



**Law
Commission**
Reforming the law

Annual Report 2014–15

The Law Commission Annual Report 2014–15

(Law Com No 359)

The Forty-Ninth 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 2014 to 31 March 2015, although we have also included references beyond the reporting period, up to and including 3 June 2015, when the terms of this report were agreed.



Nicholas Paines QC
Law Commissioner,
Public Law

Professor David Ormerod QC
Law Commissioner,
Criminal Law

Stephen Lewis*
Law Commissioner,
Commercial and
Common Law

Elaine Lorimer
Chief Executive

The Rt Hon Lord Justice
Lloyd Jones
Chairman

Professor Elizabeth Cooke
Law Commissioner,
Property, Family and
Trust Law

* Stephen Lewis joined the Law Commission on 1 January 2015, replacing David Hertzell as Law Commissioner for commercial and common law.

“

The performance of the Commission, within the constitutional constraints in which it operates, has been brilliantly successful. When the Commission's work on statute law is added into the mix, the record looks even better. ”

Sir Geoffrey Palmer, Scarman Lecture, 24 March 2015.

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Law Commission Annual Report 2014–15



In this, my third and final report as Chairman, I am pleased to report that the Law Commission has enjoyed another very successful year in which a great deal has been accomplished.

Publications

The last year has been the busiest and most productive year in the history of the Law Commission in terms of the volume of law reform reports produced. In 2014 we published reports on:

- Wildlife Law: Control of Invasive Non-native Species (LC342) 11 February 2014
- Matrimonial Property: Needs and Agreements (LC343) 27 February 2014
- Contempt of Court (2): Court Reporting (LC344) 26 March 2014
- Regulation of Health Care Professionals: Regulation of Social Care Professionals in England (LC345) 2 April 2014
- Patents, Trade Marks and Design Rights: Groundless Threats (LC346) 15 April 2014
- Taxi and Private Hire Services (LC347) 23 May 2014
- Hate Crime: Should the Current Offences be Extended? (LC348) 28 May 2014
- Conservation Covenants (LC349) 24 June 2014
- Fiduciary Duties of Investment Intermediaries (LC 350) 30 June 2014
- Data Sharing between Public Bodies (LC 351) 11 July 2014
- Insurance Contract Law: Business Disclosure; Warranties' Insurers' Remedies for Fraudulent Claims; Late Payment. (LC 353) 17 July 2014

- Social Investment by Charities (Recommendations Paper) 24 September 2014
- Simplification of Criminal Law: Kidnapping and Related Offences (LC355) 20 November 2014
- Rights to Light (LC356) 4 December 2014

In addition the Commission has published the following papers:

- Social Investment by Charities: A Consultation Paper (LCCP216) 24 April 2014
- Unfitness to Plead (Issues Paper) 2 May 2014
- Reform of Offences against the Person: A Scoping Consultation Paper (LCCP217) 12 November 2014
- General Statute Law Repeals: A Consultation Paper (SLR 03/14) 27 November 2014
- Electoral Law: A Joint Consultation Paper (LCCP218) 9 December 2014
- Enforcement of Family Financial Orders: A Consultation Paper (LCCP 219) 11 March 2015
- Technical Issues in Charity Law: A Consultation Paper (LCCP 220) 20 March 2015
- Reforming Insurance Contract Law: Insurable Interest (Issues Paper) 27 March 2015
- Statute Law Repeals: 20 Report; Draft Statute Law Repeals Bill (Cm 9059 / SG/2015.60), 3 June 2015

Implementation

The Commission has also enjoyed considerable success in achieving the implementation of its recommendations for law reform.

- The Inheritance and Trustees' Powers Act, which received Royal Assent on 14 May 2014, implements Law Commission recommendations on Intestacy.
- The Care Act, which received Royal Assent on 14 May 2014, implements Law Commission recommendations on Adult Social Care.
- The Co-operative and Community Benefit Societies Act 2014, which received Royal Assent on 14 May 2014 is a Law Commission consolidation Act.
- The Consumer Rights Bill, which received the Royal Assent on 26 March 2015, implements Law Commission recommendations in three

reports: Unfair Contract Terms, Consumer Redress for Misleading and Aggressive Practices, and Consumer Remedies for Faulty Goods.

- The Infrastructure Act, which received the Royal Assent on 12 February 2015 implements Law Commission recommendations on Control of Invasive Non-native Species.
- The Criminal Justice and Courts Act, which received the Royal Assent on 12 February 2015, implements certain Law Commission recommendations in relation to Juror Misconduct and Internet Publications.
- The Insurance Act, which received the Royal Assent on 12 February 2015 implements recommendations in the Law Commission's most recent report on insurance law.
- The Government has announced that it has adopted the recommendations in the Law Commission report on Fiduciary Duties of Investment Intermediaries.
- Recommendations in the Law Commission report on Expert Evidence in Criminal Proceedings have been implemented in the Criminal Procedure Rules and Criminal Practice Directions.
- On 29 January 2015 the Department of Health announced that it accepted the majority of the Commission's recommendations in its joint report with the Scottish and Northern Ireland Law Commissions on Regulation of Healthcare/ Social Care Professionals and is committed to legislate on this matter in due course.
- The Charities (Protection and Social Investment) Bill, which received its first reading in the House of Lords on 28 May 2015 will implement Law Commission recommendations on Social Investment by Charities.

In addition Law Commission recommendations for reform have been implemented by the Welsh Assembly:

- 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 Renting Homes (Wales) Bill was introduced into the Welsh Assembly on 9 February 2015. This Bill will implement the Law Commission's 2006 report on Renting Homes, updated in Renting Homes in Wales/ Rhentu Cartrefi yng Nghymru (LC337) 9 April 2013.

In its achievements over the last year, the Law Commission has demonstrated yet again the benefits that a law reform body independent of Government can confer on society. Despite its limited number of staff and relatively modest budget, the Commission continues to produce substantial recommendations of real quality that are being implemented by Parliament.

The Twelfth Programme of Law Reform

The continuing need for an independent Law Commission has been further demonstrated by the public response to the consultation on our Twelfth Programme of Law Reform. Over 250 projects were proposed for consideration by the Commission. After months of consultation and research the Commission proposed the following nine projects which were accepted by the Lord Chancellor and laid before Parliament¹:

- Bills of Sale
- Firearms
- The Form and Accessibility of the Law applicable in Wales
- Land Registration
- Mental Capacity and Detention
- Planning and Development Control in Wales
- Protecting Consumer Prepayments on Retailer Insolvency
- Sentencing Procedure
- Wills

¹ Twelfth Programme of Law Reform (2014) LC354.

The Law Commission's 50th Anniversary

On 15 June 1965, 750 years to the day after the grant of Magna Carta, the Law Commissions Bill received Royal Assent. 2015 is, accordingly, the 50th anniversary of the creation of the Law Commission and this is being marked by a series of events throughout the year. On 24 March Sir Geoffrey Palmer KCMG AC QC, a former Prime Minister of New Zealand, delivered an inspirational Scarman Lecture entitled "The Law Reform Enterprise: Evaluating the Past and Charting the Future". The following evening Sir Geoffrey shared a platform with the Lord Chief Justice, the Counsel General and the First Legislative Counsel at the Governance Centre, Cardiff University where the subject was the future of legislation. A capacity audience enjoyed a fascinating and immensely enjoyable evening. Future events to mark the anniversary will include a Parliamentary reception in the Palace of Westminster in July. In addition we will be running a competition for law students and producing materials for schools as part of an outreach programme. We will report fully on our 50th anniversary activities in next year's annual report.

Staff changes

Recent months have seen a number of changes in the composition of the Commission and its staff.

In December 2014 David Hertzell left the Commission after seven-and-a-half years as Commissioner responsible for commercial and common law matters. During this time he led many important projects including Unfair Contract Terms, Consumer Redress for Misleading and Aggressive Practices, Consumer Remedies for Faulty Goods, Patents, Trademarks and Design Rights (Groundless Threats) and Fiduciary Duties of Investment Intermediaries. Perhaps most notable is his leadership of the Insurance Law project which has resulted in the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015 which, taken together, constitute the most important reform of the law of insurance in over a century. He leaves the Commission with the

remarkable achievement that our work on every one of the projects he has led has been implemented or accepted for implementation by the Government.

In his place we have been joined by Stephen Lewis who comes to the Commission following a distinguished practice as a solicitor in the City of London, most recently at Clyde and Co. He has rapidly established himself and is very welcome.

Although it strictly falls outside the period covered by this annual report, I also wish to refer to the departure from the Commission in May 2015 of Professor Elizabeth Cooke who has been appointed Principal Judge of the Land Registration Division, Property Chamber, First Tier Tribunal. Professor Cooke has been the Commissioner responsible for property, family and trust law for the last seven years and has led projects including Matrimonial Property (Needs and Agreements), Easements, Rights to Light, Conservation Covenants and the Electronic Communications Code. She too has achieved a great deal and has been responsible for a series of law reform statutes including the Perpetuities and Accumulations Act 2009, the Trusts (Capital and Income) Act 2013 and the Inheritance and Trustees' Powers Act 2014. The inclusion of the Law Commission's recent recommendations on Social Investment by Charities in the Charities (Protection and Social Investment) Bill is a fine note on which to end her career at the Commission.

We thank both departing Commissioners very warmly for their outstanding contributions to the work of the Law Commission and we wish them every future success.

One of the great advantages enjoyed continuously by the Law Commission since it started its operations in June 1965 has been the secondment to the Commission from the Office of Parliamentary Counsel of highly skilled Parliamentary Counsel. As a result, not only have most of our law reform reports been accompanied by a draft Bill prepared in house, but the interaction between the project teams and the drafters has improved the quality of the recommendations for reform. Adrian Hogarth,

who has been the Lead Parliamentary Counsel at the Law Commission for the last four years, joining in August 2011, will return to the Office of Parliamentary Counsel in August 2015. During his time with us he has drafted many Bills which have reached the statute book. We are most grateful to him not only for his professional drafting skills but also for his contributions to reform projects and his wise advice on Parliamentary procedure. We thank him very warmly.

John Saunders who has led the Statute Law Repeal team since 1997 has recently retired after a total of 23 years at the Law Commission, including a period as Acting Chief Executive. Over many years John was, quite literally, the face of the Law Commission in that our reports and papers carried on their front cover a photograph of John blowing dust from an open law book. The work of the SLR team in proposing the repeal of statutes which are no longer of any practical utility does not attract a great deal of public attention but is essential to maintaining an accessible statute book. As the Joint Committee on the Draft Deregulation Bill accepted in 2013, this work requires painstaking legal and historical research which the Law Commission has shown it is particularly well equipped to undertake. John has performed this role with distinction. In response to the report of the Committee on the Deregulation Bill we accelerated the completion of our 20th report on Statute Law Repeals and the draft Bill which were published on 3 June 2015, the day before John's retirement party. We extend to him our thanks and our wishes for a long and happy retirement.

We also say farewell to Richard Percival who joined the Commission in 1998 as a lawyer working in criminal law. Between 2001 and his departure this year he was the manager of what, under his leadership, became the Public Law team. During a distinguished career in law reform Richard supervised major projects on housing law, adult social care, the regulation of health and social care professions, taxi and private hire vehicle regulation, wildlife management and electoral law. Under his direction the team's work resulted in a number of significant changes to the law, including the Care Act 2014, and parts of the Social Services and Wellbeing (Wales)

Act 2014. At the time this report goes to press, the Renting Homes (Wales) Bill, which sprang from work undertaken by Richard and his team, is before the National Assembly for Wales. Richard has made an enormous contribution to life at the Commission and the work we do. He has left us to take up an academic post at Cardiff University. We wish him every success.

Triennial Review

In our last Annual Report we reported that the Law Commission had undergone its first Triennial Review and had passed with flying colours. We have now taken steps to implement certain of its recommendations concerning the governance of the Commission. A Framework Document describing the relationship between the Ministry of Justice and the Commission has been negotiated and will be signed shortly. A decision has been taken to appoint two non-executive members of the Management Board of the Commission and I am pleased to welcome the first of these, Sir David Bell, who will join the Board in September 2015. Sir David is a former Permanent Secretary of the Department for Education and is currently Vice-Chancellor of the University of Reading.

Wales

The Law Commission has continued to play an important role as an independent law reform body for Wales. The Commission had been concerned for some time that the machinery of law reform in England and Wales has not kept up to date with devolution in Wales. I am, therefore, very pleased to report that the Wales Act 2014 has amended the Law Commissions Act 1965 in a number of important respects. First, it permits the Welsh Government to refer law reform projects directly to the Commission. Secondly, the Welsh Ministers are subjected to a duty to report annually to the National Assembly for Wales on progress made in implementing Law Commission proposals relating to Welsh devolved matters. Thirdly, it makes provision for a protocol between the Welsh Ministers and the Law Commission concerning the Commission's work in relation to Welsh devolved matters.

Regular meetings at different levels continue to take place between the Commission and the Welsh Government. Meetings between the Chairman and Chief Executive of the Commission and the First Minister, the Counsel General and officials in the Welsh Government have been particularly useful. Relations with the National Assembly have been strengthened; the Chief Executive and I have recently given evidence to the Constitutional and Legislative Affairs Committee on Making Laws in the Fourth Assembly. The Commission's Welsh Advisory Committee has continued to provide invaluable assistance in identifying the law reform needs of Wales both in the devolved and non-devolved areas. The Commission has recently undertaken two projects relating specifically to Wales, and we are most grateful to the members of the Committee for their support as we approach the consultation phase of these projects.

On 1 August 2015 I will be succeeded as Chairman by Lord Justice Bean to whom I extend my warmest congratulations and best wishes. I am confident that the organisation will prosper under his leadership. I hope he will enjoy his time at the Law Commission as much as I have.

Finally, I wish to record my admiration for the hard work, skill and dedication of all my colleagues at the Law Commission and for their considerable achievements in improving the law. The last three years have been among the happiest of my professional life and it has been a great honour and a delight to work with them in this remarkable organisation. I wish them all every success in their future endeavours.



Sir David Lloyd Jones

Chairman

Highlights of 2014–15

2014

| April | May | June | August | November |
|--|--|---|--|---|
| 2 | 1 | 24 | 19 | 3 |
| Report on Regulation of Health and Social Care Professionals published | Social Services and Well-being (Wales) Act receives Royal Assent | Report on Conservation Covenants published | Stephen Lewis appointed Commissioner to succeed David Hertzell | Government accepts majority of recommendations on Level Crossings |
| 15 | 2 | July | September | 12 |
| Report on Patents, Trade Marks and Design Rights: Groundless Threats published | Issues Paper on Unfitness to Plead published | 1 | 24 | Consultation on Offences against the Person opens |
| | 8 | Report on Fiduciary Duties of Investment Intermediaries published | Recommendations on Social Investment by Charities released | 20 |
| | 14 | 11 | October | Report on Simplification of Criminal Law: Kidnapping and Related Offences published |
| | Lord Chancellor's Fourth Report to Parliament on implementation | Report on Data Sharing between Public Bodies published | 1 | |
| | Care Act receives Royal Assent | 17 | Consumer Protection from Unfair Trading (Amendment) Regulations 2014 come into force | |
| | 14 | Report on Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment published | 6 | |
| | Inheritance and Trustees' Powers Act receives Royal Assent | 22 | Revised Criminal Procedure Rules and Criminal Practice Direction come into effect (including our recommendations on Expert Evidence in Criminal Proceedings) | |
| | 14 | Twelfth Programme of Law Reform launched | | |
| | Co-operative and Community Benefit Societies (Consolidation) Act receives Royal Assent | | | |
| | 23 | | | |
| | Report on Taxi and Private Hire Services published | | | |
| | 28 | | | |
| | Report on Hate Crime: Should the Current Offences be Extended? published | | | |

2015

December

4

Report on Rights to Light published

17

Wales Act receives Royal Assent

January

1

Stephen Lewis joins Commission

26

Codification of Sentencing Procedure project launches

29

Government accepts recommendations on Regulation of Health and Social Care Professionals

February

9

Renting Homes (Wales) Bill introduced in National Assembly

11

Consultation on Offences against the Person closes

12

Insurance Act receives Royal Assent

12

Criminal Justice and Courts Act receives Royal Assent

March

6

Professor Elizabeth Cooke appointed Principal Judge of the Land Registration Division of the First Tier Tribunal

9

Firearms Law scoping study launches

11

Consultation on Enforcement of Family Financial Orders opens

12

Infrastructure Act 2015 receives Royal Assent, giving effect to species control orders

13

Lord Chancellor's Fifth Report to Parliament on implementation

20

Consultation on Technical Issues in Charity Law opens

24

Scarman Lecture 2015 given by the Rt Hon Sir Geoffrey Palmer KCMG AC QC

March cont...

25

Law Commission symposium on the form and accessibility of the law relating to Wales, Welsh Governance Centre, Cardiff

26

Consumer Rights Act receives Royal Assent

26

Scoping phase of Marriage Law review begins

26

Deregulation Act receives Royal Assent

27

The Rt Hon Lord Justice Bean appointed Chairman from 1 August. Re-appointment of Professor David Ormerod QC announced

27

Consultation on Reforming Insurance Contract Law: Insurable Interest opens

31

Consultation on Electoral Law closes

PART ONE

Who we are and what we do

“

I argue that the Law Commission does valuable work in improving equality of arms, in clarifying aspects of historical legislation that modern developments have made obscure, and generally – in that rather overused modern phrase – in helping to make the law fit for purpose.

