



Ministry
of Justice

Report on the implementation of Law Commission recommendations

May 2025

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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 pursuant to section 3A of the Law Commission Act 1965

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Introduction

I am pleased to present this report on the Government's implementation of Law Commission recommendations. Although much of the work done on implementing the recommendations in this Report took place under the previous Government, it falls to this Government to report on the work and we will continue to consider all the outstanding recommendations.

It is the ninth 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 2023 to January 2024, but also covers implementation progress between January 2024 and the publication date.

Under the Law Commission Act 1965, the Commission should consist of (except during any temporary vacancy) a Chairman and four other Commissioners appointed by the Lord Chancellor as their sponsoring Minister. At present the Commission is led by Sir Peter Fraser, who became the new Chair in December 2023, and three further Commissioners leading work across their specialist areas of the law. The Commission is currently recruiting to fill a vacancy for a fourth Commissioner in Commercial and Common Law. Projects undertaken by the Commissioners can be commissioned as part of their programmes of reform or undertaken through individual referrals from Ministers across Government.

During the time covered by this report, a number of recommendations arising from projects undertaken by the Law Commission have been implemented, either partially or fully.

Several recommendations were taken forward in primary legislation over this period – the Arbitration Bill, the Automated Vehicles Bill, the Criminal Justice Bill and the Leasehold and Freehold Reform Bill, which were all introduced in Parliament in November 2023 under the previous government. However, following the announcement of the General Election on 22 May 2024 the Arbitration Bill and the Criminal Justice Bill fell. The Arbitration Bill was later re-introduced to Parliament on 18 July and became an Act on 24 February 2025. The Automated Vehicles Bill and Leasehold and Freehold Reform Bill became Acts on 20 May and 24 May 2024 respectively. The Online Safety Act, which received Royal Assent in October 2023, introduced a number of new communications offences, including a new offence of cyberflashing, encouraging or assisting serious self-harm, and four new offences of sharing or threatening to share intimate images, all of which are closely based on Law Commission recommendations. The Electronic Trade Documents Act 2023 was implemented through the special parliamentary procedure for

Law Commission bills. It received Royal Assent in July 2023 and came into force in September 2023.

The Law 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 May 2024.

The Commission is still fully engaged on current projects, including those not yet commenced from the 13th programme. They are also still in the process of analysing and developing the 14th programme law reform proposals, which will continue until the Government and the Commission both agree the time is right for them to launch the new programme. I look forward to working with them on this and other future reform projects.

I would like to extend my sincere thanks to the organisation and the Chair, Sir Peter Fraser for all the work taken forward between January 2023 and January 2024, up to the date of publication. I look forward to seeing the many more things that the Law Commission will accomplish whilst Sir Peter Fraser is Chair.

The Right Honourable Shabana Mahmood 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 ninth report to be published by the Government under section 3A. As required, the report covers Law Commission recommendations that have been implemented by the previous 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 2023 to 11 January 2024 but has also been updated to reflect implementation progress between January 2024 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. 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

Electronic Trade Documents¹

4. In March 2022, the Law Commission published its final report and draft Bill setting out recommendations to allow for the legal recognition of trade documents such as bills of lading and bills of exchange in electronic form. The previous Government accepted the recommendations, which were implemented in the Electronic Trade Documents Act 2023. The Act came into force in September 2023.
5. International trade is worth around £1.266 trillion to the UK. The process of moving goods across borders involves a range of actors including transportation, insurance, finance and logistics service providers. Despite the size and sophistication of this market, many of its processes, and the laws underlying them, are based on practices developed by merchants hundreds of years ago. In particular, being the “holder” or having (physical) “possession” of a trade document has special significance. However, the law did not allow an electronic document to be possessed. As a result, nearly all documents used in international trade had to be in paper form.
6. Based on Law Commission recommendations, the Electronic Trade Documents Act 2023 provides that a trade document in electronic form should be capable of being possessed provided that certain criteria are met. These criteria are designed to replicate the salient features of paper trade documents. The recommendations apply to documents that rely on possession for their functionality as a matter of law or commercial practice, with specific exclusions for bearer bonds and uncertificated securities under the Uncertificated Securities Regulations 2001.
7. The potential positive impacts of using electronic trade documents – including financial and efficiency gains, and environmental benefits – are vast. This Government’s own impact assessment identified benefits of £1.3bn to the UK economy.²
8. The Law Commission is doing some further work looking at the private international law elements of Electronic Trade Documents.

¹ Electronic Trade Documents: Report and Bill (LC405) (15.03.2022)

² https://www.legislation.gov.uk/ukpga/2023/38/pdfs/ukpgaod_20230038_en.pdf

Wildlife Law: Final Report³

9. 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.

