



**Law  
Commission**  
Reforming the law

## Annual Report 2013–14





# The Law Commission Annual Report 2013–14

(Law Com No 352)

The Forty-Eighth Annual Report of the Law Commission

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

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

This annual report covers the period 1 April 2013 to 31 March 2014, although we have also included references beyond the reporting period, up to and including 21 May 2014, when the terms of this report were agreed.



L to R: Elaine Lorimer, Sir David Lloyd Jones, Nicholas Paines QC, Professor Elizabeth Cooke, David Hertzell, Professor David Ormerod QC

*Commissioners:*

The Rt Hon Lord Justice Lloyd Jones, Chairman  
Professor Elizabeth Cooke  
David Hertzell  
Professor David Ormerod QC  
Nicholas Paines QC\*

*Chief Executive:*  
Elaine Lorimer



\* Nicholas Paines QC joined the Law Commission on 18 November 2013 replacing Frances Patterson QC who left the Commission on 30 September 2013, having been appointed Justice of the High Court, Queen's Bench Division, with effect from 1 October.

“

I end by thanking the Law Commission, which does an extremely good job for us in this country. I add my tributes to it for the work that it does all the time to present us with considered and measured proposals for legislation.

”

Simon Hughes, HC Deb, 26 March 2014, c427.

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# Law Commission Annual Report 2013–14



I am happy to report that the Law Commission of England and Wales has come through the challenges of the last 12 months in good heart and with considerable success.

## Triennial Review

First, I should record that the Commission has successfully completed its Triennial Review, the process by which the Government scrutinises arm's-length bodies. This intensive and prolonged review into the structure and functioning of the organisation resulted in two reports, in August 2013 and March 2014 respectively, which expressly accepted the continuing need for the Commission's functions to be performed by an independent body. The review acknowledged the value placed by the public on the independence and impartiality of the Commission and confirmed that the present model is the most appropriate for the maintenance of that independence. The reports also provided a resounding endorsement of our work.

## Relocation

During the last year, the Commission has moved its offices once again. The decision of the Ministry of Justice to rationalise its estate resulted in a search for alternative accommodation. The only suitable accommodation in Central London which was offered to us was in the tower of the Ministry of Justice building in Petty France. This gave rise to concerns on our part as to the likely effect on the public perception of the independence of the Commission from the Ministry of Justice.

In the event, we have, in common with a number of other arm's-length bodies including the Judicial College and the Judicial Appointments Commission, moved into the Ministry of Justice building. The accommodation is certainly superior to that which we occupied in Steel House. In the result, the Law Commission now operates from the site of the house occupied by Jeremy Bentham for the last 40 years of his life, to which a plaque on the wall bears witness.

Our newly acquired proximity to the Ministry of Justice has made all the more important the maintenance of our independence and the appearance of our independence. It is, therefore, with some relief that I am able to report that we have won our protracted battles to retain the Law Commission's logo and its independent website. We are grateful to Ministers in the Ministry of Justice and to a large number of our stakeholders for their support which enabled this unhappy episode to be brought to a satisfactory conclusion.

## Staff changes

The past year has seen a change in the composition of the Commission. In October 2013 Frances Patterson QC was appointed a Justice of the High Court, Queen's Bench Division. During her time as a Law Commissioner, Frances led the Public Law Team in many onerous projects including Level Crossings, Regulation of Health and Social Care Professionals, Regulation of Taxis and Private Hire Vehicles and Electoral Law. In each, her expertise in public law and her powers of diplomacy were turned to great advantage as the resulting reports and papers demonstrate. We wish Mrs Justice Patterson every success in her judicial career.

In her place we have been joined by Nicholas Paines QC who has left a distinguished practice in public law and EU law at Monckton Chambers to join the Commission. On his arrival he immediately rose to the considerable challenge of completing a number of the public law projects in the 11th Programme. He is very welcome.

It is with great sadness that I have to record the death of Gianni Sonvico in a tragic accident in October 2013. Gianni joined the Law Commission as a Research Assistant in September 2013 and immediately established himself as a valued and popular member of the Criminal Law Team. In the short time he was with us he made an important contribution to the project on contempt of court. He was an accomplished, highly motivated and enthusiastic lawyer who would certainly have had an outstanding career at the Bar. At the Commission we have all been deeply affected by his death and we extend our sympathy to his family.

## Publications

As the Commission has moved towards the completion of the 11th Programme of Law Reform, this has been an extremely busy and highly productive year. As at 21 May 2014 we have published consultation papers on:

- Patents, Trade Marks and Design Rights: Groundless Threats<sup>1</sup>
- Hate Crime: The Case for Extending the Existing Offences<sup>2</sup>
- Data Sharing between Public Bodies<sup>3</sup>
- Fiduciary Duties of Investment Intermediaries<sup>4</sup>
- Social Investment by Charities<sup>5</sup>

and have published reports on:

- Renting Homes in Wales, Rhentu Cartrefi yng Nghymru<sup>6</sup>
- Level Crossings<sup>7</sup>
- Contempt of Court (1): Juror Misconduct and Internet Publications<sup>8</sup>
- Wildlife Law: Control of Invasive Non-native Species<sup>9</sup>
- Matrimonial Property, Needs and Agreements<sup>10</sup>
- Contempt of Court (2): Court Reporting<sup>11</sup>
- Regulation of Health Care Professionals: Regulation of Social Care Professionals in England<sup>12</sup>
- Patents, Trade Marks and Design Rights: Groundless Threats<sup>13</sup>

In addition, we have published the following papers:

- Criminal Liability: Insanity and Automatism: A Discussion Paper<sup>14</sup>
- Unfitness to Plead: An Issues Paper<sup>15</sup>

## Implementation

There has been some excellent news in relation to implementation of Law Commission reports.

- The Inheritance and Trustees' Powers Act, which received Royal Assent on 14 May 2014, implements Law Commission recommendations on intestacy.
- The Care Act, which also received Royal Assent on 14 May 2014, implements Law Commission recommendations on Adult Social Care.
- The Consumer Rights Bill, currently before Parliament, will implement Law Commission recommendations in three reports: Unfair Contract Terms, Consumer Redress for Misleading and Aggressive Practices, and Consumer Remedies for Faulty Goods.
- The Criminal Justice and Courts Bill, currently before Parliament, will implement our recommendations in relation to juror misconduct and internet publications published in December 2013.
- The Social Services and Well-being (Wales) Act, which received Royal Assent on 1 May 2014, implements in Wales Law Commission proposals on Adult Social Care. This represents an important milestone for the Law Commission and the National Assembly for Wales as this is the first occasion on which Law Commission recommendations have been implemented by the National Assembly using its powers under Part 4, Government of Wales Act 2006.
- The Welsh Government has announced its intention of introducing a Bill in the National Assembly for Wales in 2015 which will implement the Law Commission's 2006 report on Renting Homes, updated in Renting Homes in Wales/ Rhentu Cartrefi yng Nghymru.

1 LCCP212, 17 April 2013.  
 2 LCCP213, 27 June 2013.  
 3 LCCP214, 16 September 2013.  
 4 LCCP215, 22 October 2013.  
 5 LCCP216, 24 April 2014.

6 LC337, 9 April 2013.  
 7 LC339, 25 September 2013.  
 8 LC340, 9 December 2013.  
 9 LC342, 11 February 2014.  
 10 LC343, 27 February 2014.

11 LC344, 26 March 2014.  
 12 LC345, 2 April 2014.  
 13 LC346, 15 April 2014.  
 14 23 July 2013.  
 15 2 May 2014.

This good news has been tempered somewhat by our disappointment at the decision of the Government not to take effective action in relation to our recommendations on Expert Evidence in Criminal Proceedings. In our report published in March 2011 we recommended that a reliability test should be introduced for expert evidence. In our view, such a change in the rules of admissibility of evidence would require primary legislation. The Ministry of Justice did not disagree with the desirability of such a reform but considered that amendments to the Criminal Procedure Rules would be sufficient. As a result, in place of supporting amending legislation, the Government has invited the Criminal Procedure Rules Committee to amend the Rules to require more information from those wishing to adduce expert evidence. I am, however, pleased to record that the Advocacy Training Council is developing training programmes based on our recommendations. We hope that in this way the Law Commission report will equip the legal profession with the skills needed to challenge expert evidence effectively.

## Consolidation

The Commission has been able in the last year to take up, once again, its work on the consolidation of legislation. The Co-operative and Community Benefit Societies Act 2014, which received Royal Assent on 14 May 2014, will make readily accessible the statutory provisions governing this important area of the law.

## Statute Law Repeals

One important function of the Law Commission and the Scottish Law Commission which does not always receive the praise it deserves is that of statute law repeals. At the Law Commission a small, dedicated SLR team carries out extensive research in order to identify primary legislation which is no longer of any practical utility. At intervals it produces a draft Statute Law Repeals Bill for the purpose of repealing defunct and obsolete legislation. Nineteen such Bills have been drafted since 1965. All have been enacted, repealing over 3,000 Acts in their entirety and thousands of

other Acts in part. The most recent, which became the Statute Law (Repeals) Act 2013, resulted in the repeal of 817 Acts in their entirety and the removal of redundant provisions from some 50 other Acts.

The Law Commissions were concerned to learn on the publication of the draft Deregulation Bill that it included a clause (clause 51) which would enable a Minister to provide by order for legislation to cease to apply "if the Minister considers that it is no longer of practical use". While drawing attention to the comments of others on the constitutional implications of such a proposal, in our evidence to the Joint Committee on the Draft Deregulation Bill we emphasised that it is often only after the most thorough research that it can safely be concluded that a given Act is indeed defunct. The proposed power would result in a duplication of this statutory function of the Law Commission, without the safeguards of rigorous research and consultation carried out by experts.

In their evidence to the Joint Committee the Law Commissions made proposals for the production of more frequent and more responsive SLR Bills. In its report, the Committee concluded that these answered the arguments advanced by the Government in support of the proposed new power<sup>16</sup>. In its view the Law Commissions are better placed to carry out this work than are Government departments. Moreover, it considered that their independence and track record since 1965 reinforce the trust which Parliament places in the Law Commissions. The Joint Committee recommended that the clause be removed from the Bill, a course which the Government eventually followed.

The report of the Joint Committee recommended that the number of lawyers deployed on SLR work at the Law Commissions should be increased. However, the Government rejected that proposal and has made clear that no additional funding will be made available for the Commissions' SLR work.<sup>17</sup> Notwithstanding this, the Commissions are currently working to reform their SLR procedures within available resources.

<sup>16</sup> HL Paper 101; HC 925, 11 December 2013.

<sup>17</sup> Government Response to the Report of the Joint Committee on the Draft Deregulation Bill, Cm 8808, 30 January 2014.

## Twelfth Programme of Law Reform

While moving towards the conclusion of the 11th Programme of Law Reform, we have also been planning for the 12th Programme. A four-month consultation period in the summer of 2013 on the new programme was launched by major events in London and Cardiff. Extensive contacts with interested parties and the public followed. Consultation meetings were held with the judiciary, the Bar and the Law Society. The Chief Executive also met legal and policy directors across Whitehall and the Chief Executives of the Law Commissions in Scotland and Northern Ireland. For the first time the Commission held a consultation event in Parliament which was chaired by Sir Alan Beith MP, Chair of the Justice Committee, and attended by members of both Houses. The public consultation resulted in over 250 proposals for law reform projects from 180 consultees. All have been examined in detail by teams at the Commission. Our proposals for the new programme will be submitted to the Lord Chancellor in early June and we hope to publish the new programme before Parliament rises for the summer recess.

### Meeting with Supreme Court

In October 2014 the Commissioners and Chief Executive attended a meeting with the Supreme Court, four of whose members are former Law Commissioners. This was a valuable opportunity to discuss progress on current projects and the selection of projects for inclusion in the forthcoming 12th Programme of Law Reform. We hope that it will be possible to hold similar meetings in the future.

### Meetings with Parliamentarians

The Commission is keen to strengthen its links with Parliamentarians and the last year has seen a number of developments in that regard.

- Reference has been made above to the consultation event held in Westminster in connection with the 12th Programme.

- We are particularly grateful to Sir Alan Beith for sponsoring our exhibition at the Palace of Westminster in October 2013.
- On 12 May 2014 a short debate took place in the House of Lords on the implementation of Law Commission reports.

## Wales

The past year has seen a number of important developments in our role and activities in relation to Wales.

- The Wales Bill, currently before Parliament, will, if enacted in its present form, amend the Law Commissions Act 1965 so as to permit the Commission to operate more effectively in the changed constitutional circumstances following devolution in Wales. For the first time Welsh Ministers will be given the power to refer law reform projects to the Commission and the First Minister will be required to report annually to the National Assembly on steps taken to implement Law Commission reports. There will also be provision for the conclusion of a protocol between the Commission and the Welsh Ministers.
- The Welsh Advisory Committee, created in 2013, has proved extremely valuable. It has met three times in its first year and has provided invaluable insights into the law reform needs of Wales, both in the devolved and non-devolved areas. Its members have played a very creative part in the consultation on the 12th Programme and we look forward to their future involvement in consultations on individual projects. We are very grateful to them for their contribution.
- Throughout the year we have maintained our close links with the Counsel General, lawyers and officials in the Welsh Government. Our recent discussions on the 12th Programme included a meeting with the First Minister.
- Our consultation on the 12th Programme included a launch event at the Wales Governance Centre, for which we are most grateful to Cardiff University, and a strong presence at the Legal Wales Conference at City Hall, Cardiff in October 2013.

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## International relations

We maintain our links with Law Commissions in many other jurisdictions. During the last year we have been pleased to welcome at the Commission visiting lawyers from other nations including Albania, Australia, Bangladesh, Mauritius, New Zealand, Norway, Pakistan, Russia, Saudi Arabia, Sierra Leone, South Korea and Thailand.

## Looking forward

2015 will mark the 50th anniversary of the creation of the Law Commission by the Law Commissions Act 1965. Although this may not bear comparison with Magna Carta, Agincourt or Waterloo, it is certainly worth celebrating. A number of events are planned to mark the anniversary, including the Scarman Lecture which will be delivered on 24 March 2015 in the Middle Temple Hall by Sir Geoffrey Palmer, former Prime Minister of New Zealand and former Chair of the New Zealand Law Commission. We also hope to participate in an academic conference on the Law Commissions.

## Conclusion

In surveying the events of the last year I am very conscious of the immense contribution to the work of the Commission made by those to whom we refer as our "stakeholders". Over the past year we have had cause, once again, to turn to them repeatedly for their advice and they have been unstinting in their support for our work. We are very grateful to them.

Finally, I wish to record my warm appreciation of the efforts and achievements of the Commissioners and staff during the last year. The 11th Programme of Law Reform has been extremely ambitious and the completion of so many projects has imposed great pressures on the teams in recent months. They have risen magnificently to the challenge. Once again they have produced work of the highest quality of which the Commission can be proud.



**Sir David Lloyd Jones**  
Chairman

# Highlights of 2013–14

## 2013

April	May	June	July	September	October
<b>6</b>	<b>9</b>	<b>26</b>	<b>2</b>	<b>16</b>	<b>7</b>
Consumer Insurance (Disclosure and Representations) Act 2012 comes into force.	Care Bill introduced into the House of Lords on 9 May	Visitors from the Ministry of Justice in New Zealand	Launch event for the 12th Programme consultation, London	Consultation on Data Sharing between Public Bodies opens	12th Programme consultation event, Wales Governance Centre, Cardiff
<b>9</b>	<b>10</b>	<b>27</b>	<b>17</b>	<b>25</b>	<b>8</b>
Report on Renting Homes in Wales published	Visit from members of the Senate Standing Committee on Human Rights, the Right and Liberty, and Consumer Protection of Thailand	Commonwealth Drafters seminar	Annual report 2012-13 published	Joint report on Level Crossings published	12th Programme consultation event, Houses of Parliament
<b>24</b>	<b>24</b>		<b>23</b>	<b>26</b>	<b>10</b>
Chairman delivers Wales Governance Centre annual lecture, "The Law Commission and law reform in a devolved Wales"	Announcement of Frances Patterson QC's appointment to the High Court	Consultation on Hate Crime: The Case for Extending the Existing Offences opens	Discussion paper on Insanity and Automatism published	Consultation on draft consolidation Bill on Co-operative and Community Benefit Societies opens	12th Programme consultation event, Supreme Court
			<b>30</b>	<b>27</b>	<b>11</b>
			Inheritance and Trustees' Powers Bill introduced into the House of Lords	Visit from the Secretary of Justice of Hong Kong	Chairman delivers speech at Legal Wales conference, Cardiff
					<b>16</b>
					Chairman, Chief Executive give evidence to the Joint Committee on the Draft Deregulation Bill
					<b>17</b>
					12th Programme consultation event, Royal Courts of Justice
					<b>21</b>
					Week-long exhibition in the Houses of Parliament

## 2014

October cont...	November	December	January	February	March
<b>22</b>	<b>7</b>	<b>3</b>	<b>15</b>	<b>11</b>	<b>11</b>
Consultation on Fiduciary Duties of Investment Intermediaries opens	Appointment of Nicholas Paines QC and extension (to Dec 2014) of David Hertzell's term as Commissioner announced	Visit by members of the Anti-Corruption and Civil Rights Commission of South Korea	Visit by the Chairman of the Law Commission of Bangladesh	Report on Wildlife Law: Control of Invasive Non-native Species published	Professor Ormerod QC gives evidence to the Public Bill Committee hearing on the Criminal Justice and Courts Bill
<b>23</b>	<b>18</b>	<b>9</b>		David Hertzell gives evidence to the Public Bill Committee hearing on the Consumer Rights Bill	<b>17</b>
Elizabeth Cooke gives evidence to the Special Public Bill Committee hearing on the Inheritance and Trustees' Powers Bill	Nicholas Paines QC starts as Public Law Commissioner	Report on Contempt of Court (1): Juror Misconduct and Internet Publications published		<b>27</b>	Co-operative and Community Benefit Societies Bill completes its passage through Parliament
<b>24</b>	<b>21</b>	<b>10</b>		Report on Matrimonial Property, Needs and Agreements published	Visit by the Chief Justice of Albania
Visit by participants in PAI's Changing the Law: Successful Reform course	Visit by delegation of justices from Sierra Leone	Visit by the DPP and colleagues from the Criminal Law Review Committee and Law Reform Commission, Mauritius			<b>18</b>
		<b>18</b>			The Social Services and Well-being (Wales) Bill completes its passage through the National Assembly
		Visit by the Justice Minister of Saudi Arabia			<b>26</b>
		<b>19</b>			Report on Contempt of Court (2): Court Reporting published
		Co-operative and Community Benefit Societies Bill introduced into the House of Lords			Inheritance and Trustees' Powers Bill completes its passage through Parliament

# PART ONE

## Who we are and what we do

“

I pay tribute to the Law Commission and the Scottish Law Commission, whose 2013 Act was the largest Statute Law (Repeals) Act ever. It did away with 817 whole Acts, along with sections of 50 other Acts. That was a great triumph.

”

Lord Bates, HL Deb, 19 June 2013, c312.



## The Chairman and Commissioners of the Law Commission

The Law Commission is headed by a Chairman and four Commissioners, all of whom are appointed by the Lord Chancellor. At 31 March 2014, the Law Commissioners were:

- The Rt Hon Lord Justice Lloyd Jones, Chairman
- Professor Elizabeth Cooke, Property, Family and Trust Law
- David Hertzell, Commercial and Common Law
- Professor David Ormerod QC, Criminal Law
- Nicholas Paines QC, Public Law

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

The Law Commission was created by the Law Commissions Act 1965 for the purpose of reforming the law of England and Wales. It is an advisory, non-departmental public body, which is part of the family of Ministry of Justice arm's-length bodies.

The Law Commission's principal objective is to promote the reform of the law. We do this by reviewing areas of the law and making recommendations for change. We seek to ensure that the law is as simple, accessible, fair, modern and cost-effective as possible.

A number of specific types of reform are covered by the Law Commissions Act 1965:

- simplification and modernisation of the law
- codification
- removal of anomalies
- repeal of obsolete and unnecessary enactments, and
- consolidation

We approach this work in two distinct strands: programmes of law reform and statute law work, which includes both consolidation and statute law repeals.

The progress we have made during 2013–14 in all these areas of work is recorded in Part 2.

