



Ministry  
of Justice

# **Report on the implementation of Law Commission proposals**

January 2017

# **Report on the implementation of Law Commission proposals**

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

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## Introduction

I am pleased to present this report on the implementation of Law Commission proposals. This is the sixth annual report to be presented following the passing of the Law Commission Act 2009. This Act places the Lord Chancellor under a duty to report to Parliament each year on the extent to which the Law Commission's proposals have been implemented by the Government. The report covers the period 12 January 2015 to 11 January 2016. During this year a number of Law Commission projects have been implemented, both those commissioned as part of their agreed reform programmes and those undertaken as additional referrals. These include Consumer Rights: Unfair Terms in Contracts & Consumer Remedies for Faulty Goods; and Contempt of Court (1): Juror Misconduct and Internet Publications.

In addition to these projects a number of Bills which implement Law Commission recommendations have received Royal Assent; for example, control orders for non-native species were introduced through the Infrastructure Act 2015.<sup>1</sup> In addition, changes to Insurance contract law received royal assent in the Insurance Act 2015; and two taxi and private hire measures which were included in the Deregulation Bill that received Royal Assent in March 2015.<sup>2</sup>

Work has also continued this year across the broad range of significant projects in the Law Commission's Twelfth Programme of Law Reform. These include the reform of sentencing procedure; the law applicable to Wales; the law on Bills of sale; and the law on Land Registration. We look ahead with interest to seeing these law reform projects develop towards a conclusion, working with the Commission to input as necessary on the individual projects.

Even given the need to reduce the deficit, we have continued to make noteworthy and substantial progress on the implementation of Law Commission proposals overall and their work continues to deliver real benefits for individuals and organisations in many areas of life following the celebration of their 50<sup>th</sup> anniversary last year.

**The Right Honourable Elizabeth Truss MP**  
**Lord Chancellor**

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<sup>1</sup> Wildlife Law: Control of invasive non-native species (LC342) (12.02.2015)

<sup>2</sup> Taxis and Private Hire Services (LC 347) (23.05.2014)

## Scope of the report

1. Section 3A of the Law Commissions Act 1965, as amended by section 1 of the Law Commission Act 2009, places a duty on the Lord Chancellor to report to Parliament each year on the extent to which the Law Commission proposals have been implemented by the Government.
2. This is the sixth annual report to be published by the Government under the Law Commission Act 2009. The report covers the period 12 January 2015 to 11 January 2016, but the text has also been updated to reflect any further progress between January and the publication date.
3. As provided for under the Law Commission Act 2009, the report covers Law Commission proposals that have been implemented by the Government during the Year; proposals that have not yet been implemented, including plans for implementation, and decisions taken not to implement proposals.
4. The scope of the report is in relation to the Law Commission in England and Wales. However, the report notes where projects have been conducted jointly with the Scottish Law Commission and Northern Ireland Law Commission. The report deals primarily with Law Commission proposals that are for HM Government to implement. A separate report has been produced for the first time this year, for those proposals implemented by the Welsh Government, so those are not detailed in this report.

## Proposals that have been implemented

### Consumer Rights: Unfair Terms in Contracts and Consumer Remedies for Faulty Goods

#### *Unfair Terms in Contracts*<sup>3</sup>

5. In 2005 the Law Commission and Scottish Law Commission published a report on unfair terms in contracts which recommended a simplified regime, bringing together the UK law (set out in the Unfair Contract Terms Act 1977) and the regulations implementing the EU Directive.
6. In May 2012, the Government asked the two Commissions to update its recommendations relating to consumers with a view to their implementation. Particularly, issues had arisen in the 2009 litigation over bank charges for unauthorised overdraft. Since 1994 the courts have had power to assess the fairness of terms in consumer contracts, but may not consider the amount of the price. While the Court of Appeal<sup>4</sup> believed that overdraft charges could be assessed for fairness, the Supreme Court<sup>5</sup> held that they could not be assessed because they were price terms.
7. In March 2013, the Commissions published an updated report. It recommended that the courts should not interfere with prices which are transparent and prominent; however, where charges are tucked into small print, the courts should have the power to assess them for fairness.
8. The Government adopted all the recommendations in the two Commissions' updated report and they were included in Part 2 of the Consumer Rights Act 2015 which came into force on 1 October 2015.

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<sup>3</sup> Consumer Rights: Unfair Terms in Contracts (LC 292) (19.03.2013)

<sup>4</sup> In the case "The Office of Fair Trading v Abbey National PLC and others" decision reference EWCA Civ 116.

<sup>5</sup> In the case "The Office of Fair Trading v Abbey National PLC and others" decision reference [2009] UKSC 6.



### ***Consumer remedies for faulty goods***<sup>6</sup>

9. UK consumers have a legal right to reject faulty goods. This provides consumers with the right to a refund if they act within a reasonable time.
10. In 2009 the Law Commission and the Scottish Law Commission recommended that the right to reject should be retained in the UK as a short-term remedy of first instance. However, more certainty was needed over how long the right lasted. The Commissions recommended that, in normal circumstances, a consumer should have 30 days to return faulty goods and receive a refund. The Government accepted the need for a clear time limit. The 30 day period, with provision for a shorter period for certain items such as perishable goods, is included in Part 1, Chapter 2 of the Consumer Rights Act 2015.
11. To prevent consumers from being locked into a cycle of failed repairs, the report recommended that consumers should be entitled to escape from a contract after one failed repair or one failed replacement. This recommendation is also included in the Consumer Rights Act 2015 which came into force on 1 October 2015.