Modernising Communications Offences⁴

10. The Online Safety Act 2023 introduced new communications offences based on the Law Commission's recommendations: a false communications offence, a threatening communications offence, a cyber-flashing offence, offences of sending or showing flashing images electronically with the intention of causing harm to a person with epilepsy, and an offence of encouraging or assisting serious self-harm. These offences were commenced on 31 January 2024.
11. The offences of sending or showing flashing images and the offence of encouraging or assisting serious self-harm were not initially included in the Online Safety Bill but the previous Government agreed to add them during the Bill's passage in response to concerns raised in Parliament. The offence of encouraging or assisting serious self-harm in the Online Safety Act is limited to encouragement or assistance given by means of verbal, written or electronic communications, publications or correspondence, and also includes a scenario where a person shows another person a communication. The Criminal Justice Bill was aimed to repeal the offence in the Online Safety Act (in relation to England and Wales and Northern Ireland) and replace it with a broader one that would cover encouraging or assisting serious self-harm both by means of communication and in any other way. However, the Bill was dropped due to the General Election being called.
12. As previously set out, the previous Government decided, on balance, to not bring in the Law Commission's recommendations for a harmful communications offence through the Online Safety Act. To avoid leaving a gap in criminal law, the previous Government therefore decided not to repeal the existing communications offences (Malicious Communications Act 1988 & s127(1) of the Communications Act 2003)

³ Wildlife Law: Final report (LC 362) (10.11.2015)

⁴ Modernising Communications Offences (LC399) (20.07.21)

and instead made minor revisions to these acts to avoid overlap with the new false communications offence and threatening communications offence.

Recommendations that have not yet been implemented

(i) Recommendations in the process of implementation

Updating the Land Registration Act 2002⁵

13. In 2018, the Law Commission published its findings on the review of the Land Registration Act 2002. The report recommended some technical reforms to address issues in the law, to enhance fraud prevention, and to expediate, simplify, and reduce the cost of conveyancing for all.
14. The previous Government received the review positively, offering a full response to the 53 recommendations on March 25, 2021. The previous Government noted that the majority of the recommendations are technical or specific, with three impacting on the jurisdiction of the First-tier Tribunal, which adjudicates disputes relating to land registration matters. Overall, the previous Government deemed the land registration system to be effective. It accepted 40 recommendations, noting modifications may be required to a small number before implementation and declined three recommendations, citing concerns about significant changes to the effective land registration system without clear benefits or potential unintended consequences. 10 recommendations required further consideration and the previous Government's response provided insight for each.
15. Future implementation will align with broader land registration policy development and HM Land Registry business strategy priorities outlined in its Strategy 2022+. Active collaboration with stakeholders is enhancing electronic and online digital application services and eliminating paper-based transactions by accepting electronically signed transfers and deeds for registration. The Digital Property Market Steering Group, a coalition of Government and industry partners, has been formed to drive crucial digital transformation in the land and property market.

Event fees in retirement properties (Transfer of Titles and Change of Occupancy Fees in Leasehold)⁶

16. 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 Ministry of

⁵ Updating the Land Registry Act 2002 (LC380) (24.07.18)

⁶ Event Fees in Retirement Properties (LC373) (31.03.17)

Housing, Communities and Local Government (MHCLG) asked the Law Commission to investigate and make recommendations for change.

17. 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; and that the code of practice should be supported by an amendment to the Consumer Rights Act 2015 so that it can be enforced by consumers. Where there is a breach of the code of practice, the Commission recommended that in most cases the event fee should not be payable.
18. The previous Government issued an interim response in November 2017, thanking the Commission for the report.
19. In March 2019, the previous Government responded to the Law Commission, agreeing to implement the majority of its recommendations, and to give further consideration to recommendations on succession rights and a database of leasehold retirement properties with event fees.
20. This Government is giving careful consideration to the Older People's Housing Taskforce report published in November 2024, including its recommendation that Government should implement the Law Commission's 2017 recommendations to regulate event fees.

Residential Leasehold & Commonhold⁷

21. 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, covering recommendations on the valuation aspects of enfranchisement was published, and on 21 July 2020 a further three reports were published, on the remaining aspects of enfranchisement as well as commonhold and the right to manage. The reports contain a large number of recommendations.
22. The previous Government responded to a number of the Commission's recommendations on enfranchisement and the right to manage.⁸ Key Law

⁷ 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)

⁸ <https://www.gov.uk/government/news/government-reforms-make-it-easier-and-cheaper-for-leaseholders-to-buy-their-homes> and <https://www.gov.uk/government/publications/leasehold-valuation-enfranchisement-and-the-right-to-manage>

Commission recommendations in respect of those areas were implemented in the Leasehold and Freehold Reform Act 2024.