## The Law Commission in Wales

As the Law Commission of England and Wales, we strive to meet the law reform needs of the people of Wales.

This has been the first full year during which we have benefited from the support of our Welsh Advisory Committee. We established the Committee in 2013 to advise us on the exercise of our statutory functions in relation to Wales. For more on the Committee, see page 11.

- Part 2 of this report charts the many projects on which we have been engaged in 2013–14 that, if implemented, would impact on the lives of people in Wales.
- During the year we have also seen the Social Services and Wellbeing (Wales) Act 2014, which implements our recommendations on adult social care<sup>1</sup>, receive Royal Assent (see page 36), and the recommendations in our Renting Homes in Wales report<sup>2</sup> accepted by the Welsh Government (see page 37).

To strengthen our capacity to deliver effective law reform for Wales, we have been working with the Welsh Government to establish a formal framework for our relationship.

On 20 March 2014 the Wales Bill was introduced into Parliament. If enacted, the Bill would:

- provide for a Protocol to be established between us and the Welsh Government that would govern the way we work together
- amend the Law Commissions Act 1965 to grant powers to the Welsh Government to refer law reform projects directly to us, and
- place an obligation on Welsh Ministers to report annually to the Assembly about the implementation of our reports.

<sup>1</sup> Adult Social Care (2011) LC326.

<sup>2</sup> Renting Homes in Wales/Rhenttu Cartrefi yng Nghymru (2013) LC337.

## Our objectives

As an organisation, we have worked together to identify the characteristics to which the Law Commission should aspire:

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

## Our Business Plan

Our Business Plan<sup>3</sup> for this year identifies four priority areas for action:

- Law reform – to make a difference through law reform.
- External relations and reputation – to engage proactively with our stakeholders and respond to their feedback.
- Our people – to attract the best and continue to ensure the Law Commission is an excellent place to work.
- Finance and governance – to ensure decision making that is robust.

The Business Plan also acknowledges the challenging environment within which we would need to work to deliver our priorities:

- the completion of a number of our 11th Programme projects, which would place a high level of demand on our law teams and, in particular, our Parliamentary Counsel;
- the consultation for our 12th Programme of law reform, which would involve every member of the Commission and many of our stakeholders;
- the examination of the Commission by the Ministry of Justice and the critical friends group charged with conducting the Government’s Triennial Review; and
- after five years in Steel House, our move into new, and smaller, offices.

We have met these challenges successfully while continuing to deliver within our four priority areas, and have done this against a backdrop of a 10 per cent cut on our original comprehensive spending review settlement.

Our achievements of 2013–14 are outlined throughout this annual report.

## Measuring success

The implementation of our recommendations for reform is clearly an important indicator of the success of the Law Commission. This is covered in detail in Part 3 of this report.

However, implementation does not fully demonstrate the breadth of the Commission’s impact. In an effort to assess our impact and influence, we record instances during the calendar year when the Law Commission is cited in judgments or during business in the Houses of Parliament, and we look at the profile given to us in the media.

**Table 1.1: Citations**

In UK judgments	307
In judgments from other common law jurisdictions	72
In Hansard	108

In addition, the Commission’s work is widely quoted in academic journals and the media. A basic search on the internet reveals 220 references made in UK academic journals during the calendar year 2013, and our monitoring service picked up over 650 references to the Law Commission from the mainstream media during 2013–14. There were many more mentions in local and specialist press and in blogs. Some of these will be made in support of the Commission; some will not. At the very least these figures show that the Law Commission is gaining attention and stimulating debate on the issues we address.

<sup>3</sup> <http://lawcommission.justice.gov.uk/publications/934.htm>.

# Welsh Advisory Committee

We set up our Welsh Advisory Committee in 2013 to give the people of Wales a stronger voice in law reform and help us continue to act as an effective law reform body for both England and Wales. The Committee's role is to:

- advise us on the exercise of our statutory functions in relation to Wales; and
- help us:
  - identify the law reform needs of Wales, within both the devolved and reserved areas; and
  - identify and take into account specific Welsh issues in all our law reform projects.

During its first full year of operation, the Committee has met three times. These meetings have created valuable opportunities for detailed and informative discussion with the Committee's wide-ranging membership, and a chance to gain fresh insights and new angles on devolved projects and projects that cover England and Wales, Great Britain and the UK. They have also enabled us to report back to some of the leading lawyers in Wales on our ongoing work.

The Committee has made a particularly significant contribution to our work in developing our 12th Programme of Law Reform (see page 20-1), which will make up the majority of our work over the next few years. The Committee will continue to work with us to shape and deliver the projects in the 12th Programme. We believe that their in-depth knowledge



The effect of bringing into force of Part 4 of the Government of Wales Act 2006 is that a greater divergence will develop between the law applicable in England and that in Wales. This has important implications for the implementation of law reform. The demands of law reform will undoubtedly have particular characteristics within a devolved Wales with its own legislative powers. We welcome the close working between the Law Commission, UK Government and Welsh Government on these matters.\*



of the landscape and of the individuals we should be engaging and working with will prove invaluable.

## The members

The Committee's members are drawn from academia, the judiciary, practitioners, and the public and third sectors. Their broad interests enable them to act as a truly representative body, reflecting the diverse needs and priorities of the Welsh people.

- Keith Bush QC
- Professor Dermot Cahill, *School of Law, Bangor University*
- Professor Gillian Douglas, *Department of Law, Cardiff University*
- Professor Margaret Griffiths, *Acting Public Services Ombudsman for Wales*
- Ruth Henke, QC
- Phil Jarrold, Acting Chief Executive, *WCVA*
- Emyr Lewis, *Wales Governance Centre, Cardiff University*
- Professor Gwynedd Parry, *Department of Law, Swansea University*
- Helen Power, *Law School, University of South Wales*
- Professor Richard Rawlings, *Faculty of Law, University College London*
- Sarah Rochira, Older People's Commissioner for Wales
- Professor Thomas Glynn Watkin, *First Legislative Counsel for Wales and Department of Law, Cardiff University*
- Angela Williams, *Citizens Advice Cymru*
- Professor John Williams, *Department of Law and Criminology, Aberystwyth University*
- Professor Dan Wincott, *Department of Law, Cardiff University*

We would like to welcome new members to the Committee and express our thanks to those who left during the year – Graham Benfield OBE, Anna Buchanan, Richard Owen and Peter Tyndall – for the contribution they have made to law reform in Wales.

\* Silk Commission report, Empowerment and Responsibility: Legislative Powers to Strengthen Wales (2014), 10.3.43.

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# PART TWO

## Review of our work for 2013–14

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“

In particular, in the delivery of all its law reform projects, the Commission enjoys the support of a wide range of academics, research bodies and other experts who contribute to the Commission’s work (often on a pro bono basis) because it is an independent body producing impartial, evidence-based recommendations.”

Helen Grant MP, former Parliamentary Under-Secretary of State for Justice. Written statement, Hansard (HC), 16 July 2013, Col 89WS.

# Commercial law and common law

## Commissioner

David Hertzell

### Fiduciary duties of investment intermediaries

We started this project in March 2013, following Professor John Kay's report on long-term decision-making in UK equity markets,<sup>1</sup> commissioned in the wake of the financial crisis. This identified concerns about how fiduciary duties were interpreted in the context of investment.

In particular:

- it was not clear who in the investment chain was subject to fiduciary duties and what those duties were, and
- there were concerns that fiduciary duties required pension trustees to maximise short-term returns at the expense of considering long-term factors that might impact on company performance.

One of the recommendations in Professor Kay's report was that "the Law Commission should be asked to review the legal concept of fiduciary duty as applied to investment to address uncertainties and misunderstandings on the part of trustees and their advisers", with the goal of clarifying the duties that exist between intermediaries and between intermediaries and investors.

We published a consultation paper in October 2013,<sup>2</sup> which received 96 responses. The paper looked at the investment market through the lens of pensions, tracing a chain of intermediaries from the prospective pensioner/saver, through trustees, fund managers, brokers and custodians to the registered shareholder of a UK company.

We commented that there are well-established duties on pension trustees to act in the best interests of scheme members. This does not mean that trustees are required to maximise financial return over a short time scale. They may apply a broad definition of "best interests", looking at any factor (including environmental, social and governance factors) that could impact on risk and performance over the long term.

For contract-based pensions and others in the chain, fiduciary duties are much less certain. We concluded that the duties on contract-based pension providers to act in the interests of scheme members should be clarified and strengthened. Our final report is scheduled for publication in June 2014.

### Insurance contract law

Insurance contract law was codified in 1906 and is now seriously out of date. The 1906 Act was developed at a time when the insured knew their business while the insurer did not, and designed to protect the fledgling insurance industry against exploitation.

Working with the Scottish Law Commission, we have been conducting a wide-ranging review that aims to simplify the law and bring it into line with modern market practice.

The review is being carried out in phases. Our first priority was consumer insurance law, in particular to remove the duty on a consumer to volunteer information to the insurer and replace it with a duty to answer the insurer's questions honestly and reasonably. A Bill was introduced into Parliament using the special procedure for uncontroversial Bills, which became the Consumer Insurance (Disclosure and Representations) Act 2012. It came into force on 6 April 2013.

<sup>1</sup> The Kay Review of UK Equity Markets and Long-Term Decision Making, Business, Innovation and Skills Committee (2013), London: TSO.

<sup>2</sup> Fiduciary Duties of Investment Intermediaries (2013) LCCP215.

In June 2014 we are due to publish a second report and draft Bill, covering four further topics:

- the duty of disclosure in business insurance;
- the law of warranties;
- damages for late payment; and
- insurer’s remedies for fraud.

### **The duty of disclosure in business insurance**

Before taking out insurance, business policyholders are required to tell the insurer everything that is material to the risk. If they fail, the insurer may “avoid” the policy and refuse all claims. The duty is so broad and unclear that few policyholders can be sure that they have covered everything.

We recommend that a duty “to present the risk fairly” should remain, but with greater clarity over what it covers. Insurers should be required to play an active role, asking questions in some circumstances. Importantly, we also recommend a new system of proportionate remedies to apply where the draconian threat of avoidance is inappropriate.

### **Breach of warranty**

In insurance law, a “warranty” is a particularly onerous term. Typically, warranties require policyholders to take some action to mitigate the risk, such as maintain a burglar alarm. The problem is that any breach discharges the insurer from liability, even if it has been remedied. For example, if the alarm fails and is then repaired, the insurer can refuse a claim that occurs after the alarm has been restored to full working order. The insurer can also refuse an unrelated claim, such as a flood claim. We make three recommendations:

- the insurer should pay any claim that arises after the breach has been remedied;
- “basis of the contract” clauses, which convert every statement on a proposal form into a warranty, should be abolished; and
- where a term is designed to prevent loss of a particular type (or at a particular place or time) it should not remove the insurer’s liability to pay for a different type of loss (or loss at a different place or time).

### **No damages for late payment in English law**

The English courts have held that an insurer is not liable to pay damages for loss caused by their failure to pay valid claims on time. For example, if an insurer unreasonably delays payment for three years, and as a result a business fails, the insurer is not liable for the losses caused by the failure, however foreseeable. This is out of line with normal contract principles, with the law in Scotland and with the other jurisdictions we have looked at.

We recommend that insurers should have a contractual obligation to pay any insurance claims within a reasonable time. If they do not, insurers may be liable for losses caused by their breach, on normal contractual principles.

### **Insurers’ remedies for fraud**

Insurers are particularly vulnerable to fraud by the policyholder, and the law needs to provide well-known, robust sanctions. Unfortunately, the existing law in this area is confused.

We recommend setting out clear statutory remedies for the insurer. The insurer should not have to pay any part of the fraudulent claim and should be able to treat the contract as terminated at the point of the fraud. However, the insurer should remain liable for genuine losses before the fraud.

For consumers, these rules would be mandatory. For business, we recommend a default statutory regime so that parties can agree alternative provisions in their contracts if they wish. However, the effect of the terms must be clear and the insurer must take sufficient steps to draw it to the attention of the insured.

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## **Patent, trade mark and design rights: groundless threats of infringement proceedings**

Litigation over infringement of intellectual property rights is a frightening prospect. It is complex, expensive and disruptive and usually involves specialist courts, judges, lawyer and experts. The mere threat of proceedings is, therefore, a potent weapon. Traders can use groundless threats of infringement proceedings to do down a rival by scaring away its customers and other contractors. Since the 19th century, the law has provided protection against such threats. The statutory provisions originate in patent law and were later extended to trade marks and design rights.

Any person who is aggrieved by threats of infringement proceedings may go to court and obtain a declaration, injunction or damages unless the threatener can justify the threat by proving infringement.

In 2012 we were asked by the Intellectual Property Office to consider whether to repeal or reform the law of groundless threats. The current law has been criticised. It does not protect against allegations falling short of threats. The drafting of the provisions is sometimes poor, inconsistent and ambiguous. It is easy for rights holders and their advisers inadvertently to fall foul of the provisions when sending a letter before action, encouraging a “sue first – talk later” mentality.

As it stands, the right to protect intellectual property also has the capacity to be used to stifle competition. However, despite these problems the provisions still appear to provide an important protection.

Our final report recommends that protection against groundless threats should be retained but reformed.

We recommend new, consistent defences covering patents, trade marks and design rights, making it easier for rights holders to send legitimate communications without falling foul of the provisions. In effect this will create a “safe harbour” within which parties can air their grievances and work together to reach a solution without resorting to litigation. We also recommend that professional advisers acting on behalf of their clients should no longer face liability for making threats.

We published our report on 15 April 2014.

# Criminal law

## Commissioner

Professor David Ormerod QC

## Contempt of court

We published a consultation paper on contempt of court on 28 November 2012. Given that the law on contempt of court is vast, the paper considered four discrete areas:

- Contempt by publication both under the Contempt of Court Act 1981 and at common law – we considered how best to balance the right to a fair trial by an impartial tribunal with the right to freedom of expression.
- The impact of new technology on the question of who constitutes a publisher for the purposes of the contempt – we assessed whether the 1981 Act is capable of dealing effectively with rapidly developing media technologies, including social media.
- The issue of jurors who seek information related to the proceedings that they are trying beyond the evidence presented in court or those who disclose information related to their deliberations, both of which are forms of contempt – we asked how to strike a balance between the public interest in the administration of justice, the defendant's right to a fair trial and the rights of the jurors concerned.
- Contempts in the face of the court committed in the Crown Court or magistrates' courts when exercising criminal jurisdiction – we explored uncertainties and inconsistencies in existing court powers and made proposals that would make the law clear, fair and practicable.

The consultation closed on 28 February 2013. To date we have published two reports making recommendations for reform on juror misconduct and internet publication (see page 37) and court reporting (see page 41).

Our recommendations include:

- Juror misconduct and internet publication
  - Introduce a new criminal offence for jurors conducting prohibited research
  - Establish an exemption from contempt liability for publishers relating to archived online material
  - Make a limited exception to the prohibition on jurors revealing their deliberations, in order to reveal miscarriages of justice, or to participate in carefully controlled research. Both of these recommendations are reflected by clauses in the Criminal Justice and Courts Bill introduced into Parliament in February 2014.
- Court reporting
  - Ensure that postponement orders on court reporting are all posted on a single publicly accessible website (a similar website currently operates in Scotland).
  - Include a further restricted service where, for a charge, registered users can access the terms of the order and sign up for automated email alerts of new orders.

Our final report will deal with contempt in the face of the court and aspects of contempt by publication not already addressed in the existing reports. We expect to publish this in 2015.

## Hate crime

This project was referred to us by the Ministry of Justice following the publication of the Government's three-year Hate Crime Action Plan<sup>3</sup> in March 2012 and an exchange of correspondence over the second half of that year.

The project examines the case for extending two existing groups of offences dealing with hate crime to include additional groups of potential hate crime victims:

- "Aggravated" offences - under the Crime and Disorder Act 1998, certain offences (including for example assault and criminal damage) can be prosecuted as "aggravated" offences if the defendant has either (1) demonstrated hostility towards the victim on grounds of the victim's

3 Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime, HM Government (2012).



race or religion, or (2) been motivated (wholly or partly) by hostility towards a member of a racial or religious group based on their membership of that group. The aggravated offences carry higher maximum sentences than their non-aggravated forms. Our project considers whether these aggravated offences should be extended to cover cases where the defendant's hostility is based on disability, sexual orientation or transgender identity.

- Stirring up hatred - separately, the Public Order Act 1986, criminalises certain forms of threatening, abusive or insulting conduct, where the conduct is (1) intended or likely to stir up hatred on grounds of race, or (2) intended to stir up hatred on grounds of religion or sexual orientation. Our project examines the case for extending these offences to cover stirring up hatred on grounds of disability or transgender identity.

We are also looking at the application of sections 145 and 146 of the Criminal Justice Act 2003. These provisions deal with sentencing powers in any offence in which the defendant's hostility on grounds of race, religion, sexual orientation, disability or transgender status is an aggravating factor.

Our report on the consultation, which closed in September 2013, was due to be published on 28 May 2014.

## Insanity and automatism

This project looks at the circumstances in which a person should not be held criminally liable as a result of their mental condition at the time they committed an alleged offence.

The rules that currently govern what is known as the "insanity" defence date from 1843. They have been widely criticised, on the following grounds:

- the relationship between the insanity and automatism defences is illogical and confusing;
- it is not clear whether insanity is even available as a defence to all crimes in all courts;

- the law lags behind psychiatric understanding, and this partly explains why, in practice, medical professionals do not always apply the correct legal test;
- the label "insane" is stigmatising and outdated as a description of those with mental illness and simply wrong as regards those who have learning disabilities or learning difficulties; and
- there are potential problems of compliance with the European Convention on Human Rights.

In July 2013 we published a discussion paper<sup>4</sup> that set out provisional proposals for reform of the defences of insanity and automatism based on lack of capacity. The paper explained how these defences would work with the law on intoxication, and why we think the related issue of children's developmental immaturity merits separate investigation.

We are also working on a linked project on unfitness to plead (see page 19).

## Offences against the person

The Offences Against the Person Act 1861 is widely recognised as being outdated. It uses archaic language and follows a Victorian approach of listing separate offences for individual scenarios, many of which are no longer necessary (for example, the offence of impeding a person endeavouring to save himself from a shipwreck).

The structure is also unsatisfactory; there is no clear hierarchy of offences and the differences between some of the offences are not clearly spelled out. For example, an offence under section 20 (maliciously wounding or inflicting grievous bodily harm) is seen as more serious than an offence under section 47 (assault occasioning actual bodily harm) but the maximum penalty for both is the same. There are other technical difficulties: to take one example, the distinction between "causing" grievous bodily harm under section 18 and "inflicting" grievous bodily harm under section 20 is notoriously difficult to draw.

4 Criminal Liability: Insanity and Automatism. A Discussion Paper (2013).

At the request of the Ministry of Justice, we are carrying out a scoping exercise as a first step towards a project to reform the law on offences against the person.

We began work on this project in spring 2014, with a view to publishing a scoping paper before the end of the year.

### **Regulation, public interest and the liability of businesses**

Following a request from what is now the Department for Business, Innovation and Skills in late 2008 and as a result of discussion with that Department and the Ministry of Justice in early 2009, our work in this project took as its focus the use of criminal law as a way of promoting regulatory objectives or public interest goals and, particularly, how businesses are treated by the criminal law.

In August 2010 we opened a consultation that examined:

- the use of criminal law as a way of promoting regulatory objectives and public interest goals;
- whether the doctrines of delegation and consent and connivance are unfair to small businesses; and
- the application of the identification doctrine in the regulatory or public interest context and the possibility of giving courts the power to apply a due diligence defence.

The Ministry of Justice incorporated many of our proposals into its guidance for regulatory lawmakers published in summer 2011.

The remainder of this project, which deals with a small number of doctrines relating to business liability, is on hold. We hope to take this work forward as part of a larger project on the liability of businesses in the future.

### **Simplification of criminal law**

In the 10th Programme of Law Reform, we stated our intention to embark on a project for the simplification of the criminal law.<sup>5</sup> This would involve reviewing some of the older or less-used common law or statutory offences, with a view to considering either abolishing these offences or making relatively modest legal changes aimed at removing injustices or anomalies. In some cases we may recommend restating existing common law offences in statutory form.

