



Ministry  
of Justice

# Report on the implementation of Law Commission recommendations

July 2023

CP 891



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of Justice

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

Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of His Majesty

July 2023



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# Introduction

I am pleased to present this report on the implementation of Law Commission recommendations by Government.

It is the eighth report to be presented following the passing of the Law Commission Act 2009. This Act places the Lord Chancellor under a duty to report to Parliament on the extent to which the Law Commission's recommendations have been implemented by the Government. This document covers the implementation status of Law Commission reports during the period of January 2018 to January 2023.

The Commission is headed by five Commissioners, all of whom are appointed by the Lord Chancellor as their sponsoring Minister. At present the Commission is led by their Chairman, the Rt Hon Lord Justice Green and four further Commissioners leading work across their specialist areas of the law. These are Professor Sarah Green (Commercial and Common Law Commissioner); Professor Nick Hopkins (Property, Family and Trust Law Commissioner); Professor Penney Lewis (Criminal Law Commissioner); and Nicholas Paines KC (Commissioner for Public Law and the Law in Wales).

During the time covered by this report a number of individual Law Commission projects have either been started, or are in the process of being implemented, whether commissioned as part of one of their official programmes of reform or undertaken through individual referrals from Ministers across Government. The Commission provides a comprehensive and detailed record of progress in all areas of their work in their annual report each year – the latest of which was published in December 2022. They also carried out a consultation to canvass ideas for their next – and 14<sup>th</sup> – programme of law reform. To help inform this process they invited respondents to consider a number of potential areas of interest which included emerging technologies; leaving the European Union; the environment; legal resilience (particularly in light of the Covid 19 pandemic); and areas of the law which could benefit from simplification through codification or simplification. By the time the consultation closed at the end of July 2021, they had received nearly 200 possibilities for law reform, spanning almost every area of the law in England and Wales, which will go on to help shape a great deal of their new work over the next few years.

On 16 February this year, the Commission announced that they had extended the timetable for finalising the 14<sup>th</sup> Programme in view of the Government's focus on priorities for the remainder of this Parliament. They are also still fully engaged working on current projects including those not yet commenced from the 13<sup>th</sup> programme. The process of analysing and developing those 14<sup>th</sup> programme proposals will continue until we both agree the time is right for them to launch the new programme. I would like to extend my

thanks to the organisation – and the Chair – for all the work that he and they have undertaken during the period covered by this report.

**The Right Honourable Alex Chalk KC MP**  
**Lord Chancellor and Secretary of State for Justice**

# Scope of the Report

1. Section 3A of the Law Commissions Act 1965 places a duty on the Lord Chancellor to report to Parliament on the extent to which Law Commission recommendations have been implemented by the Government.
2. This is the eighth report to be published by the Government under section 3A. As required, the report covers Law Commission recommendations that have been implemented by the Government; recommendations that have not yet been implemented, including plans for implementation; and decisions taken not to implement recommendations. The report covers the period 12 January 2018 to 12 January 2023 but has also been updated to reflect implementation progress between January 2023 and the publication date.
3. The scope of the Report is in relation to the Law Commission in England and Wales. However, the report notes where projects have been conducted jointly with the Scottish Law Commission and Northern Ireland Law Commission. The report deals primarily with Law Commission recommendations that are for HM Government to implement. A separate report is produced for those recommendations that are for the Welsh Government to implement, so those are not detailed in this report.



# Recommendations that have been implemented

## **Mental Capacity and the Deprivation of Liberty<sup>1</sup>**

4. The majority of the Law Commission's recommendations in their 2017 report on Mental Capacity and Deprivation of Liberty were included in the Mental Capacity (Amendment) Act 2019 which received Royal Assent on 16 May 2019.
5. In the spring/summer 2022, Government undertook a 17-week public consultation on the draft regulations, draft Code of Practice and draft implementation documents for the Liberty Protection Safeguards (LPS). The consultation received over 750 detailed responses, including from stakeholders across the health and social care, voluntary and legal sectors, and the people affected by the LPS. Many of those who responded to the consultation expressed support for the LPS and agreed that there is a need for a more streamlined and person-centred system. Some responses to the consultation also suggested changes to the proposals in a number of ways which have been considered during the consultation analysis phase.
6. At this time, the Government has taken the difficult decision to delay implementation of the LPS beyond the life of this Parliament. This was one of a number of difficult decisions the Government has had to take as part of prioritisation work on social care which is seeing investment in workforce development, technology, and new data and oversight. More detail on the Government's plans for adult social care reform are set out in the publication, Next steps to put People at the Heart of Care.
7. Although this Government has taken the decision not to progress the LPS and the associated recommendations put forward by the Law Commission in their 2017 report at this point, it is our intention to publish a response to the consultation as soon as practicable to provide further information on the valuable feedback received on the proposals. Until the LPS come into force, the Deprivation of Liberty Safeguards (DoLS) will remain an important system for authorising deprivations of liberty, and it is vital that health and social care providers continue to make DoLS applications in line with the Mental Capacity Act 2005 to ensure that the rights of those who may lack the relevant capacity are protected.

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<sup>1</sup> Mental Capacity and Deprivation of Liberty (LC372) (13.03.17)

## **The Sentencing Code<sup>2</sup>**

8. In 2014, the Coalition Government agreed that the Law Commission should undertake the Sentencing Code project to consider consolidation of the law governing sentencing procedure, as part of the Law Commission's 12th programme of law reform. The aims of the project were to ensure the law relating to sentencing procedure is readily comprehensible and operates within a clear framework; increase public confidence in the criminal justice system; and ensure that the criminal justice system, in so far as it relates to sentencing procedure, operates as efficiently as possible.
9. The Law Commission published its final report on the project on 22 November 2018. Alongside the report, the Law Commission also published a draft Sentencing (Pre-consolidation Amendments) Bill, an essential paving measure for the Sentencing Code, and a draft Sentencing Code Bill. The main recommendation of the report was for the Government to enact the draft legislation. The report also made 11 further recommendations for reform of the law, which were not reflected in either of the draft Bills.
10. On 22 May 2019, the Government published its interim response to the report, accepting the principal recommendation to enact the draft legislation. On 28 April 2020 the Government published its final response, setting out the Government's consideration of the other recommendations made by the Law Commission.
11. The Sentencing (Pre-consolidation Amendments) Act 2020 was introduced to Parliament as a Bill using the Law Commission's special Parliamentary procedure for uncontroversial reform and received Royal Assent on 8 June 2020. The Sentencing Act 2020 was introduced to Parliament as a Bill under the special Parliamentary procedure for consolidation bills. It received Royal Assent on 22 October 2020.

## **Data Sharing between Public Bodies<sup>3</sup>**

12. The Government published the National Data Strategy in September 2020, bringing together ambitions for data within a single, coherent narrative. Policy responsibility for Government use of data and therefore the oversight of the Digital Economy Act 2017 sits in the Cabinet Office's Central Digital and Data Office (CDDO). The CDDO shapes strategy and assures delivery for Digital, Data and Technology across Government. CDDO also looks at non-legal issues such as the ethical use of data and data interoperability which often prevent or impede the reuse of data. Finally, CDDO leads on implementing Mission 3 of the National Data Strategy: Transforming Government's use of data. Under Mission 3, the Cabinet Office is committed to drive the use of the Digital Economy Act 2017 powers as well as addressing barriers to

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<sup>2</sup> Sentencing Code (LC382-22.11.18) (LC365 – 20.05.16)

<sup>3</sup> Data Sharing between Public Bodies (LC 351) (11.07.14)

data sharing more widely. In turn, this will drive efficiency and improve public services.

13. The Digital Economy Act 2017 contains a single, umbrella piece of legislation designed to reduce legal barriers to data sharing and enable public authorities to share personal information for specific purposes. The data sharing provisions are set out in Part 5 to the Digital Economy Act 2017 and are used where there are no other statutory gateways and where consent cannot be relied on or is not appropriate. The data sharing provisions in the Digital Economy Act 2017 now allow public authorities to access data to deliver better services without the considerable delays required to create new legal powers by primary legislation.
14. Since the powers became operational in 2018, public authorities have used the Digital Economy Act 2017 to make 91 data shares involving public service delivery, registration services, reducing public sector debt and tackling fraud against the public sector as well as accrediting 183 research projects and accessing 125 new distinct data sources for statistics purposes. The volume of data sharing activity demonstrates added value to public authorities in opening up opportunities for accessing more data more quickly than before and improving public services to those in need while at the same time protecting public funds. The Government continues to engage with the Law Commission to see where further work can be undertaken.