”

Lord Hodgson of Astley Abbots, Oral Questions, Hansard (HL)
12 May 2014, Col GC435.

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 2015, the Law Commissioners were:

- The Rt Hon Lord Justice Lloyd Jones, Chairman
- Professor Elizabeth Cooke, Property, Family and Trust Law
- Stephen Lewis, Commercial and Common Law¹
- 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 statutory public body, which is sponsored by the Ministry of Justice.

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 2014–15 in all these areas of work is recorded in Part 2.

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 Plan² identifies four priority areas for action for the Law Commission:

- 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.

We set out in our Business Plan the commitments we have made as an organisation as to how we will meet our priorities, including those specific to 2014-15:

- We will finalise the 12th Programme, ensuring that it is well balanced and consists of projects that will make a positive difference to society and which have a reasonable chance of implementation.
- We will use our 50th anniversary to strengthen relationships with existing stakeholders and to establish relationships with new stakeholders across sectors.
- We will implement the recommendations of the Triennial Review so that as an organisation we are fully compliant with modern standards of good governance.

¹ Stephen Lewis joined the Law Commission on 1 January 2015, replacing David Hertzell as Law Commissioner for Commercial and Common Law.

² Available via www.lawcom.gov.uk

The Business Plan also records the Commission's commitment to continue to deliver the savings contained within the SR10 settlement, which represents a 25 per cent reduction in our voted funding since 2010/11.

For more on our Business Plan priorities, see Appendix C.

The Law Commission in Wales

It has been a significant year for the Law Commission in relation to our work in Wales.

The Wales Act 2014 has brought about significant changes to our relationship with the Welsh Government and how we work with Welsh Ministers in relation to Welsh devolved matters. We have strengthened our ties with friends and supporters in Wales and, for the first time, we have launched two projects that relate to the law in Wales only.

Working with the Welsh Government

On 17 December 2014 the Wales Act received Royal Assent, bringing into force amendments to the Law Commissions Act 1965.

The 2014 Act empowers the Law Commission to give information and advice to Welsh Ministers. In turn, this enables Welsh Ministers to refer work directly to the Commission whereas, previously, referrals could be made only through the Wales Office.

The Wales Act 2014 also provides for a protocol to be established between us and the Welsh Government that would lay the ground rules for the way we work together. We are continuing to work with Welsh Ministers to draft this protocol.

In a direct reflection of the obligations placed on the Lord Chancellor by the Law Commission Act 2009, the Wales Act 2014 requires Welsh Ministers to report annually to the Assembly about the implementation of our reports relating to Welsh devolved matters.

These are very welcome developments, which will ensure that, for the first time, the statutory scheme reflects the reality of devolution in Wales.

Reforming the law in Wales

This year saw another historic first for the Law Commission. Our 12th Programme (see pp12-13), which we launched on 22 July 2014, includes two law reform projects that relate only to Wales:

- The form and accessibility of the law relating to Wales – see p32
- Planning and development control in Wales – see p33

During the year we have also seen the Social Services and Well-being (Wales) Act 2014, which implements our recommendations on adult social care³, receive Royal Assent on 1 May 2014 (see p49), and the Renting Homes (Wales) Bill introduced into the National Assembly on 9 February 2015. This Bill implements the recommendations of our Renting Homes in Wales report⁴ (see p46).

Wales Advisory Committee

Throughout this year we have been supported by our Wales Advisory Committee. We established the Committee in 2013 to advise us on the exercise of our statutory functions in relation to Wales, and to give the people of Wales a stronger voice in law reform.

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.

³ Adult Social Care (2011) LC326.

⁴ Renting Homes in Wales/Rhenttu Cartrefi yng Nghymru (2013) LC337.

Table 1.1: Citations

| | 2012 | 2013 | 2014 |
|--|------|------|------|
| In UK judgments | 324 | 307 | 404 |
| In judgments from other common law jurisdictions | 34 | 72 | 3 |
| In Hansard | 39 | 108 | 51 |

In addition, the Commission's work is widely quoted in academic journals and the media. A basic search on the internet reveals 619 references made in UK academic journals during the calendar year 2014, compared with 220 in 2013. Our monitoring service picked up more than 680 articles in the mainstream media that referred to the Law Commission during 2014–15, compared with 650 the previous year. 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.

Our 12th Programme of law reform

On 23 July 2014 we launched our 12th Programme of law reform. The Programme includes nine new projects that cover a wide range of topics and will occupy our law reform teams for the next three or four years.

The new projects came out of a four-month consultation we held in summer 2013. We wanted to hear from influencers and decision makers in central and local Government, the judiciary, the worlds of legal practice and academia, as well as the third and private sectors. In addition to using the press and our social media channels to get the message out, we decided on a personal and direct approach, inviting consultees to a series of events and meetings throughout the summer.

- Launch event on 2 July at the Royal Institution of Great Britain, 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.
- A gathering of over 100 stakeholders, including the Welsh Advisory Committee and members of the National Assembly for Wales, at the Wales Governance Centre in Cardiff Bay.
- Events at the Houses of Parliament, including an exhibition in the Upper Waiting Hall to promote the consultation.
- Meetings at the Supreme Court and Royal Courts of Justice with the Justices of the Supreme Court and the Justices of the High Court and Court of Appeal.

We had an excellent response to the consultation, receiving more than 250 proposals from 180 consultees. In accordance with the Law Commissions Act 1965, we submitted the Programme to the Lord Chancellor for approval. The Programme was laid before Parliament on 22 July 2014.



Our new programme covers a very wide range of legal subjects. Its projects touch on many areas of life, from consumer prepayments to mental capacity, wills, firearms and planning law in Wales. Together, they have the potential to deliver reforms that could have a profound and far-reaching impact on all our lives.

Sir David Lloyd Jones, Chairman, Law Commission, 23 July 2014.

A Programme to deliver real change

Our nine 12th Programme projects have the potential to deliver real benefits for individuals and organisations in many areas of life.

The law has an essential role to play in protecting the vulnerable. We will therefore be considering how the law can protect the rights of people who lack the capacity to consent to necessary medical care. We will review how consumers who have made pre-payments can be protected when companies collapse, and examine the law on “logbook loans”, a form of lending that comes with very few consumer protections. We will also be looking at how the law on wills can be made clearer and more certain, hopefully encouraging more people to make wills and that more of them are valid.



The Law Commission’s project to codify sentencing law is a valuable and long-overdue stepping stone in the process of the rationalisation and clarification of the criminal law.

*Lord Thomas of Cwmgiedd,
Lord Chief Justice of England and Wales.*

There is much in the new programme to improve public confidence in the justice system. We will propose a more straightforward sentencing procedure that would make criminal sentencing

more accessible and intelligible. We will consider how the outdated law that governs firearms may be modernised and simplified; as it stands, the law hampers the police and courts in detecting and punishing crime.

For the first time, our Programme contains projects that look specifically at the law in Wales. We will produce recommendations for reforming planning law in Wales, and to improve the accessibility of the law in force in Wales.

Bills of sale

A review of the law relating to bills of sale loans, including “log book loans”, a form of lending often used by the most vulnerable in society but which comes with very few consumer protections (see p15).



Citizens Advice welcomes the Law Commission’s announcement to review the Bills of Sale Act which governs logbook loans. We have been campaigning since the beginning of 2014 to secure changes to the way logbook loans and lenders operate so that consumers are better protected.

Citizens Advice news release, 23 July 2014.



Firearms

A scoping exercise to identify problems with the existing law, suggest ways in which firearms offences might be modified and simplified and provide clear definitions of relevant terms (see p21).

The form and accessibility of the law applicable to Wales

An Advice to Government, considering ways in which the existing legislation can be simplified and made more accessible, and how future legislation could reduce problems (see p32).

Land registration

A wide-ranging review of the 2002 Act, with a view to amending those elements of the Act that could be improved in light of experience with its operation (see p29).

Mental capacity and detention

A law reform project to consider how deprivation of liberty should be authorised and supervised in settings other than hospitals and care homes (see p32).

Planning and development control in Wales

A law reform project to recommend a simplified and modernised planning system for Wales (see p33).

Protecting consumer prepayments on retailer insolvency

A scoping review to assess the scale of the problem and consider ways to increase protection for consumers (see p20).

Sentencing procedure

A law reform project to recommend a single sentencing statute (see p24).

Wills

A law reform project to review the law on wills, focusing on mental capacity and will making, how wills should be written and signed, and how mistakes in wills can be corrected (see p30).



Both the House of Lords and the Supreme Court criticised the Deprivation of Liberty Safeguards for their bewilderingly bureaucratic complexity. I have considerable sympathy with this view, and welcome the decision by Government to ask the Law Commission to look for a framework that is simpler, while still protecting peoples’ rights.

David Behan, Chief Executive, Care Quality Commission. Care Home News, 26 January 2015.



PART TWO

Review of our work for 2014–15

“

I know that the level of stakeholder interaction with the Law Commission during the groundless threats work has been excellent, particularly within the IP legal community.

”

Baroness Neville-Rolfe, Parliamentary Under Secretary of State for Business, Innovation and Skills, Minister for Intellectual Property, Written Statement, Hansard (HL) 26 February 2015, HLWS274.

Commercial law and common law

Commissioner

Stephen Lewis¹

“

The highlight of the team's year was the enactment of the Insurance Act 2015. This, together with the Consumer Insurance (Disclosure and Representations) Act 2012 has struck a fairer balance between the policyholders and insurers, and brings Insurance Contract Law into the 21st century. We have also made progress with other items in the 12th Programme, most notably our work on bills of sale, consumer prepayments and transfer charges in residential leases. Last but not least, we are working on a Bill to give effect to our report on groundless threats in relation to patents, trade marks and design rights.

Stephen Lewis.

”

Bills of sale

A bill of sale is a way for an individual to use their existing goods as security for a loan. The use of bills of sale has grown dramatically in recent years, from 2,840 in 2001 to 50,656 in 2013. A common example is the “logbook loan”, where the borrower takes out a loan against the value of their car.

The law in this area dates from Victorian times. It is complex, arcane and difficult to understand, and out of step with the protection offered to consumers in relation to other types of credit.

The consequences of not following the exacting formality requirements are severe; an error can void the whole loan, as well as the lender's security. In cases where the borrower defaults, the law currently allows a lender with a bill of sale to seize the property without a court order; something which has been flagged as a particular concern by consumer groups. The present system is also costly, as bills of sale must be registered at the High Court.

The Law Commission is conducting a two-year review of the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882 (the Bills of Sale Acts). This project was suggested to us as part of our 12th Programme. The Treasury has asked us:

- to look at how the legislation is currently used and how far it meets the needs of users and third parties; and
- to make recommendations for reform, to ensure that the law in this area is up-to-date, fair and effective.

We intend to publish a consultation paper in September 2015 and a final report by summer 2016.

Fiduciary duties of investment intermediaries

This project responded to concerns expressed in Professor John Kay's report on long-term decision-making in UK equity markets². In particular, the report highlighted the following issues:

- it was not clear who in the investment chain was subject to fiduciary duties and what those duties were; and
- stakeholders were worried 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.

We published our report on 1 July 2014,³ along with a six-page guidance note for pension trustees explaining that the law does not require them to maximise financial return over a short time scale but rather to consider all financially relevant factors, including risks to a company's performance over the long term. These could include poor governance or environmental degradation, or risks to a company's reputation arising from the way it treats its customers, suppliers or employees.

In some circumstances, pension trustees may also consider non-financial factors, such as members' quality of life or the desire to express disapproval of certain industries. Trustees may take non-financial factors into account if they have good reason to think

¹ David Hertzell to 31 December 2014. Stephen Lewis joined the Commission on 1 January 2015.

² The Kay Review of UK Equity Markets and Long-Term Decision Making, Business, Innovation and Skills Committee (2013), London: TSO.

³ (2014) LC350.

that scheme members would share that concern, and there is no risk of significant financial detriment to the fund.

Our report recommended that the Government should review aspects of the Occupational Pension Schemes (Investment) Regulations 2005 and the equivalent regulations applying to local government pensions.

We also welcomed the establishment of independent governance committees to provide greater oversight of members' interests in contract-based pensions. We recommended that these committees should be under a duty to act in the interests of scheme members and should be indemnified by pension providers.

The Government has now accepted the report and endorsed our guidance. See p45 for more information.

Insurance contract law

With the Scottish Law Commission we have conducted a wide-ranging review to simplify insurance contract law and bring it into line with modern market practice. The first report, on consumers' duty of disclosure,⁴ led to the Consumer Insurance (Disclosure and Representations) Act 2012. This year has seen the publication of our second report and a further consultation on insurable interest.

The second report

On 17 July 2014 we published our second report⁵ covering:

- the duty of disclosure in business insurance;
- warranties;
- insurers' remedies for fraudulent claims; and
- late payment.

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 to do so, the insurer

may "avoid" the policy and refuse all claims. However, this duty is so broad and unclear that few policyholders can be sure that they have covered everything.

We recommended that a duty "to present the risk fairly" should remain, but with greater clarity as to what it covers. Insurers should be required to play an active role, including by asking relevant questions in some circumstances. Importantly, we also recommend the adoption of a new system of proportionate remedies, 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 maintaining a burglar alarm. The problem is that any breach discharges the insurer from liability, even if it has been remedied: so, for example, if a burglar 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 made 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, it should not be used to remove the insurer's liability for different losses.

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 recommended clear statutory remedies. 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.

⁴ (2012) LC319/SLC 219.

⁵ (2014) LC353/SLC238.

However, the insurer should remain liable for genuine losses before the fraud.

Damages for late payment

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 looked at.

We recommended 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.

Contracting out

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.

Implementation

The Government accepted our recommendations on the first three issues, but not on late payment. A Bill implementing our proposals on business disclosure, warranties and insurers' remedies for fraudulent claims was passed using the procedure for uncontroversial Law Commission Bills. The Insurance Act 2015 will come into force in August 2016. See p43 for more information.

The third report

We will consider a number of outstanding issues – including insurable interest, brokers' liability

for premiums and the need for a formal marine policy – in a third report, planned for 2015–16.

Insurable interest

We consulted on this issue in an issues paper in 2008⁶ and as part of our 2011 Consultation Paper.⁷ Initially we took the view that reforming the law of insurable interest was not a priority.

However, in 2014 the Investment and Life Assurance Group (ILAG) approached us on behalf of life insurers, asking us to return to this issue. ILAG told us that their members are under pressure to write policies that include cover for children and cohabitants, and to insure "key employees" for substantial amounts. Although these policies perform a useful social function, they may be considered void under the current law, strictly applied, and some court cases in England have actually labelled them "illegal". This may put insurers and policyholders in a difficult position.

In March 2015 we published a further paper on this issue⁸, setting out updated proposals to clarify the concept of insurable interest in indemnity insurance and to extend the concept for life insurance. We proposed that people should be allowed to insure the lives of their children, cohabitants or employees. We did not think that the law should put controls on this. Whether insurance was appropriate in any given circumstances should be left to the good sense of insurers, with regulatory intervention if necessary.

Patent, trade mark and design rights: groundless threats

We published our report on 15 April 2014.⁹ The Government has accepted the report, and asked us to produce a draft Bill suitable for introduction through the special procedure for uncontroversial Law Commission Bills. In February 2015 we started work on instructing Parliamentary Counsel. We plan to publish a further report and draft Bill in November 2015.

For more see p45.

6 Insurable Interest (2008) Issues Paper 4.

7 (2011) LCCP201/SLCDP152.

8 Insurable Interest (2015) Issues Paper 10.

9 (2014) LC346.

Protecting consumers against rogue traders

Consumers will now have real and meaningful protection against misleading and aggressive commercial practices, as reforms we recommended are given effect in the Consumer Protection (Amendment) Regulations 2014.

Misleading and aggressive commercial practices are a significant problem. Research commissioned by Consumer Focus – now part of Citizens Advice – found that in a two-year period nearly two-thirds of the population had fallen victim to a misleading or aggressive practice, costing consumers £3.3 billion a year.

A large proportion of the victims are among the most vulnerable in society, with housebound and older people facing a particular threat from high-pressure, doorstep selling. One common tactic is for the salesperson to “wear the customer down”, staying with them for as long as two or three hours and leading them to believe that they will only leave if a purchase is made. With the number of people aged 85 or over living alone in England and Scotland set to rise to 1.4 million by 2033, this is a prime example of an area where the law needs reform in order to reflect the needs of an ageing population.

The damaging impact of misleading and aggressive commercial practices is not confined to the elderly and vulnerable; it can be felt across all sections of the community. Common examples include:

- Misleading broadband speed advertisements, where consumers are promised speeds of “up to 24 MB” when in fact this is not achievable, and the average speed in practice is less than half what is advertised.
- Wheel-clamping, where consumers are charged on the spot, despite there being no clear signs about parking, and the clampers themselves failing to provide identification.
- Utility companies sending invoices to people who have never been customers.
- Agents demanding standard fixed-sum settlements for alleged shop-lifting or illegal downloads.