### **Public nuisance and outraging public decency**

Public nuisance and outraging public decency are both common law offences. The offence of public nuisance consists of any wrongful act or omission that exposes members of the public to risks to life, health or safety or loss of comfort or amenity. Outraging public decency means doing an indecent act or creating an indecent display, in such a place or in such a way that members of the public may witness it and be shocked or disgusted by it.

We opened our consultation on public nuisance and outraging public decency on 31 March 2010.

Our provisional proposals, which we set out in our consultation paper,<sup>6</sup> are that:

- both offences should be restated in statutory form;
- both offences should require intention or recklessness; and
- the separate common law offence of conspiracy to outrage public decency should be abolished and replaced by the normal statutory conspiracy offence.

We will bring this project to a conclusion before the end of 2014.

<sup>5</sup> (2008) LC311, para 2.24 and following.

<sup>6</sup> Simplification of Criminal Law: Public Nuisance and Outraging Public Decency (2010) LCCP193.

## Kidnapping

Kidnapping is a common law offence, triable only in the Crown Court, and carries an unlimited sentence of imprisonment. It is defined as the taking or carrying away of one person by another, by force or fraud, without the consent of the person taken or carried away and without lawful excuse. Like false imprisonment, of which it is sometimes regarded as an aggravated form, it is classed as an attack on liberty.

One problem with this definition is whether the requirement of force or fraud should be separate from that of lack of consent: a child or vulnerable adult, for example, may be taken away without consent but without the use of force or fraud.

We opened our consultation<sup>7</sup> on this project in September 2011. We provisionally proposed that kidnapping, and probably false imprisonment, should be replaced by statutory offences.

We intend to publish our final report by late autumn 2014.

## Unfitness to plead

The law on unfitness to plead addresses what should happen when a defendant who faces criminal prosecution is unable to engage with the process because of their mental or physical condition. Such a defendant may be found “unfit to plead”. They are not tried in the usual way but undergo a different process to decide whether they did the act that is the substance of the criminal charge. If it is found that they did, they may be detained in a hospital or supervised in the community.

The legal test used to decide whether a defendant is “unfit to plead” dates from 1836 when the science of psychiatry was in its infancy and does not adequately reflect advances in modern psychiatric and psychological thinking. In addition, the law has developed piecemeal and independently of development of the right to “effective participation” as part of the fair trial guarantees under Article 6 of the European Convention on Human Rights.

This test needs to be reformed so that it achieves a fair balance between protecting vulnerable defendants who may be unable to defend themselves properly in a criminal trial, and ensuring that the rights of victims and the security of the general public are properly addressed.

We published our consultation paper on 27 October 2010,<sup>8</sup> which contained our provisional proposals for comprehensive reform of the law on unfitness to plead in England and Wales. We received over 50 responses and, on 10 April 2013, we published an analysis of those responses.

During this year we have reviewed our provisional proposals in light of the consultation responses, taking into account the changes to the criminal justice system since the consultation. As a result, we have identified a number of additional questions on which we invite input from stakeholders. The purpose of asking these questions is to ensure that our final recommendations to Government are practical and properly reflect the experience and views of all those who encounter these issues, whether by working within the criminal justice system or experiencing it as a victim, witness, defendant or member of the public.

We have set out our additional questions in an issues paper, which we published online on 2 May 2014. We are also holding a symposium on unfitness to plead at the University of Leeds on 11 June 2014, which will bring together leading legal, clinical and other experts to discuss our proposed reforms. We anticipate the publication of the report in the spring of 2015.

<sup>7</sup> Simplification of Criminal Law: Kidnapping (2011) LCCP200.

<sup>8</sup> Unfitness to Plead (2010) LCCP197.

# Consulting for the 12th Programme of law reform

Consultation is integral to all that we do at the Law Commission and never more important than when we are building our new programmes of law reform.

On 2 July 2013 we launched the consultation for our 12th Programme of law reform. Our statutory obligation to keep under review “all the law” of England and Wales, and our independence from the political agenda, empower the Commission to develop programmes that touch many areas of life – from industry and commerce to the everyday lives of families and individual citizens – wherever the need for reform is greatest. We had two priorities for our consultation:

- to reach as broad an audience as we could, to help us build a programme with far-reaching impact; and
- to equip our consultees with the information they would need to give their proposals the best chance of success.

We wanted to reach influencers and decision makers in central and local Government, the judiciary, the worlds of legal practice and academia, as well as representative bodies in the third and private sectors. In addition to using the press and our social media channels, we decided this time to make a more personal and direct approach to consultees through a series of events and meetings throughout the summer.

## A direct approach

We launched the consultation with an evening event on 2 July at the Royal Institution of Great Britain in London, bringing together senior members of the judiciary, the Law Society and Bar Council, legal practitioners and academics, representatives from influential third sector organisations and the private sector. The Chairman and Commissioners talked to our guests about the criteria we use to select projects and the requirements of the Protocol that governs how we work with Government. To give a different perspective, we invited Gavin Lerner from the Department of Health to talk about the information Government officials need to promote, and achieve, law reform within their own Departments.

We also wanted to demonstrate to our consultees from representative bodies the level of commitment that would be required from them in order to represent their members’ interests in the process of a law reform project. We invited Steve Foulsham of the British Insurance Brokers’ Association to talk about the challenges he faced representing, and fully involving, the Association’s members through all the phases of our long-term project on insurance contract law.



I had never fully appreciated the full extent of the consultative element of the Commission’s work programme.\*



We followed our launch with a series of events and meetings:

- A gathering of over 100 stakeholders, including the Welsh Advisory Committee, members of the National Assembly for Wales and leading figures from the public, private and third sectors in Wales, at the Wales Governance Centre at Cardiff University.
- Events at the Houses of Parliament, including an invitation-only meeting in the Committee rooms and a week-long exhibition demonstrating the range of our work and promoting the consultation.
- Meetings at the Supreme Court and Royal Courts of Justice, at which the Chairman, Commissioners and Chief Executive discussed the Programme and the sort of projects we were looking for, with the Justices of the Supreme Court and the Justices of the High Court and Court of Appeal.
- The Chairman further promoted the consultation to our stakeholders in Wales, delivering his speech: “A Law Commission that serves Wales effectively: the Advisory Committee for Wales and the Twelfth Programme of Law Reform” at the Legal Wales conference on 11 October.

\* Feedback from a stakeholder on the value of our launch event.



L to R: Professor David Ormerod QC, Gavin Larnar, Professor Elizabeth Cooke, Sir David Lloyd Jones, Steve Foulsham in conversation with Elaine Lorimer

### The outcome

The response to the consultation has been excellent, with more than 250 proposals received, many of which could potentially translate into valuable and important law reform projects (see this page). For the first time this year we also put forward for discussion a series of ideas for potential projects. We are grateful to consultees who gave us their thoughts on these ideas and provided us with evidence in support of the need for reform.

We will submit our 12th Programme of Law Reform to the Lord Chancellor early in the summer of 2014.



### How we select projects for our programmes of law reform

When considering a potential law reform project, we are guided by our criteria and the Protocol with Government, which is intended to ensure that our recommendations have the best possible chance of becoming law.

To satisfy our criteria, we will ask:

- How important is the project: to what extent is the law unsatisfactory (unfair, unduly complex, inaccessible or out of date)? What are the potential benefits of reform?
- Is the independent, non-political Commission the most suitable body to conduct the project?
- Are the necessary resources (for example, sufficient relevant experience, project-specific funding) available to enable us to carry out the project effectively?

In addition, the Protocol, which sets out how we work with Government, requires that:

- Government must “give an undertaking that there is a serious intention to take forward law reform” in the relevant area.

### We asked consultees:

- Sentencing procedure: do we need a project to codify and simplify sentencing law?
- Leasehold law: might some areas of landlord and tenant law, mostly relating to commercial leases, benefit from reform?
- Social media and the criminal law: should the criminal law and criminal rules of evidence and procedure be reviewed in light of the growing use of social media?
- Bills of sale: do problems with bills of sale persist? Should the law be reformed?
- Land registration: does the Land Registration Act 2002 still meet its original objectives?
- Fraud by victims of personal injury: should the Law Commission examine this area of law, or can it be left to the courts?
- Corporate liability: should there be other models, apart from the identification doctrine, for holding corporations to account?
- Welsh planning law: should there be a Wales-only statute for planning law?

# Property, family and trust law

## Commissioner

Professor Elizabeth Cooke

## Charity law, selected issues

This project examines a range of issues concerning the constitution and regulation of charities and their activities. Part of the project reviews the procedures by which charities incorporated by Royal Charter and by Act of Parliament amend their governing documents. The rest comprises issues arising from Lord Hodgson's 2012 review of the Charities Act 2006 that were referred to us by the Office for Civil Society in the Cabinet Office.

One of these issues is whether the law regarding charity trustees' powers and duties when making social investments, that is investments designed both to achieve a financial return and to further the charity's purposes, is sufficiently clear.

Social investment is an important and developing area for charities, enabling them to meet their charitable objectives by combining investment and spending. Charities registered with the Charity Commission hold combined investment assets worth £126 billion:<sup>9</sup> clearly, if there are new, more efficient ways to put those assets to good use, there is significant potential benefit to the public.

Many charities are already involved in social investment and the existing law is not proving an impediment to them. There is some concern, however, that the law is unclear on the precise powers and duties of charity trustees in this developing field. There is a risk that some trustees may be deterred from engaging with social investment owing to the complexity and lack of clarity in the current law.

In a consultation paper<sup>10</sup> published on 24 April 2014 we provisionally proposed the introduction of a new default statutory power for charity trustees to make social investments, together with a non-exhaustive list of factors that charity trustees may take into account when exercising the power.

The consultation is due to close on 18 June. We will analyse the responses and discuss with the Office for Civil Society how to take this aspect of the project forward. Once we have completed this, we will resume work on the other areas of the project. We expect to publish a consultation paper on these areas in late 2014 and a final report and draft Bill in 2016.

## Conservation covenants

This project considers the case for giving special legal status to agreements over land designed to achieve important conservation objectives. Currently, a landowner can agree to use or not to use that land in a particular way. But any agreement will be enforceable against future owners only if certain conditions are met: it must impose only restrictions (for example, not to build on the land), not positive obligations (for example, to maintain a dry stone wall); and those restrictions must "touch and concern" other land nearby by providing an identifiable benefit to that land. This can make it difficult to pursue long-term conservation goals.

In this project we are considering the case for permitting landowners to enter into long-lasting and enforceable agreements where a conservation objective would be met by an obligation to use, or not use, land in a particular way.

These types of agreements already exist in other jurisdictions such as the USA, Canada, Australia, New Zealand and Scotland. These "conservation covenants" are not specifically linked to nearby land. They allow a landowner to agree, for example, to maintain a woodland habitat and allow public access to it, or to refrain from using certain chemicals on land.

The major issues we are examining include:

- which conservation objectives are of sufficient importance to bind land;
- whether to permit only prescribed public bodies and conservation organisations to enter into conservation covenants with landowners; and
- the means by which covenants can be modified or discharged.

<sup>9</sup> Charity Commission, *Charities in England and Wales*, 31 December 2013.

<sup>10</sup> LCCP216.

The consultation for this project ran from March to June 2013. We have analysed the responses, including those from environmental groups and landowners' representatives, and expect to publish a final report and draft Bill in June 2014.

### Family financial orders – enforcement

This project, which we began this year once we had completed our work on matrimonial property, needs and agreements (see this page), looks at the various means by which court orders for financial provision on divorce or the dissolution of a civil partnership and orders concerning financial arrangements for children are enforced. It does not touch upon the basis for claims but considers the legal tools available to force a party to comply with financial orders made under the Matrimonial Causes Act 1973, the Civil Partnership Act 2004 and the Children Act 1989.

The law in this area has in the past been described as “hopelessly complex and procedurally tortuous”.<sup>11</sup> The available enforcement mechanisms are contained in a wide range of legislation. Members of the public, legal practitioners and the courts find it difficult to understand how the various mechanisms interact, and the law prevents some more sensible arrangements being put in place.

The aim of the project is to offer a clear set of rules and the opportunity to access the full range of enforcement options. It is important that the court has the ability to consider enforcement against a wide range of assets and that the enforcement regime works effectively when small amounts are owed, so that parties are not forced to wait until large arrears are due before enforcing orders in their favour. The aim of reform is to ensure that money that has been ordered to be paid for the support of children and adults is paid.

We are investigating law and practice in this area in light of developments, particularly to the court system, that have taken place since the project was included in our work programme. This will inform the scope of the project and its anticipated timetable.

### Matrimonial property, needs and agreements

This project was set up (initially under the title “Marital property agreements”) to examine the status and enforceability of agreements (commonly known as “pre-nups”) made between spouses and civil partners (or those contemplating marriage or civil partnership) concerning their property and finances. The overall aim was to clarify the law on financial provision following divorce or dissolution of a partnership, including by allowing spouses and civil partners to make binding nuptial agreements.

We opened a consultation in January 2011 and, in November 2011, the Family Justice Review published a report on the family justice system.<sup>12</sup> The report commented on the need for a separate review of the law governing financial orders on divorce and the dissolution of civil partnership. The Ministry of Justice’s February 2012 response<sup>13</sup> announced that the scope of our marital property agreement project would be extended to include a targeted review of two aspects of financial provision on divorce and dissolution.

To reflect these extended terms of reference, we renamed our project “Matrimonial property, needs and agreements”. A supplementary consultation paper on needs and non-matrimonial property was published in September 2012 and followed by a series of consultation events for the general public and for academics and practitioners.

We published our final report in February 2014, making the following recommendations:<sup>14</sup>

- Financial needs – the meaning of “financial needs” should be clarified in guidance produced by the Family Justice Council, so that the term can be applied consistently by the courts. This will also give people without legal representation access to a clear statement of their responsibilities with regard to achieving a financial settlement.

<sup>11</sup> Family Law Bar Association response to the 11th Programme consultation.

<sup>12</sup> Family Justice Review Final Report, Family Justice Review Panel (2011).

<sup>13</sup> [www.gov.uk/government/publications/family-justice-review-government-response](http://www.gov.uk/government/publications/family-justice-review-government-response) (last visited 5 May 2014).

<sup>14</sup> Matrimonial Property, Needs and Agreements (2014) LC343.

- Developing a formula – some jurisdictions use formulae to calculate the payments due from one former spouse to another. We recommend that work be done to assess whether such a formula, which could take the form of non-statutory guidance, might be useful.
- Qualifying nuptial agreements – we recommend that legislation be enacted introducing “qualifying nuptial agreements”: enforceable contracts that couples could use to make contractual arrangements about the financial consequences of divorce or dissolution. These agreements would be subject to certain procedural safeguards and could not be used to contract out of “financial needs”.

See page 43 for information on the status of this project.

## Rights to light

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

We commenced our project on rights to light in spring 2012 and opened a consultation in February 2013. Our consultation paper examined whether the current law by which rights to light are acquired and enforced provides an appropriate balance between those benefiting from the rights and those wishing to develop land in the vicinity, and made provisional proposals to address perceived problems and inequalities in the law.<sup>15</sup>

The consultation closed in May 2013. We received in excess of 125 responses from a wide variety of stakeholders including individuals, representative bodies, surveyors, members of the legal professions and academics. We have reviewed the responses and are in the process of formulating final policy; we are on target to produce a final report and recommendations before the end of 2014.

<sup>15</sup> Rights to Light (2013) LCCP210.



# Public law

## Commissioner

Nicholas Paines QC

## Data sharing

Public bodies frequently report difficulties in sharing data with other public bodies, to an extent that impairs their ability to perform their functions for citizens. What is not clear is whether this is a result of defects in the law itself, or problems with understanding the law.

We are conducting this project as a scoping review designed to establish where the problems truly lie and what should be done to address them. We ran a consultation during autumn 2013 and expect to publish a scoping report in July 2014.

## Electoral law

The law in relation to the administration of elections is old, disparate, confusing and sometimes contradictory. Particularly since 1997, a structure designed in the 19th century has been patched-up and adapted to accommodate new elections to new institutions with new voting systems. The system can be maintained only by the production of voluminous guidance, fortified by the considerable energy and ingenuity of electoral administrators.

A major project to reform electoral law was included in our 11th Programme. We divided the project into three stages:

- a scoping study;
- the development of substantive law reform proposals; and
- the production of a draft Bill.

The first-stage scoping study lasted from July 2011 to December 2012, when our scoping report was published. This defined those areas of electoral law that could properly be dealt with as a matter of law reform, including the administration of the local campaign, the timetable for elections, the law governing polling day and the count, combination of polls, challenges to the result and criminal offences, and the administration of referendums.

Matters of a fundamentally political nature, like the franchise, voting systems, electoral boundaries and the national funding of political parties were excluded.

Electoral law must necessarily be addressed on a UK-wide basis. We conducted the scoping review stage in close consultation with the Scottish and Northern Ireland Law Commissions. This was the Law Commissions' second tripartite project.

The next, substantive, stage of the project is again being conducted by all three UK Law Commissions. Since January 2012 we have been working with our partner commissions with the aim of consulting after the referendum on Scottish independence in September 2014. This phase will terminate in autumn 2015. If the Governments and the Commissions decide to proceed with the project to the final drafting phase, we intend to publish the final report and draft legislation in early 2017.

## Level crossings

This joint project with the Scottish Law Commission seeks to improve the law relating to the 7,500 to 8,000 level crossings in Great Britain. Our final report, accompanied by a draft Bill and draft regulations, was published in September 2013.<sup>16</sup>

Our recommendations would:

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

The Government is expected to deliver an interim report and final response later in 2014.

<sup>16</sup> Level Crossings (2013) LC339.

## Regulation of health and social care professionals

This project deals with the professional regulatory structure relating to 32 health care professions throughout the UK, and social workers in England. Together, this amounts to over 1.5 million people. It is the first tripartite project conducted jointly with the Scottish Law Commission and the Northern Ireland Law Commission.

The project was referred to us by the Secretary of State for Health in summer 2010. There were nine regulatory bodies within the remit of the project:

General Chiropractic Council  
 General Dental Council  
 General Medical Council  
 General Optical Council  
 General Osteopathic Council  
 General Pharmaceutical Council  
 Health and Care Professions Council  
 Nursing and Midwifery Council  
 Pharmaceutical Society of Northern Ireland

We published our final report and draft Bill on 2 April 2014,<sup>17</sup> setting out a new single legal framework for the regulation of all health and social care and imposing greater consistency across regulators where this is in the public interest (for example with regard to the conduct of fitness to practice hearings). In other areas, regulators are given greater autonomy to deliver their functions in a way that best suits the profession in question, with the caveat that they must consult on any proposed rule changes and provide information to the public and registrants about their work.

The draft Bill also reforms the role of Government in professional legislation. In particular, it targets Government oversight on areas of sufficient public interest or that give rise to questions about the allocation of public resources. Government is also given power to intervene in cases of regulatory failure.

The Bill has received a positive response from stakeholders. The General Medical Council has described it as "a once in a generation opportunity to future-proof medical regulation in the UK", while the Nursing and Midwifery Council described the Bill as essential to enabling it to "modernise its 'outdated and inflexible' decision-making processes."

We await the Government's preliminary response.

## Taxi and private hire services

This project was proposed as part of the 11th Programme by the Department for Transport. Taxis ("hackney carriages") and private hire vehicles are highly regulated. The current regime for taxis is largely Victorian. Private hire services are regulated by unsatisfactory legislation dating from 1975 and 1976 (outside London) and 1998 (within London). The project aims to take a broadly de-regulatory approach to the process of modernising and simplifying the regulatory structures for this important economic activity.

In May 2012 we published our consultation paper.<sup>18</sup> In it, we proposed a single statute to govern both the taxi and private hire trades, and to deal with both London and the rest of England and Wales. We proposed freeing up the private hire market by removing the ability of local licensing authorities to specify conditions for operator, driver and vehicle licensing, relying instead on national standards. Operators licensed in one area would also be able to use vehicles and drivers licensed in other areas. On the taxi side, we provisionally proposed keeping local conditions but abolishing the ability of licensing authorities to limit the number of taxis they will license.

The interest was such that we had to extend the consultation period twice. We attended 85 consultation meetings across England and Wales, allowing us to hear the views of thousands of people, including a large number of those engaged in the trades. We received just over 3,000 responses, a record number for any Law Commission consultation.