#### **Pension Funds and Social Investments<sup>4</sup>**

15. In November 2016, the Government asked the Law Commission to look at how far pension funds may or should consider issues of social impact when making investment decisions. The Law Commission's report, published in June 2017, built on the work done in their previous report on Fiduciary duties of Investment Intermediaries (LC350). It found that where such investments are compliant with trustees' fiduciary duties, set out in that report, there are no substantive regulatory barriers to making social impact investment by pension funds. Most of the barriers are in fact structural and behavioural, including the need for clearer legislation and guidance.
16. The Government published an interim response to the report in December 2017 which set out the areas in which it was considering taking action. These include plans for the Department for Work and Pensions (DWP) to clarify legislation applicable to occupational pension schemes, and the Financial Conduct Authority (FCA) to clarify its rules applicable to personal pension schemes, in relation to:
  - consideration of broader financial risks
  - pension schemes' ability to consider members' concerns

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<sup>4</sup> Pension Funds and Social Investment (LC374) (23.06.17)

- the role of engagement alongside voting as an important aspect of stewardship of pension scheme assets

17. The Government issued a final response, which incorporated the FCA's final response, in June 2018. DWP published draft regulations relating to occupational pension schemes for consultation alongside the final response, and laid regulations in September 2018, which came into force on a staged basis from October 2019.<sup>5</sup> The FCA consulted on rule changes in April 2019 and made final rules in December 2019, coming into force in April 2020. DWP and the FCA both met and went beyond the Law Commission's recommendations to Government in a number of areas.

### **Conservation Covenants<sup>6</sup>**

18. The Law Commission Report (with an accompanying draft Bill) published on 24 June 2014, proposed introducing a new statutory scheme of conservation covenants. A conservation covenant is a voluntary agreement between a landowner and responsible body (charity, public body or local/central Government) to do or not do something on the land for a conservation purpose. This might be, for example, an agreement to maintain woodland and allow public access to it, or to refrain from using certain pesticides on native vegetation. These agreements are long lasting and can continue after the landowner has parted with the land, ensuring that its conservation value is protected for the public benefit.
19. Conservation Covenants are used in many other jurisdictions, but do not exist in the law of England and Wales. Instead, landowners and responsible bodies are relying on complex and expensive legal workarounds, or the limited number of existing statutory provisions that enable certain covenants to be enforced by specified bodies (for example, the National Trust). Under the scheme a conservation covenant would be formed by the agreement of two parties; be able to contain both restrictive and positive obligations; and be capable of binding the landowners' successors in title.
20. The Government issued its response to this report in early 2016 indicating support for the concept. Following further consultation, the Government announced on 23 July 2019 an intention to legislate to introduce conservation covenants in England in the Environment Bill. Subject to minor amendments, the conservation covenants scheme recommended by the Law Commission has been enacted as Part 7 of the Environment Act 2021 which received royal assent in November 2021.

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<sup>5</sup> The Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018

<sup>6</sup> Conservation Covenants (LC 349) (24.06.2014)

## **The Electronic Execution of Documents<sup>7</sup>**

21. The Law Commission completed this report in September 2019 having reviewed the law and case for reform on electronic signatures and the electronic execution of documents. This was a very important project in terms of modern business and trade, domestically and internationally.
22. Transactions are increasingly made through electronic means and the project looked at the law underpinning those transactions and whether it has kept pace with technology in providing businesses with reassurance that electronic signatures and other digital execution of documents offer legally binding contracts and agreements. The Law Commission concluded that an electronic signature is capable in law of being used to execute a document (including a deed) provided that (i) the person signing the document intends to authenticate the document and (ii) any formalities relating to execution of that document are satisfied.
23. The Lord Chancellor responded in a Written Ministerial Statement in March 2020, welcoming the Law Commission's report and endorsing the conclusions it had reached. The Government agreed that for ordinary business transactions electronic signatures could be used with confidence, and that the current state of the law meant no specific additional legislation was required.
24. The Government also agreed with the recommendation to set up an Industry Working Group of experts to give further consideration to raising standards and preparing best practice in this field. The Government has convened that group which began its work in 2021. The group published an interim report on 1 February 2022 and a final report on 1 February 2023. The Government has also agreed the recommendation that a review of the law of deeds should be undertaken when resources and other priorities allow.
25. The electronic execution report is part of a co-ordinated series of law reform projects on updating the law appropriately to match developments in technology and commercial practice. It complements the Law Commission's current projects on digital assets, DAOs, conflict of laws issues in relation to digital assets and on electronic trade documents. The Government has commissioned and fully supports these projects to enhance the UK's ability to lead and engage in digital trade.

## **Technical Issues in Charity Law<sup>8</sup>**

26. This project on selected issues in charity law originated from the Commission's Eleventh Programme of law reform. The wider charities project was divided into two parts, the first was taken forward in the linked Social investment by Charities project,

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<sup>7</sup> The Electronic Execution of Documents (LC386) (04.09.2019)

<sup>8</sup> Charity Law: Technical Issues in Charity Law (LC375) (14.09.17)

which reported in 2014. The majority of the recommendations for reform in that report were included in the Charities (Protection and Social Investment) Act 2016, which received Royal Assent on 16 March 2016.

27. The second part of the project, which examined other technical legal issues in charity law, was designed to support and equip the charities sector by ensuring the legal framework in which it operates is fair, modern, simple and cost effective. The Commission published an initial consultation on this project in March 2015, which was followed by a supplementary one focusing on changing a charity's purposes and trust corporation status in September 2016. The Commission's final report was published a year later in September 2017. The Government responded to the report in March 2021, accepting 36 out of the 43 recommendations. The Charities Bill was introduced in the House of Lords on 26 May 2021 to implement the Commission's recommendations that the Government accepted. It was introduced into the House of Lords under the Law Commission procedure for non-controversial Bills which allows part of the debate on the Bill to be taken off the floor of the House and instead be heard in Committee. On 24 February 2022 the Bill received Royal Assent becoming the Charities Act 2022.

### **Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency<sup>9</sup>**

28. The Law Commission published its final report on Public Nuisance and Outraging Public Decency on 25 June 2015.
29. Public nuisance traditionally dealt with environmental nuisance such as noise, smells and obstruction, but it also includes more general forms of public misbehaviour, bringing a wider range of potential offenders into its scope. In line with the model favoured by consultees, the report recommends retaining the offence and restating it in statute largely in its existing form but adding a mental element of intention or recklessness.
30. The Government did not formally reply to this recommendation but has implemented the recommendations on public nuisance through the Police, Crime, Sentencing and Courts Act 2022 and is still considering the recommendations on outraging public decency (see paragraphs 100–102).

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<sup>9</sup> Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency (LC 358) (25.06.2015)

### **Corporate criminal liability**

31. On 10 June 2022, the Law Commission published an options paper providing an assessment of different options for reform of the law relating to the criminal liability of non-natural persons.
32. The Government is currently implementing the two strongest options for reform presented in the report:
  1. to place the identification doctrine on a statutory footing; and
  2. the creation of a new criminal offence of corporate criminal liability for fraud, to hold organisations to account if they profit from fraud committed by their employees. This is known as a “failure to prevent fraud” offence.
33. Both measures were introduced to the Economic Crime Corporate Transparency Bill during its passage through parliament.

# Recommendations that have not yet been implemented

## (i) Recommendations in the process of implementation

### **Making Land Work: Easements, Covenants and Profits a Prendre<sup>10</sup>**

34. The Law Commission's 2011 report on easements, covenants and profits à prendre set out recommendations that would simplify and clarify the rules relating to the acquisition of easements by prescription (or long use of land) and implication, as well as the termination of easements by abandonment.
35. Furthermore, the reforms would give greater flexibility to developers when building estates where there would be multiple owners and users. The reforms also included a proposal to extend the jurisdiction of the Lands Chamber of the Upper Tribunal to allow for the discharge and modification of certain easements and profits. The recommendations are designed to make the law relating to easements, covenants and profits à prendre fit for the needs of the twenty-first century and a modern registration system.
36. The Government announced in the Housing White Paper published on 7 February 2017 that it "also intends to simplify the current restrictive covenant regime by implementing the Law Commission's recommendations for reform and will publish a draft Bill for consultation as announced in the Queen's Speech." This supplemented the earlier announcement on 18 May 2016 that the Government intended to bring forward proposals in a draft Law of Property Bill to respond to the Commission's recommendations.
37. Given the passage of time, the Government asked the Law Commission to look further at the implications of the Making Land Work report for the Government's wider leasehold and commonhold reform programme. The Commission has provided the Department for Levelling Up, Housing and Communities with possible options and updates to the Commission's work which are being considered.