Strengthening consumer confidence

A father is out shopping with his child, when the child takes a chocolate bar from the shelf, opens it and starts eating. The father pays for the chocolate bar but subsequently receives a letter from a “civil recovery” company claiming to be endorsed by the Home Office and threatening court action unless he pays £90 to cover staff time, security and administration costs. Following a series of aggressive phone calls, the father pays up.

The civil recovery company falls foul of the Regulations because it lied about being endorsed by the Home Office – something which is likely to have been a significant factor in influencing the consumer’s decision to pay. As the father had already paid for the chocolate bar, the claim is bogus and he is entitled to unwind the payment as he acted within 90 days. He may also be entitled to damages.

Before the reforms came into force in October 2014, it was difficult, if not impossible, for consumers to get their money back. The law in this area was contained in the Consumer Protection from Unfair Trading Regulations 2008. While these covered many of the most common unfair practices, they could be enforced only by the Office of Fair Trading or Trading Standards. Consumers wanting redress had to rely on private law rights, which were fragmented, complex and unclear.

In April 2011 we launched a joint consultation with the Scottish Law Commission, focusing on three key areas: misleading practices; aggressive practices; and establishing a new scheme of consumer remedies.

Based on the findings from the consultation, the two Commissions recommended targeted reform, giving consumers a specific right of redress against traders who breach the 2008 Regulations. We said that consumers should be entitled to receive a full refund within 90 days, and a discount after this period; and may also be entitled to claim damages.



Consumers are fed up with high-pressure selling tactics. If someone is misled or bullied into buying unsuitable products or services, then they should have the right to get their money back and be compensated. These recommendations represent a step forward for consumer rights.

Richard Lloyd, Executive Director, Which?
28 March 2012.

The Consumer Protection (Amendment) Regulations 2014 implement our recommendations and make the law easier to understand and simpler to apply. They offer significant protection to consumers, who will now find it much easier to obtain a refund and to be able to “unwind” unsatisfactory transactions.

Legitimate traders will find it easier to deal with complaints about misleading practices, and advice agencies will benefit from simpler, easier ways of valuing consumer loss. Finally, combatting aggressive practices should strengthen consumer confidence, leading to increased sales.

Protecting the vulnerable

A doorstep seller claiming to work for the council gains entry to an elderly consumer’s home. Although he asks the seller to leave, she refuses, and after two hours he agrees to buy a £2,000 mobility aid, paying a cash deposit and signing a credit agreement for the outstanding balance. On hearing what has happened, the man’s neighbour complains to the mobility aid company, two months after the initial visit.

The company is in the wrong on a number of counts, including having claimed to work for the council – a misleading action – and refusing to leave, which is an aggressive practice. The vulnerability of the consumer in this case means that the trader’s actions are likely to have been a significant factor in his decision to enter into the contract.

The new Regulations give the consumer several options. Even though he has been using the mobility aid for two months, he can return it and reclaim his deposit, along with any payments made under the credit agreement, without having to pay any compensation. Alternatively, he can opt to keep the mobility aid and ask for a discount on the purchase price. Finally, he may be entitled to damages for the distress caused by the seller’s actions.

Protecting consumer prepayments on retailer insolvency

This project considers whether there is a need to provide greater protection for consumer prepayments when retailers or other service providers become insolvent.

Consumers often pay for goods and services in advance of receiving them. This is common practice for a range of products, from flights and theatre tickets to football season tickets and holidays. British consumers also spend £4 billion on gift vouchers each year, paying immediately for a card or voucher that can be exchanged for a product or service at some point in the future.

However, recent high-profile retailer insolvencies have highlighted the lack of protection for consumers in this area. When the Christmas savings club Farepak collapsed in 2006, it owed £38 million to vulnerable consumers.

Deposits are particularly prevalent in the furniture, DIY and home-improvements sector. Here, a long list of retailers have encountered financial difficulties and gone into administration, including World of Leather, MFI, Focus DIY, Habitat, Homeform, Dwell and Paul Simon.

When a retailer becomes insolvent, the law imposes a strict hierarchy of creditors to be paid from any remaining assets. Consumers, who are classed as unsecured creditors, are near the bottom of the list and frequently receive nothing. The administrator may decide to honour consumer prepayments and gift vouchers, but they are under no obligation to do so. Consumers are often unaware of the legal situation and, in some cases, conflicting information from administrators further confuses matters.

The issues are complex and go to the heart of the insolvency regime. In 1982, the Cork report¹⁰ rejected greater protection for consumers, noting that consumers typically lose small and affordable amounts while the effect on suppliers can be catastrophic. But following the Farepak collapse, the Treasury Select

Committee described the existing safety net as “inadequate and incomplete”.¹¹

This project, which forms part of our 12th Programme, considers possible ways forward, gathering empirical evidence about the scale of the problem and consulting on possible solutions. We expect to open a consultation in June 2015 and publish our final report in 2016.

Transfer of title and change of occupancy fees in leaseholds

Some leases oblige the leaseholder to pay a fee to the freeholder each time the lease is sold. Such leases are common in the retirement sector, where fees can be substantial (ranging from 1 per cent to 30 per cent of the sale price).

In 2013, the Office of Fair Trading (OFT) raised concerns about these charges. It concluded that the terms were potentially unfair and that there was a lack of transparency, particularly in the sales material. In response to the OFT’s report, some landlords voluntarily entered into undertakings on the use of the terms. However, the OFT also recommended that the Government should consider further measures, including legislative reform.

The project was referred to the Law Commission by the Department for Communities and Local Government (DCLG) in August 2014. We intend to publish a consultation paper in September 2015, looking at the nature of the problem and the transparency of the fees. We will consider how the current law addresses the problems that are identified and consider whether greater protection is needed for leaseholders.

¹⁰ <http://discovery.nationalarchives.gov.uk/details/r/C11294862>

¹¹ <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtreasy/504/50407.htm>.

Criminal law

Commissioner

Professor David Ormerod QC



The criminal team had a momentous year with a prolific output of publications, numerous implementation successes and valuable engagement with a diverse range of stakeholders. The team expanded and now has tremendous depth and breadth of criminal law experience. 2015 promises to be no less exciting as we complete significant 11th programme projects and begin consultations on our important 12th programme projects: to reform firearms legislation and to produce an entire new Sentencing Code.



Professor David Ormerod QC.

Contempt of court

Following our comprehensive consultation on a range of issues on contempt of court in 2012 (juror misconduct, the capacity to deal with online publishing and social media, and contempt in the face of the court), we have published two reports making recommendations for reform on juror misconduct and internet publications¹² (see p42) and court reporting¹³ (see p50).

In our report Contempt of Court (1): Juror Misconduct and Internet Publications, our recommendations included:

- Introducing a new criminal offence for jurors conducting prohibited research.
- Establishing an exemption from contempt liability for publishers relating to archived online material
- Making 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.

The Government broadly accepted the Law Commission's recommendations concerning juror misconduct and acknowledged that our recommendations concerning the defence for archive online material represent a balanced and measured proposal. For more on the Government's response (see p42).

In our report Contempt of Court (2): Court Reporting, we recommended:

- Ensuring that postponement orders on court reporting are all posted on a single publicly accessible website (a similar website currently operates in Scotland).
- Including 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.

The Government has welcomed these recommendations, and will consider how an online reporting restriction database could be taken forward as existing technology is updated and replaced. See also p42.

Third report

Our third and 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 2016.

Firearms

Public confidence in the criminal justice system is understandably dented when defendants walk free because the relevant statutes are not fit for use in the modern age. The current law relating to firearms is contained in 34 different statutes and dozens of pieces of secondary legislation, and is supplemented by Home Office guidance running to over 200 pages. This results in a confused and confusing picture, and creates significant practical difficulties for investigating authorities and prosecutors. It also makes it difficult for legitimate firearms users – such as hunting and shooting enthusiasts – to comply with the law.

¹² (2013) LC340.

¹³ (2014) LC344.

In part, this is because the way in which the law has categorised weapons in the past no longer reflects present reality. For example, the legislation does not define key terms such as “antique”, “imitation”, “lethal” and even “weapon”. Further problems arise because there is considerable overlap between offences, making it difficult to establish clearly which charges apply in an individual case. The law has also failed to keep abreast with modern technology, and in particular with the availability of equipment that can be used to convert obsolete or deactivated weapons into active firearms.

The implications are serious and wide-ranging. There is a greater need to rely on experts to classify weapons; prosecutors are struggling to select appropriate charges; prosecutions are longer and more costly than they might otherwise be because of the need to rely on expert reports; and there are many examples of defendants avoiding convictions on extremely technical bases by successfully arguing that the weapon in their possession has been wrongly classified.

This scoping exercise will scrutinise the current legislation, identify the problems with the law and propose a range of solutions to the most pressing problems. It will also consider the case for the enactment of a new single statute to cover all firearms offences and set out clear definitions of all relevant terms. We plan to hold a consultation in summer 2015, followed by a symposium in the autumn, and to publish our scoping report in early 2016.

Hate crime

A “hate crime” can be defined as one where the victim – or anyone else – believes that it is motivated by hostility based on any one (or more) of the following five characteristics: (1) disability; (2) transgender identity; (3) race; (4) religion; and (5) sexual orientation. Currently, the law responds to hate crime in three ways:

- Under the Crime and Disorder Act 1998 if, in committing one of a list of offences such as assault or harassment, the perpetrator is motivated by hostility on the grounds of race or

religion or demonstrates hostility based on race or religion, he or she can be charged with an “aggravated” form of the offence, which carries a longer maximum sentence.

- The Public Order Act 1986 prohibits certain types of conduct intended or likely to stir up hatred on grounds of race, religion and sexual orientation.
- Sections 145 and 146 of the Criminal Justice Act 2003 imposes enhanced sentences for offences motivated by hostility on the grounds of any of the five protected characteristics.

This project was referred to us by the Ministry of Justice following the publication of the Government’s three-year Hate Crime Action Plan¹⁴ in March 2012.

The Ministry asked us to look at:

- extending the aggravated offences in the Crime and Disorder Act 1998 to apply equally to all five protected characteristics; and
- extending the stirring up of hatred offences under the Public Order Act 1986 to apply equally to all five protected characteristics.

We also examined the current “enhanced sentencing” regime, as this already applies to all five characteristics and involves similar elements to the aggravated offences.

We hosted a symposium with over 100 interested stakeholders. We received over 150 responses to our consultation.

Our report on the consultation, which closed in September 2013, was published on 28 May 2014¹⁵ and includes the following recommendations.

Enhanced sentencing

The enhanced sentencing system is a potentially powerful weapon in the fight against hate crime, but it is currently being under-used. We therefore recommended that the Sentencing Council issue new guidance on sentencing in hate crime cases, and that, in every case where an offender is given an enhanced sentence based on hostility, that fact should be recorded on the offender’s criminal record in the Police National Computer (PNC).

¹⁴ Challenge it, Report it, Stop it: The Government’s Plan to Tackle Hate Crime, HM Government (2012).

¹⁵ (2014) LC348.

We recommended that these reforms be introduced whether or not aggravated offences are extended.

The aggravated offences

In principle, we concluded that the aggravated offences should apply equally to hostility based on all five characteristics. However, some consultees raised serious concerns about unnecessary complexities in the form and operation of these offences as contained in the 1998 Act. The list of offences in that Act would need to be altered to ensure that they were the ones most suitable for tackling hate crime against disabled, LGB and transgender people.

Such matters were outside our terms of reference. We therefore recommended a full-scale review of the aggravated offences prior to any extension. Should the Government choose not to conduct such a review, our recommended alternative would be to extend aggravated offences to disability, sexual orientation and transgender identity.

The stirring up offences

Although there is a case in principle for creating new offences of stirring up hatred on grounds of disability or transgender identity, we have not been persuaded of the practical need to do so. The consultation produced no clear evidence of conduct or material that would fall within the new offence – that which was threatening and intended to stir up hatred on grounds of transgender identity or disability. We therefore did not recommend extending these offences.

Misconduct in public office

Misconduct in public office is a common law offence but there is no exhaustive definition. Although there are relatively few prosecutions each year, a disproportionately high number of these are the subject of appeal. Despite this, the boundaries of the offence remain uncertain.

Recent appeals have identified two key areas of uncertainty:

- There is no clear definition of what the term “public office” means. Doubtful cases include contractors carrying out functions for public bodies, and employees of charities whose objects serve a wide public interest. As the demarcation between public/private blurs, there is pressure on the offence which rests on the notion of a “public” office.
- There does not appear to be a clear standard of fault or wrongfulness. Various tests are mentioned in the cases, such as breach of trust and dishonesty, but these often seem to apply to particular types of case rather than forming part of an overall definition.

In 2010 the Committee on the Issue of Privilege (Police Searches on the Parliamentary Estate) recommended that the Law Commission revisit its 1997 proposal to create a statutory offence.

In this project, we will examine what role such an offence plays and what form it might take if placed on a statutory footing. We will publish a consultation paper in summer 2015, and a final report and recommendations will follow in summer 2016.

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 of the Act is also unsatisfactory. There is no clear hierarchy of offences and the differences between offences are not always 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.

At the request of the Ministry of Justice, we are carrying out a scoping exercise. We will ascertain whether there is general agreement that this is an area of law in need of reform. We are also consulting on whether the last model for reform in this area – a Home Office Bill from 1998 – would still serve as a suitable draft for reform albeit with some amendment and updating.

We began work on this project in spring 2014, and our scoping consultation paper was published on 12 November 2014.¹⁶ The consultation ran until 11 February 2015 and our report is scheduled for publication in summer 2015.

Sentencing procedure

The law governing the procedure for sentencing affects all criminal cases, and is applied in hundreds of thousands of trials and thousands of appeals each year. Currently, the law lacks coherence and clarity: it is spread across many statutes; and frequent updates are brought into force at different times by different statutory instruments and have a variety of transitional arrangements.

This makes it difficult, if not impossible at times, for practitioners and the courts to understand what the present law of sentencing procedure actually is. This can lead to delays, costly appeals and unlawful sentences. A survey of 400 Court of Appeal cases from 2012 by the sentencing expert Robert Banks found that 262 were appeals against sentences and that of these, 95 related to sentences that had been unlawfully passed in the Crown Court. These are not cases in which there is a disagreement as to what the level of sentence should be; these are cases where the basis for the sentence was wrong in law. Banks wrote, “[This] figure shows that we can no longer say the sentencing system is working properly. Cases since then have indicated that these figures are not unrepresentative.”¹⁷

The courts have repeatedly complained about the complexity of modern sentencing procedure. There is strong evidence that the high number of unlawful sentences being handed down is a direct result of judges’ inability to find their way through the relevant

provisions. This undermines public confidence in sentencing and costs a great deal of public money to rectify on appeal.

There seems to be near unanimity from legal practitioners, judges and academic lawyers that the law in this area is in urgent need of reform. Our project, which was launched on 26 January 2015, has been described by the Rt Hon the Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales, as “a valuable and long-overdue stepping stone in the process of the rationalisation and clarification of the criminal law” and as promising “clear benefits in terms of increasing efficiency and improving clarity and transparency of the sentencing process for offenders and the general public.”

Our aim is to introduce a single sentencing procedure statute that will act as the first and only port of call for sentencing tribunals. It will set out the relevant provisions in a clear and logical way, and ensure that all updates can be found in a single place. The project will not interfere with mandatory minimum sentences or with sentencing tariffs in general, but the process by which they come to be imposed will be streamlined and much improved.

We are planning to publish a first issues paper in summer 2015, followed by a series of consultative documents over the following 18 months. We expect to publish our report, with a draft Bill, in summer 2017.

Simplification of criminal law

In the 10th Programme of Law Reform, we stated our intention to embark on a project to simplify the criminal law.¹⁸ 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.

¹⁶ (2014) LC217.

¹⁷ Robert Banks, *Banks on Sentence Vol.1* (2013).

¹⁸ (2008) LC311, para 2.24 and following.

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.

This definition is problematic for a number of reasons, including:

- The elements of the offence overlap, and the relationship between them is not clear. For example, it is not necessary to require force or fraud and absence of consent.
- The meaning of “deprivation of liberty” is not clear. Does loss of liberty have to occur while the victim is being taken, or can they be taken to a place and then confined there?
- There is no clear definition of the relationship between kidnapping and false imprisonment.

We opened our consultation¹⁹ on this project in September 2011 and our final report was published on 20 November 2014.²⁰ Before the report was finalised, the Ministry of Justice extended our terms of reference to include consideration of a pressing problem in relation to abduction of children overseas. The report included the following recommendations.

Reform of kidnapping and false imprisonment

We recommended the creation of two distinct statutory offences. False imprisonment would be replaced with a new offence of unlawful detention, which would closely follow the existing common law. The new statutory kidnapping offence would have fewer, more closely defined, elements and a clearer relationship with the offence of unlawful detention. It would occur where a person without lawful authority or reasonable excuse intentionally uses force or the threat of force in order to take another person or otherwise cause them to move in his company. We recommended that these offences remain triable in

the Crown Court only, with the existing maximum penalty of life imprisonment.