<sup>17</sup> (2014) LC345.

<sup>18</sup> LCCP203.

Some of our proposals provoked a great deal of controversy, and there has been a lobby of Parliament by members of trades unions representing taxi drivers opposing many of the provisional proposals.

Given the high level of interest occasioned by the project, we published a short interim statement in April 2013. In the statement, we explained that we had changed our views on abolishing the ability of local licensing authorities to limit taxi numbers and refined our views in other areas. We also published all of the responses received.

We expect to publish a report and draft Bill on 23 May 2014.

## Wildlife

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

This project, which was proposed by the Department for Environment, Food and Rural Affairs (Defra) and included in the 11th Programme, considers the transposition of key EU directives on wild birds and the particularly important animals and plants characterised as European Protected Species, and their integration with other, domestic, legal structures. It also seeks to bring into the same legislative structure various purely domestic protection regimes for specific species.

In March 2012 the Government asked us to add consideration of the possibility of appeals against licensing decisions by regulatory bodies to the project.

Our aim in this project is not to determine what level of protection should be accorded to particular species, but rather to create a structure within which such decisions can properly be made by Government, guided by appropriate scientific advice. It expressly excludes consideration of the Hunting Act 2004.

We held a consultation in 2012, attending numerous events and meetings with a wide range of stakeholders in both England and Wales, and received 488 written responses.

In our consultation paper we proposed a single statute bringing together most of the law relating to wildlife.<sup>19</sup> In addition to making specific proposals on the most appropriate way of transposing the EU directives, we also looked at the current regime for the enforcement of wildlife legislation, including both criminal offences and civil sanctions, and at appeals.

Environment law is devolved in Wales. We are liaising closely with the Welsh Government, which is engaged on a process of policy development and reform based on the Natural Environment Framework for Wales.

Following a request by Defra to bring forward one element of the project, we published a report on the control of invasive non-native species in February 2014, which is now awaiting a Government decision (see page 44 for more information). The publication of our report on the remaining elements of the project is scheduled for autumn 2014.

<sup>19</sup> Wildlife Law (2012) LCCP206.

## The Law Commission under review



Triennial Reviews are part of the process by which Government departments scrutinise arm's-length bodies. The Law Commission has stood up well to this scrutiny and we are pleased to note that the Government has formally recognised the continuing need for the Commission's existing functions.

"The review also acknowledges the value that our many stakeholders place on the independence and impartiality of the Commission, and confirms that our non-departmental status is the most appropriate model for maintaining this independence. "Since the Law Commission was set up in 1965, our recommendations have led to wide-ranging, profound and enduring changes in the law. Fifty years later, the need for a principled and strategic approach to law reform remains as strong as ever. We are delighted that the Government considers the Law Commission – in both form and function – to be the most appropriate body to continue this vital work.



Sir David Lloyd Jones  
Chairman  
20 March 2014

On 20 March 2014 the Government completed its Triennial Review of the Law Commission, concluding that there is "overwhelming evidence" that:

- there is a continuing need for all the Commission's existing functions; and
- the Law Commission is the most appropriate body to continue this vital work.

Leading the Review, the Ministry of Justice called for evidence early in 2013. In addition to our own submission, they received 45 responses from across Government, the devolved administrations and the wider public sector, practitioners, academics, professional groups and the judiciary.

### The continuing need for the Law Commission

The first question the Review asked was, what are the core functions of the Law Commission and are they still needed?

- To keep all the law under review – all consultees said that this function should be retained, with the review board specifically acknowledging its contribution to the Government's commitment to "assuring better law".
- Consolidation – stakeholders gave this strand of our work "overwhelming support".
- Repeal of obsolete and unnecessary enactments – respondents pointed to the contribution of our statute law repeals work to the rule of law and the benefits of an accessible statute book as evidence of its continuing importance and significance.
- Simplification and modernisation of the law – all consultees said that we should continue with this work, quoting the value that our law reform work has delivered over the years in improving the law.

“

The overwhelming weight of evidence from respondents to the call for evidence is in favour of retaining all of the Commission’s substantive functions. The Government agrees with this conclusion in view of the clear contribution these functions make to the development of better and more effective law.

”

The Review also asked whether the Law Commission, as an advisory non-departmental public body (NDPB), was the most effective and cost-efficient way of delivering these functions. All the evidence gathered was “overwhelmingly in favour” of our retaining our independent status, leading the board to conclude that the Law Commission’s ability to deliver its functions is dependent on our freedom from external pressures, in particular political influence.

### Transparency and accountability

One theme that ran through the evidence in both stages of the Triennial Review was how effectively we engage with stakeholders at every stage of our work, from seeking ideas for projects through to supporting law Commission Bills through Parliament, and how our stakeholders welcome this openness.

“

The Commission continues to fulfil an important function within the justice system and the commitment of those working at the Commission to continue to do this despite various pressures was impressive.

”

### Principles of good corporate governance

The second stage of the Triennial Review examined in detail our governance arrangements, commending us for particularly good practice in a number of areas. These included the extent to which the Law Commissioners are involved in developing and overseeing the business plan and the good relationship we have with our Ministry of Justice sponsors.

There were recommendations for improvement, too, including that the Commission should:

- create a framework document with the Ministry of Justice;
- review the Commission’s funding model; and
- appoint non-executive board members.

### I am pleased to announce...

The completed Triennial Review was presented to the House of Lords on 20 March 2014 by Lord Faulks QC, Minister of State for Civil Justice and Legal Policy, with responsibility for the Law Commission. His written ministerial statement to Parliament summarised the findings of the Review.

“

The review identified a number of areas of particularly good practice by the Law Commission and its sponsor team at the Ministry of Justice. In particular it commended the Commission’s open and transparent approach to law reform and policy making.

”

The Triennial Review of the Law Commission Reports on Stages One and Two, and the evidence we submitted to Stage One, are available via our website.

# Statute Law

**Commissioner**  
Chairman

## Consolidation

In summer 2013 the Law Commission opened a consultation asking for suggestions for our next programme of law reform. We took the opportunity to ask in addition for ideas for possible consolidation projects and are grateful to all consultees who made suggestions.

### Co-operative and Community Benefit Societies

During the year we completed our consolidation of the law on co-operative and community benefit societies (also known as industrial and provident societies).

The Law Commission was invited to take up this project in 2012, working with HM Treasury. It is a joint project with the Scottish Law Commission.

The legislation, which has its origins in the 19th century, has been consolidated before, most recently in the Industrial and Provident Societies Act 1965. That Act has been heavily amended and supplemented by a number of subsequent Acts and Statutory Instruments.

We prepared a draft Bill and recommended changes to the law that would be required to achieve a satisfactory consolidated text and put the law into a more logical, accessible, clear and modern form. On 26 September 2013 we opened a consultation asking consultees to consider whether the Bill accurately reproduced the effect of the existing legislation and whether our recommended changes would have an impact on law beyond the scope of the consolidation.

The consultation closed on 15 November and, having taken into account responses from consultees, we and our colleagues in the Scottish Law Commission submitted our final report to the Lord Chancellor and Secretary of State for Justice and the Secretary of State for Scotland.<sup>20</sup>

Our final Bill was introduced into the House of Lords on 19 December 2013. Following the dedicated procedure for consolidation Bills, it completed its passage through Parliament on 17 March 2014 and received Royal Assent on 14 May.

We are grateful to the Office of the Parliamentary Counsel for making available one of their counsel to help with this project.

### Bail

Our project to consolidate the law on bail was suspended in 2010. We will explore with the Ministry of Justice whether to restart work in this area.

## Statute law repeals

### 20th century legislation

Usually, we conduct our statute law repeals work by reviewing all the law on any given topic from earliest times through to the present day. However, a recent review of 20th century legislation suggested the existence of a considerable amount of comparatively modern but obsolete law that has fallen outside our previous repeals projects. As a result, we have now completed a chronological examination of 20th century Acts, and we shall be publishing a number of consultation papers based on our findings. The first, on obsolete 20th century trade and industry legislation, will be published in summer 2014. Other major components of the project include obsolete legislation on finance and shipping. Work on these and other areas is ongoing.

<sup>20</sup> (2013) LC341/SLC235.

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## Churches

Our churches project examines 18th and 19th century Acts that were passed to raise money for the repair or rebuilding of ancient churches in England and Wales. Parliamentary authority had been needed for these works because the costs were met by rates levied on the inhabitants of the parishes. In nearly every case, the Acts became obsolete once sufficient money had been raised from parishioners. Indeed, many of the churches in question no longer exist. A consultation paper setting out our repeal proposals will be published in summer 2014.

## Next report

Subject to the response of consultees, repeal proposals relating to all our statute law repeals work, including the projects mentioned above, will be included in our next Statute Law Repeals report (and draft Bill), which is planned for 2015.

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# PART THREE

## Implementation of Law Commission law reform reports 2013-14

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“

I can state unequivocally that in my view the Law Commission continues to play a vital role in helping to shape the criminal law in England and Wales and that its functions are still very much required.

”

Keir Starmer QC, former Director of Public Prosecution, evidence to the Government's Triennial Review of the Law Commission.



This part of our annual report sets out the progress that has been made towards implementation of our reports over the past year. A table showing the implementation of all our reports is available at Appendix A. In summary:

- Between 1 April 2013 and 31 March 2014
  - we published 6 final reports with recommendations for law reform
  - the recommendation from 1 report was implemented
  - outstanding recommendations from 1 report, made in 2003, were finally rejected
- At 31 March 2014
  - 7 reports were in the process of being implemented
  - 3 reports were awaiting implementation
  - 14 were awaiting a decision from Government

Our progress during the year can be seen in the context of the Law Commission's overall achievements:<sup>1</sup>

- Law reform reports published 202
- Implemented in whole or in part 135 (66.8%)
- Accepted or implemented in whole or in part 143 (70.9%)
- Accepted in whole or in part, awaiting implementation 8 (3.9%)
- Accepted in whole or in part, will not be implemented 5 (2.4%)
- Awaiting response from Government 11 (5.4%)
- Rejected 31 (15.3%)
- Superseded 8 (3.9%)

## Improving the rate of implementation

Over the last five years there have been three developments designed to improve the rate at which Law Commission reports are implemented. We welcome these developments, which we believe will assist in ensuring that progress is made in considering and implementing our reports in a timely and efficient manner.

## Lord Chancellor's report to Parliament

In November 2009 the Law Commission Act 2009 was passed by Parliament (amending the Law Commissions Act 1965). A key feature of this Act is that it places a requirement on the Lord Chancellor to report to Parliament annually on the Government's progress in implementing our reports. The fourth report to Parliament was made on 8 May 2014.<sup>2</sup>

## Protocol between Government and the Law Commission

Following the commencement of the Law Commission Act 2009, in March 2010 the Government and the Law Commission agreed the terms of a Protocol<sup>3</sup> in relation to our work. The latter part of the Protocol sets out departmental responsibilities once we have published a report. The Minister for the relevant Department will provide an interim response to us as soon as possible (but not later than six months after publication of the report), and will give a final response as soon as possible but within a year of the report being published.

The Protocol applies only to those projects we have taken on since it was agreed in March 2010, although we agreed with Government Departments to take it into account, so far as is practicable, in relation to projects that were ongoing at that date.

The 11th Programme, which has constituted the majority of our law reform work this year, is the first programme to be conducted entirely under the terms of the Protocol.

## Law Commission parliamentary procedure

On 7 October 2010 the House of Lords approved<sup>4</sup> a new parliamentary procedure that had been recommended by the House of Lords Procedure Committee as a means of improving the rate of implementation of Law Commission Reports.<sup>5</sup> Bills are suitable for this procedure if they are regarded as "uncontroversial".

<sup>1</sup> As at 21 May 2014.

<sup>2</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014) HC 1237.

<sup>3</sup> Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission (2010) LC321.

<sup>4</sup> [www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80403-0002.htm#08040373000008](http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80403-0002.htm#08040373000008) (last visited 8 May 2014).

<sup>5</sup> [www.publications.parliament.uk/pa/ld200708/ldselect/ldprohse/63/6303.htm](http://www.publications.parliament.uk/pa/ld200708/ldselect/ldprohse/63/6303.htm) (last visited 8 May 2014).

Five Law Commission Bills have now followed this procedure:

- Inheritance and Trustees' Powers Bill, introduced into Parliament on 30 July 2013, completed its passage through Parliament on 26 March 2014 and received Royal Assent on 14 May 2014.
- Trusts (Capital and Income) Act 2013, introduced on 29 February 2012, received Royal Assent on 31 January 2013.
- Consumer Insurance (Disclosure and Representations) Act 2012, introduced on 16 May 2011, received Royal Assent on 8 March 2012.
- Third Parties (Rights against Insurers) Act 2010, introduced on 23 November 2009, received Royal Assent on 25 March 2010.
- Perpetuities and Accumulations Act 2009, introduced on 1 April 2009, received Royal Assent on 12 November 2009.

The House of Lords Procedure Committee also recommended that the procedure should be extended to reports of the Scottish Law Commission.<sup>6</sup> This was approved by the whole House on 7 October 2010.<sup>7</sup> The first Scottish Law Commission Bill to follow the procedure, the Partnerships (Prosecution) (Scotland) Bill, was introduced in November 2012 and received Royal Assent on 25 April 2013.

<sup>6</sup> [www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101007-0001.htm#10100714000813](http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101007-0001.htm#10100714000813) (last visited 8 May 2014).

<sup>7</sup> [www.publications.parliament.uk/pa/ld201011/ldselect/ldprohse/30/3003.htm#a1](http://www.publications.parliament.uk/pa/ld201011/ldselect/ldprohse/30/3003.htm#a1) (last visited 8 May 2014).

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# Reports implemented

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## Contempt of court: scandalising the court

Section 33 of the Crime and Courts Act, which received Royal Assent on 25 April 2013, enacts our recommendation to abolish the historic common law form of contempt of court known as scandalising the court.

We published our report recommending the abolition of this offence on 19 December 2012.<sup>8</sup> This work was brought forward as a result of the Government's consideration of a proposed amendment to the Crime and Courts Bill to abolish the offence, following a high profile case in Northern Ireland in spring 2012.

The House of Lords debated, and accepted, the abolition of scandalising the court as an amendment to the Crime and Courts Bill on 11 December 2012 and, on 31 January 2013, the House of Commons also accepted the amendment.

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<sup>8</sup> LC335.

# Reports in the process of being implemented

## Adult social care

On 11 May 2011 we published our report recommending a unified legal framework for the provision of adult social care services to disabled people, older people and carers.<sup>9</sup>

Our recommended reforms would introduce single statutes for adult social care in England and in Wales. Dozens of landmark pieces of legislation would be repealed including the National Assistance Act 1948, Chronically Sick and Disabled Persons Act 1970 and NHS and Community Care Act 1990. The new statute would set out a single duty to assess, an eligibility framework for service provision and requirements to safeguard adults from abuse and neglect.

Both the Department of Health and the Welsh Government accepted our recommendations and have moved rapidly to implement them. Both the Care Act 2014 and the Social Services and Well-being (Wales) Act 2014 received Royal Assent in May 2014, implementing the vast majority of our recommendations.

## Consumer redress for misleading and aggressive practices

In March 2012 we published our final report recommending new legislation to provide redress to consumers who experience misleading and aggressive practices in their dealings with traders.<sup>10</sup>

Misleading and aggressive commercial practices are a major problem. In 2009 Consumer Focus commissioned research which found that almost two-thirds of the population had fallen victim to a misleading or aggressive practice within the preceding two years.<sup>11</sup> Many victims are among the most vulnerable in society, with housebound and older people facing a particular threat from high-pressure, doorstep selling.

The Consumer Protection from Unfair Trading Regulations 2008 implemented the Unfair Commercial Practices Directive into UK law. They provide that traders must not use “unfair commercial practices” against consumers. While the Regulations cover many of the unfair practices consumers complain about, they can be enforced only by the Office of Fair Trading or Trading Standards.

Consumers who seek redress have to rely on private law rights if they want to take action. Our review found current private law in this area to be fragmented, complex and unclear. It is particularly difficult for those who have experienced aggressive practices.

We recommended targeted reform, giving consumers a specific right of redress against traders who had breached the Consumer Protection from Unfair Trading Regulations by carrying out a misleading or aggressive action. Consumers should be entitled to receive a full refund within 90 days, or (following this) a discount. In some cases, they should also be entitled to damages.

The Consumer Protection from Unfair Trading (Amendment) Regulations 2014 give effect to these recommendations. They were laid before Parliament on 1 April 2014 and are due to come into effect on 1 October 2014.

## Consumer remedies for faulty goods

In November 2009 we published our final report on consumer remedies for faulty goods.<sup>12</sup> This was a joint project with the Scottish Law Commission, referred to us by the then Department for Business, Enterprise and Regulatory Reform in December 2007.

We recommended that the right to reject faulty goods within a “reasonable period” and obtain a refund be retained, contrary to a 2008 proposal by the European Commission, which was later abandoned.<sup>13</sup>

<sup>9</sup> LC326.

<sup>10</sup> LC332/SLC226.

<sup>11</sup> Consumer Focus, *Waiting to be heard: Giving consumers the right of redress over Unfair Commercial Practices* (August 2009).

<sup>12</sup> LC317/SLC216.

<sup>13</sup> In March 2010, Viviane Reding, the EU Commissioner responsible for this area, acknowledged the importance of the UK’s right to reject and undertook to amend the proposed new directive: speech, Madrid 15 March 2010 (available on <http://europa.eu>, last visited 8 May 2014).

The right to reject within a “reasonable period”, defined as 30 days, is included in Part 1, Chapter 2 of the Consumer Rights Bill, introduced into Parliament in January 2014. The recommendation, that consumers should be entitled to escape a contract after one failed repair or replacement, is also included

However, the Government has not accepted recommendations to abolish the “deduction for use” provisions or to allow a longer right to reject for goods that will not be used for some time.

### **Contempt of court: juror misconduct and internet publications**

Our report, Contempt of Court (1): Juror Misconduct and Internet Publications,<sup>14</sup> was published on 9 December 2013. The report recommends the creation of a new criminal offence for jurors conducting prohibited research and an exemption of contempt liability for publishers relating to archived online material.

Both of these recommendations are reflected by clauses in the Criminal Justice and Courts Bill introduced into Parliament in February 2014. We also recommended a limited exception to the prohibition on jurors revealing their deliberations in order to allow jurors to reveal miscarriages of justice to the competent authorities, or to participate in carefully controlled research into how juries operate.

The Government plans to deliver an interim response to those recommendations that have not already been implemented by June 2014, followed by a final response in December 2014.

### **Intestacy and family provision claims on death**

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

Many tens of thousands of people die intestate each year and it appears that this figure is rising. Research suggests that more than 27 million adults in England and Wales do not have a will and that those who may need one most are the least likely to have one.

We reported on this project on 14 December 2011, making recommendations for reform to Government.<sup>15</sup>

We published two draft Bills with our final report. The first of these, the Inheritance and Trustees’ Powers Bill, received Royal Assent on 14 May 2014.

For more information on the second draft Bill, the Inheritance (Cohabitants) Bill, see Intestacy and Family Provision Claims on Death on page 42.

### **Renting homes in Wales**

In 2006, we published Renting Homes: the final report.<sup>16</sup> The report proposed a fundamental reform of the law relating to rented accommodation. In May 2009, Government rejected the report for England. Housing is, however, a devolved matter in Wales, and Welsh ministers had accepted the report in principle as early as May 2007.

In 2011 the National Assembly for Wales gained wider legislative competence and, in 2012, announced its intention to legislate to implement Renting Homes.<sup>17</sup> To assist with implementation, we undertook a short piece of work, supported by the Welsh Government, to update the original proposals, consider any devolution issues that might arise and consider how the proposals might relate to other current policy concerns. The result was the report, Renting Homes in Wales/Rhenttu Cartrefi yng Nghymru, which we published in April 2013.<sup>18</sup>

In May 2013 the Welsh Government published its own white paper to consult on implementing the proposals.<sup>19</sup> The Welsh Government aims to introduce legislation in 2015.

<sup>14</sup> LC340.

<sup>15</sup> LC331.

<sup>16</sup> LC297.

<sup>17</sup> Homes for Wales: a white paper for better lives and communities.

