribution on Intestacy (HC 60)	Law Reform (Succession) Act 1995 (c 41).

Law Com No	Title	Implementing Legislation
188	Transfer of Land: Overreaching: Beneficiaries in Occupation (HC 61)	Trusts of Land and Appointment of Trustees Act 1996 (c 47).
1990		
192	Family Law: The Ground for Divorce (HC 636)	Family Law Act 1996 (c 27).
193	Private International Law: Choice of Law in Tort and Delict (Joint Report - Scot Law Com No 129) (HC 65)	Private International Law (Miscellaneous Provisions) Act 1995 (c 42).
1991		
196	Rights of Suit in Respect of Carriage of Goods by Sea (Joint Report - Scot Law Com No 130) (HC 250)	Carriage of Goods by Sea Act 1992 (c 50).
199	Transfer of Land: Implied Covenants for Title (HC 437)	Law of Property (Miscellaneous Provisions) Act 1994 (c 36)
202+	Criminal Law: Corroboration of Evidence in Criminal Trials (Cm 1620)	Criminal Justice and Public Order Act 1994 (c 33).
1992		
205	Criminal Law: Rape within Marriage (HC 167)	Criminal Justice and Public Order Act 1994 (c 33).
207	Family Law: Domestic Violence and Occupation of the Family Home (HC 1)	Family Law Act 1996 (c 27).
1993		
211	Statute Law Revision: Fourteenth Report (Joint Report - Scot Law Com No 140) (Cm 2176)	Statute Law (Repeals) Act 1993 (c 50).
215	Sale of Goods Forming Part of a Bulk (Joint Report - Scot Law Com No 145) (HC 807)	Sale of Goods (Amendment) Act 1995 (c 28).
216	The Hearsay Rule in Civil Proceedings (Cm 2321)	Civil Evidence Act 1995 (c 38).
217	Family Law: The Effect of Divorce on Wills	Law Reform (Succession) Act 1995 (c 41).
1994		
220	The Law of Trusts: Delegation by Individual Trustees (HC 110)	Trustee Delegation Act 1999 (c 15).
224	Structured Settlements and Interim and Provisional Damages (Cm 2646)	In part by Finance Act 1995 (c 4); Civil Evidence Act 1995 (c 38); and Damages Act 1996 (c 48).
226	Administrative Law: Judicial Review and Statutory Appeals (HC 669)	In part by Housing Act 1996 (c 52).
228	Criminal Law: Conspiracy to Defraud (HC 11)	Theft (Amendment) Act 1996 (c 62).
1995		
230	Legislating the Criminal Code: The Year and a Day Rule in Homicide (HC 183)	Law Reform (Year and a Day Rule) Act 1996 (c 19).
233	Statute Law Revision: Fifteenth Report (Joint Report - Scot Law Com No 150) (Cm 2784)	Statute Law (Repeals) Act 1995 (c 44).
235	Transfer of Land: Land Registration (jointly with H M Land Registry) (Cm 2950)	Land Registration Act 1997 (c 2).
1996		
242	Privity of Contract: Contracts for the Benefit of Third Parties (Cm 3329)	Contracts (Rights of Third Parties) Act 1999 (c 31).
243	Offences of Dishonesty: Money Transfers (HC 690)	Theft (Amendment) Act 1996 (c 62).
1998		
252	Statute Law Revision: Sixteenth Report (Joint Report - Scot Law Com No 166) (Cm 3939)	Statute Law (Repeals) Act 1998 (c 43).
1999		
260	Trustees' Powers and Duties (Joint Report - Scot Law Com No 166) (HC 538/SE 2)	Trustee Act 2000 (c 29).

APPENDIX C

LAW COMMISSION LAW REFORM REPORTS AWAITING IMPLEMENTATION

(Para 3.7)

Of all the Law Commission's 168 law reform reports, the 27 listed below remain outstanding. Twelve of these, marked *, have been accepted by the Government in full or in part, subject to Parliamentary time being available.