### **Updating the Land Registration Act 2002<sup>11</sup>**

38. The Law Commission published the conclusions of its review of the Land Registration Act 2002 in July 2018, recommending some 'technical reforms to iron

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<sup>10</sup> Making Land work: Easements, Covenants and Profits a Prendre (LC 327) (08.06.2011)

<sup>11</sup> Updating the Land Registry Act 2002 (LC380) (24.07.18)



out the kinks in the law, help prevent fraud and make conveyancing faster, easier and cheaper for everyone' and a draft Bill. The Government welcomed the review and published its full response to the 53 recommendations on 25th March 2021.

39. The Government considered each of the recommendations carefully. Most of the recommendations are technical and/or narrowly targeted, with three impacting on the jurisdiction of the First-tier Tribunal, which adjudicates disputes relating to land registration matters. The Government considered that the land registration regime is generally functioning effectively. It accepted 40 recommendations, a small number of which on the basis that they should be modified prior to implementation – and to allow for further consideration of the appropriate legislative mechanism to bring mandatory electronic conveyancing into effect.
40. The Government has also indicated that it will consider implementation alongside wider land registration policy development and HM Land Registry business strategy priorities, set out in its published Strategy 2022+, as it continues to work with customers to develop new electronic and online digital application services. It has ended the need for paper-based transactions by accepting electronically signed transfers and other deeds for registration. It is pioneering further innovation that will improve the speed and security of conveyancing and unlock the benefits of digitalising the property market in England and Wales.
41. The Government rejected three recommendations on the basis that they would create significant change to the generally effective land registration regime, without clear cut benefits, and/or risk unintended consequences in key areas without there being a clear problem to be resolved in practice. There are a further 10 recommendations where the Government has been unable to reach clear conclusions and the response explains its intentions around each of these.

### **Wildlife Law: Final Report<sup>12</sup>**

42. On 11 February 2014, the Law Commission published its first report on Wildlife Law: Control of Invasive Non-native Species. This project was part of a wider project on wildlife law brought forward at the request of Defra and the Welsh Government to be included in the Law Commission's 11th Programme of law reform. Some of the recommendations contained in that report were introduced in the Infrastructure Act 2015. Additionally, through the Invasive Alien Species (Enforcement and Permitting) Order 2019, Defra have put in place legislation prohibiting the import, keeping, breeding, sale, and transport and release of invasive alien species of special concern, and a licensing system for management measures for otherwise prohibited activities that help to eradicate, control or contain widespread invasive species.

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<sup>12</sup> Wildlife Law: Final report (LC 362) (10.11.2015)

43. On 10 November 2015, the Law Commission published its final report on Wildlife Law and an accompanying draft Bill. The Government issued its response on 22 November 2016, explaining that exit from the EU provides an opportunity to re-examine the regulatory framework and how it works, so that it is fit for purpose to meet our national needs in the future and fulfil the UK's international obligations. Defra published its Green Paper consultation on Nature Recovery in March 2022. The reforms explored in the Nature Recovery Green Paper have fed into the government's Environmental Improvement Plan (EIP), our delivery plan for protecting nature. Defra officials are exploring options to improve the existing system of nature protections and, in the longer term, considering how they might simplify and improve the legislative landscape.

#### **Event fees in retirement properties (Transfer of Titles and Change of Occupancy Fees in Leasehold)<sup>13</sup>**

44. Following an Office of Fair Trading investigation in 2013 which found that transfer, or event fees charged in retirement property leases may be unfair, the then Ministry for Housing, Communities and Local Government (MHCLG) (which is now known as the Department for Levelling Up, Housing and Communities (DLUHC)) asked the Law Commission to investigate and make recommendations for change.
45. The Law Commission published their final report on 31 March 2017, which recommended that event fees should be regulated with the introduction of a new code of practice approved by the then Secretary of State for Communities and Local Government. The code of practice should be supported by an amendment to the Consumer Rights Act 2015 so that it can be enforced by consumers and where there is a breach of the code of practice, the Commission recommends that in most cases the event fee should not be payable.
46. The Government issued an interim response in November 2017, thanking the Commission for the report which fitted with the key priority of increasing the supply of housing and the Housing White paper objective of improving consumer choice and fairness for leaseholders. The recommendations also fit with the Government's wider objective of better outcomes for older consumers.
47. The Government's final response to the Law Commission was issued in March 2019, thanking them for the report which fits with the DLUHC's key priorities to increase the supply of housing and improve consumer choice, including better outcomes for older consumers and fairness for leaseholders. The Government will implement the majority of the recommendations but will further consider two recommendations on succession rights and a database of leasehold retirement properties with event fees.

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<sup>13</sup> Event Fees in Retirement Properties (LC373) (31.03.17)

This work will be taken forward as part of the Government's comprehensive leasehold reform programme.

### **Residential Leasehold & Commonhold<sup>14</sup>**

48. In 2020, the Law Commission published a series of four reports on Residential Leasehold and Commonhold, which together aim to achieve wholesale reform of the enfranchisement, right to manage, and commonhold regimes. In January 2020 the first of the four reports, covered recommendations on the valuation aspects of enfranchisement, and on 21 July 2020 a further three reports were published, on the remaining aspects of enfranchisement as well as commonhold and right to manage. The reports contain a large number of recommendations.
49. The Government is committed to taking forward a comprehensive programme of reform to end unfair practices in the leasehold market and asked the Law Commission to undertake their review in support of this. On 7 January 2021 the Government responded to a number of the Commission's recommendations, including leasehold reforms to cover enfranchisement valuation and 990-year leases (see: <https://www.gov.uk/government/news/government-reforms-make-it-easier-and-cheaper-for-leaseholders-to-buy-their-homes>). The Government will respond to the remaining recommendations in due course.

### **Simplifying the Immigration Rules<sup>15</sup>**

50. The Law Commission's report on Simplifying the Immigration Rules was published in early 2020. It included a recommendation that the Home Office should overhaul the Immigration Rules and redraft them based on the principles (1) suitability for the non-expert user; (2) comprehensiveness; (3) accuracy; (4) clarity and accessibility; (5) consistency; (6) durability (a resilient structure that accommodates amendments); and (7) capacity for presentation in a digital form. In total there were 41 detailed recommendations on drafting and structure and processes to ensure resilience.
51. The Home Office published its response in March 2020. The response welcomed the Law Commission's report and accepted all of the Law Commission's 41 recommendations, in whole or in part. In line with the recommendations, the Home Office has established a Simplification of the Rules Review Committee to look at the drafting and structure of the rules. Due to the volume and complexity of the rules,

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<sup>14</sup> Leasehold home ownership: buying your freehold or extending your lease - Report on options to reduce the price payable (LC387) (9.1.2020); Leasehold home ownership: buying your freehold or extending your lease – Final Report (LC392) (27.7.2020); Leasehold home ownership: exercising the right to manage (LC393) (21.7.2020); Reinvigorating commonhold: the alternative to leasehold ownership (LC394) (21.07.2020)

<sup>15</sup> Simplifying the Immigration Rules (LC388) (13.01.2020)

which have evolved iteratively over time, it was decided to deliver simplification in phases.

52. In autumn 2020 the first tranche of simplified rules were laid. These rules simplified the drafting and structure of more than 20 routes, including visits, study and work. The simplified rules follow a consistent structure, and are drafted in plain English, in line with the principles set out by the Law Commission. They also begin to consolidate cross-cutting rules (for example those on proof of language ability and proof of finance), to ensure greater consistency. Since then further routes and cross-cutting rules have been implemented and new routes have been introduced applying the simplified approach. These simplified rules are a significant step in realising the Home Office commitment to implementing the Law Commission recommendations, providing greater clarity to applicants, caseworkers and all other users of the rules. In addition, the simplified rules enable wider change to ensure the systems and processes are streamlined and more straightforward. The Immigration Rules will be consolidated once the remaining routes have been simplified.

### **Regulation of Health and Social Care Professionals<sup>16</sup>**

53. The Law Commission published its final report (with a draft Bill) on the 2 April 2014 about the regulation of health care professionals and, in England only, the regulation of social workers. This was a joint project with the Scottish and Northern Ireland Law Commissions. The report sets out recommendations for a new single legal framework for the regulation of health care professionals and aims to introduce a consistent legal framework which will better enable the regulators to uphold their duty to protect the public, for example, the conduct of fitness to practise hearings.
54. The Commission's recommendations envisage improvements across professional regulation including robust governance structures for regulatory bodies, enabling innovation in education and leaner processes enabling the regulatory bodies to take swifter action to ensure public protection.
55. The Government published its response on 29 January 2015, noting the need for further work on refining the Law Commission's recommendations to achieve the priorities of better regulation, autonomy and cost-effectiveness while maintaining a clear focus on public protection. The Government has already taken measures so that people can continue to be confident they are receiving high quality care. It made improvements to the way doctors, nurses and midwives are investigated when there are concerns about their ability to treat patients safely.