### ***Contempt of Court (1): Juror Misconduct and Internet Publications***<sup>7</sup>

12. In December 2013 the Law Commission published a report containing recommendations for law reform relating to contempt by jurors and to aspects of contempt by publication as they relate to modern media. This report is the first of three planned for the review of the law of contempt. The report contains recommendations to reform the law of strict liability contempt relating to archived online material and to modernise the way in which juror misconduct is handled including by creating offences of jurors researching their cases and to provide limited exceptions to the prohibition on jurors disclosing deliberations, for example, in order to uncover miscarriage of justice.
13. The recommendations were largely incorporated in the Criminal Justice and Courts Bill introduced in February 2014 but the strict liability provisions were later dropped. The remaining provisions relating to juror misconduct remained in the Bill which received Royal Assent on 12 February 2015. The juror misconduct provisions came into force on 13 April 2015.

### ***Third Parties (Rights against Insurers)***<sup>8</sup>

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

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<sup>6</sup> Consumer Rights: Consumer Remedies for Faulty Goods (LC 317) (04.11.2009)

<sup>7</sup> Contempt of Court (1): Juror Misconduct and Internet Publications (LC 340) (09.12.2013)

<sup>8</sup> Third Parties (Rights against Insurers) (LC 272) (31.07.2001)

15. The 2013 Implementation Report indicated that the Government was working towards implementation of the 2010 Act but had provisionally concluded that it would have to be amended before it could be commenced. The 2014-2015 report stated that some of the necessary amendments were made by the Insurance Act 2015 and that the Ministry of Justice was working with the Law Commission to draft regulations to effect the remainder. The regulations<sup>9</sup> were made on 28 April 2016. The 2010 Act as amended by the Insurance Act 2015 and the regulations was brought fully into force on 1 August 2016.<sup>10</sup>

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<sup>9</sup> Third Parties (Rights against Insurers) Regulations 2016  
<http://www.legislation.gov.uk/id/uksi/2016/570>

<sup>10</sup> Third Parties (Rights against Insurers) Act 2010 Commencement Order 2016  
<http://www.legislation.gov.uk/id/uksi/2016/550>

## Proposals that have not yet been implemented

### (i) Proposals in the process of implementation

#### *Fiduciary Duties of Investment Intermediaries*<sup>11</sup>

16. The Law Commission published its report on fiduciary duties of investment intermediaries in July 2014. The report explained the nature of fiduciary duties and other duties to act in the best interests of savers, and clarified how far those who invest on behalf of others may take account of factors such as social and environmental impacts and ethical standards. The report concludes that legislation on this issue is not required. The Law Commission drafted Guidance for Trustees of Pension Schemes alongside the report and recommended that the legal position set out in this guidance should be reflected in regulatory guidance.
17. The report also supported the Government's reforms to the governance of contract-based workplace pension schemes, including the new requirement on contract-based pension providers to establish Independent Governance Committees.
18. The Government published its response to the Law Commission in October 2014. It welcomed the Commission's clear guidance that fiduciaries such as pension scheme trustees have a duty to consider any factors which are, or may be, financially material to the performance of an investment – including over the long-term. The report makes very clear that this should include taking into account environmental and social, and corporate governance factors and wider macroeconomic considerations, where trustees think these may be financially material.
19. The Government expressed the hope that the Law Commission's report will remove any remaining misconception that fiduciary duties require trustees to focus on maximising short-term returns alone. Evidence suggests that progress has been made in this respect. For instance, the Pensions and Lifetime Savings Association has recently reported that all respondents to its latest annual engagement survey agreed that active consideration of risks to a company's long-term sustainability, including environmental, social and governance factors, is compatible with fiduciary duties.
20. The Government also welcomed the Law Commission's conclusion that the law is sufficiently flexible to allow trustees to make investment decisions that are based on non-financial factors, provided they have good reason to think that scheme members share the concern, and there is no risk of significant financial detriment to the fund.
21. The Law Commission report made a number of specific recommendations to Government departments, and to the Financial Conduct Authority (FCA) and the Pensions Regulator (TPR), aimed at embedding its findings in relevant regulations and guidance, and addressing other issues identified in the course of the review. A brief summary of these recommendations, the Government's response, and progress with their implementation, is set out below:

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<sup>11</sup> Fiduciary Duties of Investment Intermediaries (LC 350) (01.07.2014)