<i>Year</i>	<i>Law Com No</i>	<i>Title</i>
1991	194	Distress for Rent
1992	208	* Business Tenancies: Landlord and Tenant Act 1954, Part II ¹
1993	218	* Legislating the Criminal Code: Offences against the Person and General Principles ²
1994	222	Binding Over
	226	Judicial Review and Statutory Appeals
1995	229	Intoxication and Criminal Liability
	231	* Mental Incapacity ³
1996	237	* Involuntary Manslaughter ⁴
	238	Landlord and Tenant: Responsibility for State and Condition of Property ⁵
1997	245	* Evidence in Criminal Proceedings: Hearsay and Related Topics ⁶
	246	Shareholder Remedies ⁷
	247	* Aggravated, Exemplary and Restitutionary Damages ⁸
1998	248	* Legislating the Criminal Code: Corruption ⁹
	249	Liability for Psychiatric Illness ¹⁰
	251	* The Rules Against Perpetuities and Excessive Accumulations ¹¹
	253	* The Execution of Deeds and Documents by or on behalf of Bodies Corporate ¹²
	255	* Consents to Prosecution
1999	257	Damages for Personal Injury: Non-Pecuniary Loss ¹³
	261	Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties ¹⁴
	262	Damages for Personal Injury: Medical, Nursing and other Expenses; Collateral Benefits ¹⁵
	263	Claims for Wrongful Death ¹⁶

¹ See para 3.22 above.

² See para 3.8 above.

³ See paras 3.29 - 3.32 above.

⁴ See para 3.9 above.

⁵ See paras 3.19 - 3.20 above.

⁶ See para 3.11 above.

⁷ See para 3.16 above.

⁸ See para 3.12 above.

⁹ See para 3.10 above.

¹⁰ See para 3.13 above.

¹¹ See para 3.14 above.

¹² See para 3.17 above.

¹³ Much of this report was dealt with by the Court of Appeal in early 2000 in *Heil v Rankin*: see para 3.14 above.

¹⁴ See para 3.15 above.

¹⁵ See para 3.13 above.

¹⁶ See para 3.13 above.

APPENDIX C

LAW COMMISSION LAW REFORM REPORTS AWAITING IMPLEMENTATION [CONTINUED]

<i>Year</i>	<i>Law Com No</i>	<i>Title</i>
2001	267	* Double Jeopardy and Prosecution Appeals ¹⁷
	269	Bail and the Human Rights Act 1998 ¹⁸
	270	Limitation of Actions ¹⁹
	271	* Land Registration for the 21st Century: A Conveyancing Revolution ²⁰
	272	Third Parties – Rights against Insurers ²¹
	273	Evidence of Bad Character in Criminal Proceedings ²²

¹⁷ See paras 3.6 and 5.4 - 5.7 above.

¹⁸ See paras 5.2 - 5.3 above.

¹⁹ See para 4.1 above.

²⁰ See paras 7.1 - 7.4 above. Bill currently in Parliament.

²¹ See paras 4.6 - 4.7 above.

²² See para 5.8 above.

APPENDIX D

VISITORS FROM OVERSEAS

(Para 9.10)

Among the visitors to the Law Commission during 2001 were:

<i>Australia</i>	Professor Peter Cane (Australian National University) Mr Ian Davis (Commissioner, Australian Law Reform Commission) Mr Stephen Edwards (Associate Legal Director, Australian Finance Conference) Chief Justice John Harber Phillips AC (Supreme Court, Melbourne)
<i>Bolivia</i>	Minister Vasquez
<i>Cambodia</i>	Dr Say Bory and Mr Yang Sem (Members of the Constitutional Council)
<i>Canada</i>	Ms Susan Zimmerman (Director of Research, Law Commission of Canada)
<i>Hong Kong</i>	Ms Elsie Leung (Secretary for Justice and Chairman of the Hong Kong Law Reform Commission)
<i>Japan</i>	Professor Yasunori Kasai (Niigata University)
<i>Indonesia</i>	Dr Paulus Lotulung (Deputy Chief Justice) Dr L Marzuki (Justice of the Supreme Court) Ms Chairani A Wani (Justice of the Supreme Court)
<i>Malawi</i>	Justice Elton M Singini (Law Commissioner, Malawi Law Commission)
<i>Nigeria</i>	Mrs Yetunde Fasade (Secretary, Nigerian Law Reform Commission)
<i>Poland</i>	Professor Janusz Kochanowski (Professor of Law, University of Warsaw and Adviser to the Justice Minister)
<i>Russia</i>	Mr Mikhail V Iourine (Judge of the Yaroslavl Region)
<i>Singapore</i>	Bala Reddy (Deputy Public Prosecutor)
<i>Trinidad & Tobago</i>	Hon Ramesh Lawrence Maharaj, MP (Attorney General)
<i>USA</i>	Professor Donald B King (Professor of Law Emeritus, St Louis University School of Law)

DELEGATIONS FROM: China (three delegations)

Latvia

Russia

Serbia

The Commonwealth, on a Commonwealth Secretariat course for lawyers

APPENDIX E

STAFF

(Para 10.1)

(AS AT THE END OF 2001)

The names of the Commission's legal staff are set out, by their teams, at the head of Parts IV-VIII.

