



LAW COMMISSION – FREEDOM OF INFORMATION ACT

Previously released information / disclosure log

Notes

- Logs are updated at the end of each quarter
- Questions are produced in their original format.

FY2013–2014

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Quarter 1

Topic	1) Passport fraud
Date of Response	19 and 22 April 2013
Details	Various questions relating to the subject of passport fraud

Answer

I am writing now to advise you that we have made a search of our records and have concluded that the Commission does not hold the information which you are seeking.

As I explained in my email dated 19 April 2013 at 10:34, the Law Commission does not hold information of the description specified in the requests you have been sending us. Accordingly there is nothing that I can add to my previous email.

Topic	2) The law of the United Kingdom
Date of Response	22 April 2013
Details	<p>Please can you provide some answers to these questions.</p> <p>1) UK LAW – What law is used on UK LAND? (Is it Admiralty Law or Common Law or Statute Law)</p> <p>2) NAME OF THE UK LEGAL SYSTEM – Does the UK Legal system have a specific name that it is known by? (Asking if this has a Latin name or known as British Legal System, etc. for example)</p> <p>3) PROCESS OF LEGISLATION – When a Judge hears a case in a court and it becomes case law, how does this become part of the UK Legislation as a Statutory Instrument? (Is there a process like Parliamentary Acts that finally gets Royal Ascent that allows case law to become a statutory instrument)</p> <p>4) I would also appreciate any comments relating to the examples I have included below. If this is going to prove too vexatious, please advise where I can get this information from.</p> <p>I have included below some background information (and some notes of my own in italics) to give you an idea as to what beliefs are in existence by various groups that exist and are being spread on the internet. People are for obvious reasons are being drawn in to these ideas, I wish to dispel this myth and quell the arguments by people who believe this Free Man On The Land (FMOTL), The British Constitution Group (BCG), UK Column and Lawful Rebellion amongst the main batch of popular belief systems that perpetuate various beliefs that they can undertake certain actions legally and lawfully ignore certain laws when it suits them.</p> <p>These groups use wording that makes or lends to an air of “Legal” rights or knowledge as well as piggy backs their ideas on to the back of some item that has legal standing to make what they say about other rights to be true and your rights under “Common Law Jurisdiction” which is a popular phrase that they use.</p> <p>Perhaps either the law commission or the Ministry of Justice could add to their websites information about the legal system and what laws we live on the land by and what areas of Admiralty Law exist on land as well as where it has jurisdiction / boundaries, etc. as this firmly held belief of these groups that we all live under Admiralty Law on the land and this idea is needing to be dispelled once and for all as too many people are deluding themselves and putting faith and belief in to an idea that has no legal / lawful basis.</p>

Answer

Firstly, I should point out that there is no 'UK legal system' as such. Rather, there are three separate legal jurisdictions within the UK: England and Wales, Scotland, and Northern Ireland. This is because Scotland and Ireland had their own legal systems before they became part of the UK. Scots law and Northern Ireland law remain separate from English law today.

Regarding your specific questions:

(1) The law of England and Wales applies anywhere within the jurisdiction of its courts, both on land and on its territorial waters. English law is composed of both statute law and common law. Statute law is created by Acts of Parliament, while common law derives from the decisions of courts, via a system of precedent. This means that, if one court decides a case in a particular way, other courts are bound to decide similar cases in the same way in the future. Common law, or case law, is the set of past cases that courts can refer to when making their decisions.

Admiralty law is simply a part of the law that concerns maritime activities, such as shipping. Like the rest of English law, admiralty law consists of both statutes and common law. It can apply to activities on land, if these are maritime in nature: for example, the making of a contract to send goods by sea.

(2) Legal systems do not have official names. The legal system of England and Wales is usually known as English law. The legal system of Scotland is usually known as Scots law, and the legal system of Northern Ireland as Northern Ireland law.

(3) Case law does not need to become legislation to form part of the law. Any case that a court decides can then be referred to as precedent by other courts; there is no special process involved. Statutory instruments are something entirely different – they are a kind of delegated legislation.

I hope that this answers all your questions. Please let me know if anything is unclear. If you would like to know more about the English legal system, Learning the Law by Glanville Williams includes a useful introduction to its structure.