<sup>18</sup> LC337.

<sup>19</sup> Renting Homes: a better way for Wales.

## Unfair contract terms

In 2005 we published a report with the Scottish Law Commission on unfair terms in contracts,<sup>20</sup> recommending that the Unfair Contract Terms Act 1977 and the 1999 Unfair Terms in Consumer Contracts Regulations be replaced by a single simplified regime.

In 2012 we were asked to update unfair terms law as it applied to consumers, in the light of litigation over bank charges (particularly the Supreme Court decision, *OFT v Abbey National*<sup>21</sup>). Following an issues paper in July 2012, we published an Advice to the Department for Business, Innovation and Skills in March 2013<sup>22</sup> with a revised set of recommendations.

In particular, we recommended that price and main subject matter terms should be exempt from review only if they are transparent and prominent.

The Government accepted the recommendations in our 2013 paper as regards consumer contracts. They were included in Part 2 of the Consumer Rights Bill, which was introduced into Parliament in January 2014.

Our 2005 recommendations relating to unfair terms in business contracts have not been implemented.

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20 (2005) LC292/SLC199.

21 [2009] UKSC 6, [2010] 1 AC 696.

22 Unfair Terms in Consumer Contracts: Advice to the Department for Business, Innovation and Skills (2013).

# Reports awaiting implementation

## Conspiracy and attempts

This project addressed the law governing statutory conspiracy (under the Criminal Law Act 1977) and attempt (under the Criminal Attempts Act 1981). It recommended reform to resolve the problems with the current law which, among other things, set the fault element too high in respect of conspiracies to commit certain offences.<sup>23</sup>

The Government has accepted the recommendations contained in this report.

However, despite considering this a worthwhile project for future consideration, the Government does not consider that this is a priority area for immediate reform and will not, therefore, be implementing our recommendations during the lifetime of this Parliament.<sup>24</sup>

## Expert evidence in criminal proceedings

This project addressed the admissibility of expert evidence in criminal proceedings in England and Wales. Our final recommendations and our draft Criminal Evidence (Experts) Bill are set out in a report we published on 22 March 2011.<sup>25</sup>

The Ministry of Justice responded on 21 November 2013, indicating that it did not intend to act on the majority of our recommendations at this time.

We are, however, actively pursuing alternative methods of implementation. The Advocacy Training Council is seeking to develop new methods of training for all advocates engaged in cases involving expert evidence. The overarching aim of the project is to develop a sophisticated training package for advocates that will disseminate best practice in assessment of, and challenges to, expert opinion evidence. That package will be based, in part, on our recommendations.

## Participating in crime

In this project we examined the law of secondary liability for assisting and encouraging crime. The principles determining when someone can be found liable for a crime on the basis of help or encouragement have become less clear and can result in unfairness. In 2012 the Justice Committee recommended that Government consult on the recommendations we made in our report.<sup>26</sup>

The Government has accepted the recommendations contained in our report and has acknowledged that they offer:

- potential and possibly significant benefits to the administration of justice, both in terms of facilitating prosecutions and in better targeting what behaviour should or should not be viewed as criminal, and
- potential, longer-term savings for the criminal justice system in respect of a reduction of appeals and a more streamlined approach to prosecutions.

Despite this, the Government has decided that reform in this area cannot be considered a priority in the current climate and will not be implementing our recommendations during the lifetime of this Parliament.<sup>27</sup>

<sup>23</sup> Conspiracy and Attempts (2009) LC318.

<sup>24</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2012), paragraphs 28–9.

<sup>25</sup> Expert Evidence in Criminal Proceedings in England and Wales (2011) LC325.

<sup>26</sup> Participating in Crime (2007) LC305.

<sup>27</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2012), paragraphs 19–21.

# Reports awaiting a Government decision

## Administrative redress: public bodies and the citizen

The purpose of this project was to review the law in relation to redress from public bodies for substandard administrative action. A key objective was to achieve the correct balance between fairness to aggrieved citizens and appropriate protections to public bodies and the public funds they use.

In our report we made a recommendation for the Government to collate and publish data on compensation paid by public bodies subject to a successful pilot.<sup>28</sup>

The Government has conducted two pilots and the results of these trials are being considered.<sup>29</sup>

## Cohabitation: the financial consequences of relationship breakdown

In this project we examined the financial consequences of the termination of cohabitants' relationships by separation or death. The existing law is a patchwork of legal rules, sometimes providing cohabitants with interests in their partners' property. The law is unsatisfactory: it is complex, uncertain, and expensive to rely on. It gives rise to hardship for many cohabitants and, as a consequence, their children.

Our report recommended the introduction of a new scheme of financial remedies that would lead to fairer outcomes on separation for cohabitants and their families.<sup>30</sup>

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

In order to obtain a remedy, applicants would have to prove that they had made qualifying contributions to the parties' relationship that had given rise to certain lasting consequences at the point of separation.

In broad terms, the scheme would seek to ensure that the pluses and minuses of the relationship were fairly shared between the couple. The report recommended that couples should, subject to necessary protections, be able to disapply the statute by means of an opt-out agreement, leaving them free to make their own financial arrangements.

The Government announced in September 2011 that the recommendations for reform would not be taken forward in this Parliament.<sup>31</sup>

## Company security interests

In August 2005 we published a final report and draft legislation on company security interests, recommending major reforms.<sup>32</sup> These would replace the present paper-based system with a new online process to register charges cheaply and instantaneously. They would also provide simpler and clearer rules to determine "priority" disputes between competing interests over the same property.

We were disappointed that the then Department of Trade and Industry was not able to include our main recommendations within the Companies Act 2006, though a power was included to make some amendments to the scheme for registration of charges. In 2010 the Department for Business, Innovation and Skills consulted on changes to the scheme<sup>33</sup> and subsequently announced an intention to introduce regulations.<sup>34</sup>

The revised scheme for registration of charges came into force in April 2013.<sup>35</sup> We still await a decision on our broader recommendations.

28 Administrative Redress: Public Bodies and the Citizen (2010) LC322.

29 Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014), paragraphs 59–60.

30 Cohabitation: The Financial Consequences of Relationship Breakdown (2007) LC307.

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

32 Company Security Interests (2005) LC296.

33 [www.bis.gov.uk/Consultations/registration-of-charges](http://www.bis.gov.uk/Consultations/registration-of-charges) (last visited 8 May 2014).

34 <https://www.gov.uk/government/consultations/registration-of-charges-created-by-companies-and-limited-liability-partnerships> (last visited 8 May 2014).

35 SI 2013 No 600.



## Contempt of court: court reporting

Contempt of Court (2): Court Reporting was published on 26 March 2014.<sup>36</sup>

We recommended that court reporting postponement orders are all posted on a single publicly accessible website (similar to the one that already operates in Scotland).

We further recommended the creation of a more extensive restricted service where, for a charge, registered users could find out the detail of the reporting restriction and could sign up for automated email alerts of new orders. These recommendations would greatly reduce their risk of contempt for publishers, from large media organisations to individual bloggers, and enable them to comply with the court's restrictions or report proceedings to the public with confidence.

We are waiting for the Government's response to our recommendations.

## The Electronic Communications Code

Schedule 2 to the Telecommunications Act 1984, known as the Electronic Communications Code, sets out a statutory regime that governs the rights of electronic communications network providers and the providers of network conduits to install and maintain infrastructure on public and private land.

In this project we examined the current Code and made recommendations that would make it work more efficiently and in a way that is more accessible for those who work with and are affected by it. Our report made a number of recommendations to form the basis of a revised Code.<sup>37</sup>

Our recommendations would modernise and simplify the Code while balancing the interests of operators and landowners. In particular, they would:

- provide a clearer definition of the market value that landowners receive for the use of their land;

- clarify the conditions under which landowners can be ordered to give an operator access to their land;
- resolve a number of inconsistencies between the current Code and other legislation;
- clarify the circumstances in which landowners are able to remove network equipment from land;
- specify limited rights for operators to upgrade and share their equipment; and
- improve the procedure for resolving disputes under the Code.

The Government is in the process of considering these recommendations. The Department for Culture, Media and Sport has commissioned a piece of further analysis to study the economic impact of various alternative wayleave regimes.<sup>38</sup>

The Government aims to provide a detailed response to our report by the end of 2014.

## The High Court's jurisdiction in relation to criminal proceedings

The usual way for the prosecution or defence to challenge a decision of the Crown Court in a trial on indictment is by appeal to the Criminal Division of the Court of Appeal. There are, however, two less common ways of challenging a decision of the Crown Court: by way of judicial review and by appeal by way of case stated.

The Law Commission was asked to consider the power of judicial review of the High Court over the Crown Court in criminal proceedings, as provided in section 29(3) of the Senior Courts Act 1981, because interpretation of that section had resulted in confusion and anomalies. We were also asked to examine the provision providing for appeal by way of case stated from the Crown Court to the High Court.

Our report, which was published on 27 July 2010, contains recommendations and a draft Bill.<sup>39</sup>

<sup>36</sup> LC344.

<sup>37</sup> The Electronic Communications Code (2013) LC336.

<sup>38</sup> <https://www.gov.uk/government/publications/modelling-the-economic-impacts-of-alternative-wayleave-regimes-the-nordicity-report> (last visited 8 May 2014).

<sup>39</sup> The High Court's Jurisdiction in Relation to Criminal Proceedings (2010) LC324.

In brief, we recommended:

- abolishing appeal by case stated from the Crown Court to the High Court in criminal proceedings;
- reforming the law on judicial review of the Crown Court in criminal proceedings so that judicial review of decisions in a trial on indictment is barred from the time the case goes to the Crown Court for trial to the end of the trial, with an exception where the judge refuses bail; and
- introducing two new statutory appeals.

Although work has been delayed by other priorities, the Government has continued to consider our recommendations and intends to provide a response during summer 2014.<sup>40</sup>

### **Intestacy and family provision claims on death (cohabitants)**

As reported on page 37, our final report, *Intestacy and Family Provision Claims on Death*, was accompanied by two draft Bills to implement our recommendations.<sup>41</sup> The *Inheritance and Trustees' Powers Act 2014* received Royal Assent on 14 May 2014.

The second Bill, the draft *Inheritance (Cohabitants) Bill*, contained recommendations that would:

- reform the law regarding an application for family provision by the survivor of a couple who had children together; and
- in defined circumstances, entitle the deceased's surviving cohabitant to inherit under the intestacy rules where there was no surviving spouse or civil partner: generally speaking, this entitlement would arise if the couple lived together for five years before the death or for two years if they had a child together.

The Government announced on 21 March 2013 that it did not intend to implement the *Inheritance (Cohabitants) Bill* during this Parliament.<sup>42</sup>

### **Level crossings**

This joint project with the Scottish Law Commission seeks to improve the law relating to the 7,500 to 8,000 level crossings in Great Britain. Our final report, accompanied by a draft Bill and draft regulations, was published in September 2013.<sup>43</sup>

Our recommendations would:

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

The Government will deliver an interim report and final response later in 2014.

### **Making land work: easements, covenants and profits à prendre**

This project examined the general law governing:

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

We looked closely at the characteristics of these rights, how they are created, how they come to an end and how they can be modified.

Our report made recommendations to modernise and simplify the law relating to these rights.<sup>44</sup>

<sup>40</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014), paragraphs 55–8.

<sup>41</sup> (2011) LC331.

<sup>42</sup> Written Statement, Hansard (HL), 21 March 2013, vol 744, col 59WS.

<sup>43</sup> LC339.

<sup>44</sup> Making Land Work: Easements, Covenants and Profits à Prendre (2011) LC327.

Our recommendations would remove anomalies, inconsistencies and complications in the current law, saving time and money by making it more accessible and easier to use for those who rely on and engage with these interests most: homeowners, businesses, mortgage lenders and those involved in the conveyancing process. The recommendations would also give new legal tools to landowners to enable them to manage better their relationships with neighbours and more effectively realise the potential of their properties.

In the Lord Chancellor's 2013 implementation report the Government stated that, although its consideration of this report had been delayed by work on other priorities, it had met with a number of stakeholders to discuss the recommendations and was preparing its response.<sup>45</sup> During 2013, discussion with stakeholders has continued but the completion of the response to the report has again been delayed by work on other priorities. We expect to receive the Government's response to our report later in 2014.<sup>46</sup>

### **Matrimonial property, needs and agreements**

This project was set up (initially under the title "Marital property agreements") to examine the status and enforceability of agreements (commonly known as "pre-nups") made between spouses and civil partners (or those contemplating marriage or civil partnership) concerning their property and finances. In February 2012 the scope of the project was extended to include a targeted review of two aspects of financial provision on divorce and dissolution.

In February 2014, we published our final report,<sup>47</sup> making the following recommendations:

- the meaning of "financial needs" should be clarified so they can be applied consistently by the courts;
- work should be done to assess whether a formula for calculating payments would be useful; and
- legislation be enacted introducing "qualifying nuptial agreements".

On 17 April, the Ministry of Justice announced that they had accepted our recommendation that guidance be produced on the meaning of financial needs, and had asked the Family Justice Council to take forward this work.

We expect an interim response from the Government on our two remaining recommendations in August 2014.

### **Public services ombudsmen**

This project arose from our earlier work on administrative redress (see page 40), and makes a number of recommendations in relation to the operation of the public services ombudsmen, the Parliamentary Commissioner for Administration, the Health Service Ombudsman, the Local Government Ombudsman, the Public Services Ombudsman for Wales and the Independent Housing Ombudsman.

We published our report and final recommendations on 14 July 2011.<sup>48</sup>

The Government is considering our recommendations in consultation with the ombudsmen and we are expecting a response later in 2014.<sup>49</sup>

Recommendations relating to the Public Services Ombudsman for Wales, who investigates complaints against devolved services, are under consideration by the Welsh Assembly.

<sup>45</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2013), paragraphs 38-9

<sup>46</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014), paragraphs 52-4.

<sup>47</sup> Matrimonial Property, Needs and Agreements (2014) LC343.

<sup>48</sup> Public Services Ombudsmen (2011) LC329.

<sup>49</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014), paragraphs 49-51.

## Regulation of health and social care professionals

This project dealt with the professional regulatory structure relating to 32 health care professions throughout the UK, and social workers in England. Together, this amounts to over 1.5 million people. The project was the first tripartite project conducted jointly with the Scottish Law Commission and the Northern Ireland Law Commission.

We published our final report and draft Bill on 2 April 2014, setting out a new single legal framework for the regulation of all health and social care.<sup>50</sup>

We await the Government's preliminary response.

For more on this project and the draft Bill, see page 26.

## Termination of tenancies

This project examined the means whereby a landlord can terminate a tenancy because the tenant has not complied with his or her obligations under it. This is an issue of great practical importance for many landlords and tenants of residential and commercial properties. The current law is difficult to use and littered with pitfalls for both the layperson and the unwary practitioner. It does not support negotiated settlement and provides little protection for mortgagors and chargees.

Our report recommended the abolition of forfeiture and its replacement by a modern statutory scheme for the termination of tenancies on the ground of tenant default that would balance the interests of all parties affected and promote more proportionate outcomes.<sup>51</sup>

In the Lord Chancellor's 2013 report on the implementation of Law Commission reports,<sup>52</sup> the Government stated that it had discussed the proposals with a number of stakeholders and was continuing discussions with the Commission about this report, but that no final decision had been taken. Although work has been delayed by other priorities the Government has continued to consider the proposals and intends to reach a final decision in 2014.<sup>53</sup>

## Wildlife law: control of invasive non-native species

On 11 February 2014, we published our final report, *Wildlife Law: Control of Invasive Non-native Species*.<sup>54</sup>

This is the first item to be delivered from the full project on Wildlife (see page 27). We brought forward this element of the project at the request of the Department for Environment, Food and Rural Affairs to enable them to consider whether to introduce early legislation.

Invasive non-native species arrive as a result of human action and cause environmental and economic damage. They pose a significant threat to ecosystems as well as damaging property and infrastructure. Existing law does not contain sufficient powers to allow for their timely and effective control or eradication. Our recommendations in relation to species control orders will allow for a proportionate and necessary response to an increasing problem.

<sup>50</sup> Regulation of Health Care Professionals. Regulation of Social Care Professionals in England (2014) LC345/SLC237/NILC18.

<sup>51</sup> Termination of Tenancies (2006) LC303.

<sup>52</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2013), paragraphs 18-19

<sup>53</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014), paragraphs 61-3.

<sup>54</sup> LC342.

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# Reports rejected

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## Partnership law

Our report, Partnership Law, arose from a joint project between the Law Commission and the Scottish Law Commission.<sup>55</sup> The recommendations sought to reform the law of general partnerships and clarify and modernise the law on limited partnerships, which has been little changed since its introduction in 1907.

Two recommendations relating to limited partnerships were implemented by way of the Legislative Reform (Limited Partnerships) Order 2009, namely making a certificate of registration conclusive evidence that a limited partnership has been formed at the date shown on the certificate and requiring all new limited partnerships to include “Limited Partnership”, “LP” or equivalent at the end of their names.

The Government announced in May 2014 that it does not expect to implement the remainder of our recommendations in England and Wales.<sup>56</sup>

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<sup>55</sup> (2003) LC283.

<sup>56</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014), paragraphs 66–7.

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# PART FOUR

## How we work

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“

The Commission's commitment to openness was...greatly welcomed by the Commission's stakeholders. Its open and transparent approach to law reform and policy making is an exemplar of the kind of open policy making championed in the Civil Service Reform plan.

”

Triennial Review of the Law Commission, Report of Stage Two (March 2014).

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

## Our programme of law reform

The Law Commission is required to submit to the Lord Chancellor programmes for the examination of different branches of the law with a view to reform.

Every three or four years we consult widely, asking for suggestions for appropriate projects. During the summer of 2013–14 we conducted a thorough consultation seeking ideas for our 12th Programme of law reform. For more on this, see page 20-1.

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

- the strength of the need for law reform;
- the importance of the issues it will cover;
- the availability of resources in terms of both expertise and funding; and
- whether the project is suitable to be dealt with by the Commission.

Although we have a duty to “take and keep under review all the law”,<sup>1</sup> it is important that our efforts are directed towards areas of the law that most need reform and reforms that are most likely to be implemented. There should be a focus on change that will deliver real benefits to the people, businesses, organisations and institutions to which that law applies.

The majority of the projects set out in Part 2 of this annual report originated in the 11th Programme of Law Reform.<sup>2</sup> We expect to start work on the projects in our 12th Programme in summer 2014.

## How we conduct our law reform projects

Before starting a law reform project, we will agree the terms of reference with the relevant Government Department and, in some instances, set one or more review points. These allow us to pause at specific stages of a project to consider, with the relevant Department, whether the research and analysis we have done so far suggest that a substantive law reform project is in fact required.

On occasion we start our projects with a scoping or discussion paper. The aim of this is to explore how extensive the project should be, find out the key issues as seen by others and identify interested parties.

### Consultation

Following an initial research stage, we will open a consultation with stakeholders, publishing a paper describing the present law and its shortcomings, and setting out provisional proposals for reform.

The Law Commission is committed to consulting fully with all the people and organisations who could potentially be affected by our proposals. Thorough, targeted consultations allow us to acquire a good understanding of the issues that are arising in an area of law and the effect they are having, and give us a clear picture of the context within which the law operates. We use them to assess the impact of our proposed policies and refine our thinking.

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

We ask consultees to submit formal, written responses, and we provide a number of ways to enable them to do this, including online. All the responses we receive are analysed and considered carefully. They are published, either separately or in the final project report.