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<sup>16</sup> Regulation of Healthcare Professionals: Regulation of Social Care Professionals in England (LC 345) (02.04.2014)

56. On 31 October 2017, the Government published a consultation paper, 'Promoting professionalism, reforming regulation' which built on the Commission's report and closed at the end of January 2018. The Government response to the consultation, setting out proposed next steps, was published in July 2019. This was followed by a further detailed policy consultation, 'Regulating Healthcare Professionals, Protecting the Public' which was launched on 24 March 2021 and ran until 16 June 2021. This set out the Government's plans to reform the legal framework for healthcare professionals in the UK through a series of secondary legislation (Section 60 Orders), starting with legislation for the General Medical Council, which will also bring Physician Associates and Anaesthesia Associates into regulation.
57. The proposals cover four broad areas:
  - The Governance and Operating Framework of the regulators
  - Education and Training
  - Fitness to Practise
  - Registration
58. The Government published its response to the March 2021 consultation and, in parallel, a consultation on the first section 60 Order on 17 February 2023. The Government is aiming to lay that first Order in Parliament by the end of 2023.
59. The Department of Health and Social Care is also considering whether to take forward wider reforms to healthcare professional regulation, and is currently:
  - Considering the report of a review looking at reducing number of regulators as set out in the November 2020 *Busting Bureaucracy* policy paper;
  - Analysing the responses to a consultation seeking views on the process for determining which professions are subject to statutory regulation including a consideration of whether those professions in regulation are the right ones; and
  - Working with NHS England and Improvement to bring forward a review of the England Medical Performers Lists regulations.
60. Through the enactment of the Children and Social Work Act 2017 (and the Social Workers Regulations 2018), the Department for Education enabled Social Work England to begin regulating the social work profession from 2019. This legislation aligns closely to the Law Commission's findings and prioritises robust governance and leaner processes for public protection.
61. The Social Workers Regulations were amended in 2022. The Department for Education and Department for Health and Social Care have worked closely throughout.

### **Protection of Official Data<sup>17</sup>**

62. The Law Commission published its final report on the Protection of Official Data on 1st September 2020. The report sets out recommendations for the reform of the espionage and unauthorised disclosure offences under the Official Secrets Acts.
63. The Government published a consultation on legislative proposals to Counter State Threats in May 2021. That publication included an extensive response to the Law Commission's recommendations.
64. In May 2022 the Government introduced the National Security Bill into Parliament. That Bill created new and modernised offences, tools and powers to deal with state threats, including the threat of espionage. This legislation was informed by the Law Commission's report and recommendations on the Official Secrets Acts 1911, 1920 and 1939.
65. In relation to the Law Commission's recommendations in relation to the Official Secrets Act 1989, the Government has listened to the strong views and concerns raised on reform of that Act in response to the public consultation.
66. It is clear to the Government that reform is complex and engages a wide range of interests. It is only right that proper, due consideration should be given to the concerns that stakeholders have raised in the consultation and as such the Government did not take forward reform of that legislation as part of this Bill. We continue to keep the position in respect of the reform of the 1989 Act under review.

### **Enforcement of Family Financial Orders<sup>18</sup>**

67. The Law Commission published its report on enforcement of family financial orders in December 2016, following concerns raised by practitioners that the legal routes and procedures for enforcing payment of financial orders made by the family court were unnecessarily complex.
68. The Law Commission recommended a range of reforms designed to make the enforcement of family financial orders more effective, more accessible and fairer. The Law Commission recommended both procedural changes and statutory reform. Recommendations included consolidation of all procedural rules dealing with enforcement of family financial orders, as well as the introduction of new powers for the court to remove, for up to 12 months, driving licenses and passports of debtors who can pay but choose not to do so.

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<sup>17</sup> Protection of Official Data (LC395) (01.09.20)

<sup>18</sup> Enforcement of Family Financial Orders (LC370) (14 12.2016)

69. Following the Government's final response on 23 July 2018, it proposed to take forward those recommendations which require changes to procedural rules and operational changes rather than changes to primary legislation, before coming to a final view on whether it should take forward those recommendations requiring statutory reform.
70. A consultation on proposed changes to the Family Procedure Rules that deal with the enforcement of family financial orders, in line with the recommendations made by the Law Commission in its report, was undertaken by the Family Procedure Rule Committee in July and August 2020. Following this consultation, the Government has been working with the Family Procedure Rule Committee's dedicated Enforcement Working Group to consider changes to procedure rules that deal with enforcement of financial orders. The Family Procedure Rule Committee approved in November 2022 an amendment to Family Procedure Rule 33.3(3), such that respondents to general enforcement applications will be required to provide the court with a financial statement setting out their financial position no later than 7 days before the first hearing in the applicant's enforcement application. This rule change was implemented on 6 April 2023.
71. The Family Procedure Rule Committee will review the operation of this rule change in due course, alongside the wider question as to whether it wishes to make further procedural changes in respect of enforcement. The Government will come to a final view on whether it will take forward the Law Commission's recommendations requiring statutory reform after the Family Procedure Rule Committee has reviewed the operation of its recent rule change, as well as whether it wishes to make further procedural changes in respect of enforcement.

### **Modernising Communications Offences<sup>19</sup>**

72. In February 2022, the Government published its interim response to the Law Commission's report, 'Modernising the Communications Offences'.
73. The Government accepted the Law Commission's recommended harm-based offence communication offence, false communications offence, threatening communications offence and cyberflashing offence. These offences were included in the Online Safety Bill on introduction to Parliament.
74. After careful consideration, the Government decided to remove the harmful communications offence, which when applied could potentially have criminalised legitimate discussion of some topics. The remaining offences will be taken through the Online Safety Bill.

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<sup>19</sup> Modernising Communications Offences (LC399) (20.07.21)

75. As this could leave a gap in criminal law, the Government will no longer repeal the existing communications offences (Malicious Communications Act 1988 & s127(1) of the Communications Act 2003) but will make minor revisions to these acts to avoid overlap with the new false communications offence and threatening communications offence in clauses 160 & 162.
76. The Government whilst accepting in principle the Law Commission's recommendations on offences of sending flashing images and encouraging or assisting self-harm did not initially include them in the Online Safety Bill on the basis that the full offences were not within the scope of the Bill which deals with communication only offences. On further consideration however, the Government has now tabled amendments to introduce an offence of sending or showing flashing images and a communications version of an encouraging or assisting self-harm offence. The Government has also said that it will legislate to expand those offences to cover behaviour that does not involve communication, for example direct assistance to self-harm, when Parliamentary time allows.

### **Taking, Making and Sharing Intimate Images without Consent<sup>20</sup>**

77. The Commission published its final report "Intimate Image Abuse" in July 2022. This recommended repeal of existing offences tackling intimate image abuse, which are spread across different pieces of legislation, and their replacement with coherent package of offences covering the taking and sharing of intimate images without consent, which would make the criminal law more consistent and expand it to further protect victims. There were additional recommendations for other aspects of the criminal justice system including for example in relation to prosecution guidance and sentencing guidelines.
78. In November 2022, the Government, in an interim response, announced that it intended to bring in a whole package of new offences, based on those recommended by the Commission, as soon as Parliamentary time allows. It also committed to introducing, in the Online Safety Bill passing through Parliament in 2022/23, those parts of the package which are communications offences and are therefore in scope of that Bill, i.e., the offences relating to *sharing* intimate images. These offences are due to be tabled during the Lords stages of that Bill.

### **Automated Vehicles<sup>21</sup>**

79. In March 2018, the Government's Centre for Connected and Autonomous Vehicles (CCAV) asked the Law Commission to undertake a far-reaching review of the UK's regulatory framework for road-based automated vehicles, building on the work of CCAV and the insurance law reforms in the Automated and Electric Vehicles Act

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<sup>20</sup> Intimate Images Abuse (LC407) (06.07.22)

<sup>21</sup> Automated Vehicles: Joint Report Law Com No 404



2018. The aim of the project was to promote confidence in the laws around the safe use of automated vehicles, and in the UK as a vibrant, world-leading venue for the connected and automated vehicle industry. Jointly with the Scottish Law Commission, three consultation papers were published in 2019, 2020 and 2021. These identified pressing problems in the law that may be barriers to the use of automated vehicles, from road traffic legislation which focuses on "the driver", vehicle standards, criminal offences and public transport. Throughout the project, safety was at the forefront of the Law Commission proposals, which also sought to retain the flexibility required to accommodate future development.