Reform of sections 1 and 2 of the Child Abduction Act 1984

We recommended that the maximum sentence for offences under sections 1 and 2 of the Child Abduction Act 1984 be increased from seven to 14 years’ imprisonment, and that the offence under section 1 be extended to cover cases of wrongful retention of a child abroad. This extension would close the gap in the law highlighted in the case of *R (Nicolaou) v Redbridge Magistrates’ Court*.²¹

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,²² 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 are planning to publish our report in summer 2015.

19 Simplification of Criminal Law: Kidnapping (2011) LCCP200.

20 (2014) LC355.

21 [2012] EWHC 1647 (Admin); [2012] 2 Cr App R 23.

22 Simplification of Criminal Law: Public Nuisance and Outraging Public Decency (2010) LCCP193.

Unfitness to plead

The law on unfitness to plead addresses what should happen when a defendant facing criminal prosecution is unable to engage with the process because of his or her mental or physical condition. If such a defendant is found “unfit to plead”, there is not a trial in the usual way but the court adopts a different process to decide whether the defendant carried out the act in question. If it is found that they did, the court may order detention in a hospital or supervision 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. Clearly, it does not adequately reflect advances in modern psychiatric and psychological thinking. In addition, problems arise because the law has developed piecemeal and independently of the development of the right to “effective participation” which forms part of the fair trial guarantees under Article 6 of the European Convention on Human Rights.

This fitness 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 2010,²³ setting out 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.²⁴

We have subsequently reviewed our provisional proposals in light of the consultation responses, taking into account recent changes to the criminal justice system. As a result, we identified a number of additional questions, designed to help us ensure that our final recommendations to Government are practical and properly reflect the views of all stakeholders, whether they work within the criminal justice system or experience it as a victim, witness, defendant or member of the public.

These questions were outlined in an issues paper, published on 2 May 2014.²⁵ Our symposium on unfitness to plead, held at the University of Leeds on 11 June 2014, attracted leading experts in criminal law and mental health.

We have been working on the report and draft Bill, which will be published in late summer/autumn 2015.

²³ Unfitness to Plead (2010) LCCP197.

²⁴ Available via www.lawcom.gov.uk.

²⁵ Unfitness to Plead (2014) Issues Paper.

Property, family and trust law

Commissioner

Professor Elizabeth Cooke

“

My final year as a Commissioner has been very exciting. 2014 saw the publication of reports on matrimonial property, conservation covenants, social investment by charities, and rights to light; as I leave, we have consultations open on technical issues in charity law and the enforcement of family financial orders. It has been a great privilege to work with the Property, Family and Trust team on this wide range of topics, and with the many stakeholders and consultees who have given their time so generously to advise us.

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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 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.

We made provisional proposals for reform of the law governing social investment in a consultation paper²⁶ published on 24 April 2014. That consultation closed on 18 June 2014 and we published our recommendations on 24 September 2014.²⁷ We recommended the introduction of a new default statutory power for charity trustees to make social

investments, and the creation of statutory duties that charity trustees must comply with when making a social investment. The Government accepted our recommendations and incorporated our Bill into the Charities (Protection and Social Investment) Bill, which was introduced into Parliament on 28 May 2015.

On 20 March 2015 we published a consultation paper on technical issues in charity law,²⁸ which covers the remaining areas of the project including:

- the powers of charities to amend their governing documents;
- what should happen to the proceeds of a fundraising appeal when it fails to raise sufficient funds;
- the obligations on charity trustees when they sell land;
- the restrictions on spending permanent endowment and the possibility of creating a new optional statutory regime for the use of permanent endowment;
- whether a charity should have a default power to pay trustees for the supply of goods;
- whether charities should be permitted to make ex gratia payments (payments that trustees are morally, but not legally, obliged to make) without Charity Commission consent;
- the merger and incorporation of charities;
- the insolvency of charitable trusts; and
- the powers of the Charity Tribunal.

The consultation will run until 3 July 2015. We expect to publish our final report and draft Bill in 2016.

Conservation covenants

Currently, a landowner can agree to use or not to use their 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.

²⁶ LCCP216.

²⁷ Social Investment by Charities: Recommendations (2014).

²⁸ (2015) LCCP220.

This project considered 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 consultation for this project ran from March to June 2013 and considered issues such as:

- 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.

We received responses from a range of environmental groups and landowners’ representatives.

We published our final report and draft Bill on 24 June 2014. The report recommends the introduction of a new statutory scheme of conservation covenants in England and Wales. In this scheme, a conservation covenant would:

- be formed by the agreement of two parties – a landowner (a person with a freehold estate or leasehold estate of more than seven years), and a responsible body drawn from a limited class of organisations;
- be able to contain both restrictive and positive obligations;
- be capable of binding the landowner’s successors in title (that is, all subsequent owners) after he or she has disposed of the land; and
- be made for the public good.

The Government is considering the report and will respond later in 2015.

Family financial orders – enforcement

This project 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 on 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 project is not concerned with the enforcement of maintenance for children administered by the Child Maintenance Service; such payments are not owed under a court order and so are outside the scope of our project.

The law in this area has in the past been described as “hopelessly complex and procedurally tortuous”.²⁹ 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 produced a consultation paper setting out a number of questions and provisional proposals in March 2015.³⁰ We aim to publish a report with our final recommendations to Government by summer 2017.

²⁹ Family Law Bar Association response to the 11th Programme consultation.

³⁰ (2015) LC219.

Land registration

The Land Registration Act 2002 was implemented following a joint project between the Law Commission and Land Registry. It updated the law relating to the registration of titles to and interests in freehold and some leasehold land.

The land registration regime is of enormous and growing importance. Over 80 per cent of the land in England and Wales is registered, with Land Registry maintaining more than 23 million titles. Dealings and disputes that engage the land registration regime can be complex and require expert advice. Uncertainty in the regime makes advising clients difficult, incentivises litigation and increases costs for landowners.

Evidence suggests that some areas of the current law would benefit from revision or clarification; the 12th Programme consultation revealed a range of often highly technical issues that have important commercial implications for Land Registry and its stakeholders, including mortgage providers. This project therefore comprises a wide-ranging review of the 2002 Act, with a view to amending parts of the Act that could be improved. In particular, it will examine the extent of Land Registry's guarantee of title, rectification and alteration of the register, and the impact of fraud. It also re-examines the legal framework for electronic conveyancing.

The project is now under way, and we aim to publish a consultation paper in spring 2016 and our report and draft Bill in late 2017.

Marriage law

This project involves a review of the law governing how and where people can marry in England and Wales. The underlying question is whether the current law, which has evolved over a long period of time, provides a fair and coherent legal framework: does it allow people to marry in a way that meets their needs and wishes, while recognising the interests of society and the state in protecting the status of marriage?

The Law Commission has agreed to carry out an initial piece of work to prepare the way for potential future reform of this important area of law. A preliminary study involving research into domestic and comparative law, and engagement with key stakeholders, will aim to identify the key issues. The work is not intended to cover:

- Who can be married – there will be no consideration of changing the age of consent or the restrictions on marrying within prohibited degrees.
- Whether or not religious groups should be obliged to solemnise marriages of same sex couples, an issue which was recently decided by Parliament following wide public debate.
- The rights or responsibilities imparted by marriage, such as the financial entitlements of surviving spouses or the consequences of divorce.

We expect to complete this scoping phase by the end of 2015, when we will publish our findings. We will then work with Government to consider next steps and a decision will be taken about the ongoing involvement of the Law Commission.

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 provides an appropriate balance between the interests of those benefiting from rights to light and those wishing to develop land in the vicinity. We made provisional proposals to address perceived problems in the law.³¹

³¹ Rights to Light (2013) LCCP210.

The consultation closed in May 2013. We received over 125 responses from a wide variety of stakeholders including individuals, representative bodies, surveyors, members of the legal professions and academics. We published our final report and draft Bill on 4 December 2014.³²

Our key recommendations

- A statutory notice procedure be established, allowing landowners to require their neighbours to tell them within a set time limit if they plan to seek an injunction to protect their right to light.
- A statutory test be introduced clarifying when the courts may order damages to be paid, rather than halting development or ordering a building to be demolished by granting an injunction. This takes into account the Supreme Court decision in the case of *Coventry v Lawrence*.³³
- The procedure by which landowners can prevent their neighbours from acquiring rights to light by prescription be updated.
- Amendment of the law governing when an unused right to light is to be treated as having been abandoned.
- Power be given to the Lands Chamber of the Upper Tribunal to discharge or modify obsolete or unused rights to light.

The Government's interim response to our recommendations is expected in June 2015, six months after publication of our final report.

Wills

It is estimated that 40 per cent or more of the adult population does not have a will; and even where a person has made a will, the state of the law is such that it may be found to be invalid. Where there is no will, or an invalid will, the intestacy rules will apply. These are no substitute for the expression of an individual's own wishes; it is therefore important that people make wills and that the law supports this.

The primary wills statute, the Wills Act 1837, dates from the Victorian era while the law governing the mental capacity to make a will derives from a case

from 1870. There is concern that the current law discourages some people from making wills, that it is out of step with social and medical developments, and that it may not give best effect to a person's intentions. It has been criticised for being difficult to understand and apply. In the case of mental capacity, this presents a growing problem, since conditions that affect capacity are becoming more common as people live longer.

This project will review the law of wills, focusing on four key areas:

- testamentary capacity;
- the formalities for a valid will;
- the rectification of wills; and
- mutual wills.

It will consider whether the law could be reformed to encourage and facilitate will-making in the 21st century: for example, by taking account of developments in technology and medicine. It will also aim to reduce the likelihood of wills being challenged after death, and the incidence of litigation. Such litigation is expensive, can divide families and is a cause of great stress for the bereaved.

We had planned to commence the project early in 2015, but have postponed it in light of the Government's request that we undertake a review of marriage law (see p29). We now expect to start work on wills once we have published a scoping paper on marriage law in late 2015.

³² Rights to Light (2014) LC356.

³³ [2014] UKSC 13; [2014] 2 WLR 433.

Public law

Commissioner

Nicholas Paines QC

“

2014–15 has been a most productive year in the public law team. Our recommendations for the control of invasive non-native plants and animals reached the statute book and we made several other recommendations for reform that, if implemented, would bring benefits to many. There would be new powers and duties for the regulators of the health professions, and a clear main objective of protecting the public. And passengers in taxis and private hire vehicles anywhere in the country could expect more consistent levels of safety and improved accessibility for those with disabilities.

Nicholas Paines QC. ”

Data sharing between public bodies

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. Some of these problems stem from defects in the law itself, and some from problems with understanding the law.

We conducted this project as a scoping review designed to identify where the problems truly lie and what should be done to address them. We ran a consultation during autumn 2013 and published a scoping report in July 2014.³⁴

In the report we concluded that a full law reform project should be carried out in order to create a principled and clear legal structure for data sharing.

Electoral law

The law relating 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, resulting in a system dependent on voluminous guidance, and on 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.³⁵ This defined those areas of electoral law that could properly be dealt with as a matter of law reform, including the administration of local campaigns, election timetables, 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. We published a detailed consultation paper in December 2014.³⁶ The consultation period ran until 31 March 2015, and we are aiming to finalise our substantive law reform recommendations 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.

³⁴ (2014) LC351.

³⁵ Electoral Law in the United Kingdom: A Scoping Report (2012).

³⁶ (2014) LCCP218.

The form and accessibility of the law applicable in Wales

Across the UK the law can be difficult for both professionals and members of the public alike to find and understand. The process of devolution lends an extra dimension to these problems in relation to the law in Wales.

The Government of Wales Act 1998 transferred executive powers to the National Assembly for Wales by means of transfer of functions orders, while other powers were transferred by statute. In 2007, these functions were transferred to Welsh ministers, and provision was made for transferring legislative competence either by statute or by legislative consent order. The system changed again in 2011, this time giving the National Assembly broader powers to make laws in devolved areas.

This is causing difficulty in a number of areas. It may appear from a statute that a power is exercised by the Secretary of State when in fact it has been transferred to Welsh ministers. Following the commencement of Part 4 of the Government of Wales Act 2006, statutes can be amended both in Westminster and by the Welsh Assembly with regard to their application in Wales. As a result, some now contain a mix of provisions covering both England and Wales, provisions that cover England only and provisions that apply only to Wales.

We will consider ways in which the earlier legislation can be simplified and made more accessible, and how future legislation could reduce, rather than multiply, the problems.

This is one of two projects in the 12th Programme that relate solely to Wales. The project will be purely advisory, and our final report will not contain a draft Bill. We will publish a consultation paper in summer 2015 and, following a formal consultation period, will present our advice to the Welsh Government in early 2016.

Mental capacity and detention

The Mental Capacity Act 2005 provides a framework for assessing whether people have the capacity to make certain decisions and, where they do not, for others to make those decisions in their best interests.

In 2004, the European Court of Human Rights established that the informal admission to a psychiatric hospital of a compliant but incapacitated person could amount to a deprivation of liberty under Article 5 of the European Convention on Human Rights. The UK was found to be in breach of the Article, because the law in England and Wales did not provide for an adequate system of authorisation and review of the deprivation of liberty.

In response to this, the Deprivation of Liberty Safeguards (DoLS) were introduced into the Mental Capacity Act 2005 by the Mental Health Act 2007. The safeguards aimed to plug the gap identified in the case, and to ensure that such situations are properly regulated in line with the person's human rights. However, they only apply to deprivations of liberty in hospitals and care homes; elsewhere, deprivations of liberty must be authorised and supervised by the Court of Protection.

The DoLS provisions have been criticised for being overly complex and excessively bureaucratic. Staff find them difficult to understand, and there is confusion regarding the relationship between powers under the Mental Health Act 1983 and the DoLS.

In March 2014 a House of Lords Select Committee found that DoLS were not “fit for purpose” and called for them to be replaced by a new system that would also cover people in supported living arrangements. Shortly afterwards, a decision of the Supreme Court made it clear that the nature of a deprivation of liberty of incapacitated people that requires the engagement of the DoLS is broader than had previously been assumed. This decision has led to a very significant increase in the number of applications under the DoLS.

Our project considers how deprivation of liberty should be authorised and supervised in hospitals, care homes and community settings and includes an examination of the legislation underpinning DoLS in its entirety. Work began in summer 2014. We will publish a consultation paper in July 2015, followed by a three-month consultation period. We expect to publish our report, with recommendations for reform and a draft Bill, in summer 2017.

Planning and development control in Wales

Planning law in both England and Wales is over-complicated and difficult to understand. The statutory provisions have not been consolidated since the Town and Country Planning Act 1990, and there has been piecemeal legislative development ever since.

The position is especially complex in Wales. Some, but not all, of the recent English legislation is applicable to Wales, while some provisions are specific to Wales only and some that are applicable in both countries have been commenced in England but not in Wales. This means that it can be very difficult, even for professionals, to understand which parts of the planning law apply in Wales. This is causing increased costs to individuals, communities and businesses, as well as to local planning authorities.

These problems cannot be dealt with by technical consolidation alone. This project, which began in autumn 2014, therefore considers the benefits of simplified, modernised planning law for Wales.

The main focus is the reform of the distinct process of development management and consideration of planning applications, and the relationship between development management and local development plans. This will complement the Welsh Government's Planning (Wales) Bill which reforms plan-making functions in Wales but does not fundamentally address development management.

A simplified and modernised planning system for Wales will have the potential to promote economic growth, increase the supply of housing and protect

the environment, as well as increasing efficiency and reducing transaction costs.

We expect to publish our report, with recommendations for reform and a draft Bill, in summer 2017.

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 professionals. It 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 professionals and reforming the oversight role of Government in relation to the regulators.³⁷

The Government responded on 29 January 2015,³⁸ accepting the majority of our recommendations and stating its commitment to legislate to implement them at the earliest possible opportunity. For more on this project and the draft Bill, see p48.

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, while 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.³⁹ The interest was such that we had to extend the consultation period twice. We attended 85 consultation meetings across England and Wales,

³⁷ (2014) LC345/SLC237/NILC18.

³⁸ (2015) Cm8995.

³⁹ (2012) LCCP203.

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.

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.

Our report and draft Bill were published on 23 May 2014,⁴⁰ setting out plans for a new single legal framework for the regulation of taxi and private hire services across England and Wales, including London and Plymouth.

We also recommended:

- retaining the current two-tier system, distinguishing between taxis and private hire vehicles;
- introducing national standards for all taxis and private hire vehicles, but with local authorities retaining responsibility for issuing licences and enforcement;
- making it easier for providers of private hire services to work cross-border, and give licensing officers new enforcement powers to deal with vehicles and drivers licensed in different areas;
- tougher penalties on touting (actively soliciting customers), including impounding;
- that certain vehicles operating at the fringes of licensing, or outside licensing altogether, are brought clearly within the scope of taxi and private hire regulation (although we recommend retaining the exemption for wedding and funeral cars);

- that licensing authorities should retain the right to limit the number of taxis working in their licensing area;
- mandatory disability awareness training for all taxi and private hire drivers;
- that licensing authorities should have the power to introduce a duty on taxis to stop when hailed;
- that licensing authorities should be required to review accessibility needs in their area every three years; and
- that the Secretary of State should have the power to require large operators to meet certain quotas in order to help address the lack of accessible vehicles.