23. The King's Speech in July 2024 made clear that this Government will further reform the leasehold system by enacting the remaining Law Commission recommendations relating to leasehold enfranchisement and the right to manage. It will also take steps to bring the leasehold system to an end, reinvigorating commonhold through a comprehensive new legal framework and banning the sale of new leasehold flats so commonhold becomes the default tenure.
24. As a first step, on 3 March 2025, this Government published the Commonhold White Paper⁹ in which it committed to the introduction of a comprehensive new legal framework based on the vast majority of the recommendations made by the Law Commission in their 2020 report *Reinvigorating Commonhold: the alternative to leasehold ownership*.

Simplifying the Immigration Rules¹⁰

25. 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.
26. 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, which have evolved iteratively over time, it was decided to deliver simplification in phases.
27. In autumn 2020 the first tranche of simplified rules were laid. 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. To date over 50 parts of the rules have been simplified in whole

⁹ Commonhold White Paper, Commonhold White Paper - GOV.UK

¹⁰ Simplifying the Immigration Rules (LC388) (13.01.2020)

or in part. 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 Professionals¹¹

28. 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.
29. 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.
30. The previous 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 previous Government had already taken measures so that people could continue to be confident they were 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.
31. On 31 October 2017, a Government consultation paper, 'Promoting professionalism, reforming regulation' was published, which built on the Commission's report and closed at the end of January 2018. The previous Government's response to the consultation published in July 2019 set out proposed next steps. This was followed by a further detailed policy consultation, 'Regulating Healthcare Professionals, Protecting the Public' which ran from 24 March 2021 until 16 June 2021, that set out detailed plans to reform the legal framework for each of the healthcare professionals in the UK through a series of secondary legislation (Section 60 Orders).

¹¹ Regulation of Healthcare Professionals: Regulation of Social Care Professionals in England (LC 345) (02.04.2014)

32. The proposals covered four broad areas:
- The Governance and Operating Framework of the regulators
 - Education and Training
 - Fitness to practice; and
 - Registration
33. The previous Government published its response to the March 2021 consultation and, in parallel, a consultation on the first section 60 Order on 17 February 2023. This legislation, the Anaesthesia Associates and Physician Associates Order 2024, came into effect in March 2024, and provides powers to the General Medical Council (GMC) to bring anaesthesia associates and physician associates into statutory regulation under a modernised regulatory framework from December 2024. It has been designed to act as a template for the future reforms that could be rolled out to all healthcare professional regulators.
34. This Government is currently considering its priorities for professional regulation and will set these out in due course.

Protection of Official Data¹²

35. The Law Commission published its final report on the Protection of Official Data on 1 September 2020. The report sets out recommendations for the reform of the espionage and unauthorised disclosure offences under the Official Secrets Acts.
36. On 20 December 2023 Parts 1–3 of the National Security Act 2023 came into force. The Act, which received Royal Assent in July 2023, creates new and modernised offences, tools and powers to deal with state threats, including the threat of espionage and was informed by the Law Commission’s report and recommendations on the Official Secrets Acts 1911, 1920 and 1939.
37. In relation to the Law Commission’s recommendations in relation to the Official Secrets Act 1989, the Government continues to keep the position in respect of the reform under review.

Enforcement of Family Financial Orders¹³

38. 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.

¹² Protection of Official Data (LC395) (01.09.20)

¹³ Enforcement of Family Financial Orders (LC370) (14 12.2016)

39. 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.
40. Following the previous 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.
41. 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 worked 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.
42. The Family Procedure Rule Committee reviewed the operation of this rule change in April 2024. It considered that Family Procedure Rule 33.3(3) was working well and should continue without change. This Government will consider whether to take forward the Law Commission's recommendations requiring statutory reform, as well as possible further procedural changes in respect of enforcement, following the publication of the Law Commission's Scoping Report on Financial Remedies on Divorce and Dissolution, published in December 2024.

Taking, Making and Sharing Intimate Images without Consent¹⁴

43. The Commission published its final report "Intimate Image Abuse" in July 2022. This recommended the repeal of existing offences tackling intimate image abuse, and their replacement with a coherent package of offences covering the taking and

¹⁴ Intimate Image Abuse (LC407) (06.07.22)

sharing of intimate images without consent, which would make the criminal law more consistent and expand it to further protect victims.