80. The Law Commission's report was published on 26 January 2022. Its recommendations cover initial approval and authorisation of self-driving vehicles, ongoing monitoring of their performance while they are on the road, misleading marketing, and both criminal and civil liability. This includes writing the test for self-driving into law; a two-stage approval and authorisation process building on current international and domestic schemes; a new in-use safety assurance scheme; new legal roles for users, manufacturers and service operators; and offences holding manufacturers and service operators responsible for misrepresentation or non-disclosure of safety-relevant information.
81. The Government formally responded to the report in the Connected and Automated Mobility (CAM) 2025 paper,<sup>22</sup> a command paper laid in Parliament, in August 2022. Government agreed to the majority of the Commissions' recommendations and set out its vision for a legislative framework that it is aiming to implement when Parliament time allows.

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

### **Public Service Ombudsman<sup>23</sup>**

82. The Law Commission's 2011 report focuses on five ombudsmen; the Parliamentary Commissioner; the Health Service Ombudsman; the Local Government Ombudsman; the Public Services Ombudsman for Wales; and the Housing Ombudsman.
83. The report makes a series of recommendations aimed at improving access to, and the effectiveness of, public services ombudsmen.

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<sup>22</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1099178/cam-2025-realising-benefits-self-driving-vehicles-print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1099178/cam-2025-realising-benefits-self-driving-vehicles-print.pdf)

<sup>23</sup> Public Service Ombudsman (LC 329) (14.07.11)

84. Due to other policy and legislative priorities, the Government does not consider large-scale reform of ombudsmen institutions to be a priority at the current time.

### **Rights to Light<sup>24</sup>**

85. A right to light is an easement that gives a landowner the right to receive light through defined apertures in buildings on his or her land. The owner of land that is burdened by the right cannot substantially interfere with it – for example by erecting a building in a way that blocks the light – without the consent of the benefiting owner. The right may enable landowners to prevent construction that would interfere with their rights or, in some circumstances, to have a building demolished.
86. The Law Commission undertook a project on rights to light because of concerns about a lack of clarity and certainty in the current law, and because of the potential for rights to light disputes to be a major cause of delay and expense during land development. The final report was published in December 2014.
87. The Government has been carefully considering the report. There are no immediate plans to implement the recommendations as a result of other legislative priorities, but the position will be kept under review.

### **Matrimonial Property, Needs and Agreements<sup>25</sup>**

88. The Law Commission published its final report on Matrimonial Property, Needs and Agreements in February 2014. The report makes recommendations to clarify the law of financial needs on divorce or dissolution of a civil partnership which would ensure that the law is applied consistently by the courts and reinforces judicial best practice. In addition, it recommends that work be done to assess whether a formula as an aid to calculation of financial outcomes could be devised, which would require the collection of empirical data. Finally, it recommends the introduction of qualifying nuptial agreements in England and Wales which would be enforceable contracts, with a number of related provisions and safeguards, enabling couples to make binding arrangements for the financial consequences of divorce or dissolution.
89. The Government has accepted and taken action on the recommendation for guidance. The Family Justice Council developed financial guidance for separating couples and unrepresented litigants. The Family Justice Council's web page provides guidance dated April 2016. It also publishes guidance aimed at the judiciary and practitioners, the second edition of which was published in April 2018. The legal charity, AdviceNow, also publishes guidance on the topic for litigants in person,

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<sup>24</sup> Rights to Light (LC356) (04.12.14)

<sup>25</sup> Matrimonial Property, Needs and Agreements (LC 343) (27.02.2014)

with funding from the Family Justice Council, with the latest edition published March 2022.

90. The Government has also worked with a Data Collection Working Group (members of which have included the Law Commission, the judiciary, HMCTS and academics) to take steps to gather data in respect of financial remedies proceedings. The Government worked with the Working Group to create a revised version of the D81 form (a statement of information about parties' financial circumstances used to support applications for a consent order in financial remedies proceedings on divorce), which was published in 2022. The amendments to the D81 form would enable it to be more usefully used in any future data-gathering exercise.
91. More broadly, during the passage of the Divorce, Dissolution and Separation Act 2020 through Parliament, the Government committed to a review of the law of financial remedies on divorce being conducted. An announcement was made on 4 April 2023 that the Law Commission will be conducting this review. As part of its review, the Law Commission will scope whether the issues of matrimonial property, needs and agreements need to be reviewed beyond its recommendations in its 2014 report. This is necessary because the Law Commission's 2014 report considered discrete issues within the law of financial provision on divorce, rather than the underlying law governing financial remedies. Whilst this review is taking place, the Government does not consider it to be the right time to legislate in respect of nuptial agreements, favouring a holistic rather than piecemeal approach to any future legislative reform.

### **Financial Remedies and Inheritance Rights for Cohabitants<sup>26</sup>**

92. The Law Commission published its report "Cohabitation: The Financial Consequences of Relationship Breakdown" in July 2007. This report recommended the creation of a statutory scheme giving financial remedies to qualifying cohabiting partners against each other on relationship breakdown.
93. The Law Commission's report "Intestacy and Family Provision Claims on Death" published in December 2011, also included recommendations relating to cohabiting partners. In particular, that report recommended giving qualifying cohabitants the same entitlement as a spouse or civil partner on intestacy and giving cohabiting partners more rights under the Inheritance (Provision for Family and Dependents) Act 1975.
94. The Government announced in September 2011 that it did not intend to take forward the recommendations in the Law Commission's 2007 report in that current Parliament (2010–2015) because of major reforms already planned for the family justice system,

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<sup>26</sup> Cohabitation: The Financial Consequences of Relationship Breakdown (LC 307) (03.07.2007)

which were delivered in 2014. In March 2013, the Government made a similar announcement regarding the cohabitation related recommendations in the 2011 report. The Government reconsidered the Law Commission's recommendations on intestacy and family provision claims in light of the Women and Equalities Committee's Report on the Rights of Cohabiting Partners in 2022.

95. The Government rejected the Women and Equalities Committee's recommendation that it should make a commitment to publish draft legislation for pre-legislative scrutiny in the 2023–24 Session of Parliament, in relation to the Law Commission's 2007 proposed opt-out cohabitation scheme. The Government considered that existing work underway on the law of marriage and divorce, which are directly relevant to issues concerning cohabitants, must conclude before considering any change to the law in respect of the rights of cohabitants on relationship breakdown.
96. The Government also rejected the Women and Equalities Committee's recommendation that it should immediately implement the Law Commission's 2011 recommendations concerning intestacy and family provision claims for cohabiting partners. This was on the basis that that reform of inheritance and family provision rights for cohabitants needs to be considered as part of the wider approach to reform of the law on cohabitation rights, so that a consistent approach is taken.

### **Reforming the Law on Weddings<sup>27</sup>**

97. The Law Commission published a report on 19 July 2022 setting out 57 recommendations on reforms to the law on weddings, particularly how and where these can take place. The Government is considering the Law Commission report and will respond in due course.

### **Reforming the Law on Taxis and Private Hire Services<sup>28</sup>**

98. The law that governs how the taxi and private hire vehicle (PHV) trades operate in England and Wales is old, inconsistent and struggling to deal with internet-driven changes in passenger behaviour. The Law Commission published its report on 23 May 2014, recommending reforms that would make the law clearer for those working in the taxi and private hire trades and their passengers.
99. The Commission's report recognised the value to passenger choice of the two-tier system of PHVs – which must be pre-booked via a licensed operator and taxis – which can also use ranks or ply for immediate hire. It makes recommendations to retain and reinforce the distinction. Passenger safety was at the forefront of the Commission's reforms. It recommended that standards be set nationally for public safety, accessibility and environmental impact so that passengers of taxis and PHVs

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<sup>27</sup> Celebrating Marriage: A New Weddings Law (LC 408) (18.07.2022)

<sup>28</sup> Taxis and Private Hire Services (LC 347) (23.05.2014)

could confidently expect consistent levels of safety and quality wherever they travel. The Government has considered the report. Two of the recommendations were delivered by the Deregulation Act 2015.