22. Recommendation 1 asked The Pensions Regulator to consider how it can give greater authority to the Law Commission's guidance in its own guidance materials. The Pensions Regulator has since updated its Trustee toolkit to reflect the Law Commission's findings; provided links to the Law Commission guidance on its website and in the Toolkit; and publicised the guidance via email to trustees. The Regulator has issued detailed guidance on integrated risk management and investment strategy to supplement its Code of Practice on Funding Defined Benefits. It is now consulting on a revised draft Code of Practice for trust-based defined contribution schemes, which will be introduced in 2016, and also supplemented with additional guidance material. It has sought to ensure that these guidance materials reflect the findings of the Law Commission review.
23. Recommendation 3 asked the Government to review several aspects of the Occupational Pension Schemes Investment Regulations 2005. In response, the Government agreed to review two of aspects of these regulations. The Government consulted in February 2015 on whether to:
- amend the reference to "social, environmental or ethical considerations" to reflect the distinction between financial factors and non-financial factors identified by the Law Commission review; and
  - amend the regulations governing the Statement of Investment Principles to require trustees to state their policy (if any) on stewardship, with reference to the Stewardship Code, or explain why they have chosen not to do so.
24. The Government responded to this consultation in December 2015. Having considered the responses carefully it has decided that this is an area where guidance, including that from the Pensions Regulator, can be more effective than regulatory change, in particular because it can more easily be kept up to date over time. The Government has therefore decided not to amend the Investment Regulations at this time. It has however sought further evidence on how pension schemes currently make information about their approach to investment and stewardship available, with a view to improving practice in this area.
25. Recommendation 4 asked the Government to review aspects of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009. The Government published a consultation document in November 2015 on draft regulations to replace these regulations as part of wider reforms to the Local Government Pension Scheme. This document set out why, after due consideration, it would not be necessary or appropriate explicitly to transpose article 18(1) of the IORP Directive in the new regulations. The Government has however removed the requirement on schemes to review investment management performance at least every three months, from the draft new regulations, in line with the Law Commission's recommendation.
26. Recommendations 2, 5 and 6 relate to the introduction of Independent Governance Committees (IGCs) within firms operating workplace personal pension schemes. The FCA consulted in August 2014 on new rules governing these IGCs which impose a duty on them to act in the interests of scheme members, in line with the Law Commission's recommendation 5. These rules came into force in April 2015. The FCA has also produced guidance for firms to the effect that they should consider whether to indemnify IGC members, although they stopped short of including a requirements to indemnify members in their rules (Law Commission recommendation 6), noting that any legal action is likely to be against the pension provider, with whom the

policyholder has a contract, rather than the IGC. In line with Recommendation 2, the FCA continues to hold discussions with IGCs about their approach to assessing value for money offered by schemes.

27. Recommendations 7 and 8 asked the Government, as part of its commitment to review the charge cap on default funds in defined contribution pension schemes in April 2017, to consider i) whether the cap has incentivised short-term trading over long-term investments, and ii) whether there is sufficient transparency about stock lending activity and associated fees. The Government welcomed this recommendation and will confirm the timetable and scope of this review in due course.
28. Recommendation 9 asked to Government to review the current operation of the system of intermediated shareholding. The Government welcomed the Law Commission's analysis of the law of intermediated securities and committed to considering whether our system for holdings of dematerialised securities works effectively and efficiently for both investors and issuers, in particular in the context of work to implement the requirement, in the EU Central Securities Depositories Regulation (CSDR), for dematerialisation (the abolition of paper certificates) for transferable securities admitted to trading venues, by 2023 for newly issued securities, and by 2025 for all securities.
29. BIS has subsequently commissioned external research into the operation of the intermediated shareholding system and published this research in January 2016. This research will inform a consultation on the options and timetable for dematerialisation in the first half of 2016, acknowledging that there may be a case for bringing the dematerialisation forward. The Government is already working with industry stakeholders to develop these options. The Government will also continue to take a lead in negotiating improvements to the substantive laws on intermediated securities at both a European and international level.
30. CSDR also mandates for the first time that direct participants in Central Securities Depositories, such as CREST, must offer their clients a choice of both individually segregated ('designated') and omnibus ('pooled') accounts on reasonable commercial terms and disclose the protections afforded and costs of each level of segregation they offer. This is intended to provide greater choice and transparency in the system of intermediated shareholdings.

### ***Patents Trademarks and Design Rights: Unjustified Threats***<sup>12</sup>

31. Patents, trademarks and design rights are valuable intellectual property rights and a vital foundation of economic growth. These rights ensure that innovation is rewarded and encouraged. The law provides a means by which they can be effectively enforced; through legal proceedings for infringement. However, making unjustified or groundless threats to sue a competitor for infringement can have unfair and harmful effects on legitimate business activities. Intellectual property law therefore has long-standing provisions which protect certain businesses from being harmed by unjustified threats. The Law Commission has now published its final report (LC360) on this project. The report contains a draft bill, which would implement the recommended reforms previously accepted by Government. The draft bill also refines the small number of recommendations which Government accepted with qualifications. The final report

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<sup>12</sup> Patents Trademarks and Design Rights: Unjustified Threats (LC 346) (15.04.14)

also makes two new recommendations to ensure that the reforms extend to the proposed new Unitary Patent, likely to take effect in 2017.

32. The Government has accepted the recommendations made in the final report and has recently consulted on whether the Law Commissions draft Intellectual Property (Unjustified Threats) Bill is suitable to be introduced into Parliament via the special procedure for Law Commission recommendations. Stakeholder views indicate general support for use of the special procedure route and the draft bill. The Government looks forward to making further successful progress towards reform.