44. In November 2022, the previous Government announced its intention to create a raft of new offences to deal with intimate image abuse closely based on the Law Commission recommendations. The Online Safety Act 2023 repealed the offences of disclosing or threatening to disclose private sexual images and replaced them with four new offences of sharing or threatening to share intimate images.
45. The Criminal Justice Bill, introduced by the previous Government, contained new offences to address the taking and recording of intimate images without consent and the installing of equipment to enable the commission of a taking or recording offence. The Criminal Justice Bill fell when Parliament was dissolved in May 2024.
46. This Government is committed to tackling all forms of violence against women and girls, including image based abuse, and at the beginning of the year announced plans to introduce new offences for the taking of intimate images without consent and the installation of equipment with intent to commit these offences.

Automated Vehicles¹⁵

47. 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 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.
48. 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

¹⁵ Automated Vehicles: Joint Report Law Com No 404

manufacturers and service operators responsible for misrepresentation or non-disclosure of safety-relevant information.

49. The previous Government formally responded to the report in the Connected and Automated Mobility (CAM) 2025 paper¹⁶ with a command paper laid in Parliament, in August 2022. The previous Government agreed to the majority of the Commissions' recommendations and in November 2023 introduced primary legislation in Parliament to implement the recommendations and create a dedicated regulatory framework in order to ensure the safety of self-driving vehicles and set clear responsibilities for their use and performance.
50. The primary legislation gained Royal Assent in May 2024 as the Automated Vehicles Act. Preparatory work is underway to launch an implementation programme for the Act, establishing the detailed mechanics of the new regulatory framework.

Arbitration¹⁷

51. In March 2021, the Ministry of Justice asked the Law Commission of England and Wales to conduct a review of the Arbitration Act 1996. The Law Commission was tasked with determining whether any amendments to the Act were needed to ensure that it remains fit for purpose and continues to promote England and Wales as a leading destination for commercial arbitration. The Law Commission ran two consultations and published its final report in September 2023.
52. The previous Government accepted all the Law Commission's recommendations and to give effect to them, it introduced the Arbitration Bill into Parliament in November 2023.
53. The previous Government's Arbitration Bill fell at the end of the previous Parliamentary session, when the 2024 General Election was called.
54. However, this Government then introduced into Parliament its own Arbitration Bill, giving effect to the Law Commission's reforms, on 18 July 2024. The Arbitration Bill started in the Lords under the normal Bill procedure, and completed its House of Lords stages on Wednesday 6 November 2024 and was presented to the House of Commons on the same date. The Bill received Royal Assent on 24 February 2025 and the Act will be commenced as soon as practicable.

¹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1099178/cam-2025-realising-benefits-self-driving-vehicles-print.pdf

¹⁷ Arbitration (LC 413) (05.09.23)

Confiscation of the Proceeds of Crime¹⁸

55. 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.
56. 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 previous Government decided to take forward the majority of the Law Commission's recommendations. This approach was informed by extensive engagement sessions with key stakeholders across Government, law enforcement, civil society, private sector and academia. During these discussions, the previous Government heard from multiple stakeholders that progressing the Law Commission's specific recommendations concerning apportionment, upwards reconsideration and the consolidation of multiple confiscation orders would create a number of operational and practical issues. The previous Government took a measured approach and in light of these concerns, subsequently decided not to progress these recommendations further.
57. The previous Government response to the Law Commission report was published on 25 October 2023. On 14 November 2023, the previous Government introduced the Criminal Justice Bill, which made provision for wholesale reform to the confiscation regime. The Law Commission's recommendations informed the drafting of those measures. The Criminal Justice Bill fell when Parliament was dissolved in May 2024. The new Government will legislate to take these measures forwards when Parliamentary time allows.

Anti-Money Laundering¹⁹

58. In 2017 the Home Office commissioned the Law Commission to review aspects of the anti-money laundering regime in Part 7 of the Proceeds of Crime Act 2002 and similar counter-terrorist financing regime contained in Part 3 of the Terrorism Act 2000, to consider whether there was scope for the reform of the "consent regime". In 2019, the Law Commission published its report. It makes 19 legislative and non-legislative 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.

¹⁸ Confiscation of the Proceeds of Crime after Conviction (LC 410) (08.11.22)

¹⁹ Anti-money laundering (LC384) (18.06.19)

59. The previous Government welcomed the Law Commission recommendations; several of the recommendations had already progressed, some through the legislative clauses in the Economic Crime and Corporate Transparency Act 2023 and others through the delivery of the SARs Reform Programme.
60. The previous Government response to the Law Commission SARs regime report was published on 12 February 2024.