100. Since the Law Commission's report, the Wales Act 2017 made provision for the transfer of responsibility for taxi and PHV policy to the Welsh Assembly; following this transfer in 2018 this is now a devolved policy area in all UK nations.
101. The independently chaired Task and Finish Group on Taxi and Private Hire Vehicles was established in 2017 to consider the regulation of the sector under present legislation, its effectiveness and whether the tools currently available are being used to their fullest. The chair of the group submitted his report in July 2018, the Government response in February 2019 committed to bring forward legislation when parliamentary time allows to enable the setting of national minimum standards in licensing (a key objective of the Law Commission's report), increased powers for enforcement officers and to establish a database to assist in the sharing of relevant information. This commitment remains.
102. In the interim, the Government has focussed on non-legislative measures to reform the regulation of the sector. In 2020, the Government published the Statutory Taxi and Private Hire Vehicle Standards, which set out a range of requirements and processes that all licensing authorities should follow to protect children and vulnerable adults. The legislative power under which the guidance was issued focussed on actions to protect the most vulnerable in society, but the robust safeguarding measures contained in the guidance will benefit all passengers.
103. The Government has also supported legislation brought forward through private members' bills. The Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022 and the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 have improved the regulation of the sector and increased the protection of disabled passengers.
104. The Government will publish updated Best Practice Guidance for Taxi and Private Hire Vehicle Licensing Authorities in England in 2023. The document covers a wide range of licensing issues that were out of scope of the Statutory Taxi and Private Hire Vehicle Standards.
105. In the 2022 'Levelling Up the United Kingdom' White Paper, the Government committed to explore transferring taxi and private hire vehicle licensing from lower-tier and unitary authorities to upper-tier and combined authorities; this would reduce the number of licensing authorities in England from 263 to 81 and further increase consistency in the regulation of the sector.

## **Hate Crime<sup>29</sup>**

106. The project was referred to the Law Commission by the Ministry of Justice. The Commission published its report on 28 May 2014. This report recommended that:
- (a) the Sentencing Council produce guidance on the approach to sentencing hostility-based offending in hate crime cases
  - (b) that every time the enhanced sentencing provisions under section 145 and 146 of the Criminal Justice Act 2003 are applied, this should be recorded on the offender's Police National Computer (PNC) record.
  - (c) that a full-scale review of aggravated offences should be undertaken, and the enhanced sentencing system should be looked at to see if it should be retained in its current form or amended. If the Government elect not to pursue a wider review, the aggravated offences should be extended to disability, sexual orientation and transgender identity.
  - (d) not extending the stirring up offences on grounds of disability or transgender identity. New offences of stirring up hatred on the grounds of disability and transgender identity would rarely, if ever, be prosecuted and their communicative or deterrent effect would therefore be negligible.
107. The Government did not formally respond to this report but did accept the Law Commission's recommendation to conduct a full-scale review. As a result, in October 2018, the Law Commission was tasked by the Ministry of Justice and the Home Office to review the adequacy and parity of protection offered by the law relating to hate crime and to make recommendations for its reform.
108. The Law Commission published its final report on hate crime on 7 December 2021,<sup>30</sup> making a number of recommendations for reform of the hate crime laws.
109. The Government has responded to (and accepted) one of the recommendations in that report. It is considering the remaining Law Commission's recommendations and will respond in due course.

## **Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency<sup>31</sup>**

110. The Law Commission published its final report on Public Nuisance and Outraging Public Decency on 25 June 2015. The recommendations on Public Nuisance have now been completed through the Police, Crime, Sentencing and Courts Act 2022 as per paragraphs 28–30 in the Recommendations that have been Implemented section.

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<sup>29</sup> Hate Crime: Should the Current Offences be Extended (LC 348) (28.05.14)

<sup>30</sup> Hate Crime Laws: Final Report (LC 402) (7.12.2021)

<sup>31</sup> Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency (LC 358) (25.06.2015)

111. Outraging public decency is an offence which criminalises behaviour or displays which are lewd, obscene or disgusting and take place in public. In line with the model favoured by consultees, the report recommends retaining the offence and restating it in statute largely in its existing form but adding a mental element of intention or recklessness.
112. This project is part of a small series of simplification projects originally proposed in the Commission's Tenth Programme of Law Reform and follows on from the first project in that series on "Simplification of Criminal Law: Kidnapping and Related Offences", in which the Commission recommended reforms to the common law offences of kidnapping and false imprisonment and the statutory offence of child abduction. This series of projects aims to clarify the structure and modernise the language of criminal law and make it more consistent and accessible. The Government has considered the Commission's recommendations carefully but has yet to issue a formal response or confirm next steps.

### **Unfitness to plead<sup>32</sup>**

113. The law relating to unfitness to plead addresses what should in criminal courts when a defendant lacks sufficient capacity to effectively participate in their trial, including understanding the charges against them and deciding how to plead. Defendants may be unfit to plead for a variety of reasons, such as a learning disability, a developmental disorder or a communication impairment. The law aims to balance the rights of the vulnerable defendant with the interests of those affected by an alleged offence and the need to protect the public. However, the current law in this area is inconsistently applied and outdated, failing to take into account modern medical understandings of capacity.
114. After a wide-ranging consultation conducted in winter 2010/11,<sup>33</sup> the Commission published an analysis of responses<sup>34</sup> and an issues paper in 2013<sup>35</sup> and their final report and draft Bill in January 2016.<sup>36</sup>
115. The Government provided an interim response on 22 February 2016, acknowledging the Commission's work and noting that a substantive response would be provided later. The Government is considering the report's recommendations and will respond to these in due course.

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<sup>32</sup> Unfitness to Plead (LC364) (31.10.16)

<sup>33</sup> (2010) LCCP197

<sup>34</sup> <http://www.lawcom.gov.uk/project/unfitness-to-plead/>

<sup>35</sup> <http://www.lawcom.gov.uk/project/unfitness-to-plead/>

<sup>36</sup> (2016) LC364 (two volumes)

### **Simplification of the Criminal Law: Kidnapping and Related Offences<sup>37</sup>**

116. The Law Commission published its final report on kidnapping and related offences on 20 November 2014. The report recommended the creation of two distinct statutory offences to replace the existing common law ones, namely:

- that false imprisonment be replaced with a new statutory offence of unlawful detention (a label which the Law Commission believes better captures the nature of the offence). The elements of the new offence would closely follow the existing common law; and
- that a new statutory kidnapping offence be created. This would be somewhat narrower and more focussed than the existing common law offence and would have a clearer relationship with the offence of unlawful detention.

117. The report also recommended changes to the offences under sections 1 and 2 of the Child Abduction Act 1984. These seek to:

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

118. The Government has yet to formally respond to the recommendations set out in the report.

### **Offences Against the Person – Modernising the Law on Violence<sup>38</sup>**

119. The Law Commission published its report "Reform of offences against the person" on 3 November 2015, following a scoping exercise the Government had asked the Commission to undertake as part of its 11th Programme of reform. The report also draws on earlier work that the Law Commission and others had done in this area since the 1980s, which had resulted in a draft Bill in 1998 to reform the Offences Against the Person Act 1861 (the 1861 Act). The draft Bill was never taken forward due to other Government priorities at that time.

120. The report covers most of the extant offences in the 1861 Act, the common law offences of assault and battery and the offence of assaulting a constable (s. 89(1) Police Act 1996). The report has been informed by the detailed consultation carried out by the Commission between November 2014 and February 2015 and

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<sup>37</sup> Simplification of the Criminal Law: Kidnapping and Related Offences (LC 355) (20.11.2014)

<sup>38</sup> Offences against the person – modernising the law on violence (LC 361) (03.11.2015)



recommends that updated legislation is needed to tackle violent offences more effectively and make better use of court time.

121. Recommendations contained in the report include:

- the replacement of the in-scope offences in the Offences Against the Person Act 1861 with a modern statute, containing for instance a clear system of offences of injury,
- the creation of a new offence of “aggravated assault” to bridge the gap between common assault and the more serious offence of actual bodily harm (ABH), as a summary offence with a maximum sentence of 12 months. The Commission’s best estimate of the gross savings from this recommendation on its own is around £12.47million per annum; and
- the extension of the offence of ‘threats to kill’ to include ‘threats to cause serious injury’ and ‘threats to rape’.

122. The Government has yet to formally respond to the recommendations set out in the report.

### **Contempt of Court (2): Court Reporting<sup>39</sup>**

123. On 26 March 2014, the Law Commission published its second report on the review of the law of contempt of court. The report recommends that a new online service be established to help journalists and publishers reporting criminal trials discover whether reporting restrictions are in force and, if so, why.