Topic	3) Miscellaneous requests relating to the work of the Law Commission
Date of Response	(A) 16 May 2013 and (B) 11 June 2013
Details	<p>I have a number of observations and questions. All my questions are put pursuant to the Freedom of Information Act 2000.</p> <p>1) Lord Chancellor's Report to Parliament on implementation of Law Commission reports - I am surprised that the page on the Commission's website - "What happens to our reports? - makes no reference to the Lord Chancellor's most recent Report.</p> <p>2) In July 2010 the Commission published its report on the High Court's jurisdiction in relation to criminal proceedings. Despite the fact that nearly three years have elapsed, the Lord Chancellor in his most recent report to Parliament states that there will be a response to the Commission "as soon as practicable". Since the relevant page on the Commission's website states that a response is still awaited, I assume that the position remains the same. In my view, the Ministry of Justice inertia is lamentable. Please detail the nature and dates of the steps that the Commission has taken in the last six months to elicit a response. If there have not been any such steps, please detail the nature and date of the last step taken by the Commission.</p> <p>3) In March 2011 the Commission published its report on Expert Evidence in Criminal Proceedings. Despite the fact that over two years have elapsed, the Lord Chancellor in his most recent report to Parliament merely states that the Government is now "considering its response". My questions are the same as those in paragraph 2 above.</p> <p>4) Insanity and Automatism - in 2012 the Commission published a Scoping Paper. My questions are:</p> <p>(a) how many responses to the Scoping Paper did the Commission receive?</p> <p>(b) Which individuals and organisations responded?</p> <p>(c) Is the Commission still of the view that its decision to publish a Scoping Paper rather than a Consultation Paper was justified</p> <p>In addition, I see from the relevant page on the Commission's website that it intends to publish the "next paper" on this topic in summer 2013. My question is: will the "next paper" be a Consultation Paper? If the answer is "no", what form will the paper take?</p> <p>5) Hate Crime - why did the Commission (1) agree to embark on this project and (2) to commit itself to an accelerated date for publication of the final Report? I ask this question in the light of the fact that the Commission is still working on projects which were agreed as part of the 10th Programme -agreed as long ago as June 2008. The Commission is currently unable to set dates for publication of its final Reports on Insanity & Automatism, Simplification of the Criminal Law - Kidnapping and Simplification of the Criminal Law - Public Nuisance and Outraging Public Decency. In addition, publication of the final Report on Fitness to Plead has been put back to the end of 2014 (the Commission's document "Work of Law Commission 2011-2015" had set an autumn 2013 date) while work on Offences against the Person is now not due to start until later this year (in the Commission's 11th Programme of Law Reform, it was stated that work would begin in winter 2012).</p> <p>6) Business Plan 2012/13 - I have a number of questions:</p> <p>(a) Has the Commission completed its Strategic Plan to 2015?</p> <p>(b) Which projects have been evaluated?</p> <p>(c) Has the Plan on approach to next reform programme been completed?</p> <p>(d) Why has the Commission not published a supplementary Consultation Paper on Fitness to Plead?</p> <p>(e) Did work on the final Report on Simplification of the Criminal Law - Kidnapping start in January 2013? If "no", why not?</p> <p>(f) Did the Commission provide a draft Bill to the Ministry of Justice for publication by December 2012?</p>

Answers

A

I am grateful to you for pointing out that our website makes no mention of the Lord Chancellor's most recent Report to Parliament on implementation of Law Commission reports. I confirm that the report is now on our website.

Your e-mails contain a number of requests for information which are listed below followed by our responses.

E-mail of 18 April

Detail the nature and dates of the steps that the Commission has taken in the last six months to elicit a response from the Ministry of Justice in respect of the report on the High Court's jurisdiction in relation to criminal proceedings. If there have not been any such steps, detail the nature and date of the last step taken by the Commission.

This has been raised with officials in a meeting in November 2012 and by email in April 2013.

Detail the nature and dates of the steps that the Commission has taken in the last six months to elicit a response from the Ministry of Justice in respect of the report on Expert Evidence in Criminal Proceedings. If there have not been any such steps, detail the nature and date of the last step taken by the Commission.