***Charity Law: Social Investment by Charities***<sup>13</sup>

33. The Government is committed to growing the market for social investment; this is the use of repayable capital to enable the growth of organisations that deliver a social impact as well as a financial return to investors. Charities themselves can make use of social investment to further their charitable mission and thereby maximise their impact. In the past there has been some confusion around this point, so Government asked the Law Commission to look into the relevant law. The Law Commission published its findings and recommendations in September 2014.
34. The Law Commission recommended that a new statutory power should be created conferring on charity trustees the power to make social investments. A number of attendant duties were also recommended. Legislation to this effect has now been passed by Parliament as part of the Charities (Protection and Social Investment) Act 2016. The Law Commission also recommended that the relevant guidance provided by the Charity Commission (CC14) be updated to reflect the change in law, as well as amending its guidance on the mechanisms for releasing permanent endowment. The Government expects this to be updated shortly.
35. The Law Commission recommended that HM Treasury amends legislation concerning approved charitable investments and loans to reflect the recommended statutory power of social investment. It also recommended that HMRC makes similar changes to their guidance pending the changes in legislation noted above. Government will consider this in the light of the new statutory investment power.
36. The Law Commission also recommended that HM Treasury introduce a procedure by which charities can obtain prior clearance from HMRC as to the tax treatment of a proposed social investment. This recommendation was rejected however, because it was considered unlikely that it would deliver sufficient cost benefit overall.

***Insurance Contract Law: Business Disclosure, Warranties and Insurers' Remedies for Fraudulent Claims and Late Payment***<sup>14</sup>

37. When taking out insurance, an insured party is required to disclose all material facts to the insurer; if this does not happen, the insurer may avoid the policy and refuse all claims. This has long been criticised for being overly harsh on the insured. Following recommendations from the Law Commission and Scottish Law Commission the law was reformed for consumers in 2012. In July 2014, the two Law Commissions recommended reform for business insurance: the duty of disclosure should be

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<sup>13</sup> Charity Law: Social Investment by Charities (CP 216) (24.09.14)

<sup>14</sup> Insurance Contract Law (LC353) (15.07.2014)

replaced with a duty of fair presentation, under which the insurer should be required to play more active role. Furthermore, the remedy of avoidance should be replaced with more proportionate remedies. The report also recommended that insurers should no longer be entitled to refuse claims for breaches of irrelevant warranties, and that insurers remedies for fraudulent claims should be clarified.

38. These recommendations were included in a Bill which passed through the special procedure for uncontroversial Law Commission Bills. The Insurance Act 2015 received Royal Assent on 12 March 2015 and came into force on 12 August 2016.
39. The report also included provisions on late payment. The Government strongly believes that insurers should pay claims promptly and has therefore chosen to sponsor the Commission's recommendations on late payment, which will introduce new legal requirements through the Enterprise Bill. At the time of writing this was before Parliament and was expected to receive Royal Assent shortly. The late payments clause will introduce into all contracts of insurance a legal requirement to pay claims within a reasonable time and entitle policyholders to damages where they are paid late. The clause was excluded from the Insurance Act 2015, which implemented the other recommendations to improve insurance contract law, as it was considered too controversial for the special Law Commission Bill procedure.

## **(ii) Proposals awaiting a Government decision on implementation**

### ***Marriage Law***<sup>15</sup>

40. The previous Government consulted on whether the law should be changed to allow non-religious belief organisations, including humanists, to conduct legal marriages. They concluded that there were broader implications for marriage law and asked the Law Commission whether it would conduct a review of the law on marriage ceremonies. The Law Commission undertook a preliminary scoping study and reported in December. The Government is carefully considering the report and will respond in due course.

### ***Rights to Light***<sup>16</sup>

41. A right to light is an easement that gives a landowner the right to receive light through defined apertures in buildings on his or her land. The owner of land that is burdened by the right cannot substantially interfere with it - for example by erecting a building in a way that blocks the light - without the consent of the benefiting owner.
42. Rights to light are valuable: they give landowners certainty that natural light will continue to be enjoyed by a property – increasing its utility, value and amenity. The right may enable landowners to prevent construction that would interfere with their rights or, in some circumstances, to have a building demolished.
43. The Law Commission undertook a project on rights to light because of concerns about a lack of clarity and certainty in the current law, and because of the potential for rights to light disputes to be a major cause of delay and expense in the course of land

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<sup>15</sup> Marriage Law – a scoping paper (17.12.2015)

<sup>16</sup> Rights to Light (LC356) (04.12.14)

development. The project considered the balance between competing interests that the law strikes when dealing with rights to light and about improving the way that the law intervenes when that balance is disturbed.

44. The Law Commission published its final report in December 2014 and it is expected that a decision will be reached on implementation in 2016.

***Public Services Ombudsman***<sup>17</sup>

45. The Law Commission's 2011 report focuses on five ombudsmen: the Parliamentary Commissioner; the Health Service Ombudsman; the Local Government Ombudsman; the Public Services Ombudsman for Wales; and the Housing Ombudsman.
46. The report makes a series of recommendations aimed at improving access to the public services ombudsmen, ensuring that they have the freedom to continue their valuable work and improving their independence and accountability. The report's key recommendation is for legislative reform to enable the creation of a single Public Service Ombudsman.
47. The need for a move to a single Public Service Ombudsman has been echoed in subsequent stakeholder studies and reports and, in the 2015 Queen's Speech, the Government announced that it would bring forward draft Public Service Ombudsman legislation. Following a subsequent public consultation exercise, which supported the proposed reform, the Government intends to publish draft legislation in due course.