In addition, the Law Commission's Corporate Service Team comprises:

Secretary Mr M W Sayers	Assistant Secretary Mr C K Porter	Planning, Policy and Personnel Miss C J Smith
Personnel/Recruitment Miss J A Griffiths	Printing, Publishing and Website Mr D R Leighton <i>Editor / Web Manager</i>	Accommodation, Registry and Accounts Ms A L Peries <i>Facilities Manager</i> Mr T D Cronin <i>Registry</i> Miss J A Griffiths <i>Registry / Accounts</i> Miss R Mabbs <i>Office Keeper</i> Mrs L Williams <i>Messenger</i>
Library Services Mr K Tree <i>Librarian</i> Mr M Hallissey <i>Assistant Librarian</i> Ms D Spanou <i>Library Trainee</i>	Secretarial Support Miss C P Cawe Ms J Coulson Mrs H C McFarlane Miss A J Meager Ms J R Samuel Mrs J Sharma	
Chairman's Support Mr J M Edwards <i>Clerk</i> Miss S Venn <i>Research Assistant</i>		

CONTACT POINTS:

- ♦ The general enquiry telephone number is: 020-7453-1220
- ♦ The general fax number is: 020-7453-1297
- ♦ The Law Commission's website address is: <http://www.lawcom.gov.uk>

E-mail addresses

- General e-mail address (except for library services): secretary@lawcommission.gsi.gov.uk
- Library e-mail address: library@lawcommission.gsi.gov.uk
- The law reform teams and the statute law revision team have individual e-mail addresses, which can be found on the team pages of the Commission's website

APPENDIX F

(Para 10.9)

THE COST OF THE COMMISSION

The Commission's resources are made available through the Lord Chancellor's Department in accordance with section 5 of the Law Commissions Act 1965. The cost of most items (in particular accommodation, salaries, superannuation and Headquarters' overheads) is not determined by the Commission. The figures given are those for a calendar year and cannot be related to those in Supply Estimates and Appropriation Accounts.

	2001		2000	
	£000	£000	£000	£000
Accommodation charges ¹	846.0		826.5	
Headquarters' overheads	<u>1,197.2</u>		<u>—</u>	
		2,043.2		826.5 ²
Salaries and pensions of Commissioners ⁴	423.7		417.5	
Salaries of legal staff ⁵ and secondees and payments to consultants	1,477.3 ⁴		1,407.2	
Salaries of non-legal staff ⁶	<u>346.0⁵</u>		<u>373.0⁵</u>	
		2,247.0		2,197.7
Printing and publishing; supply of information technology; office equipment and books	283.9		252.0	
Utilities (inc telecommunications) and postage	42.7 ⁶		23.4	
Travel and subsistence	7.9		12.1	
Miscellaneous (inc recruitment); fees & services ⁷	14.4		10.3	
Entertainment	<u>2.9</u>		<u>1.8</u>	
		351.8		299.5
TOTAL		<u>4,642.0</u>		<u>3,323.8²</u>

- 1 The figure for 2000 includes a component relating to ground rent, rates, utilities (gas, water etc) and all works supplied by the Lord Chancellor's Department. The figure for 2001 excludes utilities, but includes capital and depreciation charges, as well as the ground rent, rates, furniture, cleaning, security and all works supplied by LCD.
- 2 Owing to a change by LCD in allocating overheads during 1999-2000 it was not possible to give a comparable figure for 2000. The figure for 2001 is as apportioned by LCD to the Law Commission.
- 3 These figures include ERNIC and Superannuation.
- 4 The increase in the 2001 figure is almost wholly due to additional staff employed to undertake new projects required by the Government.
- 5 The reduction in the 2001 figure is due to staff vacancies.
- 6 The figure for 2000 included the cost of permanent IT staff.
- 7 The figure for 2001 includes all utilities (gas, water, fuel and electricity), unlike the figure for 2000.
- 8 These figures include recruitment campaigns for lawyers.

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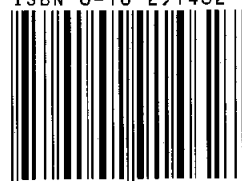
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