This has been raised with officials in meetings in November 2012, February 2013 and April 2013. There has additionally been email contact with officials in October 2012, November 2012, March 2013 and April 2013.

Insanity and Automatism

(a) How many responses to the Scoping Paper did the Commission receive?

(b) Which individuals and organisations responded?

(c) Is the Commission still of the view that its decision to publish a Scoping Paper rather than a Consultation Paper was justified

In addition, will the "next paper" referred to on the Commission's website be a Consultation Paper? If the answer is "no", what form will the paper take?

I can confirm that the Law Commission holds the information you are seeking.

Section 22 of the Freedom of Information Act 2000 exempts this information from disclosure under the Act because the information is intended for publication at a future date – this is expected to be this summer.

Section 22 is subject to a public interest test. For the section 22 exemption to operate, the public interest in maintaining the exemption until general publication has to outweigh the public interest in disclosing the information immediately.

Considerations in support of an early disclosure of the information might include:

- Special urgency informing public debate on this issue

- Possible prejudicial effects of delaying publication

- A considerable period of time before the planned publication date

Considerations in support of maintaining the exemption in this case include:

- It is in the public interest that the publication of information by public authorities (including the Law Commission) is a conveniently planned and managed activity within the reasonable control of those authorities

- Where public authorities have taken the decision in principle to publish, they have a reasonable entitlement to make their own arrangements to do so

In my view the public interest in withholding the information requested outweighs the public interest in disclosing the information.

Hate Crime - why did the Commission (1) agree to embark on this project and (2) to commit itself to an accelerated date for publication of the final Report?

The Commission received a reference from the Ministry of Justice requesting this work.

Has the Commission completed its Strategic Plan to 2015?

No

Which projects have been evaluated?

We are seeking feedback on our consultation process from a sample of those who responded to the following four consultation papers:

- Matrimonial Property Needs and Agreements

- Regulation of Health Care Professionals

- Insurance Contract Law: The Business Insured's Duty of Disclosure and the Law of Warranties

- Contempt of Court

We aim to complete at least 20 telephone interviews by 16 May. They will then be analysed.

Has the Plan on approach to next reform programme been completed?

We are still developing our detailed plans for consulting on the 12th Programme and then selecting projects to put forward to the Lord Chancellor, but we are intending to start the consultation in late June with a view to publishing the programme in 2014.

Why has the Commission not published a supplementary Consultation Paper on Fitness to Plead?

I can confirm that the Law Commission holds the information you are seeking.

Section 22 of the Freedom of Information Act 2000 exempts this information from disclosure under the Act because the information is intended for publication at a future date – this is expected to be this Summer.

As outlined above, section 22 is subject to a public interest test.

For the same reasons as apply to your request for information in relation to Insanity and Automatism, in my view the public interest in withholding the information requested outweighs the public interest in disclosing the information.

Did work on the final Report on Simplification of the Criminal Law – Kidnapping start in January 2013? If 'no', why not?

Yes, work did commence in January.

Did the Commission provide a draft Bill to the Ministry of Justice for publication by December 2012?

Assuming you are referring to the Bail Bill, the answer to your question is 'no'.

E-mail of 24 April

Please confirm that since 1 September 2010, all Commissioners (excluding the Chairman) have worked full-time at the Commission. In the unlikely event that you are unable to so confirm, please detail the extent to which, throughout the period since 1 September 2010, there has been a departure from the statement that all Commissioners (excluding the Chairman) work full-time at the Commission.

All the Commissioners are appointed on a full-time basis. A Register of Commissioners' Interests is available for view on our website.

B

I am writing in relation to point (2) in your email of 15:19 on 22 May in which you request additional information following the Commission's response to an earlier request under the Freedom of Information Act:

(2) High Court's jurisdiction in relation to criminal proceedings - I asked the Commission to "detail" the nature and dates of the Commission's attempts to elicit a response from the Ministry of Justice. The Commission's reply refers to an email sent to the Ministry in April 2013. Please provide the date in April that it was sent. "

I emailed a Ministry of Justice official about the decision on the report on High Court's jurisdiction on 25 April, following a meeting on 22 April with officials, when I had had it in mind to mention it, but had not done so. Your email was forwarded to me on 25 April and reminded me to raise the issue with officials. I did so seven minutes later.