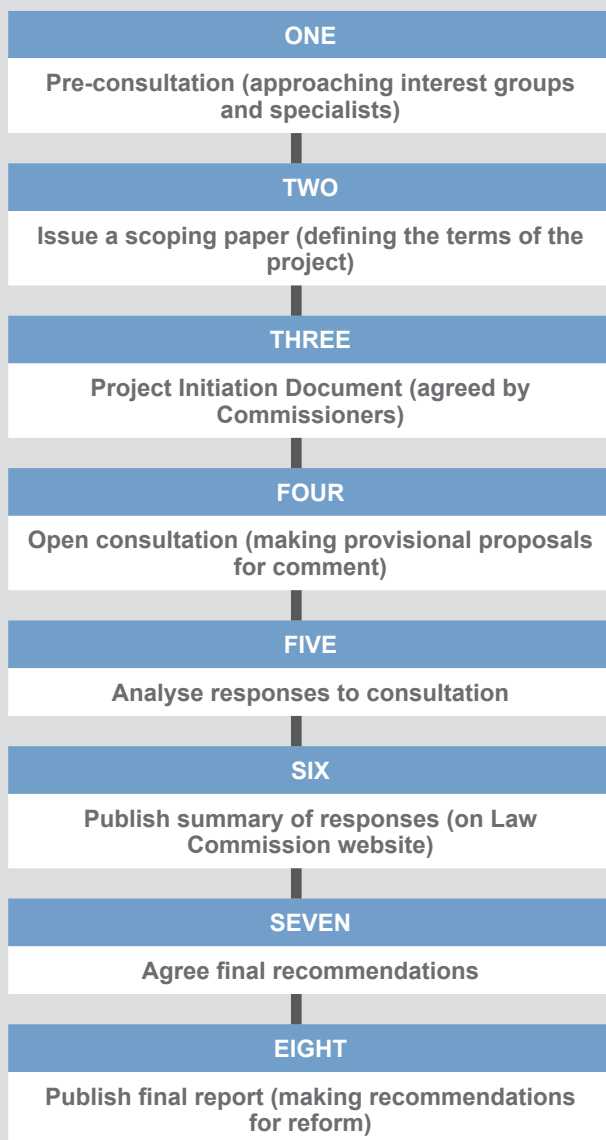
The Law Commission follows the Government Consultation Principles.<sup>3</sup>

<sup>1</sup> Law Commissions Act 1965, s 3(1).

<sup>2</sup> (2011) LC330.

<sup>3</sup> [www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance) (last visited 5 May 2014).

## Common stages of a law reform project



## Making recommendations for reform

We set out our final recommendations to Government in a report. If implementation of those recommendations would involve primary legislation, the report will usually contain a Bill drafted by Parliamentary Counsel. The report is laid before Parliament. It is then for Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless a Private Member or Peer opts to do so. After publication of a report the Commissioner, members of the relevant legal team and the Parliamentary Counsel who worked on the draft Bill will often give assistance to Government Ministers and Departments to take the work forward.

## Other law reform projects

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

Accounts of our progress on these projects are also included in Parts 2 and 3 of this annual report.

## Statute law

Consolidation of statute law and the repeal of statutes that are obsolete or no longer serve any useful purpose have been important functions of the Law Commission since its creation. By modernising the statute book and leaving it clearer, shorter and more accessible, this work helps to save time and costs for practitioners who work with the law and others who need to use it, and makes it easier for citizens to access justice.

As social and technological change continue to be reflected in new legislation, so the need for systematic and expert review of older legislation will remain.



# Opening up the debate on hate crime



Wide-ranging consultation is an essential part of our work, and our project on hate crime clearly illustrates how broad engagement stimulates debate and encourages people to respond. Our consultation on hate crime closed on 27 September 2013, and our report was due for publication on 28 May 2014.

Stakeholders were involved from the very beginning of the project, helping to frame the terms of the consultation. As well as reviewing relevant statistical data and reports, we held preliminary fact-finding discussions with organisations including those that support and campaign on behalf of people with disabilities, transgender people, and the lesbian, gay and bisexual (“LGB”) community. Some of these organisations offer hate crime reporting services and assist those affected by hate crime to deal effectively with the police and provide the information necessary for further investigation and prosecution. We also spoke to relevant public bodies and Government Departments.

During the three-month consultation period, we held events around the UK to raise awareness and give people an opportunity to debate the issues.

We were also invited to attend events organised by stakeholder groups, such as Birkbeck College’s Gender and Sexuality Group, the Greater London Authority’s Transgender Group and the West Midlands learning disability forum. Other events included:

- A seminar involving members of the judiciary at the Royal Courts of Justice.
- A meeting with the Government’s Independent Advisory Group on hate crime.
- A presentation to the Victim Services Alliance, a network of 38 NGOs and agencies providing information and support for crime victims.
- A presentation to the annual conference of the Society of Legal Scholars, whose criminal law section met in Edinburgh on 3 September.
- During September several meetings in England and Wales were held to enable members of regional Crown Prosecution Service local scrutiny and involvement panels to discuss the paper. We made presentations at two of these, one in London and one in Colwyn Bay.
- A presentation to the Sandwell Safeguarding Multi-Agency Best Practice Forum, followed by an open debate.

On 17 September 2013 we held a symposium at Queen Mary University of London. Expert speakers from a range of NGOs, academia, criminal justice agencies and legal practice debated the matters raised by our consultation paper.

In all, we received 157 written responses to the consultation. These came from academics, criminal justice agencies, members of the judiciary and magistracy, legal practitioners and their professional associations, NGOs representing a broad spectrum of interests and several members of the public.

We are grateful to all our consultees.

## Consolidation

Over 200 consolidation Acts have been enacted since the Commission was established in 1965. The aim of this work is to make statute law more accessible and comprehensible; it can have real practical benefits.

A consolidation Bill draws together different enactments on the same subject to produce a single statutory text while preserving the effect of the current law. The text usually replaces provisions in a number of different Acts or instruments. But a good consolidation does much more than produce an updated text. The cumulative effect of amendments and new law can distort the structure of legislation. Consolidation will make it more rational and intelligible. It will also aim to remove obsolete material, modernise language and resolve minor inconsistencies or ambiguities that have arisen.

### *The Law Commission and consolidation*

Responsibility for consolidation at the Law Commission lies with our in-house Parliamentary Counsel.

For the Commission to commence a consolidation project, we must be convinced that the law concerned is suitable for and in need of consolidation. We would also consider:

- complexity, size and potential cost of a project;
- size of our Parliamentary Counsel team (three during 2013–14); and
- risk of changes being made to the law during the consolidation exercise.

For understandable reasons, consolidation is often not a high priority for Government while there are limited financial resources; and Government's priorities can change significantly over the life of a project. To accommodate this, we must also be satisfied, as far as possible, that the responsible Department will provide sufficient support, in time and effort, to see a consolidation project through to completion and enactment of the Bill.

See page 30 for our consolidation work of 2013–14.

## Statute law repeals

In this strand of our work, we focus on repealing statutes that no longer serve any useful purpose, usually because they are now spent or obsolete.

This work is carried out by means of Statute Law (Repeals) Bills. The Law Commission has drafted 19 such Bills since 1965, all of which have been enacted. This has achieved the repeal of over 3,000 Acts in their entirety and the partial repeal of thousands of other Acts.

Our most recent Bill, annexed to the 19th statute law repeals report,<sup>4</sup> received Royal Assent on 31 January 2013.<sup>5</sup> A joint report with the Scottish Law Commission, this was our largest ever repeals Bill. Its enactment resulted in the repeal of 817 whole Acts and the removal of redundant provisions from 50 other Acts. See page 30-1 for an account of our statute law repeals work in 2013–14.

### Implementation

Crucial to the implementation of our consolidation and statute law repeals Bills is a dedicated parliamentary procedure. The Bills are introduced into the House of Lords and, after Lords Second Reading, are scrutinised by the Joint Committee on Consolidation Bills, which was appointed by both Houses specifically to consider consolidation and statute law repeal Bills, before returning to the House of Lords for the remaining stages.

This process ensures that the Bills take up a minimum of parliamentary time on the floor of each House and that they should always be enacted once introduced.

## The Law Commission and Government

### Protocol

In March 2010 the Law Commission agreed a statutory Protocol<sup>6</sup> with the Lord Chancellor that governs how the Commission and Government Departments should work together on law reform projects (see page 33).

<sup>4</sup> (2012) LC333/SLC227.

<sup>5</sup> Statute Law (Repeals) Act 2013 (c.2).

<sup>6</sup> Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission (2010) LC321.

## Lord Chancellor's report to Parliament

Under the Law Commission Act 2009, the Lord Chancellor is required to report annually to Parliament on the extent to which the Law Commission's proposals have been implemented by the Government. The report must set out the Government's reasons for decisions taken during the year to accept or reject our proposals and give an indication of when decisions can be expected on recommendations that are still being considered. The Lord Chancellor issued his fourth report on 8 May 2014.<sup>7</sup>

## Informing Parliamentary debate

The Commission is often invited to give evidence to Parliamentary Committees to assist with their consideration of Bills, some of which may include provisions that have derived from Law Commission recommendations.

During 2013–14 we have given evidence in support of four Bills.

### *Deregulation Bill*

In October, we were asked to give evidence to the Joint Committee on the Draft Deregulation Bill.<sup>8</sup> This provided us with an opportunity to demonstrate to Parliament the importance and effectiveness of our statute law repeals work and consider with the Committee the potential of producing “more frequent and more responsive”<sup>9</sup> statute law repeals Bills.

### *Contempt of court*

On 11 March 2014 Professor David Ormerod QC gave evidence to the Public Bill Committee hearing on the Criminal Justice and Courts Bill.<sup>10</sup> The Committee was examining the provisions in the Bill dealing with juror misconduct, which were largely based on our report *Contempt of Court (1): Juror Misconduct and Internet Publications* (see page 37).

In his evidence to the Committee, Professor Ormerod explained the thinking behind our recommendations to prevent jurors searching for information on the internet and the issues raised by the long-term availability of online publications.

### *Consumer rights*

In February 2014 David Hertzell gave oral<sup>11</sup> and written<sup>12</sup> evidence to the Public Bill Committee considering the Consumer Rights Bill, which was introduced into Parliament on 23 January 2014. The Bill includes reforms recommended in two of our projects: *Consumer Remedies for Faulty Goods* (see page 36-7) and *Unfair Terms in Consumer Contracts* (see page 38). He also gave oral<sup>13</sup> and written<sup>14</sup> evidence to the Business, Innovation and Skills Select Committee, which considered the Bill in draft in October 2013.

### *Inheritance and trustees' powers*

The Inheritance and Trustees' Powers Bill was committed to a Special Public Bill Committee on 23 October 2013. The Bill gives effect to the recommendations set out in parts 2–7 of our report on *Intestacy and Family Provision Claims on Death* (see page 37). Professor Elizabeth Cooke gave both oral and written evidence<sup>15</sup> to the Committee, answering in particular a number of questions Parliament had posed during the Bill's Second Reading.

7 Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014).

8 [www.parliament.uk/business/committees/committees-a-z/joint-select/draft-deregulation-bill/](http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-deregulation-bill/) (vol 2, last visited 8 May 2014).

9 [www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftdereg/101/10105.htm#a30](http://www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftdereg/101/10105.htm#a30) (vol2, last visited 8 May 2014).

10 [www.publications.parliament.uk/pa/cm201314/cmpublic/criminaljustice/140311/pm/140311s01.htm](http://www.publications.parliament.uk/pa/cm201314/cmpublic/criminaljustice/140311/pm/140311s01.htm) (last visited 5 May 2014).

11 [www.publications.parliament.uk/pa/cm201314/cmpublic/consumer/140211/am/140211s01.htm](http://www.publications.parliament.uk/pa/cm201314/cmpublic/consumer/140211/am/140211s01.htm) (last visited 5 May 2014).

12 [www.publications.parliament.uk/pa/cm201314/cmpublic/consumer/memo/cr01.htm](http://www.publications.parliament.uk/pa/cm201314/cmpublic/consumer/memo/cr01.htm) (last visited 5 May 2014).

13 [www.publications.parliament.uk/pa/cm201314/cmselect/cmbis/697/131008.htm](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmbis/697/131008.htm) (last visited 5 May 2014).

14 [www.publications.parliament.uk/pa/cm201314/cmselect/cmbis/697/697we09.htm](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmbis/697/697we09.htm) (last visited 5 May 2014).

15 [www.parliament.uk/business/committees/committees-a-z/lords-select/inheritance-and-trustees-powers-bill/publications/](http://www.parliament.uk/business/committees/committees-a-z/lords-select/inheritance-and-trustees-powers-bill/publications/) (last visited 5 May 2014).

## The Law Commissioners

The five Law Commissioners work full time at the Law Commission.

In accordance with Government policy for all non-departmental public bodies, there is a written code for Law Commissioners, agreed with the Ministry of Justice. It incorporates the Seven Principles of Public Life and covers matters such as the role and responsibilities of Commissioners.<sup>16</sup>

## External relations

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

It would not be possible in this annual report to thank individually everyone who provides us with guidance or offers us their views. We would, however, like to express our gratitude to all those organisations and individuals who have worked with us as members of advisory groups on our many projects and who have contributed in so many ways to our work during the course of the year.

We have particular reasons to be grateful this year for the influential support of our stakeholders:

- We heard in October 2013 that we had been successful in our campaign to gain exemption from the single Government website. This has enabled us to retain an independent web presence for the Law Commission, and would not have been possible without the direct support of our stakeholders.
- In March 2014 the Government announced the positive results of its Triennial Review of the Law Commission, acknowledging the “overwhelming weight of evidence” it had received from our stakeholders in favour of retaining the Commission’s functions,<sup>17</sup> and

the potential harm to our independence of any change to our status as a non-departmental public body. (See also page 28-9.)

We also had an excellent response from existing and new stakeholders to the consultation we ran for our 12th Programme of law reform. We received more than 250 proposals, many of which could provide the projects that will set our work programme for the next three or more years. For more on the 12th Programme, see page 20-1.

We also acknowledge the support and interest shown in the Commission and its work by a number of Ministers, Members of Parliament and Peers from across the political spectrum and public officials.

We continue to make progress in extending the number of ways in which we engage with our stakeholders. As well as providing a way for consultees to respond to us online, we have made it possible for our website users to choose to receive email alerts when we open a consultation or publish a report. We have experimented with podcasting and video, and have successfully engaged new audiences using our Twitter accounts. We now have more than 5,000 followers of our corporate account,<sup>18</sup> including legal practitioners, academics, students, librarians and journalists, as well as people and organisations who have a specific interest in our individual law reform projects.

## Education and engagement

The Law Commission has a statutory duty to promote the reform of the law. To help us meet this obligation, we engaged in a number of education initiatives during the year, although, due to other demands on our resources, we have not been able to do as much of this work as we have in previous years.

- On 24 October we hosted 12 delegates from public service agencies in Brunei, India, Jordan, Korea, Namibia and Trinidad and Tobago. Their visit to the Commission contributes to their completion of a course on “Changing the Law: Successful Reform”, run by Public Administration International.

<sup>16</sup> <http://lawcommission.justice.gov.uk/about/who-we-are.htm>.

<sup>17</sup> Triennial Review of the Law Commission, Report of Stage One (2013), page 12.

<sup>18</sup> @Law\_Commission

- In June 2013 the statute law repeals team hosted a seminar for Commonwealth drafters. These annual events are organised by arrangement with the Institute of Advanced Legal Studies and are designed to facilitate the understanding of overseas' delegates of the law reform, Bill drafting, consolidation and statute law rationalisation functions delivered by the Law Commission.
- In February 2014 we visited the sixth-form students at Cardinal Wiseman School in London. We talked to them about the work of the Law Commission and discussed the Commission's project on partial defences to murder, looking in particular at the role of duress, and on joint criminal enterprise.
- Also in February, the Chairman gave a talk to the law students of the University of Maryland in America via video link. The Commission has been giving this talk for four years, providing the students with an insight into the role of the Law Commission, how we work and the range of projects we undertake.
- We were delighted to see the Big Voice launch its Model Law Commission in the House of Commons on 9 December 2013. The Big Voice is a volunteer-led youth project aimed at sixth formers interested in issues of legal identity and the process of law reform. For the previous two years we have run half-day training events with the group to build awareness among the students of our law reform work. The Big Voice Model Law Commission replicates our structure and draws on our approach to law reform work.

We continue to seek out opportunities for reaching and engaging all those people who are interested in law reform and the processes by which the law is improved.

The Chairman, Commissioners and other members of the Law Commission accept invitations throughout the year to attend and speak at a large number and wide range of conferences, seminars, lectures and other events.

In April 2014 the Chairman was invited to deliver the Wales Governance Centre Annual Lecture. His lecture, "The Law Commission and Law Reform in a Devolved Wales"<sup>19</sup> asked how the law reform needs of a devolved Wales could best be met and what should be the contribution of the Law Commission to that process.

In March, another opportunity arose to examine the issue of law reform in a devolved Wales, when the Chairman was invited to speak to the Association of London Welsh Lawyers.<sup>20</sup>

## Community engagement



Our team, stepping out and raising funds on the London Legal Walk

On 20 May 2013 a team of legal and other staff from the Commission joined members of the judiciary and teams from many of London's law firms and sets of chambers in the annual London Legal Walk. The team raised more than £1,000 for the London Legal Support Trust, which organises the event to support free legal advice agencies in and around London, including Law Centres and pro bono advice surgeries.

## International

The Law Commission also plays a wide role in the international business of law reform and we are pleased to continue to receive international guests at our offices in London and invitations to visit colleagues around the world.

<sup>19</sup> <http://lawcommission.justice.gov.uk/publications/lectures.htm>.

<sup>20</sup> <http://lawcommission.justice.gov.uk/publications/lectures.htm>.

This year we were privileged to welcome, among others:

- Members of the Senate Standing Committee on Human Rights, the Right and Liberty, and Consumer Protection of Thailand
- Representatives from the Ministry of Justice in New Zealand
- The Secretary of Justice of Hong Kong
- The Director of Public Prosecutions and Chairman of the Criminal Law Review Committee, and the Chief Executive Officer of the Law Reform Commission of Mauritius
- The Chairman of the Law Commission of Bangladesh
- Members of the Anti-Corruption and Civil Rights Commission of South Korea
- Delegation of justices from Sierra Leone
- The Chief Justice of Albania
- The Justice Minister of Saudi Arabia

#### *New homes for the Law Commission library*

During the autumn of 2013 we were able to offer a large number of law books to our colleagues in law reform agencies overseas.



Our books, at home with the Law Commissioners of Sierra Leone

The move to our new office in November 2013 prompted a review of our library collection, partly because of space limitations. We were determined to find good homes for our books so we approached a number of international law reform agencies to see if they would have a place for our extensive range of books and journals.

We were delighted with the response and are pleased that books we were not able to keep with us could benefit other organisations. Most of the volumes are now being used by law reform commissions in countries such as Rwanda and Sierra Leone to help them in their law reform research.

We are grateful to the Commonwealth Association of Law Reform Agencies for organising this on our behalf.

#### **Our partner law commissions and the devolved authorities**

In July the Chairman and Chief Executive travelled to Edinburgh to attend a gathering of the five law reform bodies of England and Wales, Jersey, Northern Ireland, the Republic of Ireland and Scotland. This is an annual event that allows us to exchange experiences and strengthen relationships with our law reform colleagues.

During the year we have worked closely with the Scottish Law Commission on a number of law reform and statute law repeals projects. We have also completed our first tripartite law reform project, Regulation of Health and Social Care Professionals, working with colleagues in the Scottish and Northern Ireland Commissions. For more on this project, see page 26.

Statute Law (Repeals) Acts extend throughout the UK and we liaise regularly on our repeal proposals 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 in Northern Ireland. Their help and support in considering and responding to the repeal proposals is much appreciated.

# Simplifying consumer law

The law governing consumers' rights in the UK has long been unnecessarily complicated and difficult to understand. Over the last decade, the Law Commission and the Scottish Law Commission have published three reports recommending simplifications to consumer law. The Consumer Rights Bill introduced into Parliament in January 2014, along with the Consumer Protection from Unfair Trading (Amendment) Regulations 2014, implement these recommendations.

## Unfair terms

Prior to reform, two pieces of legislation covered the area: the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999. They are inconsistent and overlapping, and often use different language and concepts to produce similar, but not identical, effects. In 2005, we recommended a single simplified regime in our report, Unfair Terms in Contracts (LC292/SLC199). In March 2013 we updated this report, publishing Unfair Terms in Consumer Contracts: Advice to the Department for Business, Innovation and Skills. The Advice looked in particular at the problems that arose in the bank charges litigation (OFT v. Abbey National [2010] 1 AC 696) over how far ancillary prices can be assessed for fairness.

Price comparison websites put pressure on traders to offer low headline prices, while making profits through other charges. We recommended that the courts should not interfere with prices that are transparent and prominent but where charges are tucked away in the small print, the courts should be able to assess them for fairness.