124. The report recommends that all court reporting postponement orders be posted on a single publicly accessible website. A further restricted service would also be available where, for a charge, registered users could find out the detail of the reporting restriction and could sign up for automated email alerts of new orders. This would reduce the risk of contempt for publishers, from large media organisations to individual bloggers, and enable them to comply with the court’s restrictions or report proceedings to the public with confidence.

125. The Government supports proposals encouraging transparency and openness in the Criminal Justice system and welcomes these recommendations. As systems are developed as part of the HMCTS Reform Programme which enable wider online access to court and tribunal hearing lists by citizens and media, it will consider how it can improve access to, and knowledge of, reporting restrictions on individual cases.

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<sup>39</sup> Contempt of Court (2): Court Reporting (LC344) (25.03.2014)

### **The High Court's Jurisdiction in relation to Criminal Proceedings<sup>40</sup>**

126. The Law Commission published a report and draft bill on 27 July 2010 and a draft bill making recommendations clarifying<sup>41</sup> the limits on the availability of judicial review of decisions in a trial on indictment. The Government's interim response of 13 March 2015, noted that it was considering the Commission's recommendations and this work continues.<sup>42</sup>

### **Criminal Records Disclosure<sup>43</sup>**

127. In July 2016, the Commission was asked by the Home Office to review one specific aspect of criminal records disclosure known as "filtering". Filtering provides a framework that sets out when certain old and minor convictions will not be included on Disclosure and Barring Service standard and enhanced checks.

128. On 1 February 2017, the Commission published its report. Within the terms of reference for this project, the report included a recommendation that a statutory instrument should set out a single, itemised list of non-filterable offences in the future. The Government continues to consider the Commission's recommendations.

### **Consumer Prepayments for Retailer Insolvency<sup>44</sup>**

129. The Law Commission published their report on this project in July 2016, which considered whether greater protection is needed for consumers who lose deposits or gift vouchers when retailers or other service providers become insolvent.

130. When a retailer becomes insolvent, the law imposes a strict hierarchy of creditors to be paid out of any remaining assets. Consumers, who are classed as unsecured creditors, are very near the bottom of the list and frequently receive nothing. In some cases, the administrator may decide to honour consumer prepayments and gift vouchers, though 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 the situation.

131. The Government's response to their report was published on 27 December 2018 and accepted a number of recommendations, including the following:

- Introducing a general power for Government to require prepayment protection in sectors which pose a particular risk to consumers.

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<sup>40</sup> High Court's Jurisdiction in Criminal Proceedings (LC324) (27.07.2010)

<sup>41</sup> (2010) LC324

<sup>42</sup> Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015), paragraph 99

<sup>43</sup> Criminal records disclosure: Non-Filterable Offences (LC371) (01.02.17)

<sup>44</sup> Consumer Prepayments on Retailer Insolvency (LC368) (14.07.2016)

- Regulating Christmas and similar savings schemes, which pose a particular risk to vulnerable consumers.
- Making changes to the rules on when consumers acquire ownership of goods (see below).

132. A further recommendation of giving consumers more information about obtaining a refund through their debit or credit card issuer was actioned through advice to insolvency practitioners in the summer of 2017; and a further one on changes to insolvency hierarchy was considered but will not be going ahead.

133. The Government published the “Reforming Competition and Consumer Policy” consultation in July 2021. The consultation asked if regulation to protect users of Christmas and similar savings schemes was still necessary and what other sectors posed particular risks to consumers and therefore should also be protected. Responses to the consultation were positive on the need protect users of Christmas and similar savings schemes but inconclusive on which other sectors needed protection.

134. The Government published the Digital Market Competition and Consumers (DMCC) Bill in April 2023. The Bill includes measures which will require businesses operating “Consumer Savings Schemes” (such as Christmas savings clubs) protect consumer monies via insurance or trust arrangements. At the time of writing, the DMCC Bill is before Parliament.

#### **Draft Bill for transfer of ownership rules<sup>45</sup>**

135. Following the Government’s response published in December 2018, it asked the Law Commission to lead on the technical changes required to clarify the law applying to the transfer of ownership. In April 2021, the Law Commission published its report and a draft Bill that would introduce new rules into the Consumer Rights Act 2015.<sup>46</sup> Whilst undertaking this work, the Law Commission became aware of a widespread practice among online retailers of using terms and conditions to delay the formation of consumer sales contracts until the goods are dispatched to the consumer. Having considered the practice, the Law Commission view was that it would reduce the impact of the potential reforms in its draft Bill proposing to introduce new rules into the Consumer Rights Act 2015 as the efficacy of the proposals depended on a sales contract being in place.

136. The Government published the “Reforming Competition and Consumer Policy” consultation in July 2021. The consultation sought more information on whether the

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<sup>45</sup> Consumer sales contracts: transfer of ownership (LC398) (22.04.21)

<sup>46</sup> Consumer sales contracts: transfer of ownership (LC398) (22.04.21)

practice of using terms and conditions to delay the formation of consumer sales contracts was widespread and if it caused detriment to consumers.

137. As the result of the consultation, the Government has decided not to take forward the Law Commission proposals at this time but will continue to monitor the issue. The Government consultation response can be viewed at:  
<https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy>

### **Termination of Tenancies for Tenant Default<sup>47</sup>**

138. The Law Commission published this report in 2006. It contains recommendations to reform the means by which a landlord can terminate a fixed term commercial or residential tenancy where the tenant has not complied with his or her obligations.
139. This is an important issue for many landlords and tenants of residential and commercial properties. With regard to commercial tenancies, the current law is difficult to use, especially for the lay person and the unwary practitioner. It does not support negotiated settlement and provides little protection for mortgagees and chargees.
140. In March 2019, the Housing, Communities and Local Government Select Committee recommended that the Government implement the Law Commission's recommendations. In response, the Government asked the Law Commission to update its report. The Commission has provided the Department for Levelling Up, Housing and Communities with possible options and updates to the Commission's work which are being considered. Changes to forfeiture will require a careful balancing of the rights and responsibilities of landlords and leaseholders. Any changes will also require primary legislation.

### **Employment Law Hearing Structures<sup>48</sup>**

141. The Law Commission's 13th Programme of Law Reform included a review of employment law hearing structures. The project's terms of reference were to review the jurisdictions of the employment tribunal, Employment Appeal Tribunal and the civil courts in employment and discrimination matters and make recommendations for their reform, without considering major restructuring of the Employment Tribunal system. The Law Commission published its report on 28 April 2020, making 23 recommendations for changes to Employment Tribunal structures.
142. The Government has responded to the Law Commission's report on Employment Law Hearing Structures, welcoming the report and the detailed consideration the

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<sup>47</sup> Termination of Tenancies for Tenant Default (LC303) (31.10.06)

<sup>48</sup> Employment law hearing structures (LC390) (29.04.20)

Commission has given to this important topic. Many of the recommendations were deferred for later consideration. Two of the recommendations covered more flexible judicial deployment. As these are matters for the judiciary, the Government was unable to comment specifically on the recommendations but they were shared with judicial colleagues for their consideration.

### **Anti-Money Laundering<sup>49</sup>**

143. In 2017 the Home Office asked the Law Commission to review the anti-money laundering regime in Part 7 of the Proceeds of Crime Act 2002 and of the counter-terrorist financing regime in Part 3 of the Terrorism Act 2000. The Review recommended that the Government's consent based approach to anti-money laundering was retained, and made eighteen separate recommendations covering, inter alia: exemptions from the substantive money laundering offences; the use of suspicion as a threshold for information sharing; statutory guidance; and data exploitation.
144. The Government welcomes the Law Commission recommendations and the analytical work that underpinned it. Since the publication of the report the Government has been working to analyse the impact of the recommendations in terms of reducing the threat from money laundering and establishing a more effective and efficient public-private AML regime. Some of these recommendations have formed part of the legislative clauses in the Economic Crime and Corporate Transparency Bill.
145. The Government will continue to work through the Law Commission recommendations and has agreed with the Law Commission that an official response to the Review will be published in conjunction with the official response to the Law Commission review of the Confiscation Regime. The Government has until November 2023 to publish an official response to the Law Commission review of the Confiscation Regime.