We understand that Ministry of Justice officials are actively working on the question of implementation and we hope to hear from them shortly.

NOTE

The requester subsequently asked for internal reviews of the above answers as follows:

1) The Commission's website states that all Commissioners "work" full-time at the Commission. All I asked was confirmation that that has been the case throughout the period since 1 September 2010. The response that the Commission has sent to me states that all Commissioners are "appointed" on a full-time basis. My question had nothing to do with "appointment". I asked whether since 1 September 2010 all Commissioners (excluding Chairmen) had "worked" full-time at the Commission. In my view, the Commission, for reasons I do not understand, has failed to answer that question. Therefore, I request that the Commission undertake an internal review of the way that it has responded to the question.

2) Hate Crime - In my view the Commission's reply to my question is insulting and obstructive. Of course, I knew that the Commission had received a reference from the Ministry of Justice. My knowledge of that fact must have been clear to the Commission from the way I posed the question, namely "Why did the Commission (i) AGREE to embark on the project and (ii) to commit itself to an accelerated date for publication of the project?". What I was asking, which must have been obvious to the Commission, was: why did the Commission agree to accept the reference with an accelerated timetable? I am not satisfied with the way that the Commission has responded to my question. I would sooner take this particular response of the Commission direct to the Information Commissioner rather than seek an internal review. However, if that is not possible, I would be obliged if the Commission would conduct an internal review.

3) High Court's Jurisdiction in Relation to Criminal Proceedings - I asked the Commission to "detail" the nature and dates of the Commission's attempts to elicit a response from the Ministry of Justice. The Commission's reply refers to an email sent to the Ministry in April 2013. Please provide the date in April that it was sent.

4) The thrust of the Commission's response to those questions [to which the Commission responded by invoking section 22 Freedom of Information Act 2000] is that the public interest in withholding the information requested outweighs the public interest in disclosing the information. That may or may not be a correct judgment. However, I am not in position to form a view as to whether it is a correct judgement because the Commission has not provided me with any reasons for the conclusion it has reached. The answer rehearses the considerations that the Commission has taken into account. What I need to know are the reasons why the factors favouring non-disclosure outweigh those favouring disclosure. Once I know those reasons I can form a view. In the absence of any reasons, the Commission's response is a mere assertion that non-disclosure is better than disclosure. Accordingly, I am not satisfied with the Commission's response. Therefore, I ask that the Commission conduct an internal review of the way that it has responded to the questions that I posed.

Review decisions

1) The Commission's response to your information request is accurate in describing the appointment of Commissioners as full-time. As you point out, however, this does not directly answer the issue as to whether all Commissioners have actually worked full-time on Law Commission work since 1 September 2010. The legal expertise and experience of persons appointed as Law Commissioners often means that they are invited to undertake engagements which relate to that expertise and experience. Examples of this include the writing and editing of books and membership of bodies that relate to the study and practice of law. Such engagements would usually be carried out in the Commissioner's own time or during a period of leave. In cases where such engagements provide benefit to the Commission, absence from the office for short periods may be granted. Leave of absence from the office may also be granted to enable any Commissioner holding a part-time judicial appointment to fulfil that appointment. On such occasions, this would be on the basis that he or she may sit for up to the minimum number of days required for holders of the relevant judicial appointment (subject to a maximum of 30 days per year). In all cases, however, Commissioners must recognise that their first duty is to the Commission and to their fulfilling their duties as Commissioners. Leave of absence from the office may also be granted to enable any Commissioner to carry out judicial training work for the Judicial College. Again, this would be for a maximum of 30 days per year. It follows from the above that, whilst Commissioners are appointed on a full-time basis, they will not necessarily work for the whole of their time either at the Commission's offices or on Commission-related work. So, because of these considerations, it is not possible to provide any definitive confirmation about Commissioners full-time working during any given period. As far as I am aware, there has been no change in practice on this issue since 1 September 2010. In my opinion, the Commission's web-page could make it clearer that Commissioners do on occasions undertake other work. I shall recommend that the website is revised accordingly.