***Matrimonial Property, Needs and Agreements***<sup>18</sup>

48. The Law Commission published its final report on Matrimonial Property, Needs and Agreements in February 2014. The report makes recommendations to clarify the law of financial needs on divorce or dissolution of a civil partnership which would ensure that the law is applied consistently by the courts and reinforces judicial best practice. In addition, it investigates whether an aid to calculation of spousal support could be devised. Finally, it recommends the introduction of qualifying nuptial agreements in England and Wales which would be enforceable contracts, with a number of related provisions and safeguards, enabling couples to make binding arrangements for the financial consequences of divorce or dissolution.
49. The Government has accepted and taken action on the two main proposals in the report which do not require legislative reform. First, the Family Justice Council has developed and recently introduced financial guidance for separating couples and unrepresented litigants. Second, the Ministry of Justice is working to develop an online tool supported by formulae to assist separating couples and help provide confidence in making private financial arrangements on divorce. Officials will work with practitioners to develop and refine this tool, which will be part of wider work to support and incentivise separating and separated couples to make their own arrangements wherever possible.

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<sup>17</sup> Public Service Ombudsman (LC 329) (14.07.11)

<sup>18</sup> Matrimonial Property, Needs and Agreements (LC 343) (27.02.2014)



50. The government is considering the Law Commission's recommendation on qualifying nuptial agreements as part of a wider consideration of private family law reforms and will respond in due course.

### **Electronic Communications Code**<sup>19</sup>

51. The Electronic Communications Code is the statutory regime that governs relationships between landowners and communications operators when placing communications infrastructure on public and private land. This project focused on private property rights between landowners and electronic communications operators. It did not consider planning law.

52. In February 2013, the Law Commission provided a series of recommendations which formed the basis of a revised Electronic Communications Code. The proposed changes to the Code would set out the legal position in clear terms, provide the clarity that the current Code lacks, and provide an efficient forum for dispute resolution.

53. The Department for Culture Media and Sport announced in December that they would reform the Code based on the Law Commission's recommendations, and prepared legislation which was tabled as an amendment to the Infrastructure Bill 2014-15 on the 8th January 2015. However, DCMS received representations raising technical issues on the draft Electronic Communications Code. In order to consider them further, the Government decided to withdraw the revised Code and conduct a consultation instead.

54. The Government published details of its revised proposals for a new Electronic Communications Code on 17 May 2016. The proposed reforms remain broadly aligned with the Law Commission's recommendations, with some key exceptions: in particular, Government has decided to adopt a different basis for the valuation of Code rights and to confer automatic rights to upgrade and share apparatus. The decision to introduce more ambitious reforms in these areas was reached following further consultation with stakeholders and the consideration of independent economic analysis, commissioned by Government.

55. The Government's proposals for reform of the Electronic Communications Code will be included in the Digital Economy Bill as announced in the Queen's Speech on 18 May 2016.

### **Property Rights for Cohabitants**<sup>20</sup>

56. The Law Commission published its report *Cohabitation: the Financial Consequences of Relationship Breakdown* in July 2007. This report recommended the creation of a statutory scheme giving property rights to qualifying cohabiting partners against each other on relationship breakdown. The Law Commission's report *Intestacy and Family Provision Claims on Death*, published in December 2011, also included recommendations relating to cohabiting partners. In particular, that report recommended giving qualifying cohabitants the same entitlement as a spouse or civil partner on intestacy and giving cohabiting partners more rights under the Inheritance (Provision for Family and Dependents) Act 1975.

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<sup>19</sup> Electronic Communications Code (LC 336) (28.02.2013)

<sup>20</sup> Cohabitation: the Financial Consequences of Relationship Breakdown (LC 307) (03.07.2007)

57. The Coalition Government announced in September 2011 that it did not intend to take forward the recommendations in the Law Commission's 2007 report in the current Parliament (2010-2015) because of major reforms already planned for the family justice system. In March 2013, the Coalition made a similar announcement regarding the cohabitation related recommendations in the 2011 report. The Government is still considering the proposals.

***Wildlife Law: Final Report***<sup>21</sup>

58. On 11 February 2014, the Law Commission published its first report on Wildlife Law: Control of Invasive Non-native Species. This project was part of a wider project on wildlife law brought forward at the request of Defra and the Welsh Government to be included in the Law Commission's 11<sup>th</sup> Programme of law reform. Some of the recommendations contained in that report were introduced in the Infrastructure Act 2015, which came into force in April last year.

59. On 10 November 2015, the Law Commission published its final Wildlife Law report and accompanying draft Bill. The Government will consider both over the coming months and issue its response in due course.