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 those animals and plants characterised as European Protected Species, and their integration with other, domestic, legal structures. It also seeks to bring various purely domestic protection regimes for specific species into the same legislative structure.

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.

⁴⁰ (2014) LC237.

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.⁴¹ 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 2014.⁴² Our recommendations in relation to species control orders were given effect in the Infrastructure Act 2015. Our report on the remaining elements of the project is scheduled for publication in July 2015.

⁴¹ Wildlife Law (2012) LCCP206.

⁴² (2014) LC342.

The form and accessibility of the law applicable in Wales

In response to a suggestion from our Welsh Advisory Committee, we have included a project in our 12th Programme that will consider:

- how existing legislation in Wales can be simplified and made more accessible; and
- how future legislation could reduce, rather than multiply, the problems.

On 25 March 2015, as part of our 50th anniversary celebrations, we hosted a discussion event in Cardiff. We invited an audience of 90 stakeholders from the National Assembly, the Welsh Government, the senior judiciary and the public, voluntary and business sectors to help us consider the challenges we will face. The event, which was generously sponsored by the Wales Governance Centre, was opened by David Melding AM, Member of the Welsh Assembly and Chairman of the Constitutional and Legislative Affairs Committee. Our Chairman then introduced our distinguished panel.

- The Rt Hon Sir Geoffrey Palmer KCMG AC QC, former president of the New Zealand Law Commission and former Prime Minister of New Zealand
- The Rt Hon the Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales
- Theodore Huckle QC, Counsel General for Wales
- Dylan Hughes, First Legislative Counsel for Wales



“

I hope that you share my vision of Wales becoming a leader in the production of legislation that is clear, technically accurate and accessible to the public. I have no doubt that the Law Commission’s project on the form and accessibility of the law applicable to Wales will make a valuable contribution to this process.

”

Lord Thomas

Lessons from an independent country

Expressing his concern that “legal muddlement and the difficulties of accessibility” are real risks for Welsh legislators, he called for “order and rigor”, and said that law-makers should take more care at the beginning.

All major change legislation should be subject to careful analysis and public consultation before it reaches the Assembly, and adequate time allowed for scrutiny throughout the law-making process.

So it can be seen how proposals for change will work, a Bill should be drafted. And, for consistency, all Bills should be prepared by a new Legislation Office of Parliamentary Counsel, led by the Counsel General. The Office should also be responsible for systematic post-legislative scrutiny.

An opportunity to lead the way

“Wales should not be afraid to think boldly and innovatively”, was the message from Lord Thomas. He suggested three areas where law-makers in Wales have an opportunity to lead by example:

Modern formats – The Westminster model makes it impossible to work out how legislation has been amended.

Plain language – Law-makers should use plain English or plain Welsh, and resist the tendency to try to legislate for every possible eventuality.

Expertise – Drafters should work with subject experts to ensure legislation is technically accurate and will work in practice.

Capacity, complexity, clarity

Theodore Huckle QC outlined how Wales has sought to learn about law making from Commonwealth governments, in particular New Zealand and New South Wales, and charted the progress already made:

Capacity – The Office of the Legislative Counsel has been strengthened, bringing in more expertise and experience, and a comprehensive legislation education programme put in place.

Complexity – Where practicable, law-makers avoid amending legislation that also applies to other parts of the UK. Instead, relevant provisions are restated – bilingually – for Wales.

Clarity – The Office of the Counsel General has been working with National Archives to make content on legislation.gov.uk available in Welsh.

First Legislative Counsel Dylan Hughes gave delegates a live demonstration of “Cyfraith Cymru Law Wales”, a collaborative online service the Office has launched to provide an overview of the law of the Welsh constitution and devolved subject areas.



Lord Thomas of Cwmgiedd



L-R: Dylan Hughes, Theodore Huckle QC, Lord Justice Lloyd Jones, Lord Thomas, Sir Geoffrey Palmer



I would like to thank again Sir David and the Law Commission and, perhaps most of all, our principal guest Sir Geoffrey Palmer, for making this event one of such high quality and enormous practical value as we work to develop a new statute book for Wales.



Theodore Huckle QC

What our stakeholders said

- “It was interesting to hear about the experience from New Zealand and how amendments in legislation can impact on the accessibility of the law.”
- “It made me reflect on the short and long term impact of devolution and how the Welsh Government should be encouraged to embrace a new approach to legislation based on principles of simplicity and accessibility.”
- “The message for the Assembly was to produce less and better, more focussed legislation.”

Statute Law

Commissioner

Chairman

Consolidation

Following discussions with the Ministry of Justice we have decided to restart work on the consolidation of the law of Bail (a project suspended in 2010). That is subject to competing priorities for our drafting resources, but we hope work can restart later in 2015.

A number of possible consolidation projects were suggested to us during the year, whether by government departments or by consultees as part of our consultation on our 12th Programme of Law Reform. These have all been examined in detail by our senior Parliamentary Counsel but none of the suggestions can be taken forward at this time.

We have not carried out any consolidation work during the year. However, some elements of our current law reform project on sentencing law involves drafting work that is very similar to the work that would be necessary for a consolidation Bill on that subject.

Statute law repeals

20th century legislation

During the year we completed our examination of 20th century Acts. An earlier review had suggested the existence of a considerable amount of comparatively modern but obsolete law that had fallen outside previous repeals projects. We published two consultation papers based on our findings.

The first of these was our trade and industry paper which we published in June 2014. This included many repeal proposals, mostly dating from the 1940s, the obsolete enactments reflecting economic and social changes in the second half of the 20th century. The proposals would repeal 37 obsolete Acts.

The second consultation paper was our general repeals paper which, as the title suggests, related to topics as diverse as agriculture, criminal law, housing, taxation and social security. The proposals would repeal 56 obsolete Acts. Not all the repeals related to the 20th century. The earliest, the Statute of Marlborough, was enacted in 1267.

Statute Law Repeals report and Bill

Our 20th Statute Law Repeals report was published on 3 June 2015.⁴³ Annexed to it was the draft Statute Law (Repeals) Bill that we expect to be introduced into Parliament and enacted later this year. If enacted, this will result in the repeal of 209 Acts in their entirety and the removal of redundant provisions from 63 other Acts. The repeals in the Bill include enactments not only from the 20th century project referred to above but also from our earlier projects relating to churches and British India.

⁴³ (2015) LC357/SLC243.

PART THREE

Implementation of Law Commission law reform reports 2014–15

“

This Government, as, I am sure, does the party opposite, hold the Law Commission in very high regard.... We have made great progress and can demonstrate by what has happened and what continues to happen the continued relevance and resilience of the Commission's work.

”

Lord Faulks, Oral Questions, Hansard (HL) 12 May 2014, Col GC452.

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.

Between 1 April 2014 and 31 March 2015 we:

- published 10 final reports with recommendations for law reform, and
- the recommendations from 8 reports were implemented in whole or in part.

At 31 March 2015:

- 5 reports were in the process of being implemented
- 3 reports were awaiting implementation

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

- Law reform reports published 212
- Implemented in whole or in part 143 (67.5 per cent)
- Accepted or implemented in whole or in part 156 (73.6 per cent)
- Accepted in whole or in part, not yet implemented 8 (3.8 per cent)
- Accepted in whole or in part, will not be implemented 5 (2.4 per cent)
- Awaiting response from Government 12 (5.6 per cent)
- Rejected 31 (14.6 per cent)
- Superseded 8 (3.8 per cent)

Improving the rate of implementation

Implementation of our reports is not the only measure of the Law Commission's success. However, it is of course a crucial indicator of the extent to which we are meeting our statutory obligation, the "systematic development and reform" of the law.

There have been three developments in recent years designed to increase the rate at which Law Commission reports are implemented by:

- formalising our working relationship with Government,

- establishing at an early stage that Government has an interest in pursuing reform in the areas on which we are working, and
- 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 fifth report to Parliament was made on 13 March 2015.²

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 Protocol³ 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.

Law Commission parliamentary procedure

On 7 October 2010 the House of Lords approved⁴ 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.⁵ Bills are suitable for this procedure if they are regarded as "uncontroversial".

Six Law Commission Bills have now followed this procedure:

- Insurance Act 2015, introduced into the House of Lords 17 July 2014, completed its passage through Parliament on 3 February 2015, received Royal Assent on 12 February 2015.

¹ As at 13 May 2015.

² Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015) HC 1062.

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

⁴ www.publications.parliament.uk/pa/ld201011/dhansrd/text/101007-0001.htm#10100714000813 (last visited 28 May 2015).

⁵ www.publications.parliament.uk/pa/ld200708/ldselect/ldprohse/63/6303.htm (last visited 28 May 2015).

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- 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.

In February 2015, the Government accepted recommendations we made in our report on patent, trade mark and design rights, subject to minor qualifications, and has asked us to draft a Bill suitable for introduction through the procedure in autumn 2015.

The House of Lords Procedure Committee also recommended that the procedure should be extended to reports of the Scottish Law Commission. This was approved by the whole House on 7 October 2010.⁶ 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.

⁶ www.publications.parliament.uk/pa/ld201011/ldselect/ldprohse/30/3003.htm#a1 (last visited 28 May 2015).

Reports implemented

Adult social care

Our report on adult social care recommended a unified legal framework for the provision of adult social care services to disabled people, older people and carers. Both the Department for Health and the Welsh Government accepted our recommendations. The Care Act 2014 and the Social Services and Well-being (Wales) Act 2014 received Royal Assent on 14 May 2014, implementing the vast majority of our recommendations.

Consumer redress for misleading and aggressive practices

In March 2012 we published a joint report with the Scottish Law Commission recommending new legislation to give redress to consumers who experience misleading and aggressive practices in their dealings with traders.⁷

The Consumer Protection from Unfair Trading Regulations 2008 implemented the Unfair Commercial Practices Directive into UK law, and state 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.

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. After 90 days, the consumer should be entitled to a discount. In some cases, they should also be entitled to damages.

The Consumer Protection (Amendment) Regulations 2014 give effect to these recommendations. They came into force on 1 October 2014.

Consumer remedies for faulty goods

In November 2009 we published our final report on consumer remedies for faulty goods.⁸ 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 consumers should have a clear right to reject goods if they acted within 30 days. Consumers should also be entitled to escape a contract after one failed repair or replacement.

These recommendations are included in Part 1, Chapter 2 of the Consumer Rights Act 2015, which received Royal Assent in March 2014 and is due to come into effect on 1 October 2015.

Some recommendations in the report were not accepted. In particular, the Government did not accept our recommendation 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

In December 2013 the Law Commission published a report⁹ containing recommendations for law reform relating to contempt by jurors and to aspects of contempt by publication as they relate to modern media.

The report contained 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.

Recommendations from the report to create new offences and provide powers for judges to require jurors to surrender electronic communications devices have been implemented in the Criminal Justice and Courts Act 2015, which received Royal Assent on 12 February 2015. The report

⁷ LC332/SLC226.

⁸ LC317/SLC216.

⁹ (2013) LC340.

also contained 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.

The Government will not be taking forward our remaining recommendations concerning strict liability contempt, a specific defence for disclosure of juror deliberations to the Criminal Cases Review Commission or an exception to the disclosure offence allowing approved academic research. A decision on whether to accept the recommendations concerning juror information and education is pending.

The Government broadly accepted the Law Commission's recommendations concerning juror misconduct, and provisions in the Criminal Justice and Courts Act implement our recommendations to create new offences and provide powers for judges to require jurors to surrender electronic communications devices.

Although the Government accepted that our recommendations concerning the defence for archive online material represent a balanced and measured proposal, and two clauses were included in the Criminal Justice and Courts Bill, the former Attorney General's Written Statement of 30 June to the House¹⁰ explained that the Government decided not to pursue the measures and removed the clauses from the Bill.

For more on our contempt of court project, see p21.

Insurance contract law

As discussed in Part 2 (see p16), in July 2014, the Law Commission and Scottish Law Commission published the second report of our joint project to simplify insurance contract law and bring it into line with modern market practice. The report and draft Bill covered four topics. Our recommendations in three areas have now been implemented through the Insurance Act 2015. These areas are

- the duty of disclosure in business insurance;
- the law of warranties; and
- insurer's remedies for fraud.

The Act passed through Parliament using the procedure for uncontroversial Law Commission Bills.

The Bill was introduced into Parliament on 17 July 2014. The House of Lords Special Public Bill Committee took evidence from interested parties about the Bill. The Commissioner responsible for the report, David Hertzell, gave evidence to them on 2 December 2014. We worked with HM Treasury to ensure the successful passage of our Bill, which received Royal Assent on 12 February 2015. It will come into force on 12 August 2016.

The Government considered that our recommendations on damages for late payment were too controversial for a Bill introduced using the Law Commission procedure. While we were disappointed that our recommendations have not been enacted so far, we will continue to work with Government to see if they can be introduced in some other measure.

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.¹¹

We published two draft Bills with our final report. The first of these, the Inheritance and Trustees' Powers Bill, recommended changes to three areas of the law:

¹⁰ <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140630/wmstext/140630m0001.htm>.

¹¹ (2011) LC331.

- first, simplification and updating of the law of intestacy which determines the way in which an estate is distributed in the absence of a will;
- second, adjustment of some technical rules relating to the Inheritance (Provision for Family and Dependants) Act 1975 which permits certain family members and dependants to apply to the court to vary the distribution of an estate; and
- third, amendment of the Trustee Act 1925 so as to bring trustees' powers to apply funds for the benefit of beneficiaries in line with current practice.

These changes were implemented as the Inheritance and Trustees' Powers Act 2014. The reforms will make it simpler for people to deal with the practical and financial issues that arise when a family member dies and will simplify the administration of trusts. The Act was introduced in July 2013 and received Royal Assent on 14 May 2014. Its provisions came into force on 1 October 2014.

For more information on the second draft Bill, the Inheritance (Cohabitants) Bill, see Intestacy and Family Provision Claims on Death (Cohabitants) on p51.

Unfair contract terms

In 2005 we published a report with the Scottish Law Commission on unfair terms in contracts,¹² 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*¹³). Following an issues paper in July 2012, we published an Advice to the Department for Business, Innovation and Skills in March 2013¹⁴ 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 now form Part 2 of the Consumer Rights Act 2015. This Act received Royal Assent in March 2015 and is due to come into effect on 1 October 2015.

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

Wildlife law: control of invasive non-native species

On 11 February 2014, we published our report on the control of invasive non-native species. This was the first element to be delivered from the full project, and was brought forward at the request of Defra and the Welsh Government to enable them to consider whether to introduce early legislation.

Invasive non-native species are ones that arrive as a result of human action and cause environmental and economic damage. They pose a significant threat to ecosystems as well as damaging property and infrastructure. Existing law does not contain sufficient powers to allow for their timely and effective control or eradication.

Our recommendations in relation to species control orders were given effect in the Infrastructure Act, which received Royal Assent on 21 February 2015. These orders will make it possible, under certain circumstances, to compel land owners or occupiers to carry out control or eradication operations, or allow them to be carried out by the issuing authority.

¹² (2005) LC292/SLC199.

¹³ [2009] UKSC 6, [2010] 1 AC 696.

¹⁴ Unfair Terms in Consumer Contracts: Advice to the Department for Business, Innovation and Skills (2013).

Reports in the process of being implemented

Fiduciary duties of investment intermediaries

As we explain in Part 2 (see p15) we published this report on 1 July 2014, along with guidance to pension trustees on how far investment decisions could take account of long-term risks and non-financial factors. The report also recommended that the Government should review three aspects of the Occupational Pension Schemes (Investment) Regulations 2005 (the “Investment Regulations”).¹⁵

In October 2014, the Government published a response to our report, as part of its progress report on the implementation of the Kay review. The Government endorsed our guidance and is considering ways in which it can be given greater prominence. We are pleased that the guidance has been circulated widely and has received considerable press coverage.

In February 2015, the Department of Work and Pensions consulted on our recommended changes to the Investment Regulations.

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 2013.¹⁶

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 provided a final response to the report in October 2014, accepting both the case for reform and the majority of our recommendations.¹⁷ The Department for Transport published an action plan in December 2014, setting out an indicative timetable for implementing our recommendations and identifying a number of areas where further consideration with stakeholders is needed before reaching a conclusion.

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 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.

In April 2014 we published a report recommending reforms to these statutory provisions.¹⁸ We suggested 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. We also recommended that professional advisers acting on behalf of their clients should no longer face liability for making threats.

In February 2015, the Government accepted these recommendations subject to minor qualifications. The Law Commission has been asked to draft a Bill suitable for introduction through the special procedure for uncontroversial Law Commission Bills in autumn 2015.

¹⁵ DWP, Consultation on changes to the Investment Regulations following the Law Commission’s report.

¹⁶ LC339.

¹⁷ (2015) HC1062.

¹⁸ (2014) LC346.

Renting homes in Wales

In 2006, we published *Renting Homes: The Final Report*.¹⁹ 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 our recommendations.²⁰ To assist with implementation, we undertook a short piece of work, supported by the Welsh Government, to update the original proposals, taking into account any devolution issues that might arise and 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 2013.²¹

In May 2013 the Welsh Government published its own white paper to consult on implementing the proposals.²² The *Renting Homes (Wales) Bill* was introduced into the Welsh Assembly on 9 February 2015.