Electronic Execution of Documents²⁰

61. The Law Commission completed this report in September 2019 having reviewed the current law and case for reform on electronic signatures and the electronic execution of documents.
62. 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.
63. 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.
64. 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 previous 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.
65. The previous 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 previous Government 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 previous Government also agreed to the recommendation that a review of the law of deeds should be undertaken by the Law Commission when resources and other priorities allowed.

²⁰ Electronic Execution of Documents (LC386) (04.09.2019)

Unfitness to plead²¹

66. The law relating to unfitness to plead addresses what should happen 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 mental health condition, learning disability, or other neurodiverse condition. 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.
67. After a wide-ranging consultation conducted in winter 2010/11,²² the Commission published an analysis of responses²³ and an issues paper in 2013²⁴ and their final report and draft Bill in January 2016.²⁵
68. A full response to the Law Commission report was published in October 2023, with the majority of the Law Commission's recommendations being accepted.

Search Warrants²⁶

69. In October 2020, following a commission from the Home Office in 2017, the Law Commission published a review of search warrant legislation. The Report aimed to streamline existing legislation, including the Police and Criminal Evidence Act 1984, to make it more robust, transparent, and accessible, simplifying the search warrants process and associated powers, such as those required to access and obtain electronic data.
70. The Law Commission Report set out recommendations for the Government to consider, including comprehensive changes to the search warrants regime.
71. Significant changes have been made in response to the recommendations put forward in the Report, including streamlined electronic warrants applications and renewed guidance.
72. This Government will keep search warrants legislation under review to ensure the system works effectively.

²¹ Unfitness to Plead (LC364) (31.10.16)

²² (2010) LCCP197

²³ <http://www.lawcom.gov.uk/project/unfitness-to-plead/>

²⁴ <http://www.lawcom.gov.uk/project/unfitness-to-plead/>

²⁵ (2016) LC364 (two volumes)

²⁶ Search Warrants (LC 396) (07.10.20)

Consumer Prepayments for Retailer Insolvency²⁷

73. 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.
74. 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.
75. The previous 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.
 - 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)
76. 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.
77. The previous 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 to protect users of Christmas and similar savings schemes but inconclusive on which other sectors needed protection.
78. The previous Government published the Digital Market Competition and Consumers (DMCC) Bill in April 2023, which achieved Royal Assent on 24th May 2024. The Act includes measures which will require businesses operating "Consumer Savings Schemes" (such as Christmas savings clubs) to protect consumer monies through

²⁷ Consumer Prepayments on Retailer Insolvency (LC368) (14.07.2016)

insurance or trust arrangements. Implementation of these provisions will not happen before April 2025, and this timeline is subject to continued engagement with industry.

Digital Assets²⁸

79. The Law Commission published a report on 28 June 2023 making four recommendations to Government on how to further strengthen English and Welsh law's ability to accommodate digital assets. The previous Government commissioned the work in 2020 to identify any barriers to the recognition of digital assets as property under English and Welsh private law and recommend solutions.
80. The new Government is now putting the draft bill, as proposed by the Law Commission, through Parliament using the Law Commission special procedure process. This means it is implementing the recommendation made by the Law Commission to legislate.
81. The report also recommended setting up an expert group to provide non-binding guidance on the legal and technical control of digital assets. MoJ asked the UK Jurisdiction Taskforce, an expert group chaired by the Master of the Rolls, to take forward this work.
82. A further two recommendations were made in the report which are being reviewed by HMT.
83. A full response to the report was made through written ministerial statement on 11 September.

(ii) Recommendations awaiting a Government decision on implementation

Public Service Ombudsman²⁹

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

²⁸ Digital Assets (LC 412) (27.06.23)

²⁹ Public Service Ombudsman (LC 329) (14.07.11)

86. This Government will consider the case for ombudsman reforms alongside other policy and legislative priorities.

Rights to Light³⁰

87. 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.
88. 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.
89. The previous Government had been carefully considering the report. It said that there were no immediate plans to implement the recommendations as a result of other legislative priorities, but that the position would be kept under review.

Matrimonial Property, Needs and Agreements³¹

90. 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.
91. The previous Government accepted and took 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,

³⁰ Rights to Light (LC356) (04.12.14)

³¹ Matrimonial Property, Needs and Agreements (LC 343) (27.02.2014)

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

92. The previous Government 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 previous 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.
93. More broadly, during the passage of the Divorce, Dissolution and Separation Act 2020 through Parliament, the previous 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 scoped whether the issues of matrimonial property, needs and agreements need to be reviewed beyond its recommendations in its 2014 report. This was 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. This Government will consider the recommendations in respect of nuptial agreements in view of the findings of the Law Commission's Scoping Report on Financial Remedies on Divorce and Dissolution, published in December 2024.