## Remedies for faulty goods

Consumers in the UK have a legal right to reject faulty goods and to obtain a refund, provided they act within a "reasonable time". Under EU law, consumers' first recourse is to repair or replacement. In our 2009 report, Consumer Remedies for Faulty Goods (LC317/SLC216), we recommended that the right to reject should be

retained and that, under normal circumstances, consumers should have 30 days to return faulty goods and receive a full refund. The 30-day period is included in the Bill.

## Misleading and aggressive practices

According to research from 2009 almost two-thirds of consumers had at some time fallen victim to aggressive or misleading practice, leading to an estimated annual consumer detriment of £3.3 billion.\* Our report, Consumer Redress for Misleading and Aggressive Practices (2012), recommended that these consumers, many of whom are among the most vulnerable in society, should have a new legal right of redress entitling them to a refund or discount and, in some cases, damages.

These recommendations will be implemented in October 2014, when the Consumer Protection from Unfair Trading (Amendment) Regulations 2014 come into force.



I am delighted to introduce this important Bill. It has been widely consulted on outside and inside the House and our understanding is that it is welcomed by both business and consumer groups.... The context of the Bill is our determination to build and enhance a climate of trust in which UK business operates, restoring trust, which is often needed, in markets and market transactions. The consumer law reforms that we are discussing lie at the heart of a crusade towards trusted business and trusted capitalism."



\* Consumer Focus, Waiting to be heard: Giving consumers the right of redress over Unfair Commercial Practices (August 2009).

\*\* Vince Cable MP, Secretary of State for Business, Innovation and Skills. Second Reading of the Consumer Rights Bill. Oral answer, Hansard (HC), 28 January 2014, Hansard (HC), col 768.

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# PART FIVE

## Our people and corporate matters

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“

Working as a research assistant provides a unique opportunity to combine in-depth academic research with practical and forward-looking policy development. Working closely with external stakeholders is particularly rewarding, as it really shows how relevant and important the work we do is.

”

Hannah, Research Assistant, Public Law Team, Law Commission.

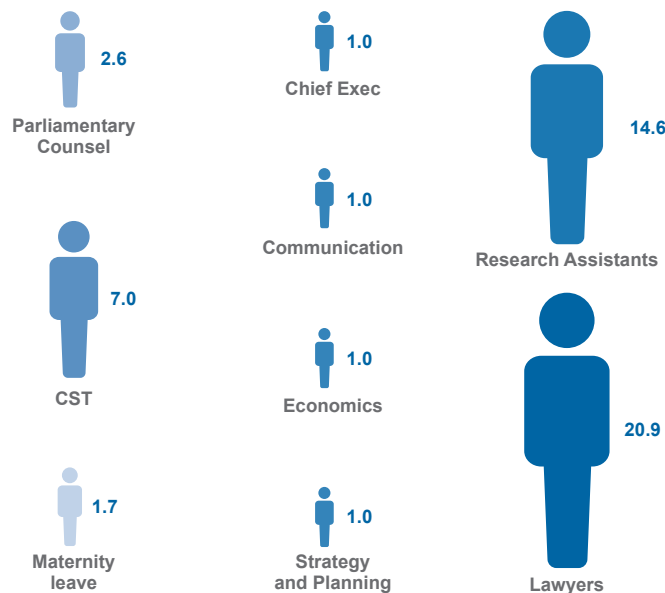


The Law Commissioners appreciate the dedication and expertise of all the people who work at the Law Commission and are grateful for their contribution to the work of the Commission.

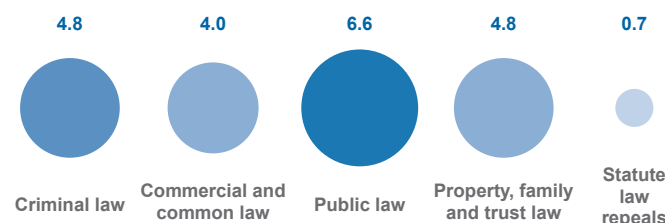
### Staff at the Commission

In 2013–14 there were 53 people working at the Law Commission (full-time equivalent: 50.8, at 1 April 2014).<sup>1</sup>

**Figure 5.1**  
People working at the Commission (full-time equivalent, at 1 April 2014)



**Figure 5.2**  
Team lawyers<sup>2</sup>



<sup>1</sup> Excluding the Chairman, Chairman's Clerk and Commissioners.  
<sup>2</sup> Excluding those on maternity leave.

### Legal staff

The Commission's lawyers are barristers, solicitors or legal academics from a wide range of professional backgrounds, including private practice and public service. In addition, Parliamentary Counsel who prepare the draft Bills attached to the law reform reports, and who undertake the consolidation of existing legislation, are seconded to the Law Commission from the Office of the Parliamentary Counsel. The Commission is very grateful to them all for their expertise and hard work.

### Research assistants

Each year a dozen or so well-qualified graduates are recruited to assist with research, drafting and creative thinking. They generally spend a year or two at the Commission before moving on to further their legal training and careers. For many research assistants, working at the Commission has been a rung on the ladder to an extremely successful career.

The selection process is extremely thorough and we aim to attract a diverse range of candidates of the highest calibre through contact with faculty careers advisers, as well as through advertisements both online and in the press.

In 2013–14 we recruited 12 new research assistants through this process.

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

### Economic and analytical services

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

## Strategy and planning

The Head of Strategic Planning supports the Chief Executive in all aspects relating to the operation of the Commission's Management Board, including governance, risk and performance management, and advises the Commission on business planning and a wide range of corporate issues.

## External relations

The Commission also has an in-house communication professional who provides strategic direction on all communication issues for the Commission and supports our work through managing our website, social media accounts, stakeholder relations and events, and handling our media relations.

## Corporate services

The corporate services team supports the work of the Law Commission in a number of areas, delivering direct services in some and, in others, providing a bridge between the Commission and the Ministry of Justice and, specifically, its Shared Services function.

Shared Services is a key element of the Civil Service Reform Plan. Its purpose is to enable core services such as HR, finance, procurement and payroll to be shared in order to deliver efficiencies and savings.

Support provided and facilitated by the team includes:

<b>Direct provision:</b>	Internal communication
	Publishing (print and electronic)
	Subscription services
<b>With support from MoJ:</b>	Health and safety
	Information assurance
	Information technology
	Library services
	Records management
<b>Shared Services:</b>	Human resources
	Resource accounting

The Head of Corporate Services sits on the management team and provides the Law Commission with the full range of corporate services. She is the competent person for health and safety management at the Commission and monitoring progress against a detailed health and safety plan.

The Law Commission no longer has a dedicated librarian. Following our move to new offices in September 2013 we have benefited from the Ministry of Justice library services and its extensive collection of library resources.

The Publishing Editor makes our publications available on the website.<sup>2</sup> Older reports and consultation papers are also available through the British and Irish Legal Information Institute<sup>3</sup> or can be supplied as pdfs on request.<sup>4</sup>

In addition to drawing specialist support from the Ministry of Justice and its shared services, the corporate services team is also in regular contact with other parts of the Ministry to ensure that we are represented and in receipt of up-to-date advice and best practice.

The team values the help available to them from their colleagues in the Ministry of Justice.

## Working at the Commission

We offer our staff a wide variety of flexible work/life balance arrangements such as home-working and working part-time or compressed hours.

The equality and diversity statement published on our website sets out our commitment to respect and value all facets of diversity and strive to give our people equality of opportunity and equality of outcome.<sup>5</sup>

## Investing in our people

With a view to the continuing professional development of our legal staff, we run a series of in-house lunchtime seminars throughout the year.

<sup>2</sup> [www.lawcom.gov.uk](http://www.lawcom.gov.uk).

<sup>3</sup> [www.baillii.org](http://www.baillii.org).

<sup>4</sup> Requests should be made to [communications@lawcommission.gsi.gov.uk](mailto:communications@lawcommission.gsi.gov.uk).

<sup>5</sup> <http://lawcommission.justice.gov.uk/working-for-us.htm>.

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

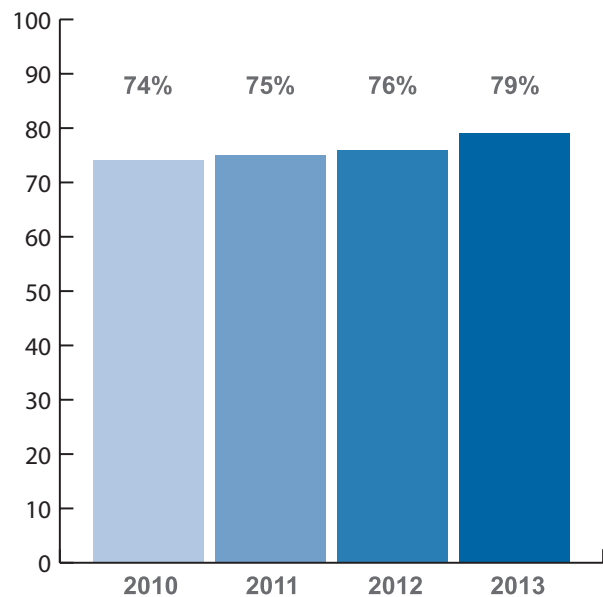
- 10 April 2013 Vindelyn Smith-Hillman, our economist, whose talk on Impact Assessments and the Lessons Learned from Brazil, reported her experience of attending the International Seminar on Electronic Health Records in Rio de Janeiro.
- 16 May 2013 Colin Moore, a research assistant from our Commercial and Common Law team and Special Constable, who talked about the Role and Responsibility of the Police Service.
- 13 June 2013 Derrick Jones, Chief Economist at the Food Standards Agency, who told us about Food Safety in the UK: The Work of the Food Standards Agency.
- 21 August 2013 Catherine Heard, a lawyer on the criminal law team, who gave colleagues an insight into the team's project on hate crime.
- 4 March 2014 Richard Broadbent, Principal Solicitor of Natural England, who talked to us about Environmental Law and Policy in the UK.

In July 2013 we held a staff awayday at the Centre for Commercial Law Studies in Lincoln's Inn Fields, London, kindly loaned to us for the day by Queen Mary University of London. This gave us an opportunity to share our experiences of the past year, and to discuss what we had achieved and all that we had learned in the process.

We were joined on our awayday by Hayley Rogers from the Office of the Parliamentary Counsel, who gave us an opportunity to discuss their Good Law initiative and how it complements the work of the Law Commission. We also heard from Steph Gray of Helpful Technology. Steph generously gave his time to talk to us about the potential opportunities social media offers us for building relationships and engaging with our stakeholders.

## People Survey results

The results of the annual People Survey show the Law Commission with an engagement index of 79 per cent for 2013. This is not only an increase on last year's result of 76 per cent but also places the Commission as a high-performing organisation in relation to other organisations of a similar size within the civil service.



## Accommodation

On 4 November 2013 the Law Commission moved to 52 Queen Anne's Gate, leaving Steel House, which had been our base for five years. Our new offices occupy a self-contained space within the main Ministry of Justice building. This allows us to function independently while working within easy reach of some of our colleagues elsewhere in the justice system and benefit from the estates and facilities services provided by the Ministry. We are fortunate that our new premises sit at the heart of St James's Park, allowing us to remain close to our important stakeholders in Whitehall and Parliament.

## Law Commission library

One of the consequences of the move to Queen Anne's Gate was the need to reduce the size of the Commission's well-established and extensive law library. This was partly because of the limited space in our new premises and the availability of the Ministry of Justice library services but the move also provided us with an opportunity to review our collection. Advances in technology enable our lawyers and researchers to access legal texts and other information online, rather than requiring access to printed volumes. This is especially true of law reports and statutes, which are readily available online.

Our collection now holds the works that we use regularly for our law reform projects together with a number of reference and other books where online access is not possible or practicable. This includes our substantial collection of local Acts, which we have built up over many years and is not widely available either online or in print.

See page 54 for how we re-homed our books.

## Information assurance

In 2013–14 there were no notifiable incidents in relation to data loss in the Law Commission.

## Freedom of Information

The Law Commission has a publication scheme. We publish a quarterly disclosure log of requests made under the Freedom of Information Act that we have received and dealt with. More details can be found on the FOI page of our website.<sup>6</sup>

## Health and safety

In 2013–14 there were two notifiable incidents in relation to staff of the Commission and the Health and Safety at Work Act 1974, both of which were reported as required.

## Sustainability

We take sustainability seriously. Our actions in relation to energy saving contribute to the overall reduction in consumption across the Ministry of Justice estate.

<sup>6</sup> <http://lawcommission.justice.gov.uk/freedom-of-information.htm>.



*David Lloyd Jones*



*David Ormerod*



*Elizabeth Cooke*



*Nicholas Paines*



*D. Hertzell*



*Elaine Lorimer*

Sir David Lloyd Jones, Chairman  
Professor Elizabeth Cooke  
David Hertzell  
Professor David Ormerod QC  
Nicholas Paines QC

Elaine Lorimer, Chief Executive  
21 May 2014

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# APPENDICES

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“

The Government holds the excellent work of the Law Commission in very high regard and the progress we have made during this past year demonstrates the continued relevance and resilience of the Commission's work.

”

The Right Honourable Chris Grayling MP, Lord Chancellor.  
Report on the implementation of the Law Commission proposals  
Jan 2013 to Jan 2014 (May 2014).

# Appendix A

## Implementation status of Law Commission law reform reports

LC No	Title	Status	Related Measures
1966			
3	Proposals to Abolish Certain Ancient Criminal Offences	Implemented	Criminal Law Act 1967 (c58)
6	Reform of the Grounds of Divorce: The Field of Choice (Cmnd 3123)	Implemented	Divorce Reform Act 1969 (c55); now Matrimonial Causes Act 1973 (c18)
7	Proposals for Reform of the Law Relating to Maintenance and Champerty	Implemented	Criminal Law Act 1967 (c80)
8	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd 3149)	Implemented	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c63)
1967			
9	Transfer of Land: Interim Report on Root of Title to Freehold Land	Implemented	Law of Property Act 1969 (c59)
10	Imputed Criminal Intent (Director of Public Prosecutions v Smith)	Implemented in part	Criminal Justice Act 1967 (c80), s 8
11	Transfer of Land: Report on Restrictive Covenants	Implemented in part	Law of Property Act 1969 (c59)
13	Civil Liability for Animals	Implemented	Animals Act 1971 (c22)
1968			
16	Blood Tests and the Proof of Paternity in Civil Proceedings (HC 2)	Implemented	Family Law Reform Act 1969 (c46)
1969			
17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (HC 38)	Implemented	Law of Property Act 1969 (c59)
18	Transfer of Land: Report on Land Charges affecting Unregistered Land (HC 125)	Implemented	Law of Property Act 1969 (c59)
19	Proceedings against Estates (Cmnd 4010)	Implemented	Proceedings against Estates Act 1970 (c17)
20	Administrative Law (Cmnd 4059)	Implemented	See LC 73
21	Interpretation of Statutes (HC 256)	Rejected	
23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (HC 369)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45)
24	Exemption Clauses in Contracts: First Report: Amendments to the Sale of Goods Act 1893: Report by the Two Commissions (SLC 12) (HC 403)	Implemented	Supply of Goods (Implied Terms) Act 1973 (c13)
25	Family Law: Report on Financial Provision in Matrimonial Proceedings (HC 448)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45); now largely Matrimonial Causes Act 1973 (c18)
26	Breach of Promise of Marriage (HC 453)	Implemented	Law Reform (Miscellaneous Provisions) Act 1970 (c33)

LC No	Title	Status	Related Measures
<b>1970</b>			
29	Criminal Law: Report on Offences of Damage to Property (HC 91)	Implemented	Criminal Damage Act 1971 (c48)
30	Powers of Attorney (Cmnd 4473)	Implemented	Powers of Attorney Act 1971 (c27)
31	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd 4497)	Implemented	Administration of Estates Act 1971 (c25)
33	Family Law: Report on Nullity of Marriage (HC 164)	Implemented	Nullity of Marriage Act 1971 (c44), now Matrimonial Causes Act 1973 (c18)
34	Hague Convention on Recognition of Divorces and Legal Separations: Report by the two Commissions (SLC 16) (Cmnd 4542)	Implemented	Recognition of Divorces and Legal Separations Act 1971 (c53); now Family Law Act 1986 (c55), Part II
35	Limitation Act 1963 (Cmnd 4532)	Implemented	Law Reform (Miscellaneous Provisions) Act 1971 (c43)
40	Civil Liability of Vendors and Lessors for Defective Premises (HC 184)	Implemented	Defective Premises Act 1972 (c35)
<b>1971</b>			
42	Family Law: Report on Polygamous Marriages (HC 227)	Implemented	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c38); now Matrimonial Causes Act 1973 (c18)
43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (SLC 21) (Cmnd 4654)	Implemented in part	Finance Act 1972 (c41), s 82.
<b>1972</b>			
48	Family Law: Report on Jurisdiction in Matrimonial Proceedings (HC 464)	Implemented	Domicile and Proceedings Act 1973 (c45)
<b>1973</b>			
53	Family Law: Report on Solemnisation of Marriage in England and Wales (HC 250)	Rejected	
55	Criminal Law: Report on Forgery and Counterfeit Currency (HC 320)	Implemented	Forgery and Counterfeiting Act 1981 (c45)
56	Report on Personal Injury Litigation: Assessment of Administration of Damages (HC 373)	Implemented	Administration of Justice Act 1982 (c53)
<b>1974</b>			
60	Report on Injuries to Unborn Children (Cmnd 5709)	Implemented	Congenital Disabilities (Civil Liability) Act 1976 (c28)
61	Family Law: Second Report on Family Property: Family Provision on Death (HC 324)	Implemented	Inheritance (Provision for Family and Dependents) Act 1975 (c63)
62	Transfer of Land: Report on Local Land Charges (HC 71)	Implemented	Local Land Charges Act 1975 (c76)
<b>1975</b>			
67	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (HC 377)	Rejected	
68	Transfer of Land: Report on Rentcharges (HC 602)	Implemented	Rentcharges Act 1977 (c30)
69	Exemption Clauses: Second Report by the two Law Commissions (SLC 39) (HC 605)	Implemented	Unfair Contract Terms Act 1977 (c50)



LC No	Title	Status	Related Measures
<b>1976</b>			
73	Report on Remedies in Administrative Law (Cmnd 6407)	Implemented	Rules of Supreme Court (Amendment No 3) 1977; Supreme Court Act 1981 (c54)
74	Charging Orders (Cmnd 6412)	Implemented	Charging Orders Act 1979 (c53)
75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd 6428)	Implemented	Occupiers' Liability Act 1984 (c3)
76	Criminal Law: Report on Conspiracy and Criminal Law Reform (HC 176)	Implemented in part	Criminal Law Act 1977 (c45)
77	Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (HC 637)	Implemented	Domestic Proceedings and Magistrates' Courts Act 1978 (c22)
<b>1977</b>			
79	Law of Contract: Report on Contribution (HC 181)	Implemented	Civil Liability (Contribution) Act 1978 (c47)
82	Liability for Defective Products: Report by the two Commissions (SLC 45) (Cmnd 6831)	Implemented	Consumer Protection Act 1987 (c43)
83	Criminal Law: Report on Defences of General Application (HC 566)	Rejected	
<b>1978</b>			
86	Family Law: Third Report on Family Property: The Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods (HC 450)	Implemented	Housing Act 1980 (c51); Matrimonial Homes and Property Act 1981 (c24)
88	Law of Contract: Report on Interest (Cmnd 7229)	Implemented in part	Administration of Justice Act 1982 (c53); Rules of the Supreme Court (Amendment No 2) 1980
89	Criminal Law: Report on the Mental Element in Crime (HC 499)	Rejected	
91	Criminal Law: Report on the Territorial and Extra-Territorial Extent of the Criminal Law (HC 75)	Implemented in part	Territorial Sea Act 1987 (c49)
<b>1979</b>			
95	Law of Contract: Implied Terms in Contracts for the Sale and Supply of Goods (HC 142)	Implemented	Supply of Goods and Services Act 1982 (c29)
96	Criminal Law: Offences Relating to Interference with the Course of Justice (HC 213)	Rejected	
<b>1980</b>			
99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (HC 369)	Implemented	Matrimonial Homes and Property Act 1981 (c24)
102	Criminal Law: Attempt and Impossibility in Relation to Attempt, Conspiracy and Incitement (HC 646)	Implemented	Criminal Attempts Act 1981 (c47)
104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd 8064)	Rejected	
<b>1981</b>			
110	Breach of Confidence (Cmnd 8388)	Rejected	
111	Property Law: Rights of Reverter (Cmnd 8410)	Implemented	Reverter of Sites Act 1987 (c15)
112	Family Law: The Financial Consequences of Divorce (HC 68)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)