Third parties (rights against insurers)

In 2001, the Law Commission and the Scottish Law Commission recommended reforms to the *Third Parties (Rights against Insurers) Act 1930*.

The aim of the 1930 Act was to protect a third party with a claim against an insolvent person, where that claim is insured. It ensures that money due under the insurance policy is paid to the third party rather than becoming part of the assets of the insured to be distributed during insolvency proceedings.

The main problem with the Act was the cumbersome procedure: where an insolvent company had been dissolved, claimants needed to restore the company and obtain a judgment against it, before proceeding against the insurer. The two Commissions recommended that the claimant should be able to

proceed directly against the insurer without first bringing proceedings against the defunct company.

The report's recommendations were enacted in the *Third Parties (Rights against Insurers) Act 2010*. However, this Act is not yet in force and drafting errors mean that it does not cover all insolvency and related events.

The *Insurance Act 2015* adds a new regulation-making power to the 2010 Act to keep it up to date with changes in insolvency law. The intention is to use this power to make regulations early in the 2015–16 parliamentary session so as to bring the 2010 Act into force by the end of 2015.

¹⁹ (2006) LC297.

²⁰ *Homes for Wales: a white paper for better lives and communities*.

²¹ LC337.

²² *Renting Homes: a better way for Wales*.

Reports awaiting implementation

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.²³

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;
- rationalise 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;
- redefine 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.

In December 2014, the Department for Culture, Media and Sport announced that they intended to reform the Code based on our recommendations. Government prepared legislation for a new Code and tabled it as an amendment to the Infrastructure Bill, but that amendment was later withdrawn. Government has indicated that it remains committed to implementing Code reform and a consultation on its draft legislation took place between February and April 2015.²⁴

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 2011.²⁵

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.²⁶

We have, however, achieved a great deal by other means:

- As the Lord Chief Justice explained in his Kalisher Lecture to the Criminal Bar Association in October 2014,²⁷ the Criminal Procedure Rules Committee has adopted as many of the recommendations as it could adopt through the Criminal Procedure Rules and accompanying Criminal Practice Directions. As a result, while the common law remains the source of the criteria by reference to which the court must assess admissibility, the Rules list those matters which must be covered in the experts' report so that the court can conduct such an assessment and the Practice Directions list the factors the court may take into account in determining the reliability of expert opinion.
- Meanwhile, in a parallel development, a series of cases concerned mainly with the use of Low Template DNA has established a requirement that the court can only admit expert evidence if it is reliable.
- In a development at least as significant as the other two, the Advocacy Training Council has adopted our recommendations in this report as the basis for its training. In this way, we are confident that the entire approach of the profession to expert evidence in both criminal and civil proceedings can be fundamentally reformed and the risk of miscarriages of justice greatly reduced.

²³ The Electronic Communications Code (2013) LC336.

²⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407675/Consultation_Document.pdf.

²⁵ Expert Evidence in Criminal Proceedings in England and Wales (2011) LC325.

²⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260369/govt-resp-experts-evidence.pdf.

²⁷ <https://www.judiciary.gov.uk/announcements/2014-kalisher-lecture-on-the-future-of-forensic-science-in-criminal-trials-by-the-lord-chief-justice/> (last visited 1 June 2015).

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 professionals. 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 professionals and reforming the oversight role of Government in relation to the regulators.²⁸

The draft Bill received a very 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.”

The Government responded to the draft Bill on 29 January 2015,²⁹ accepting the majority of the recommendations and stating its commitment to legislate to implement them at the earliest possible opportunity. In the meantime the Government has implemented some of our recommendations in the Health and Social Care (Safety and Quality) Act 2015 and through the use of secondary legislation.

The regulation of social care professionals in Wales is devolved. On 23 February 2015 the Welsh Government introduced the Regulation and Inspection of Social Care (Wales) Bill into the National Assembly. The Welsh Government stated that “although [the Law Commission report] did not cover social care workers in Wales, it is considered to have provided significant evidence and guidance for the development of workforce regulation in this Bill.”³⁰

²⁸ Regulation of Health Care Professionals. Regulation of Social Care Professionals in England (2014) LC345/SLC237/NILC18.

²⁹ (2015) Cm8995.

³⁰ Regulation and Inspection of Social Care (Wales) Bill, Explanatory Memorandum (February 2015).

Transforming the law on adult social care

The Care Act 2014, which implements our recommendations for reform of adult social care law, has been hailed as the biggest shake-up in this area for 60 years. The Social Services and Wellbeing (Wales) Act, which will come into force on 1 April 2016, will also implement the vast majority of our recommendations in Wales.

Far-reaching reforms

We first announced our plans for a review of adult social care law in 2008, as part of our 10th Programme of Law Reform. We argued that the existing law was outdated and difficult for service users, local councils and service providers to understand, leading to confusion, wasting time and resources and stifling innovation.

In our consultation paper published in 2010, we set out more than 80 detailed proposals, including creating a single statute for adult social care and the repeal of all existing community care statutes. Our final recommendations, laid before Parliament in 2011, included plans for far-reaching reforms that would bring clarity and accessibility to an area of the law that affects so many people's lives, and also put the emphasis on promoting well-being and early intervention with the aim of keeping people independent for as long as possible.

What will change in England

- Eligibility for care will now be assessed in line with national criteria, ending the current "postcode lottery" where criteria were set by individual councils.
- Councils must now offer loans for those who need them to pay for their residential care, to be repaid from their estate after their death.
- Carers have the same right to assessment and support as the people they care for.
- Those paying for their own care will still be able to go to their local council for information and advice about the care system.



The Bill represents the most significant reform of care and support legislation in more than 60 years. The foundations of social law are based on principles that are no longer relevant in today's society. This long-awaited Bill implements the recommendations of the Law Commission's excellent three-year review.

Earl Howe, Hansard (HL) 21 May 2013, vol 745, col 746.

Main changes in Wales

- Eligibility for care will now be assessed in line with national criteria, ending the current "postcode lottery" where criteria were set by individual councils.
- People will be assessed according to what they need, rather than what services are available locally.
- Assessments will be portable, so people won't have to start the process all over again if they move from one part of Wales to another.
- A National Adoption Service will be set up to improve the outcomes of children in need of a permanent family.
- A National Outcomes Framework will set out clearly what children and adults can expect from social services, and also help to measure impact and identify areas for improvement.
- The Act reforms the law governing social care for children, as well as adults.



This Act is a landmark piece of legislation, one of the most significant the Assembly has passed since it acquired full law making powers in 2011. There is nothing more important to this Government than protecting our most vulnerable citizens and helping to improve their health and wellbeing.

Carwyn Jones, First Minister of Wales, 1 May 2014.

Reports awaiting a Government decision

Cohabitation: the financial consequences of relationship breakdown

In this project we examined the financial consequences of the termination of cohabitants' relationships. 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.³¹

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 2011³² that it did not intend to take forward our recommendations for reform during the then-current Parliament.

Conservation covenants

This project considers 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.

In our final report and draft Bill, published on 24 June 2014,³³ we recommended that a new statutory scheme of conservation covenants be introduced in England and Wales. See p27 for more detail.

The Government is considering the report and will respond later in 2015.

Contempt of court: court reporting

Contempt of Court (2): Court Reporting was published on 26 March 2014.³⁴

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. Our report included a pilot study which demonstrated the likely efficiency that could be introduced by such a scheme.

The Government has welcomed our recommendations, and stated its intention to respond formally when the CLS Common Platform is implemented.

For more on our contempt of court project, see p21.

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 Plan³⁵ in March 2012 and an exchange of correspondence over the second half of that year.

³¹ Cohabitation: The Financial Consequences of Relationship Breakdown (2007) LC307.

³² Written Ministerial Statement, Hansard (HC), 6 September 2011, col 16WS.

³³ (2014) LC349.

³⁴ LC344.

³⁵ Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime, HM Government (2012)

The project examined the case for extending two existing groups of hate crime offences – “aggravated offences” and stirring up hatred – to include protection for additional groups of potential hate crime victims.

Our report on the consultation, which closed in September 2013, was published on 28 May 2014. Our recommendations included strengthening the enhanced sentencing system, and a full-scale review of aggravated offences. We recommended that stirring up offences should not be extended.

See p22 for more detail. The Government is considering our recommendations and will respond in due course.

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.³⁶

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.

The Government is considering these recommendations, and will take account of any relevant recommendations in Sir Brian Leveson’s Review of Efficiency in Criminal Proceedings³⁷ before responding.

Intestacy and family provision claims on death (cohabitants)

As reported on p43, our final report, Intestacy and Family Provision Claims on Death, was accompanied by two draft Bills to implement our recommendations.³⁸ 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 the then-current Parliament.³⁹

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

³⁶ The High Court’s Jurisdiction in Relation to Criminal Proceedings (2010) LC324.

³⁷ <https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/> (last visited 1 June 2015).

³⁸ (2011) LC331

³⁹ Written Statement, Hansard (HL), 21 March 2013, vol 744, col 59WS.

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.

These rights are of great practical importance to landowners and can be fundamental to the use and enjoyment of property. 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 recommended reforms to modernise and simplify the law underpinning these rights, making it fit for the 21st century and a modern registration system.⁴⁰ The 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. They would also give new legal tools to landowners to enable them to manage better their relationships with neighbours and facilitate land transactions.

In the Lord Chancellor’s 2015 implementation report⁴¹ the Government stated that, although good progress had been made in analysing the recommendations, it had not yet reached final conclusions. We are expecting the Government’s response to our report later in 2015.⁴²

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,⁴³ making the following recommendations:

- the meaning of “financial needs” should be clarified by the provision of guidance so they can be applied consistently by the courts;
- legislation be enacted introducing “qualifying nuptial agreements”; and
- work should be done to assess whether a formula for calculating payments would be feasible, but only when sufficient data is available about divorce outcomes under the current law.

The Government’s interim response to the Law Commission was published on 18 September 2014. The Government accepted our recommendation about guidance to clarify the meaning of “financial needs”, and work on this is now being taken forward by the Family Justice Council. A final response on the other recommendations will be given by the new Government once it has had time to consider the issues.

Rights to light

We commenced our project on rights to light in spring 2012 and opened a consultation in February 2013.⁴⁴

The consultation closed in May 2013, and we published our final report and draft Bill on 4 December 2014.⁴⁵ Our key recommendations include establishing a statutory notice procedure and introducing a statutory test to clarify when the courts may order damages to be paid, rather than halting development or ordering a building to be demolished by granting an injunction. See p29 for more detail.

The Government’s interim response to our recommendations is expected six months after publication of our final report.

⁴⁰ Making Land Work: Easements, Covenants and Profits à Prendre (2011) LC327.

⁴¹ Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015), paragraph 91.

⁴² *ibid.*, paragraph 93.

⁴³ Matrimonial Property, Needs and Agreements (2014) LC343.

⁴⁴ Rights to Light (2013) LCCP210.

⁴⁵ Right to Light (2014) LC 356.

Simplification of criminal law

Kidnapping

We opened our consultation⁴⁶ on this project in September 2011. Our final report was published on 20 November 2014 and included the following recommendations:

- Kidnapping offences should remain triable in the Crown Court only.
- The existing offence of false imprisonment be replaced by a new statutory offence of unlawful detention, and the existing offence of kidnapping be replaced with a new, more coherent, statutory kidnapping offence.
- The maximum sentence for offences under sections 1 and 2 of the Child Abduction Act 1984 be increased from seven to 14 years' imprisonment, and that section 1 be extended to cover cases involving the wrongful retention of a child abroad.

See p25 for more detail. The Government is considering our recommendations and will respond in due course.

Taxi and private hire services

This project was proposed as part of the 11th Programme by the Department for Transport. In May 2012 we published our consultation paper,⁴⁷ proposing a single statute to govern both the taxi and private hire trades, and the setting of national standards in order to free up the private hire market.

Some of our proposals provoked a great deal of controversy, and in April 2013 we published a short interim statement⁴⁸ explaining 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.

Our report and draft Bill were published on 23 May 2014.⁴⁹ Although the Government has not yet responded formally to our recommendations, three taxi and private hire measures – based on our recommendations – were included in the

Deregulation Bill. One clause has since been dropped and will be reconsidered as part of our recommendations. The Deregulation Act 2015 received Royal Assent on 26 March.

The Government has suggested that these measures should 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.

For more on this project and the draft Bill, see p33.

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. 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.⁵⁰

The Government has discussed the recommendations with a number of stakeholders and continues to consider the proposals. In the Lord Chancellor's 2015 implementation report, the Government indicated that it intends to reach a conclusion as soon as practicable in 2015.⁵¹

46 Simplification of Criminal Law: Kidnapping (2011) LCCP200.

47 LCCP203.

48 http://lawcommission.justice.gov.uk/docs/cp203_tax-and-private-hire-services_responses_overview.pdf

49 (2014) LC347.

50 Termination of Tenancies (2006) LC303.

51 Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015), paragraphs 102–4.

Reports rejected

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.⁵²

The Government conducted pilots with two departments.⁵³ Based on the outcomes of these pilots, along with wider changes to the Government's approach to reporting through the Simplifying and Streamlining Annual Report and Accounts project, it was decided that it should not be mandatory for departments to report this information, although they will be encouraged to do so where it is likely to be of interest to readers.

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.⁵⁴

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.

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.⁵⁵

The Government has accepted our recommendations and 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.

In 2014 the Justice Select Committee again recommended that the Government refer to us the matter of joint enterprise: “the Law Commission should consider the proposition that it should not be possible to charge with murder, but only with manslaughter or a lesser offence, secondary participants in joint enterprise cases who did not encourage or assist the perpetration of the murder”.⁵⁶

The Lord Chancellor subsequently said: “Joint enterprise law has enabled some of the most serious offenders to be brought to justice. It ensures that if a crime is committed by two or more people, all those involved can potentially be charged and convicted of that offence. We have considered the Justice Committee's recommendations carefully and it would not be appropriate to launch a review of the law before the end of the Parliament. We also need to think carefully about the impact changing the law would have on the families of victims”.

⁵² Administrative Redress: Public Bodies and the Citizen (2010) LC322.

⁵³ Report on the Implementation of Law Commission Proposals, Ministry of Justice (2014), paragraphs 59–60.

⁵⁴ Conspiracy and Attempts (2009) LC318.

⁵⁵ Participating in Crime (2007) LC305.

⁵⁶ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/report-joint-enterprise-follow-up/> (last visited 1 June 2015).

PART FOUR

How we work

“

No policy proposal can be properly understood and tested unless there is a Bill drafted by Parliamentary Counsel. Embedding Parliamentary Counsel in the Commission in London was a stroke of genius.

”

Sir Geoffrey Palmer, Scarman Lecture, 24 March 2015.

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, which we launched on 22 July 2014. For more on this, see pp12-13.

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”,¹ 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 progress we have made on the projects in the 12th Programme of law reform is set out in Part 2 of this annual report.

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.

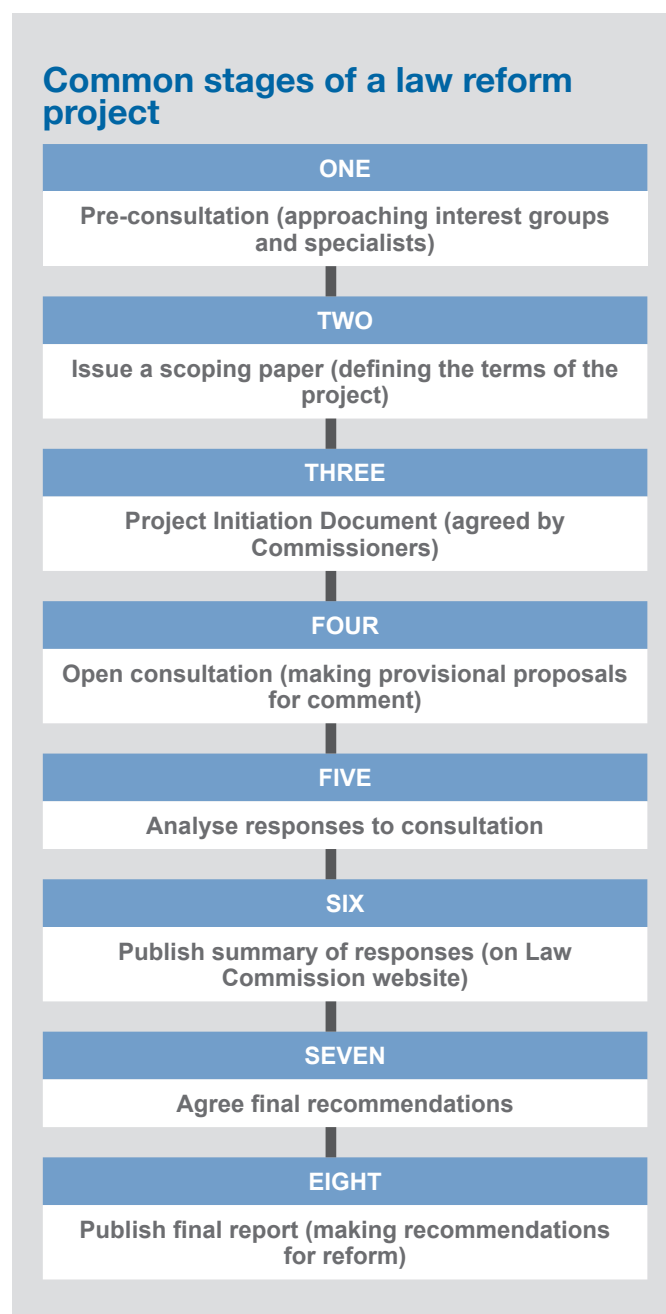
The Law Commission is committed to consulting fully with all the people and organisations who could potentially be affected by our proposals. Thorough, targeted consultations allow us to acquire a good understanding of the issues that are arising in an area of law and the effect they are having, and 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. All the responses we receive are analysed and considered carefully. They are published, either separately or in the final project report.