Financial Remedies and Inheritance Rights for Cohabitants³²

94. 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.
95. 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.
96. The previous Government announced in September 2011 that it did not intend to take forward the recommendations in the Law Commission's 2007 report in that Parliament (2010–2015) because of major reforms already planned for the family

³² Cohabitation: The Financial Consequences of Relationship Breakdown (LC 307) (03.07.2007)

justice system, which were delivered in 2014. In March 2013, the previous Government made a similar announcement regarding the cohabitation related recommendations in the 2011 report.

97. This Government made a commitment in its 2024 manifesto to ‘strengthen the rights and protections available to women in cohabiting couples’ and has noted, as set out in the 2007 report, that the existing protections for cohabiting couples are very limited. This Government plans to set out the next steps on this commitment in due course.

Reforming the Law on Weddings³³

98. 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. This Government is considering the details of this report and will set out its response to the recommendations in due course.

Reforming the Law on Taxis and Private Hire Services³⁴

99. The law that governs how the taxi and private hire vehicle (PHV) trades operate in England and Wales is old, inconsistent and is based on how passengers traditionally engaged services before the emergence of the internet and apps. 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.
100. 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 could confidently expect consistent levels of safety and quality wherever they travel. Two of the Law Commission’s recommendations were implemented through the Deregulation Act 2015.
101. Since the Law Commission’s report, the Wales Act 2017 made provision for the transfer of responsibility for taxi and PHV policy to the National Assembly for Wales (which changed its name to the Senedd Cymru/Welsh Parliament in 2020); following this transfer in 2018 this is now a devolved policy area in all UK nations.

³³ Celebrating Marriage: A New Weddings Law (LC 408) (18.07.2022)

³⁴ Taxis and Private Hire Services (LC 347) (23.05.2014)

102. 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 Department for Transport (DfT) issued a response in 2019.
103. In 2020, the DfT published statutory guidance 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.
104. 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.
105. DfT published 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 guidance.
106. The new Government is aware of the concerns about the current legislative and regulatory framework and is committed to exploring how to improve it.

Hate Crime³⁵

107. The project was referred to the Law Commission by the Ministry of Justice. The Commission published a 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 of 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 effect would therefore be negligible.

³⁵ Hate Crime: Should the Current Offences be Extended (LC 348) (28.05.14)

108. The previous 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.
109. The Law Commission published its final report on hate crime on 7 December 2021,³⁶ making a number of recommendations for reform of the crime laws in England and Wales.
110. The previous Government published a response to Recommendation 8 of the Law Commission's report in 2023, accepting its recommendation that sex or gender should not be added as a protected characteristic for the purposes of aggravated offences and enhanced sentencing. The previous Government did not respond to the remaining 33 recommendations made by the Law Commission.
111. This Government is currently considering all 34 recommendations made by the Law Commission.

Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency³⁷

112. 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.
113. 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.
114. This project is part of a small series of simplification projects originally proposed in the Commission's Tenth Programme of Law Reform. This series of projects aims to clarify the structure and modernise the language of criminal law and make it more consistent and accessible. This Government has considered the Commission's recommendations carefully but has yet to issue a formal response or confirm next steps.

³⁶ Hate Crime Laws: Final Report (LC 402) (7.12.2021)

³⁷ Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency (LC 358) (25.06.2015)

Simplification of the Criminal Law: Kidnapping and Related Offences³⁸

115. 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
 - 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.
116. The report also recommended changes to the offences under sections 1 and 2 of the Child Abduction Act 1984. These seek to:
- increase 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;
 - expand the offence under section 1 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*.
117. This Government has yet to formally respond to the recommendations set out in the report.

Offences Against the Person – Modernising the Law on Violence³⁹

118. The Law Commission published its report "Reform of offences against the person" on 3 November 2015, following a scoping exercise the previous 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 draft Bill was never taken forward due to other Government priorities at that time.
119. 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 was informed by the detailed consultation carried out by the Commission between November 2014 and February 2015 and recommends that

³⁸ Simplification of the Criminal Law: Kidnapping and Related Offences (LC 355) (20.11.2014)

³⁹ Offences against the person – modernising the law on violence (LC 361) (03.11.2015)

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

120. 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 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 assault causing 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’.⁴⁰

121. This Government has yet to formally respond to the recommendations set out in the report.

Contempt of Court (2): Court Reporting⁴¹

122. The Law Commission published their report with recommendations on 26 March 2014. Recommendations included:

- Introducing a publicly accessible database available on the internet listing the court hearings in which restrictions are currently in place.
- Creating a more extensive restricted database where, for a charge, registered users could find out the details of the reporting restriction and could sign up for automated email alerts of new orders.