LC No	Title	Status	Related Measures
<b>1982</b>			
114	Classification of Limitation in Private International Law (Cmnd 8570)	Implemented	Foreign Limitation Periods Act 1984 (c16)
115	Property Law: The Implications of Williams and Glyns Bank Ltd v Boland (Cmnd 8636)	Superseded	See City of London Building Society v Flegg [1988] AC 54
116	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (HC 513)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
117	Family Law: Financial Relief after Foreign Divorce (HC 514)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
118	Family Law: Illegitimacy (HC 98)	Implemented	Family Law Reform Act 1987 (c42)
<b>1983</b>			
121	Law of Contract: Pecuniary Restitution on Breach of Contract (HC 34)	Rejected	
122	The Incapacitated Principal (Cmnd 8977)	Implemented	Enduring Powers of Attorney Act 1985 (c29)
123	Criminal Law: Offences relating to Public Order (HC 85)	Implemented	Public Order Act 1986 (c64)
124	Private International Law: Foreign Money Liabilities (Cmnd 9064)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
125	Property Law: Land Registration (HC 86)	Implemented	Land Registration Act 1986 (c26)
<b>1984</b>			
127	Transfer of Land: The Law of Positive and Restrictive Covenants (HC 201)	Rejected	
132	Family Law: Declarations in Family Matters (HC 263)	Implemented	Family Law Act 1986 (c55), Part III
134	Law of Contract: Minors' Contracts (HC 494)	Implemented	Minors' Contracts Act 1987 (c13)
137	Private International Law: Recognition of Foreign Nullity Decrees (SLC 88) (Cmnd 9347)	Implemented	Family Law Act 1986 (c55), Part II
<b>1985</b>			
138	Family Law: Conflicts of Jurisdiction (SLC 91) (Cmnd 9419)	Implemented	Family Law Act 1986 (c55), Part I
141	Covenants Restricting Dispositions, Alterations and Change of User (HC 278)	Implemented in part	Landlord and Tenant Act 1988 (c26)
142	Forfeiture of Tenancies (HC 279)	Rejected	
143	Criminal Law: Codification of the Criminal Law: A Report to the Law Commission (HC 270)	Superseded	See LC 177
145	Criminal Law: Offences against Religion and Public Worship (HC 442)	Implemented	Criminal Justice and Immigration Act 2008 (c4)
146	Private International Law: Polygamous Marriages (SLC 96) (Cmnd 9595)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
147	Criminal Law: Poison Pen Letters (HC 519)	Implemented	Malicious Communications Act 1988 (c27)
148	Property Law: Second Report on Land Registration (HC 551)	Implemented	Land Registration Act 1988 (c3)

LC No	Title	Status	Related Measures
149	Criminal Law: Report on Criminal Libel (Cmnd 9618)	Rejected	
151	Rights of Access to Neighbouring Land (Cmnd 9692)	Implemented	Access to Neighbouring Land Act 1992 (c23)
152	Liability for Chancel Repairs (HC 39)	Rejected	
<b>1986</b>			
157	Family Law: Illegitimacy (Second Report) (Cmnd 9913)	Implemented	Family Law Reform Act 1987 (c42)
<b>1987</b>			
160	Sale and Supply of Goods (SLC 104) (Cm 137)	Implemented	Sale and Supply of Goods Act 1994 (c35)
161	Leasehold Conveyancing (HC 360)	Implemented	Landlord and Tenant Act 1988 (c26)
163	Deeds and Escrows (HC 1)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
164	Formalities for Contracts for Sale of Land (HC 2)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
165	Private International Law: Choice of Law Rules in Marriage (SLC 105) (HC 3)	Implemented	Foreign Marriage (Amendment) Act 1988 (c44)
166	Transfer of Land: The Rule in <i>Bain v Fothergill</i> (Cm 192)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
168	Private International Law: Law of Domicile (SLC 107) (Cm 200)	Rejected	
<b>1988</b>			
172	Review of Child Law: Guardianship (HC 594)	Implemented	Children Act 1989 (c41)
173	Property Law: Fourth Report on Land Registration (HC 680)	Superseded	See LC 235
174	Landlord and Tenant: Privity of Contract and Estate (HC 8)	Implemented	Landlord and Tenant (Covenants) Act 1995 (c30)
175	Matrimonial Property (HC 9)	Rejected	
<b>1989</b>			
177	Criminal Law: A Criminal Code (2 vols) (HC 299)	Superseded	Superseded by the criminal law simplification project: see Tenth Programme.
178	Compensation for Tenants' Improvements (HC 291)	Rejected	
180	Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC 318)	Implemented	Criminal Justice Act 1993 (c36), Part I
181	Trusts of Land (HC 391)	Implemented	Trusts of Land and Appointment of Trustees Act 1996 (c47)
184	Title on Death (Cm 777)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
186	Computer Misuse (Cm 819)	Implemented	Computer Misuse Act 1990 (c18)
187	Distribution on Intestacy (HC 60)	Implemented in part; Rejected in part	Law Reform (Succession) Act 1995 (c41)
188	Overreaching: Beneficiaries in Occupation (HC 61)	Implemented in part	Trusts of Land and Appointment of Trustees Act 1996 (c47)

LC No	Title	Status	Related Measures
<b>1990</b>			
192	Family Law: The Ground for Divorce (HC 636)	Implemented	Family Law Act 1996 (c27), Part II (enacted, but never brought into force)
193	Private International Law: Choice of Law in Tort and Delict (SLC 129) (HC 65)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
<b>1991</b>			
194	Distress for Rent (HC 138)	Implemented in part; Rejected in part	Tribunals, Courts and Enforcement Act 2007 (c15), Part III (enacted, but not yet brought into force)
196	Rights of Suit: Carriage of Goods by Sea (SLC 130) (HC 250)	Implemented	Carriage of Goods by Sea Act 1992 (c50)
199	Transfer of Land: Implied Covenants for Title (HC 437)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
201	Obsolete Restrictive Covenants (HC 546)	Rejected	
202	Corroboration of Evidence in Criminal Trials (Cm 1620)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
204	Land Mortgages (HC 5)	Rejected	
<b>1992</b>			
205	Rape within Marriage (HC 167)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
207	Domestic Violence and Occupation of the Family Home (HC 1)	Implemented	Family Law Act 1996 (c27), Part IV
208	Business Tenancies (HC 224)	Implemented	Regulatory Reform (Business Tenancies) (England and Wales) Order 2003
<b>1993</b>			
215	Sale of Goods Forming Part of a Bulk (SLC 145) (HC 807)	Implemented	Sale of Goods (Amendment) Act 1995 (c28)
216	The Hearsay Rule in Civil Proceedings (Cm 2321)	Implemented	Civil Evidence Act 1995 (c38)
217	Effect of Divorce on Wills (Cm 2322)	Implemented	Law Reform (Succession) Act 1995 (c41)
218	Legislating the Criminal Code: Offences against the Person and General Principles (Cm 2370)	Implemented in part	Domestic Violence Crime and Victims Act 2004 (c28)
219	Contributory Negligence as a Defence in Contract (HC 9)	Rejected	
<b>1994</b>			
220	Delegation by Individual Trustees (HC 110)	Implemented	Trustee Delegation Act 1999 (c15)
221	Termination of Tenancies (HC 135)	Superseded	See LC 303
222	Binding Over (Cm 2439)	Implemented in part	In March 2007, the President of the Queen's Bench Division issued a Practice Direction
224	Structured Settlements (Cm 2646)	Implemented	Finance Act 1995 (c4); Civil Evidence Act 1995 (c38); Damages Act 1996 (c48)
226	Judicial Review (HC 669)	Implemented in part	Housing Act 1996 (c52); Access to Justice Act 1999 (c22); Tribunals, Courts and Enforcement Act 2007 (c15)

LC No	Title	Status	Related Measures
227	Restitution: Mistakes of Law (Cm 2731)	Implemented in part; Rejected in part	See Kleinwort Benson v Lincoln City Council [1999] 2 AC 349
228	Conspiracy to Defraud (HC 11)	Implemented	Theft (Amendment) Act 1996 (c62)
<b>1995</b>			
229	Intoxication and Criminal Liability (HC 153)	Superseded	See LC 314
230	The Year and a Day Rule in Homicide (HC 183)	Implemented	Law Reform (Year and a Day Rule) Act 1996 (c19)
231	Mental Incapacity (HC 189)	Implemented	Mental Capacity Act 2005 (c9)
235	Land Registration: First Joint Report with HM Land Registry (Cm 2950)	Implemented	Land Registration Act 1997 (c2)
236	Fiduciary Duties and Regulatory Rules (Cm 3049)	Rejected	
<b>1996</b>			
237	Involuntary Manslaughter (HC 171)	Implemented in part; Superseded in part	Corporate Manslaughter and Corporate Homicide Act 2007 (c19); see LC 304
238	Responsibility for State and Condition of Property (HC 236)	Accepted in part but will not be implemented; Rejected in part	
242	Contracts for the Benefit of Third Parties (Cm 3329)	Implemented	Contracts (Rights of Third Parties) Act 1999 (c31)
243	Money Transfers (HC 690)	Implemented	Theft (Amendment) Act 1996 (c62)
<b>1997</b>			
245	Evidence in Criminal Proceedings: Hearsay (Cm 3670)	Implemented	Criminal Justice Act 2003 (c44)
246	Shareholder Remedies (Cm 3759)	Implemented	Companies Act 2006 (c46)
247	Aggravated, Exemplary and Restitutionary Damages (HC 346)	Rejected	
<b>1998</b>			
248	Corruption (HC 524)	Superseded	See LC 313
249	Liability for Psychiatric Illness (HC 525)	Rejected	
251	The Rules against Perpetuities and Excessive Accumulations (HC 579)	Implemented	Perpetuities and Accumulations Act 2009 (c18)
253	Execution of Deeds and Documents (Cm 4026)	Implemented	Regulatory Reform (Execution of Deeds and Documents) Order 2005
255	Consents to Prosecution (HC 1085)	Accepted	(Advisory only, no draft Bill)
<b>1999</b>			
257	Damages for Personal Injury: Non-Pecuniary Loss (HC 344)	Implemented in part; Rejected in part	See Heil v Rankin [2000] 3 WLR 117
260	Trustees' Powers and Duties (SLC 172) (HC 538; SE2)	Implemented	Trustee Act 2000 (c29)
261	Company Directors: Regulating Conflicts of Interests (SLC 173) (Cm 4436; SE/1999/25)	Implemented	Companies Act 2006 (c46)
262	Damages for Personal Injury: Medical and Nursing Expenses (HC 806)	Rejected	
263	Claims for Wrongful Death (HC 807)	Rejected	

LC No	Title	Status	Related Measures
<b>2001</b>			
267	Double Jeopardy and Prosecution Appeals (Cm 5048)	Implemented	Criminal Justice Act 2003 (c44)
269	Bail and the Human Rights Act 1998 (HC 7)	Implemented	Criminal Justice Act 2003 (c44)
270	Limitation of Actions (HC 23)	Rejected	
271	Land Registration for the Twenty-First Century (jointly with HM Land Registry) (HC 114)	Implemented	Land Registration Act 2002 (c9)
272	Third Parties – Rights against Insurers (SLC 184) (Cm 5217)	Implemented	Third Parties (Rights Against Insurers) Act 2010 (c10)
273	Evidence of Bad Character in Criminal Proceedings (Cm 5257)	Implemented	Criminal Justice Act 2003 (c44)
<b>2002</b>			
276	Fraud (Cm 5560)	Implemented in part	Fraud Act 2006 (c35)
277	The Effective Prosecution of Multiple Offending (Cm 5609)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
<b>2003</b>			
281	Land, Valuation and Housing Tribunals: The Future (Cm 5948)	Rejected	
282	Children: Their Non-accidental Death or Serious Injury (Criminal Trials) (HC 1054)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
283	Partnership Law (SLC192) (Cm 6015; SE/2003/299)	Implemented in part; Accepted in part; Rejected in part	The Legislative Reform (Limited Partnerships) Order 2009
284	Renting Homes (Cm 6018)	Superseded	See LC 297
286	Towards a Compulsory Purchase Code: (1) Compensation (Cm 6071)	Accepted but will not be implemented	
<b>2004</b>			
287	Pre-judgment Interest on Debts and Damages (HC 295)	Rejected	
289	In the Public Interest: Publication of Local Authority Inquiry Reports (Cm 6274)	Accepted but will not be implemented	
290	Partial Defences to Murder (Cm 6301)	Implemented	Coroners and Justice Act 2009 (c25)
291	Towards a Compulsory Purchase Code: (2) Procedure (Cm 6406)	Accepted but will not be implemented	
<b>2005</b>			
292	Unfair Terms in Contracts (SLC 199) (Cm 6464; SE/2005/13)	Accepted	
295	The Forfeiture Rule and the Law of Succession (Cm 6625)	Implemented	Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011
296	Company Security Interests (Cm 6654)	Pending	
<b>2006</b>			
297	Renting Homes: The Final Report (Cm 6781)	Rejected for England, Accepted in principle for Wales	
300	Inchoate Liability for Assisting and Encouraging Crime (Cm 6878)	Implemented	Serious Crime Act 2007 (c27)
301	Trustee Exemption Clauses (Cm 6874)	Implemented	See Written Answer, Hansard (HC), 14 September 2010, vol 515, col 38WS

LC No	Title	Status	Related Measures
302	Post-Legislative Scrutiny (Cm 6945)	Implemented	See Post-Legislative Scrutiny: The Government's Approach (2008) Cm 7320
303	Termination of Tenancies (Cm 6946)	Pending	
304	Murder, Manslaughter and Infanticide (HC 30)	Implemented in part; Rejected in part	Coroners and Justice Act 2009 (c25)
<b>2007</b>			
305	Participating in Crime (Cm 7084)	Pending	
307	Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182)	Pending	
<b>2008</b>			
309	Housing: Proportionate Dispute Resolution (Cm 7377)	Accepted in part	
312	Housing: Encouraging Responsible Letting (Cm 7456)	Rejected	
313	Reforming Bribery (HC 928)	Implemented	Bribery Act 2010 (c23)
<b>2009</b>			
314	Intoxication and Criminal Liability (Cm 7526)	Rejected	
315	Capital and Income in Trusts: Classification and Apportionment (HC 426)	Implemented	Trusts (Capital and Income) Act 2013
317	Consumer Remedies for Faulty Goods (Cm 7725)	Accepted in part. Rejected in part	
318	Conspiracy and Attempts (HC 41)	Accepted but will not be implemented	
319	Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (Cm 7758)	Implemented	Consumer Insurance (Disclosure and Representation) Act 2012 (c6)
<b>2010</b>			
320	The Illegality Defence (HC 412)	Rejected	
322	Administrative Redress: Public Bodies and the Citizen (HC 6)	Pending	
324	The High Court's Jurisdiction in Relation to Criminal Proceedings (HC 329)	Pending	
<b>2011</b>			
325	Expert Evidence in Criminal Proceedings in England and Wales (HC 829)	Pending	
326	Adult Social Care (HC 941)	Implemented	Care Act 2014 and Social Services and Well-Being (Wales) Act 2014
327	Making Land Work: Easements, Covenants and Profits à Prendre (HC 1067)	Pending	
329	Public Service Ombudsmen (HC 1136)	Pending	
331	Intestacy and Family Provision Claims on Death (HC 1674)	Implemented in part	Inheritance and Trustees' Powers Act 2014
<b>January to March 2012</b>			
332	Consumer Redress for Misleading and Aggressive Practices (Cm 8323)	Implemented	Consumer Protection (Amendment) Regulations 2014
335	Contempt of Court: Scandalising the Court (HC 839)	Implemented	Crime and Courts Act 2013 (s33)

LC No	Title	Status	Related Measures
<b>2013</b>			
336	The Electronic Communications Code (HC 1004)	Pending	
337	Renting Homes in Wales/Rhentu Cartrefi yng Nghymru (Cm 8578)	Accepted by the Welsh Government	
339	Level Crossings (Cm 8711)	Pending	
340	Contempt of Court (1): Juror Misconduct and Internet Publications (HC 860)	Accepted in part. Pending in part	
<b>2014</b>			
342	Wildlife Law: Control of Invasive Non-native Species (HC 1039)	Pending	
343	Matrimonial Property, Needs and Agreements (HC 1039)	Accepted in part. Pending in part	
344	Contempt of Court (2): Court Reporting (HC 1162)	Pending	
345	Regulation of Health Care Professionals: Regulation of Social Care Professionals in England (Cm 8839 / SG/2014/26 / NILC 18 (2014)) (Published 2 April 2014)	Pending	
346	Patents, Trade Marks and Design Rights: Groundless Threats (Cm 8851) (Published 15 April 2014)	Pending	



# Appendix B

## The cost of the Commission

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

	2012/2013 (April/March)		2013/2014 (April/March)	
	£000	£000	£000	£000
Commissioner salaries (including ERNIC)	550.6		534.1	
Staff costs <sup>1</sup>	3101.0		3223.7	
		<b>3651.6</b>		<b>3757.8</b>
Research and consultancy	16.2		23.7	
Communications (printing and publishing, media subscriptions, publicity and advertising)	151.3		130.8	
Design, print and reprographics				
Events and conferences (non-training)				
Information technology				
Equipment maintenance				
Library services (books, articles and online subscriptions)				
Postage and distribution				
Telecommunications				
Rent (net cost) for accommodation (met by MoJ)	546.3		546.3	
Travel and subsistence (includes non-staff)	38.0		18.5	
Stationery and office supplies	58.6		39.5	
Recruitment				
Training and professional bodies membership				
Recognition and reward scheme awards				
Childcare vouchers				
Health and safety equipment/services				
Hospitality	2.1		0.8	
		<b>812.5</b>		<b>759.6</b>
<b>TOTAL</b>		<b>4464.1</b>		<b>4517.4</b> <sup>2</sup>

<sup>1</sup> Includes ERNIC, ASLC, bonuses (not covered under recognition and reward scheme), secondees and agency staff.

<sup>2</sup> Figures will form part of the wider Ministry of Justice set of accounts which will be audited.

# Appendix C

## Targets for 2013–14 and 2014–15

### C.1 Targets and outcomes 2013–14

Summary of our performance during the year 2013–14 and how we met our targets.

Target	Outcome
<b>To complete reports on:</b>	
Contempt of Court	First report (Juror Misconduct and Internet Publications) published 9 December 2013 (LC340) Second report (Court Reporting) published 26 March 2013 (LC344)
Data Sharing between Public Bodies	Carried forward to 2014–15
Insurance contract law	Carried forward to 2014–15
Kidnapping	Carried forward to 2014–15
Level crossings	Published 25 September 2013 (LC339)
Matrimonial property, needs and agreements	Published 27 February 2014 (LC343)
Patents, trade marks and design rights: groundless threats	Published 15 April 2014 (LC346)
Regulation of health and social care professionals	Published 2 April 2014 (LC345)
Taxi and private hire services	Carried forward to 2014–15
Unfitness to plead	Carried forward to 2014–15
Wildlife law: control of invasive non-native species	Published 11 February 2014 (LC342)
<b>To complete consultations on:</b>	
Data sharing between public bodies	Published 11 January 2011 (LCCP198)
Hate crime	Published 27 June 2013 (LCCP213)

### C.2 Targets 2014–15

Summary of our major targets for 2014–15. We will also be commencing work on a number of the projects in our 12th Programme during the year.

Target	
<b>To publish reports on:</b>	<b>To complete consultations on:</b>
Conservation covenants	Charity law, selected issues
Contempt of court (contempt in the face of the court)	Electoral law
Contempt of court (contempt by publication)	Statute law repeals: churches
Data sharing between public bodies	Statute law repeals: trade and industry legislation
Fiduciary duties of investment intermediaries	
Hate crime	
Insurance contract law	
Kidnapping	
Public nuisance and outraging public decency	
Rights to light	
Wildlife law	

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