### **Intermediated Securities<sup>50</sup>**

146. In June 2019, BEIS asked the Law Commission to undertake a "scoping study" into investor rights in a system of intermediated securities. In the modern era, when a person invests in shares or bonds they are unlikely to receive a paper certificate. Instead, most investors hold securities through computerised credit entries in a register called CREST, through a chain of financial intermediaries. This intermediated system has made trading significantly quicker, cheaper and more convenient. However, holding shares in this way means that the investor's name does not appear on the register of members and he or she is not a member of the company. It can

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<sup>49</sup> Anti-money laundering (LC384) (18.06.19)

<sup>50</sup> Intermediated Securities 13<sup>th</sup> Prog (LC377)

mean that the investor does not have access to all the shareholder rights they would have with a paper certificate, such as the right to vote on company resolution. There is also uncertainty as to the legal redress available, especially if an intermediary in the chain encounters financial difficulties.

147. The Law Commission published its scoping study in November 2020. This provided an analysis of the law underlying intermediated securities together with the concerns of market participants. The study did not make formal recommendations for reform but did identify a range of possible solutions to the concerns identified to provide a basis for further work and discussion with market participants. The potential solutions considered included:

- Targeted legal intervention to address specific issues, such as creating a new obligation on intermediaries to arrange, upon request, for an investor to receive information, attend meetings and vote.
- Systemic change, such as removing intermediation altogether, or retaining intermediation but providing investors with an alternative option of holding their securities directly in a modernised, electronic form. Technological solutions such as distributed ledger technology.
- Potential legislative or regulatory changes to confirm that distribution of an insolvent intermediary's assets to ultimate investors should be made on a proportionate basis.

148. Since publication of the Law Commission's study, two independent reviews commissioned by the Government have made important recommendations relating to the framework and arrangements for holding shares. The first was Hill of Oareford's UK Listing Review, published in March 2021. This included a recommendation that consideration be given to how technology can be used to improve retail investor involvement in corporate actions and their undertaking of an appropriate stewardship role. The second was Mark Austin's review of secondary capital raising, published in July 2022. Drawing on the Law Commission's scoping paper, this included a call for a drive to digitisation, starting with the eradication of paper share certificates, but extending to ensuring that the rights attached to shares, whatever their form, flow to end investors quickly, clearly and efficiently. The report called for this to be taken forward by a Digitisation Task Force.

149. The Government has appointed Sir Douglas Flint to chair the taskforce which will work with stakeholders across the financial services sector to build a broad consensus for change and develop a practical implementation plan. In particular, the taskforce has been asked to identify immediate and longer term means of improving the current intermediated system of share ownership and eliminating the use of paper share certificates. Sir Douglas is expected to publish a report on the taskforce's progress and initial findings by spring 2023, and final recommendations and an implementation plan by spring 2024.

150. Due to work on other Government priorities, there has been limited further work on other legal issues connected with intermediated share ownership raised in the Law Commission's report, such as the uncertainty over the legal redress available, if an intermediary in the chain encounters financial difficulties.

### **Misconduct in Public Office<sup>51</sup>**

151. Misconduct in public office is a common law offence: it is not defined in statute. It carries a maximum sentence of life imprisonment. The offence requires that: a public officer acting as such; wilfully neglects to perform his or her duty and/or wilfully misconducts him or herself; to such a degree as to amount to an abuse of the public's trust in the office holder; without reasonable excuse or justification.

152. The Law Commission published its final report in December 2020. It recommended that the offence should be repealed and replaced with two statutory offences:

- An offence of corruption in public office: which would apply where a public office holder knowingly uses or fails to use their public position or power for the purpose of achieving a benefit or detriment, where that behaviour would be considered seriously improper by a "reasonable person". A defendant to this offence will have a defence if they can demonstrate that their conduct was, in all the circumstances, in the public interest.
- An offence of breach of duty in public office: which would apply where a public office holder is subject to and aware of a duty to prevent death or serious injury that arises only by virtue of the functions of the public office, they breach that duty, and in doing so are reckless as to the risk of death or serious injury.

153. The Government is considering the Law Commission's recommendations and will respond in due course.

### **Search Warrants<sup>52</sup>**

154. The Home Office requested the Law Commission to conduct a wide-ranging review of Search Warrants in 2017 and this was published in October 2020. The project began as a way of streamlining existing legislation within Police And Criminal Evidence Act 1984, to make it more robust, transparent, and accessible to those who need to use the legislation and to simplify the process of Search Warrants and the powers that accompany them. During the inquiry it became apparent that a new focus within the field of search warrants (that of electronic data and how it is accessed by officers) would also need to be included.

155. The report sets out 64 recommendations for the Government to consider. These changes cover the whole journey of the Search Warrant process and will involve the

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<sup>51</sup> Misconduct in Public Office (LC397) (03.12.20)

<sup>52</sup> Search Warrants (CP235) (05.09.18)

Departments and legislative bodies that must consider the practical and long-term effects that any changes might have on this area of law enforcement. These recommendations cover a wide range of topics such as changes in PACE to streamline existing legislation, giving the Criminal Procedure Rule Committee advice on amending their forms for a Search Warrant application, having His Majesty's Courts and Tribunals Service consider the practicability of more search warrant hearing slots and creating a Code of Practice governing the acquisition and treatment of electronic material in criminal investigations involving search warrants.

156. The Government welcomes the report and is considering the recommendations. This report is the most extensive independent review of the law governing Search Warrants and we want to ensure that work continues after we respond to the report. We will seek to undertake a programme of reform based on this review when the legislative timetable allows.

### **Electoral Law<sup>53</sup>**

157. The Law Commission and Scottish Law Commission published a joint final report on Electoral law on 16 March 2020. It recommended that electoral law should be rationalised into a single, consistent legislative framework with consistent electoral laws across all elections (except where differences are necessary due, for example, to different voting systems). The report also recommended that the process for challenging elections should be modernised, and that existing electoral offences should be simplified and updated.
158. The Government has not formally responded to the report. The Elections Act 2022 does not consolidate electoral law in the way recommended by the Law Commission but as part of the Electoral Integrity Programme, brought forward a number of issues raised within it. These include voter identification, changes to digital imprint regime, additional integrity measures for postal voting and other matters which were the subject of recommendations made by the final report. Other matters relating to challenges to election results and consolidation of law are still being considered in relation to future changes to electoral law.

### **Confiscation of the Proceeds of Crime**

159. In 2018, the Home Office commissioned the Law Commission with a project to review Part 2 of the Proceeds of Crime Act 2002 (the confiscation regime in England and Wales) and to make recommendations for reform. This included assessing how the regime could be adjusted and considering what an optimal confiscation regime might look like.

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<sup>53</sup> Electoral Law (LC389) (SLC256) (16.03.20)



160. In November 2022, after an extensive period of consultation, the Law Commission published its report. It makes 119 recommendations; a combination of ambitious ideas for reform and alterations to the existing legislative framework. The Government is considering the Law Commission report and will respond in due course. To inform the response, we are consulting widely across government, law enforcement, civil society, legal practitioners, and academia.

## Decisions taken not to implement

### The Law on Bills of Sale<sup>54</sup>

161. Bills of Sale are currently governed by two Victorian Statutes, the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882. In September 2014, the Treasury asked the Law Commission to review this legislation and make recommendations for its reform.
162. The Law Commission initially consulted on the reform of the existing legislation in 2015 and its final report and recommendations to reform the Bills of Sale Acts were published in September 2016. The Law Commission concluded that reform was necessary and recommended that the Bills of Sale Acts should be repealed in their entirety and replaced with a new “Goods Mortgages Act”. The purpose of this Act would be to create a new security which can be granted over a person’s goods.
163. In response, the Government published a Written Ministerial Statement on 7 February 2017. The Government accepted the overarching thrust of the Law Commission’s recommendations but decided that some issues needed further reflection. The Government agreed to support the Law Commission in drafting primary legislation. The Law Commission consulted on draft clauses in July 2017 and published a second report, with draft Bill on 24 November 2017.<sup>55</sup>
164. On 22 September 2017, the Government published a consultation document alongside an updated draft of the Bill published by the Law Commission. The consultation sought views from stakeholders on whether they agreed that reform of the law in this area was required and that the draft Bill was appropriate for the special Parliamentary procedure.
165. Given the concerns raised in the consultation, the small and reducing market and the wider work on high-cost credit, the Government decided not to introduce legislation at that time. The Government is keen that work progresses to consider reform of the broader consumer credit regulatory framework to ensure that it remains fit for purpose. On 9 December 2022, the Government published a consultation on the modernisation of consumer credit legislation. The Government published a response to that consultation on 11 July 2023. As part of that work, the Government will consider the extent to which that regulatory framework can provide robust protections for borrowers.

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<sup>54</sup> Bills of Sale (LC369) (12.09.2016)

<sup>55</sup> From Bills of Sale to Goods Mortgages (LC 376) (23.11.17)



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