¹ Law Commissions Act 1965, s 3(1).

The Law Commission follows the Government Consultation Principles.²



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.

During 2014-15 two projects were referred to us by Government:

- Marriage law – a review of the law governing how and where people can marry in England and Wales, referred by the Ministry of Justice.
- Transfer of Title and Change of Occupancy Fees in Leaseholds – an examination of leasehold terms that oblige the lessee to pay a fee when title is transferred or where there is a change in occupancy, referred by the Department for Communities and Local Government.

Accounts of our progress on these projects are included in Part 2 of this annual report.

² www.gov.uk/government/publications/consultation-principles-guidance (last visited 28 May 2015).

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 continues to be reflected in new legislation, so the need for systematic and expert review of older legislation will remain.

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.

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

See p38 for our consolidation work of 2014–15.

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 20 such Bills since 1965. Nineteen of these have been enacted, achieving 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 20th statute law repeals report,³ was published on 3 June 2015. A joint report with the Scottish Law Commission, this Bill proposes the repeal of:

- 121 obsolete Acts relating to churches
- 37 obsolete Acts and the partial repeal of 11 other Acts relating to trade and industry, and
- 56 obsolete Acts and the part repeal of 49 other Acts relating to topics as diverse as agriculture, criminal law, housing, merchant shipping and guard dogs.

See p38 for an account of our statute law repeals work in 2014–15.

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.

³ (2015) LC357/SLC243.

The Law Commission and Government

Protocol

In March 2010 the Law Commission agreed a statutory Protocol⁴ with the Lord Chancellor that governs how the Commission and Government Departments should work together on law reform projects (see p40).

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 fifth report on 13 March 2015.⁵

Informing debate and scrutiny

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

Professor Elizabeth Cooke gave evidence in January 2015 to the Joint Committee hearing on the Charities (Protection and Social Investment) Bill. She submitted a written statement to the Committee, summarising our charity law project and noting some of the issues that the project will consider: social investment by charities, the means by which charities can amend their governing documents and the regulatory framework that applies to disposal of charity land.

On 5 March 2015, Nicholas Paines QC appeared before the Welsh National Assembly Finance Committee in connection with the Consideration of Powers of the Public Services Ombudsman in Wales. In 2011 we published a report⁶ making recommendations aimed at improving access to the public services ombudsmen, including in Wales.

Also in March 2015 our Chairman, Sir David Lloyd Jones, and Chief Executive, Elaine Lorimer, appeared before the Constitutional and Legislative Affairs Committee of the National Assembly of Wales. They gave evidence on the Form and Accessibility of the Law Applicable to Wales, one of the Commission's current projects that relate to the law only in Wales. Sir David took the opportunity to also discuss the Law Commission's interest in strengthening its links with the Assembly and its Committees.

In December 2014 we gave evidence to the House of Lords Special Public Bill Committee to support their scrutiny of the Insurance Bill. David Hertzell, the Commissioner responsible for our Insurance Law report appeared before them on 2 December.

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.⁷

⁴ Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission (2010) LC321.

⁵ Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015) HC1062.

⁶ Public Services Ombudsmen (2011) LC329.

⁷ Available via www.lawcom.gov.uk.

Scarman Lecture 2015: The law reform enterprise

In the early evening of 24 March 2015 a distinguished audience of almost 200 gathered in London's historic Middle Temple Hall for the Scarman Lecture, one of the most noteworthy events in the London legal calendar.

The Law Commission hosts the Scarman Lectures in honour of our first Chairman, Lord Scarman, bringing speakers of world renown before audiences drawn from the senior judiciary, legal practice, Parliament, academia and the voluntary and business sectors.

The Lectures explore questions of law that resonate across the international stage: how law is made, how it is used and reformed, and the role it plays in all our lives.

Evaluating the past, charting the future

In proud celebration of the Law Commission's 50th anniversary, we were honoured to welcome the Rt Hon Sir Geoffrey Palmer KCMG AC QC to deliver the 2015 Scarman Lecture.

Sir Geoffrey's lecture, "The law reform enterprise: evaluating the past and charting the future", examined 50 years of the Law Commissions of Great Britain and the Commonwealth. At the heart of his Lecture was the question: what can be learned about law making from the experience of the Law Commissions? His conclusion: that their experience is "indicative of a wider problem with how legislation is made generally".

The 1965 vision

Returning to the original vision and aspirations that lay behind the establishment of the Law Commissions of Great Britain, Sir Geoffrey called for key elements to be revisited. Identifying codification as the most notable of these, he said: "There should be a recommitment to that task everywhere in the common law world. Few measures would do more to assist the rule of law." He identified as a source of tension the different cultures and methods employed by legal approaches to reform of law and political approaches. Both worlds, he believes, have much to learn from each other.



In a move away from the original 1965 vision, which recommended Law Commissions steer away from the politically controversial, Sir Geoffrey called on Governments to entrust their Law Commissions with projects that have big policy and social content. He argued that such work can be successfully completed by Law Commissions, particularly when projects touch on several Government Departments.

The dance of legislation

Turning to the way law is made, Sir Geoffrey argued that, over 50 years, the Law Commissions have pioneered methods for preparing legislation that make for more robust and durable laws. These methods have exposed flaws in the way laws are made by Executives and Parliaments, and the time has come, he said, for: "the dance of legislation...to be re-choreographed". The process of law making should be taken out of the closed institutions of the Executive and made more open and transparent. This would produce more robust laws that would work better and last longer, and give decision-makers, Ministers and MPs better information upon which to base their decisions. All Bills involving big new policies, he argues, should be prepared following the systematic methods used by the Law Commissions. Such a process would:

- produce legislation that is better thought through and more enduring;
- ensure more rigorous scrutiny of proposals in Parliament because more information about them will be available; and
- allow for more public participation in legislative decisions.

In closing, Sir Geoffrey recommended that Law Commissions should not be regarded as “interesting appendages to the machinery of Government” but should be central to legislative activities, and the independence vital to their success must continue to be nourished.

The Rt Hon Sir Geoffrey Palmer KCMG AC QC

A long-time champion of law reform, Sir Geoffrey Palmer has a distinguished career encompassing politics, academics and the law. His political life took him to many high offices of state in New Zealand, including Prime Minister, Minister of Justice and Attorney General. As a member of the Labour Government in 1986 he was responsible for the establishing legislation for the New Zealand Law Commission, and between 2005 and 2010 served as its President. He currently practices in Wellington as a QC and is a Distinguished Fellow of the New Zealand Centre for Public Law and Victoria University of Wellington Law School.



Sir Geoffrey Palmer and the Chairman take questions from the audience

The strengths of the Law Commission process

Speaking in praise of the Law Commissions' methods, Sir Geoffrey proposed a “rough”, 12-point guide for preparing legislation:

- Interdisciplinary teams with relevant skills. High quality, objective legal research. Economic and other analyses – made public.
- Discussions with interested parties. Domestic and international literature research.
- Consultation is vital to provide evidence and create democratic legitimacy for solutions.
- Issues papers defining and contextualising the issues to help focus responses.
- Design a communication strategy.
- Take submissions from the public.
- Talk to relevant Government departments, trade bodies and other organisations.
- Encourage public debate throughout policy development.
- A carefully drafted final report, and draft Bill to ensure reforms are thought through.
- The final report should include:
 - proposals and reasons for options;
 - the methods of administration; and
 - analysis of costs and economic impact.
- The work must be independent, objective, authoritative, and scholarly.
- The work should be peer reviewed rigorously and signed off by highly qualified Commissioners.

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 are particularly indebted to our existing and new stakeholders for the contribution they have made to creating our 12th Programme of law reform.

Their excellent response to our 2013 Programme consultation produced more than 250 proposals. From these we have drawn the nine new projects that will shape our work programme for the next three or more years. For more on the 12th Programme, see pp12-13.

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. Our website users can choose to receive email alerts when we open a consultation or publish a report; 6,800 have signed up for this service. We have presented our work in new ways using podcasts and video, and have successfully engaged new audiences using our Twitter accounts. We now have more than 7,600 followers of our corporate account,⁸ 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. To extend our audience reach, we have opened corporate accounts on LinkedIn and Mootis, a social media platform dedicated to people and organisations involved and interested in the legal sector.

Alumni

The Law Commission is keen to keep in touch with all our former colleagues. We have done a considerable amount of work this year tracing former Commissioners and Law Commission lawyers, research assistants and other staff.

In November 2014 we launched an alumni group on LinkedIn. We use the group to keep members up to date on our work and other Law Commission activities, and members can use it to keep in touch with each other. We would like to encourage all former Law Commission colleagues to keep in touch with us through the group, particularly in the year of our 50th anniversary.

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 throughout the year.

- In June 2014 the statute law repeals team hosted a seminar for Commonwealth drafters. This is an annual event which is organised by arrangement with the Institute of Advanced Legal Studies and is designed to facilitate the understanding of overseas' delegates about the law reform, Bill drafting, consolidation and statute law rationalisation functions delivered by the Law Commission.
- On 21 October 2014 we hosted eight delegates from public service agencies in Botswana, Jamaica, Lesotho, Malawi, Nigeria, Singapore and Uganda. Their visit to the Commission contributes to their completion of a course on "Changing the Law: Successful Reform", run by Public Administration International.

⁸ @Law_Commission.

- We were delighted to have an opportunity to support the Big Voice enterprise again this year. 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. We have contributed to their programme for a number of years, and were the inspiration behind the Big Voice Model Law Commission project. In November 2014, four members of the Law Commission took part in an evening session, offering advice and guidance to the students who were working on a series of law reform reports. The students presented their projects to a panel of parliamentarians chaired by Mrs Justice Asplin on 27 November. We joined them for the evening event at Portcullis House, during which our Chief Executive Elaine Lorimer gave a speech on behalf of the Commission.
- On 11 May 2015 Professor David Ormerod QC and Elaine Lorimer hosted a group of students from Rice University, Texas. Having recently completed semester-long internships with US Federal District Court judges or Texas State Appellate Court justices, the students visited the Law Commission to hear about how we work and, specifically, our recent project on hate crime.

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. This year these have included:

- In October 2014 the Chairman was invited to deliver a speech at Legal Wales, an annual conference staged by the Legal Wales Foundation to explore legal matters with particular reference to Wales. The Chairman's speech, *Recent Work of the Law Commission*, set out our achievements of the previous 12 months, "the most productive

period in the Commission's history" and, in particular, examined developments in our role in Wales and our relationship with the Welsh Government.

- Marking the start of our anniversary year, the Chairman gave a speech in January 2015 to the London Common Law and Commercial Bar Association, which charted 50 years of law reform at the Commission.
- Continuing the celebrations for our 50th anniversary, in April 2015 the Chairman and Chief Executive gave talks at the Commonwealth Association of Law Reform Agencies conference in Edinburgh, which brought together law reformers from across the Commonwealth. Also in April our Senior Parliamentary Counsel gave a talk at the Commonwealth Association of Legislative Counsel.

Community engagement

On 19 May 2014 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 £1,416 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.

In June 2014 Professor David Ormerod QC visited Pakistan, attending a three-day symposium convened by the British High Commission Pakistan and the Law and Justice Commission of Pakistan. In his talk, Professor Ormerod spoke of the need to place the witness at the heart of the criminal justice system.

Among the international guests we were privileged to welcome this year were:

- Director of Public Prosecutions and Chief Executive Officer of the Law Reform Commission of Mauritius
- US District Judge Lee H Rosenthal, Federal Judge on the US District Court for the Southern District of Texas
- Justice Evelyn Keyes, Justice of the Texas First District Court of Appeals
- Sir Grant Hammond KNZM, President of the New Zealand Law Commission
- The Hon Michael Kirby AC CMG, former Chairman of the Australian Law Reform Commission
- Richard Cassidy, Chairman of the Executive Committee of the US Uniform Law Commission
- Two members of the Namibian Law Reform and Development Commission
- Professor Aishah Bidin, Commissioner of the Malaysian Human Rights Commission, and colleagues
- Representatives from the Department of Justice, Ministry of Law and Justice, India

Our partner law commissions and the devolved authorities

In October 2014 the Chairman and Chief Executive travelled to Dublin 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. In April 2014 we completed our first tripartite law reform project, Regulation of Health and Social Care Professionals, working with colleagues in the Scottish and Northern Ireland Commissions (see p33), and we continue to work together on our second tripartite project, Electoral Law (see p31).

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.

PART FIVE

Our people and corporate matters

“

The value of the Law Commissions throughout the jurisdictions in the United Kingdom is immense in the expertise that they make available to Parliament.

”

Lord Kirkwood of Kirkhope, Oral Questions, Hansard (HL)
12 May 2014, Col GC439.

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 2014–15 there were 55 people working at the Law Commission (full-time equivalent: 53.1, at 1 April 2015).¹

Figure 5.1
People working at the Commission (full-time equivalent, at 1 April 2015)

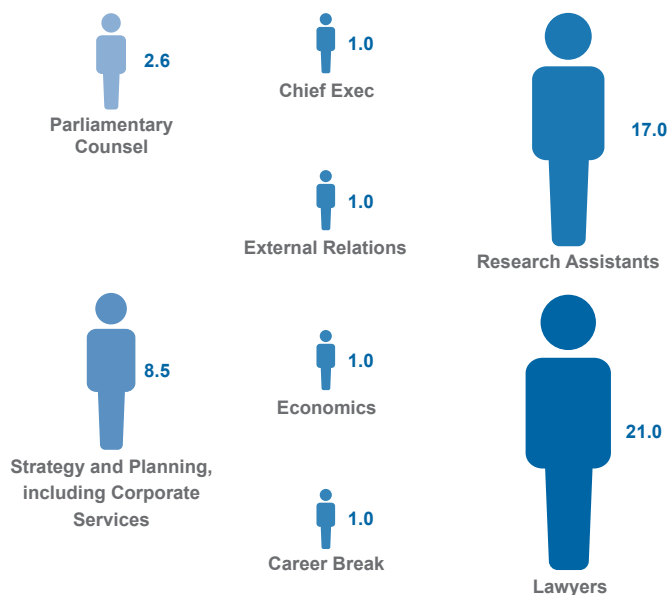
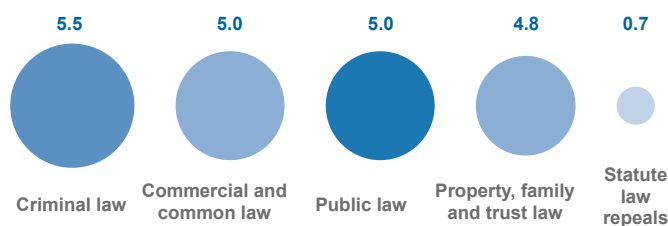


Figure 5.2
Team lawyers²



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 significant 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 2014–15 we recruited 16 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.

¹ Excluding the Chairman, Chairman’s Clerk and Commissioners.

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.

Parliamentary engagement

The Commission remains keen to strengthen its links with Parliamentarians and has made progress in doing so over the last year. We are very grateful to those members who sit on Committees in support of our special procedure, who supported us at our flagship 50th anniversary events, including the Scarman Lecture, and who contribute to our consultations as stakeholders. In March 2015 we engaged in a reciprocal work shadowing arrangement with the House of Lords Committees Office, which will help inform our future work and strengthen our relationship with Members of both Houses.

Strategy and planning

The Head of Strategic Planning supports the Chief Executive in all aspects relating to the corporate operations of the Commission. This includes, but is not limited to, governance, risk and performance management. They provide the secretariat to the Commission's Strategic Issues Meetings (the monthly meetings where Commissioners meet as a Board rather than in their peer review capacity). They also provide support and advice to the Commission on business planning and a wide range of corporate issues.

The Head of Strategic Planning sits on the Commission's management team, made up of Team Managers from across the Commission, and acts as the Chief Executive's corporate deputy where appropriate (including Chairing the monthly meetings of the management team should the Chief Executive be absent).

In addition, the Head of Strategic Planning has working level responsibility for managing the relationships with key partners in the Ministry of Justice. This includes the Sponsorship Team who are the primary contact with the Law Commission in the Ministry of Justice and act as an advocate for the Commission within both the Ministry and other departments. The Sponsorship Team also represent the views of the Ministry of Justice to the Law Commission and ensure that departmental policies relevant to the Commission are communicated to it. In addition to this key relationship, the Head of Strategic Planning also manages the relationship with the Human Resources Business Partner and the Finance Business Partner, both of whom work closely with the Commission in their respective areas of expertise to ensure that the Commission receives high-quality corporate support and effective access to departmental policies in these areas.