***Data Sharing between Public Bodies***<sup>22</sup>

60. The Law Commission completed their scoping report on data sharing between public bodies in July 2014 and found that there are both unnecessary obstacles to useful and legitimate data sharing and a lack of a clear and principled approach to proper safeguards for privacy. The report concluded that some of the obstacles stem from the law and some from other sources, such as institutional attitudes, incentives and disincentives, and made three key recommendations:

- (i) A full law reform project should be carried out to map, modernise, simplify and clarify the statutory provisions that permit and control data sharing. The project should consider how best to create a principled and clear legal structure for data sharing to meet the needs of society.
- (ii) The scope of the review should be extended beyond data sharing between public bodies to the disclosure of information by or from public bodies or other organisations carrying out publicly funded functions.
- (iii) The project should be conducted on a tripartite basis by the Law Commission of England and Wales, the Scottish Law Commission and the Northern Ireland Law Commission.

61. The Government welcomes the publication of the Law Commission scoping report on data sharing between public bodies and sent an interim response on 24 December 2014, which noted the usefulness of the scoping report and its resonance with the Government's work in the open policy making space. The open policy making process and subsequent public consultation has now concluded identifying a number of priority areas to be taken forward in the Digital Economy Bill. Government will continue to engage with representatives from the Law Commission to see where further work could be undertaken. Non-legal barriers will continue to be addressed through work

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<sup>21</sup> Wildlife Law: Final report (LC 362) (10.11.2015)

<sup>22</sup> Data Sharing between Public Bodies (LC 351) (11.07.14)

such as the Centre of Excellence for Information Sharing and the government data programme.

### **Conservation Covenants<sup>23</sup>**

62. The Law Commission report (with an accompanying draft Bill) published on 24 June 2014 proposed introducing a new statutory scheme of conservation covenants. A conservation covenant is a voluntary agreement between a landowner and responsible body (charity, public body or local/central Government) to do or not do something on the land for a conservation purpose. This might be, for example, an agreement to maintain woodland and allow public access to it, or to refrain from using certain pesticides on native vegetation. These agreements are long lasting and can continue after the landowner has parted with the land, ensuring that its conservation value is protected for the public benefit.
63. Conservation covenants are used in many other jurisdictions, but do not exist in the law of England and Wales. Instead, landowners and responsible bodies are relying on complex and expensive legal workarounds, or the limited number of existing statutory provisions that enable certain covenants to be enforced by specified bodies (for example, the National Trust). Under the scheme a conservation covenant would be formed by the agreement of two parties; be able to contain both restrictive and positive obligations; and be capable of binding the landowners' successors in title.
64. The Government issued its response to this report in early 2016.

### **Reforming the law on taxis and private hire services<sup>24</sup>**

65. The law that governs how the taxi and private hire trades operate is old, inconsistent and struggling to deal with internet-driven changes in passenger behaviour. The Law Commission published its report on 23 May 2014 recommending reforms that would make the law clearer for those working in the taxi and private hire trades and their passengers.
66. The Commission's report recognises the value to passenger choice of the two-tier system of private hire vehicles – which must be pre-booked, and taxis – which can use ranks or ply for immediate hire. It makes recommendations to retain and reinforce the distinction. Passenger safety is at the forefront of the Commission's reforms. It is recommending that standards be set nationally for public safety, accessibility and environmental impact. For the first time, passengers of taxis and private hire vehicles could confidently expect consistent levels of safety and quality wherever they travel.
67. In the absence of a dedicated Taxi Bill in the final session of the last Parliament, two taxi and private hire measures were included in the Deregulation Bill which received Royal Assent in March 2015. These measures are among the Law Commission's recommendations and can be regarded as the first steps on a longer path of reform which will be continued in the event that a dedicated Taxi Bill is brought forward.

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<sup>23</sup> Conservation Covenants (LC 349) (24.06.2014).

<sup>24</sup> Taxis and Private Hire Services (LC 347) (23.05.2014)

### ***Hate Crime***<sup>25</sup>

68. This project was referred to the Law Commission by the Ministry of Justice. The terms of reference asked the Commission to look at extending the aggravated offences in the Crime and Disorder Act 1998 to apply to all five protected characteristics (race, religion, disability, sexual orientation and transgender identity); and at the case for extending the stirring up of hatred offences under the Public Order Act 1986 to apply to all five protected characteristics. The Commission also examined the current “enhanced sentencing” regime applicable to cases where hostility is established, as this already applies to all five characteristics and involves similar elements to the aggravated offences.
69. The report recommends that the Sentencing Council produce guidance on the approach to sentencing hostility-based offending and that every time the enhanced sentencing provisions under section 145 and 146 of the Criminal Justice Act 2003 are applied, this should be recorded on the offender’s Police National Computer (PNC) record. The Commission also recommends a full-scale review of the operation of the aggravated offences under the Crime and Disorder Act 1998 and the enhanced sentencing provisions to establish whether they should be retained, amended, extended to cover hostility based on other characteristics or repealed. The Commission believes that such a review is the most valuable reform option. In the event that the Government decides not to carry out such a review the Commission recommends that the aggravated offences be extended to cover hostility based on disability, sexual orientation and transgender identity. The Government is still considering the report and will respond in due course.