123. The previous Government welcomed these recommendations and decided it would consider how an online reporting restriction database could be taken forward as existing technology is replaced and updated as part of the wider HMCTS Reform Programme.

124. In July 2022, HMCTS launched the first phase of its new Court and Tribunal Hearings (CaTH) service on GOV.UK, as part of its Reform Programme. This new online service will simplify and streamline how the media and public find information on upcoming court and tribunal hearings, by publishing all lists across England and Wales online, in one place. This new service can be freely accessed by anyone with

⁴⁰ The Law Commission also recommended an offence of sending a communication threatening to cause serious harm, in their report on Modernising Communications Offences. This recommendation was implemented in s 181 of the Online Safety Act 2024, which criminalises instances where a person sends a message conveying a threat of death, serious injury, rape, assault by penetration, or serious financial loss, and intends that (or is reckless as to whether) someone encountering the message will fear the threat will be carried out.

⁴¹ Contempt of Court (2): Court Reporting (LC344) (25.03.2014)

professional users, including accredited members of the media, able to view lists not available to the public (known as a 'media list'), including additional information such as the defendant's address and the offence code. The Publishing and Information Service team are continuing to work with stakeholders to identify enhancements to the CaTH tool to provide better information on reporting restrictions.

125. The Single Justice Procedure press list is available to view online by accredited members of the media who sign into a verified part of the CaTH service, or by way of a subscription email. Civil and family hearing lists will begin to be published on CaTH in this way during 2024.
126. On 30 April 2024, it was announced that the Lady Chief Justice has created a new Transparency and Open Justice Board. The new Board will be chaired by Mr Justice Nicklin and will lead and coordinate the promotion of transparency and open justice across the courts and tribunals of England & Wales. The board's first task will be to engage widely in setting key objectives to guide its work. Thereafter, and in partnership with HMCTS and MoJ, the board will support and coordinate a programme of changes to promote transparency and open justice. The board will establish a stakeholder committee to assist in this work.

The High Court's Jurisdiction in relation to Criminal Proceedings⁴²

127. The Law Commission published a report and draft bill on 27 July 2010 and a draft bill making recommendations clarifying⁴³ the limits on the availability of judicial review of decisions in a trial on indictment and proposing reforms to the appeals process. In July 2022 the previous Government commissioned the Law Commission to undertake a wide-ranging review of our appeals system to ensure that it is operating effectively. This Government expects to receive the review's preliminary findings in early 2025 and will consider them in the round ahead of the consultation which will follow.

Criminal Records Disclosure⁴⁴

128. 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.
129. 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

⁴² High Court's Jurisdiction in Criminal Proceedings (LC324) (27.07.2010)

⁴³ (2010) LC324

⁴⁴ Criminal records disclosure: Non-Filterable Offences (LC371) (01.02.17)

instrument should set out a single, itemised list of non-filterable offences in the future. This Government continues to consider the Commission's recommendations.

Termination of Tenancies for Tenant Default⁴⁵

130. 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.
131. 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.
132. In March 2019, the Housing, Communities and Local Government Select Committee recommended that the Government implement the Law Commission's recommendations. In response, the previous Government asked the Law Commission to update its report. The Commission has provided the Ministry of Housing, Communities and Local Government (MHCLG) with possible options and updates to the Commission's work to be 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 Structures⁴⁶

133. 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.
134. The previous Government responded to the Law Commission's report on Employment Law Hearing Structures, welcoming the report and the detailed consideration the Commission has given to this important topic. In line with the Law Commission recommendation, this Government has committed to increase the time limit within which employees are able to make an employment claim from three months to six months. As outlined in the Next Steps to Make Work Pay document,

⁴⁵ Termination of Tenancies for Tenant Default (LC303) (31.10.06)

⁴⁶ Employment law hearing structures (LC390) (29.04.20)

measures to extend the time limit for bringing claims to Employment Tribunals will be added via amendment during passage of the Employment Rights Bill.

135. Two of the recommendations covered more flexible judicial deployment. As these are matters for the judiciary, this Government is unable to comment specifically on the recommendations, but they were shared with judicial colleagues for their consideration.

Intermediated Securities⁴⁷

136. 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 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.
137. 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.
138. Since publication of the Law Commission’s study, two independent reviews commissioned by the previous Government had made important recommendations

⁴⁷ Intermediated Securities 13th Prog (LC377)

relating to the framework and arrangements for holding shares. The first was Lord Hill of Oareford's UK Listings 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.