The Head of Corporate Services reports to the Head of Strategic Planning, which enables good oversight across the corporate agenda.

Corporate services

The corporate services team, lead by the Head of Corporate Services, supports the work of the Law Commission through ensuring effective corporate service provision including in relation to:

- human resources;
- information technology;
- financial management;
- internal communications;
- publishing;
- knowledge and records management;
- information assurance;
- health and safety;
- business continuity; and
- secretarial support to the Chief Executive and Commissioners.

This small team delivers on these areas either through the direct provision of services, such as internal communications, or by providing a bridge between the Commission and the Ministry of Justice and/or Shared Services² for example in regards to human resources. The Head of Corporate Services

² 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.

is also the competent person for health and safety management at the Commission.

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.³

Engaging our people

In December 2014 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 time away from our desks allows us to come together as an organisation to explore our priorities, talk about our experiences throughout the year and celebrate our achievements.

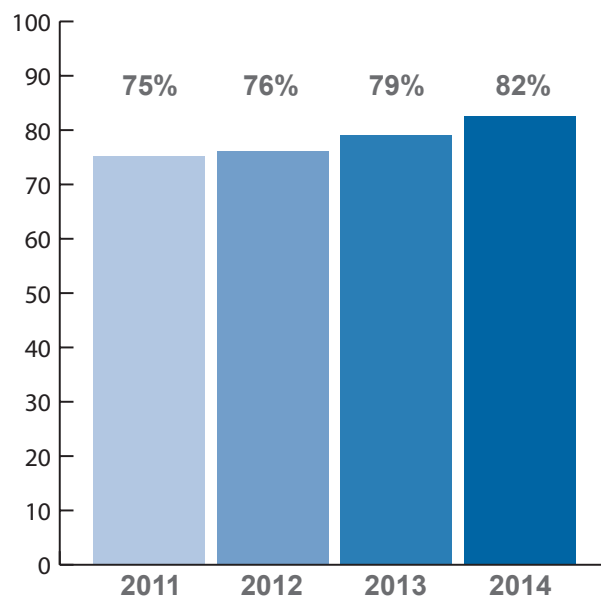
One of the objectives of our awayday was to share between our law reform teams what each had learned from their consultation exercises. The Law Commission is committed to engaging all those people and organisations that could be affected by our reforms through thorough, targeted consultation. We continue to strive to ensure our consultations are effective in generating appropriate and useful responses. The awayday provided us with an opportunity to explore the challenges of consultation and learn from each other which approaches have been successful and which have not produced such good results.

To help us understand the impact of our consultations on stakeholders, we were joined by Mark Stobbs, the Director of Legal Policy at the Law Society. He presented us with a critical commentary on our consultations from the point of view of the corporate consultee. We are grateful to him for his insight.

People Survey results

The results of the annual People Survey show the Law Commission with an engagement index of 82 per cent for 2014. This is not only an increase on our results for 2012 (76 per cent) and 2013 (79 per cent) but strongly places the Commission as a high-performing organisation in relation to other organisations of a similar size within the civil service.

[Figure 5.3 graphic presentation of people survey results]



Accommodation

We have now been in our new offices in 52 Queen Anne's Gate for 18 months. We moved in November 2013 after five years in a nearby, smaller building, which we shared with other arm's-length bodies sponsored by the Ministry of Justice.

Information assurance

In 2014–15 there were two notifiable incidents involving laptop computers but there was no loss of data on either occasion.

³ Available via www.lawcom.gov.uk.

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.⁴

Health and safety

During the year, there was one notifiable incident in relation to staff of the Commission and the Health and Safety at Work Act 1974. The incident was 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. We have motion-sensitive lighting in our office spaces and meeting rooms, and our computers, including monitors, are switched off automatically overnight.

Paper is widely recycled in the office and all our publications are printed on paper containing a minimum of 75 per cent recycled fibre content.

⁴ Available via www.lawcom.gov.uk.



David Lloyd Jones



David Cooke



E. Cooke



Nicholas Paines



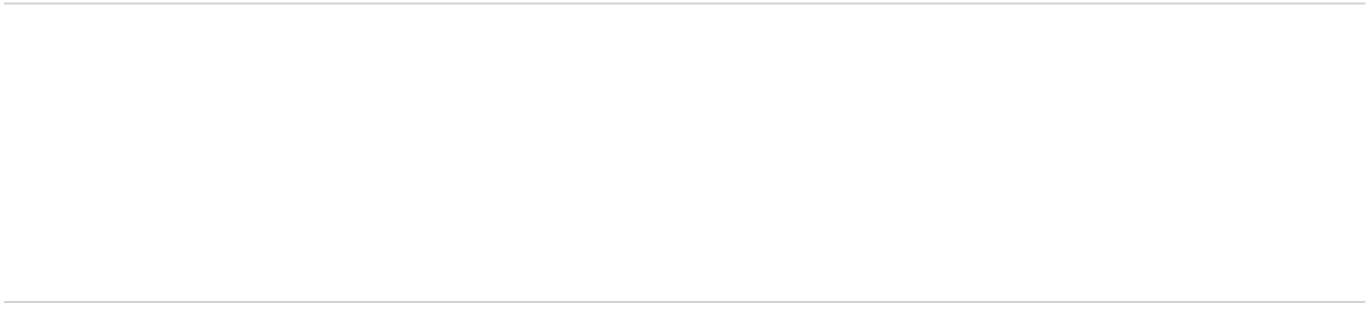
S. Lewis



Elaine Lorimer

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

Elaine Lorimer, Chief Executive
3 June 2015



APPENDICES

“

It strikes me that the Law Commissions are doing work which we all trust. There has never been any controversy about anything they have done and it takes an enormous burden off civil servants and us having to worry about yet more things running through the House.

”

Kelvin Hopkins MP, Joint Committee on the Draft Deregulation Bill, 16 October 2013.

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) |

| LC No | Title | Status | Related Measures |
|-------------|---|---------------------|--|
| 26 | Breach of Promise of Marriage (HC 453) | Implemented | Law Reform (Miscellaneous Provisions) Act 1970 (c33) |
| 1970 | | | |
| 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) |
| 1971 | | | |
| 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. |
| 1972 | | | |
| 48 | Family Law: Report on Jurisdiction in Matrimonial Proceedings (HC 464) | Implemented | Domicile and Proceedings Act 1973 (c45) |
| 1973 | | | |
| 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) |
| 1974 | | | |
| 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 Dependants) Act 1975 (c63) |
| 62 | Transfer of Land: Report on Local Land Charges (HC 71) | Implemented | Local Land Charges Act 1975 (c76) |
| 1975 | | | |
| 67 | Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (HC 377) | Rejected | |

| LC No | Title | Status | Related Measures |
|-------------|---|---------------------|--|
| 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) |
| 1976 | | | |
| 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) |
| 1977 | | | |
| 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 | |
| 1978 | | | |
| 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) |
| 1979 | | | |
| 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 | |
| 1980 | | | |
| 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 | |
| 1981 | | | |
| 110 | Breach of Confidence (Cmnd 8388) | Rejected | |

| LC No | Title | Status | Related Measures |
|-------------|---|---------------------|---|
| 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) |
| 1982 | | | |
| 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) |
| 1983 | | | |
| 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) |
| 1984 | | | |
| 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 |
| 1985 | | | |
| 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) |

| LC No | Title | Status | Related Measures |
|-------------|--|-------------|---|
| 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) |
| 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 | |
| 1986 | | | |
| 157 | Family Law: Illegitimacy (Second Report) (Cmnd 9913) | Implemented | Family Law Reform Act 1987 (c42) |
| 1987 | | | |
| 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 | |
| 1988 | | | |
| 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 | |
| 1989 | | | |
| 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) |

| LC No | Title | Status | Related Measures |
|-------------|---|--|--|
| 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) |
| 1990 | | | |
| 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) |
| 1991 | | | |
| 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 | |
| 1992 | | | |
| 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 |
| 1993 | | | |
| 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 | |
| 1994 | | | |
| 220 | Delegation by Individual Trustees (HC 110) | Implemented | Trustee Delegation Act 1999 (c15) |

| LC No | Title | Status | Related Measures |
|-------------|---|--|--|
| 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) |
| 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) |
| 1995 | | | |
| 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 | |
| 1996 | | | |
| 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) |
| 1997 | | | |
| 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 | |
| 1998 | | | |
| 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) |

| LC No | Title | Status | Related Measures |
|-------------|---|---|---|
| 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) |
| 1999 | | | |
| 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 | |
| 2001 | | | |
| 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) |
| 2002 | | | |
| 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) |
| 2003 | | | |
| 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 | |
| 2004 | | | |
| 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) |

| LC No | Title | Status | Related Measures |
|-------------|---|---|--|
| 291 | Towards a Compulsory Purchase Code: (2) Procedure (Cm 6406) | Accepted but will not be implemented | |
| 2005 | | | |
| 292 | Unfair Terms in Contracts (SLC 199) (Cm 6464; SE/2005/13) | Accepted | Consumer Rights Act 2015 (c15) |
| 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 | |
| 2006 | | | |
| 297 | Renting Homes: The Final Report (Cm 6781) | Rejected for England, Accepted in principle for Wales (see LC337) | |
| 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 |
| 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) |
| 2007 | | | |
| 305 | Participating in Crime (Cm 7084) | Pending | |
| 307 | Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182) | Pending | |
| 2008 | | | |
| 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) |
| 2009 | | | |
| 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) | Implemented in part. Rejected in part | Consumer Rights Act 2015 (c15) |
| 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) |
| 2010 | | | |
| 320 | The Illegality Defence (HC 412) | Rejected | |
| 322 | Administrative Redress: Public Bodies and the Citizen (HC 6) | Pending | |

| LC No | Title | Status | Related Measures |
|------------------------------|--|---------------------------------------|--|
| 324 | The High Court's Jurisdiction in Relation to Criminal Proceedings (HC 329) | Pending | |
| 2011 | | | |
| 325 | Expert Evidence in Criminal Proceedings in England and Wales (HC 829) | Implemented in part. Pending in part. | Criminal Procedure Rules 2014 |
| 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 |
| January to March 2012 | | | |
| 332 | Consumer Redress for Misleading and Aggressive Practices (Cm 8323) | Implemented | Consumer Rights Act 2015 (c15); Consumer Protection (Amendment) Regulations 2014 |
| 335 | Contempt of Court: Scandalising the Court (HC 839) | Implemented | Crime and Courts Act 2013 (s33) |
| 2013 | | | |
| 336 | The Electronic Communications Code (HC 1004) | Accepted | |
| 337 | Renting Homes in Wales/Rhenttu Cartrefi yng Nghymru (Cm 8578) | Accepted by the Welsh Government | |
| 339 | Level Crossings (Cm 8711) | Accepted | |
| 340 | Contempt of Court (1): Juror Misconduct and Internet Publications (HC 860) | Implemented in part. Pending in part | Criminal Justice and Courts Act 2015 (c2) |
| 2014 | | | |
| 342 | Wildlife Law: Control of Invasive Non-native Species (HC 1039) | Implemented | Infrastructure Act 2015 (c7) |
| 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) | Accepted | |
| 346 | Patents, Trade Marks and Design Rights: Groundless Threats (Cm 8851) (Published 15 April 2014) | Accepted | |
| 347 | Taxi and Private Hire Services (Cm 8864) | Pending | |
| 348 | Hate Crime: Should the Current Offences be Extended? (Cm 8865) | Pending | |
| 349 | Conservation Covenants (HC 322) | Pending | |
| 350 | Fiduciary Duties of Investment Intermediaries (HC 368) | Accepted | |
| 351 | Data Sharing between Public Bodies (HC 505) | Pending | |

| LC No | Title | Status | Related Measures |
|-------|---|---------------------|-------------------------|
| 353 | Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment (Cm 8898 / SG/2014/131) | Implemented in part | Insurance Act 2015 (c4) |
| 355 | Simplification of Criminal Law: Kidnapping and Related Offences (HC 797) | Pending | |
| 356 | Rights to Light (HC 796) | Pending | |

Appendix B

The cost of the Law 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.

| | 2013/2014 (April/March) | | 2014/2015 (April/March) | |
|--|----------------------------|---------------|----------------------------|---------------------------|
| | £000 | £000 | £000 | £000 |
| Commissioner salaries (including ERNIC) | 534.1 | | 553.2 | |
| Staff costs ¹ | 3223.7 | | 2973.1 | |
| | | 3757.8 | | 3526.3 |
| Research and consultancy | 23.7 | | 21.0 | |
| Communications (printing and publishing, media subscriptions, publicity and advertising) | 130.8 | | 140.6 | |
| 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) accommodation recharge (met by MoJ) | 546.3 | | 752.9 ² | |
| Travel and subsistence (includes non-staff) | 18.5 | | 29.0 | |
| Stationery and office supplies | 39.5 | | 42.3 | |
| Recruitment | | | | |
| Training and professional bodies membership | | | | |
| Recognition and reward scheme awards | | | | |
| Childcare vouchers | | | | |
| Health and safety equipment/services | | | | |
| Hospitality | 0.8 | | 0.3 | |
| | | 759.6 | | 986.1 |
| TOTAL | | 4517.4 | | 4512.4³ |

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

² In November 2013 the Law Commission moved to fully managed offices within the Ministry of Justice estate. This cost is met by the Ministry directly.

³ Figures will form part of the wider Ministry of Justice set of accounts which will be audited.

Appendix C

The priorities we set for the Commission in our Business Plan

Priorities for 2014-15

Law Reform – to make a difference through law reform

We will deliver law reform work that is high quality, to time and supported by a robust assessment of its impact, working in collaboration with stakeholders and in accordance with our Protocol, and we will support implementation of our law reform proposals.

We will finalise the 12th Programme, ensuring that it is well balanced, consists of projects which will make a positive difference to society and which have a reasonable chance of implementation.

We will improve how we deliver the content of our publications to our stakeholders with a focus on accessibility, effectiveness and efficiency.

Our People – to attract the best and continue to ensure the Law Commission is an excellent place to work

We will have an organisational model which promotes more effective ways of working and which gives us more scope to flex our resources.

We will enhance our staff's knowledge and skills and promote employee engagement in the corporate development of the Commission by improving internal communications.

We will invest in our staff, developing their skills and knowledge, so that over time our capabilities remain aligned with our evolving business needs.

External Relations and Reputation – to engage proactively with our stakeholders and respond to their feedback

We will set the framework for how – and why – the Law Commission presents itself to audiences.

We will use a range of media and activities to generate interest in and engagement with the work of the Law Commission, our consultations and our reports.

We will maximise the potential of our website to enable engagement with our stakeholders, facilitate and encourage participation in our consultations and provide easy access to our reports and other papers.

We will use our 50th Anniversary to strengthen relationships with existing stakeholders and to establish relationships with new stakeholders across sectors.

Finance and Governance – to ensure decision making that is robust

We will deliver the savings contained within the SR10 settlement which represents a 25% reduction in our voted funding since 2010/11.

We will provide the administration necessary to support effective corporate performance.

We will work in partnership with the Ministry of Justice to clarify our funding model so that it provides greater financial certainty over the long term, enabling us to focus on our statutory duty to keep all the law under review.

We will implement the recommendations of the Triennial Review so that as an organisation we are fully compliant with modern standards of good governance.

Appendix D

Targets for 2014–15 and 2015–16

Figure D.1 Targets for 2014–15.

| Target | Outcome |
|---|--|
| To publish reports on: | |
| Conservation covenants | Published 24 June 2014 (LC349) |
| Contempt of Court (including contempt in the face of the court and contempt by publication) | Carried forward to 2015–16 |
| Data sharing between public bodies | Published 11 July 2014 (LC351) |
| Fiduciary duties of investment intermediaries | Published 1 July 2015 (LC350) |
| Hate crime | Published 28 May 2015 (LC348) |
| Insurance contract law | Published 17 July 2015 (LC353) |
| Kidnapping | Published 20 November 2015 (LC355) |
| Public nuisance and outraging public decency | Carried forward to 2015–16 |
| Rights to light | Published 4 December 2015 (LC356) |
| Wildlife | Carried forward to 2015–16 due to 2015 General Election purdah |
| To publish consultations on: | |
| Charity law, selected issues | Published 24 April 2014 (LCCP216) on Social Investment by Charities and 20 March 2015 (LCCP220) on Technical Issues in Charity Law |
| Electoral law | Published 9 December 2014 (LCCP218) |
| Statute law repeals (including churches and trade and industry legislation) | Published 27 June 2014 (Trade and Industry) and 24 July 2014 (Churches) |

Figure D.2 Targets for 2014–15.

| Target | |
|--|--|
| To publish reports on: | To publish consultations on: |
| Contempt of court | Bills of sale |
| Insurance contract law (covering Insurable Interest) | Firearms |
| Offences against the person | Form and accessibility of the law applicable to Wales |
| Public nuisance and outraging public decency | Land registration |
| Statute law repeals | Marriage |
| Unfitness to plead | Mental capacity and detention |
| Wildlife | Misconduct in public office |
| | Planning law in Wales |
| | Protecting consumer prepayments |
| | Transfer of title and change of occupancy fees in leaseholds |
| | Wills |

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