### ***Regulation of Health and Social Care Professionals***<sup>26</sup>

70. The Law Commission published its final report (with a draft Bill) on the 2 April 2014 on the regulation of health care professionals and, in England only, the regulation of social workers. This was a joint project with the Scottish and Northern Ireland Law Commissions. The report sets out proposals for a new single legal framework for the regulation of health care professionals and aims to introduce a consistent legal framework which will better enable the regulators to uphold their duty to protect the public, for example the conduct of fitness to practise hearings.
71. The Commissions’ recommendations envisage improvements across professional regulation including robust governance structures for regulatory bodies, enabling innovation in education and leaner processes enabling the regulatory bodies to take swifter action to ensure public protection.
72. The Government published its response on 29 January 2015, noting the need for further work on refining the Law Commissions’ proposals to achieve the priorities of better regulation, autonomy and cost-effectiveness while maintaining a clear focus on public protection.
73. The Government intends to consult on how these priorities can be taken forward while taking full account of the Law Commissions’ important work on simplification and

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<sup>25</sup> Hate Crime: Should the Current Offences be Extended (LC 348) (28.05.14)

<sup>26</sup> Regulation of Healthcare Professionals: Regulation of Social Care Professionals in England (LC 345) (02.04.2014)

consistency, and building on the Professional Standards Authority for Health and Social Care's paper *Rethinking Regulation* published in August 2015. The Government will present proposals that give the regulators the flexibility they need to respond to new challenges in the future without the need for further primary legislation.

74. Recognising the need for some immediate legislative reform, the Government also intends to commence a programme of secondary legislation (subject to Parliamentary time) to make priority reforms to some of the regulators' processes. This will improve accountability and make the system more efficient and effective.
75. The Government has already taken measures so that people can continue to be confident they are receiving high quality care. It has made improvements to the way doctors, nurses and midwives are investigated when there are concerns about their ability to treat patients safely. It has also provided support for the Health and Social Care (Safety and Quality Act) 2015 to implement the Law Commissions' recommendations to ensure all regulatory bodies and the Professional Standards Authority have the consistent overarching objective of promoting public protection and that regulatory bodies have regard to this objective in fitness to practise proceedings.

#### ***Simplification of the Criminal Law: Kidnapping and Related Offences***<sup>27</sup>

76. The Law Commission published its final report on kidnapping and related offences on 20 November 2014. In line with the model favoured by consultees, the report recommends the creation of two distinct statutory offences to replace the existing common law. The Commission recommends that false imprisonment be replaced with a new statutory offence of unlawful detention (a label which they believe better captures the nature of the offence). The elements of the new offence would closely follow the existing common law. The new statutory kidnapping offence would be somewhat narrower and more focussed than the existing common law offence and would have a clearer relationship with the offence of unlawful detention. The report also recommends changes to the offences under sections 1 and 2 of the Child Abduction Act 1984, as follows –

- (i) the increase of the maximum sentences for these offences from 7 to 14 years' imprisonment, in order to avoid undesirable inconsistency between the most serious instances of these offences and kidnapping offences of a comparable level of seriousness, and;
- (ii) that the offence under section 1 be extended to cover cases of wrongful retention of a child abroad, in breach of the permission given by another parent (or other connected person) or the court. This extension would close the gap in the law highlighted in the case of *R (Nicolaou) v Redbridge Magistrates' Court*.

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

#### ***Offences against the person – modernising the law on violence***<sup>28</sup>

78. The Law Commission has published its report "*Reform of offences against the person*" which followed from a scoping exercise the Government asked the Commission to undertake as part of its 11<sup>th</sup> Programme of reform. This followed on from earlier work

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<sup>27</sup> Simplification of the Criminal Law: Kidnapping and Related Offences (LC 355) (20.11.2014)

<sup>28</sup> Offences against the person – modernising the law on violence (LC 361) (03.11.2015)

that the Law Commission and others had done in this area in the 1980's which resulted in a draft Bill in 1998 to reform the Offences Against the Person Act 1861 (the 1861 Act) that was never implemented due to other Government priorities at that time.

79. The current project covered the offences of violence in the 1861 Act, the common law offences of assault and battery and the offence of assaulting a constable (s. 89(1) Police Act 1996). It was informed by a detailed consultation which the Commission carried out between November 2014 and February 2015. The report recommends that updated legislation is needed to tackle violent offences and make better use of court time.
80. The report recommends the replacement of the outdated Offences Against the Person Act 1861 with a modern statute, containing a clear system of offences of violence, including the creation of a new offence of "aggravated assault" to bridge the gap between common assault and the more serious offence of actual bodily harm (ABH). If this offence is introduced (with a maximum sentence of 12 months) the Commission's best estimate of savings from their recommendations overall is around £16.92 million per annum. Further, they also recommend the extension of the offence of 'threats to kill' to include 'threats to cause serious injury' and 'threats to rape'.
81. The report was published on 3 November 2015. The Government will provide an interim response to the detailed proposals in due course.

***Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency***<sup>29</sup>

82. The Law Commission published its final report on Public Nuisance and Outraging Public Decency on 25 June 2015. Public nuisance traditionally dealt with environmental nuisance such as noise, smells and obstruction, but its focus has shifted to more general forms of public misbehaviour, bringing a wider range of potential offenders into its scope. Outraging public decency is a related offence which criminalises behaviour or displays which are lewd, obscene or disgusting and take place in public. In line with the model favoured by consultees, the report recommends retaining the offences and restating them in statute largely in their existing form, but adding a mental element of intention or recklessness to both.
83. This project is part of a small series of simplification projects originally proposed in the Commission's Tenth Programme of Law Reform and follows on from the first project in that series on "Simplification of Criminal Law: Kidnapping and Related Offences", in which the Commission recommended reforms to the common law offences of kidnapping and false imprisonment and the statutory offence of child abduction. This series of projects aims to clarify the structure and modernise the language of criminal law, and make it more consistent and accessible. The Government is considering this report and will respond in due course.

***Making Land work: Easements, Covenants and Profits a Prendre***<sup>30</sup>

84. The Law Commission's 2011 report on easements, covenants and profits à prendre contained reforms which would simplify and clarify the rules relating to the acquisition

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<sup>29</sup> Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency (LC 358) (25.06.2015)

<sup>30</sup> Making Land work: Easements, Covenants and Profits a Prendre (LC 327) (08.06.2011)

of easements by prescription (or long use of land) and implication, as well as the termination of easements by abandonment. Furthermore, the reforms would give greater flexibility to developers when building estates where there would be multiple owners and users. The reforms also included a proposal to extend the jurisdiction of the Lands Chamber of the Upper Tribunal to allow for the discharge and modification of certain easements and profits created post-reform. The recommendations are designed to make the law relating to easements, covenants and profits à prendre fit for the needs of the twenty-first century and a modern registration system. The Government announced on 18 May 2016 that it intends to bring forward proposals in a draft Law of Property Bill to respond to the Commission's recommendations.<sup>31</sup>

### ***Termination of Tenancies for Tenant Default***<sup>32</sup>

85. The Law Commission published this report in 2006. It contains recommendations to reform the means by which a landlord can terminate a fixed term commercial or residential tenancy where the tenant has not complied with his or her obligations.
86. This is an important issue for many landlords and tenants of residential and commercial properties. With regard to commercial tenancies, the current law is difficult to use, especially for the lay person and the unwary practitioner. It does not support negotiated settlement and provides little protection for mortgagees and chargees.
87. In the 2014-2015 report the Government stated that it intended to reach a conclusion on how to overcome concerns raised by some stakeholders as soon as practicable in 2015. Consideration of these issues is continuing and decision will be reached in 2016.

### ***Firearms Law: Reforms to Address Pressing Problems***<sup>33</sup>

88. The Firearms project forms part of the 12<sup>th</sup> Programme of Reform. The Law Commission published a scoping consultation paper in July 2015. A report containing its final recommendations was published in December 2015.
89. The project sought to address a number of problems which undermine the effectiveness of the law governing the possession and acquisition of firearms. The aims of the project were to maximise public safety and improve the clarity of the law for all those who must enforce and comply with it.
90. The report makes a number of recommendations to address problems in discrete areas. The Law Commission recommends: defining key terms in the legislation that are currently undefined; ensuring that only firearms that do not pose a realistic danger to the public can constitute "antique firearms"; ensuring the standards approved by the Home Office and the EU for deactivating firearms are mandatory; and ensuring that the law reflects the increased availability of the tools that can be used to convert imitation firearms into live firearms.

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<sup>31</sup> <https://www.gov.uk/government/publications/queens-speech-2016-background-briefing-notes> page 61.

<sup>32</sup> Termination of Tenancies for Tenant Default (LC303) (31.10.2006)

<sup>33</sup> Firearms Law: Reforms to Address Pressing Problems (LC363) (16.12.2015)

91. Given that this project was a scoping exercise: the report only examined those problems that stakeholders suggested were the most pressing. There are, however, additional deficiencies with the current legislative regime. For this reason, the Law Commission recommends that a broader project be undertaken, with the aim of codifying the law.
92. Although outside the usual reporting period for this publication, the Government included a number of the LC's recommended firearms reforms in the Policing and Crime Bill which was introduced in Parliament on 10 February 2016. The Government responded to the report on 15 April 2016.

***Contempt of Court (2): Court Reporting***<sup>34</sup>

93. On 26 March 2014, the Law Commission published its second report on the review of the law of contempt of court. The report recommends that a new online service be established to help journalists and publishers reporting criminal trials discover whether reporting restrictions are in force and, if so, why.
94. The report recommends that all court reporting postponement orders be posted on a single publicly accessible website. A further restricted service would also be available where, for a charge, registered users could find out the detail of the reporting restriction and could sign up for automated email alerts of new orders. This would reduce the risk of contempt for publishers, from large media organisations to individual bloggers, and enable them to comply with the court's restrictions or report proceedings to the public with confidence.
95. The Government supports proposals encouraging transparency and openness in the Criminal Justice system, and welcomes these recommendations. It will consider how an online reporting restriction database could be taken forward as existing technology is replaced and updated, and will respond formally when the Criminal Justice System Common Platform is implemented.

***The High Court's Jurisdiction in relation to Criminal Proceedings***<sup>35</sup>

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

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<sup>34</sup> Contempt of Court (2): Court Reporting (LC344) (25.03.2014)

<sup>35</sup> High Court's Jurisdiction in Criminal Proceedings (LC324) (27.07.2010)



## Decisions taken not to implement

98. Nil.

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