139. The Digitisation Taskforce was set up in July 2022 with the aim of facilitating the removal of the remaining shares which are still in paper form, while improving the current system of intermediated share ownership. The Taskforce published an interim report in July 2023. The report sets out four shareholding models for former certificated shareholders:
 - Establishing and maintaining a digital version of the current system.
 - Shareholders becoming direct members of CREST.
 - Transforming the shares to a Central Securities Depository, to be intermediated and administered through a nominee (such as a registrar company or broker).
 - Possible use of distributed ledger technology.
140. The interim report proposed the nominee model (the third option above) as the leading option, and has conducted a period of public engagement, as an opportunity for stakeholders to provide direct feedback on this proposal, its implications and the other options. Once the final report is published, this Government will make an assessment of the recommendations and set out the actions that need to be taken next.
141. One of the recommendations in the Law Commission's report – that section 793 of the Companies Act 2006 be amended to enable companies to more easily identify and communicate with the ultimate beneficial owners of their shares – was also a recommendation in Mark Austin's review of secondary capital raising. This Government is expected to implement this change after consideration of the final Taskforce report, which may also make recommendations in relation to section 793.
142. 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 Office⁴⁸

143. 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.
144. 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.
145. This Government is actively considering the Law Commission's recommendations.

Electoral Law⁴⁹

146. 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.
147. The previous Government did not formally respond to the report. The Elections Act 2022 did not consolidate electoral law in the way recommended by the Law Commission but as part of the Electoral Integrity Programme, has addressed a number of issues raised within it. These include introduction of a requirement for photographic identification for voting in polling stations, changes to the digital imprint regime, bringing forward additional integrity measures for postal voting and other matters which were the subject of recommendations made by the final report. Following the General Election in July, the new Government is looking to bring

⁴⁸ Misconduct in Public Office (LC397) (03.12.20)

⁴⁹ Electoral Law (LC389) (SLC256) (16.03.20)

forward measures as set out in manifesto commitments and will be considering other elements of electoral law and in doing so will be looking at the Law Commissions' recommendations as part of that process.

Surrogacy⁵⁰

148. The Government supports surrogacy as part of assisted conception options, to help people who have difficulty starting their own family.
149. The Law Commission have consulted widely on this topic, which generates a wide diversity of views, and we welcome this comprehensive report, *Building Families Through Surrogacy: A New Law*.
150. The Law Commission's report and draft legislation outlines a new regulatory regime for surrogacy that offers clarity, safeguards and support – for the child, the surrogate and the parents who will raise the child. It includes a new pathway to legal parenthood, under which intended parents would become parents of the child from birth, rather than obtain a parental order after the child's birth. This would be subject to the surrogate having the right to withdraw consent.
151. The new pathway would be overseen and supported by non-profit Regulated Surrogacy Organisations (RSOs), which in turn would be regulated by the Human Fertilisation and Embryology Authority (HFEA). Under the new pathway, and for the first time, checks and safeguards would take place before the surrogacy arrangement is entered into and before the child is conceived.
152. There is a lot of detail to carefully consider, and the Department for Health and Social Care are working with other key Government Departments, who have an interest in the changes suggested, to review the report's recommendations. This will inform a response from the new Government to the report, which will be published in due course.

Making Land Work: Easements, Covenants and Profits a Prendre⁵¹

153. 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.
154. 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

⁵⁰ Building families through surrogacy: a new law (LC 411) (28.03.23)

⁵¹ Making Land work: Easements, Covenants and Profits a Prendre (LC 327) (08.06.2011)

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.

155. Given the passage of time, in 2021 the Commission provided the Ministry of Housing, Communities and Local Government (MHCLG) with possible options and updates to the Commission's work. These were considered alongside the Residential Leasehold & Commonhold reports but were not taken forward in the Leasehold and Freehold Reform Act 2024.

Decisions taken not to implement

Draft Bill for transfer of ownership rules⁵²

156. Following the previous Government's response to the report on Consumer Prepayments in Retailer Insolvency (above) published in December 2018, it asked the Law Commission to produce draft legislation 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 2015.⁵³ 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.
157. The previous Government published the "Reforming Competition and Consumer Policy" consultation in July 2021. The consultation sought more information on whether the practice of using terms and conditions to delay the formation of consumer sales contracts was widespread and if it caused detriment to consumers.
158. As the result of the consultation, the previous Government decided not to take forward the Law Commission proposals at that time but said it would continue to monitor the issue. The previous Government published its consultation response in the "Reforming Competition and Consumer Policy: Government response to consultation" in April 2022.⁵⁴

⁵² Consumer sales contracts: transfer of ownership (LC398) (22.04.21)

⁵³ Consumer sales contracts: transfer of ownership (LC398) (22.04.21)

⁵⁴ <https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy>

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