2) Having seen the papers leading up to the Commission's acceptance of the reference to undertake this project, I am in a position to expand upon the Commission's original response to you. The Commission was asked by the Ministry of Justice ("MoJ") in July 2012 to carry out a review to examine the need to extend existing hate crime offences based upon the characteristics of race, religion, sexual orientation, gender identity and disability. The MoJ was keen that the review should be completed no later than early 2014. This date was set so as to allow the Government to legislate during the current Parliament if it wished to do so. Having considered the proposal, Commissioners agreed in September 2012 that there was a good case for taking on the project, although it was appreciated that some reprioritisation of other projects would be necessary in order to meet the early 2014 target being proposed. In reaching this decision, Commissioners took account of issues such as the extent to which the existing law was unsatisfactory and the potential benefits that would flow from reform. Commissioners also considered the terms of the Protocol agreed between the Commission and Government in March 2010. The Protocol includes a commitment whereby Departmental

officials provide appropriate support for the project and maintain regular contact with the Commission's team throughout the project. In the event, the MoJ were able to provide satisfactory assurances in this respect. I hope this information now provides you with sufficient material to explain why the Commission agreed to take on this project and why in the circumstances it accepted the accelerated timetable. On your final question (whether you are able to approach the Information Commissioner direct), the Commission responded to you by email on 22 May 2013 when it explained that it was necessary for you to go through the internal review procedure before approaching the Information Commissioner.

3) The criminal law team manager responded as follows: I emailed a Ministry of Justice official about the decision on the report on High Court's jurisdiction on 25 April, following a meeting on 22 April with officials, when I had had it in mind to mention it, but had not done so. Your email was forwarded to me on 25 April and reminded me to raise the issue with officials. I did so seven minutes later. We understand that Ministry of Justice officials are actively working on the question of implementation and we hope to hear from them shortly.

4) I have reviewed the two responses in the light of the conditions set out in section 22 of the Freedom of Information Act 2000. The effect of section 22 is that information is exempt information for the purposes of the Act if:

- (a) it is held by the public authority with a view to its publication at some future date;
- (b) it was so held when the request was made;
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the proposed publication date; and
- (d) in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Dealing first with (a) and (b), I have spoken to members of the Commission's Criminal Law team and I am satisfied from my discussions with them that the information that your requests seek is information held by the Commission with a view to publication at some future date. It was held by the Commission when you made your request on 18 April 2013. I understand that the proposed date of the publication is 23 July 2013.

Turning to (c), I have considered whether the decision to withhold the information prior to publication is reasonable, in line with accepted practice and fair to all concerned. There is some overlap here with the public interest balance in (d), but my judgment is that the Commission has reached a correct and reasonable decision in managing the availability of the information that you seek on both your requests, as part of the Commission's process for planning and controlling the publication of its views. The public interest test in (d) means that the Commission needs to show that the public interest in maintaining the exemption is greater than the public interest in providing the information that you seek. The Commission's response of 16 May 2013 set out a number of considerations that might support early disclosure of the information sought. These are set out above and concern special urgency to inform public debate, possible prejudicial effects of delay and a considerable delay before publication. The Commission's response also set out considerations in support of maintaining the exemption in this case. These are also set out above and concern the value of allowing public authorities like the Commission to plan and manage the publication of information and make appropriate arrangements for doing so. Your request for this review seeks the reasons for the Commission determining the public interest test in favour of non-disclosure and why the factors favouring non-disclosure outweigh those favouring disclosure. The answer to this is that the information that both your requests seek raises complex and inter-related issues that should be published at the same time and to the world at large. In common with much of the Commission's work, it is important to control the release date of information so as to allow everyone to view it at the same time. Early release of the information, or parts of it, may result in the information being mis-reported or misunderstood. Moreover, relations with the media and with key stakeholders may be damaged if information is released early to particular (apparently privileged) individuals. It is also often the case that the impact of the information is blunted if it is prematurely "leaked".

These are the principal factors in support of non-disclosure of the information you seek. By contrast, it is difficult to assess the strength of the factors supporting early disclosure. As far as I am aware, no interests will be prejudiced by the information being withheld pending the proposed publication on 23 July 2013. Nor am I aware of any special urgency in the information being released ahead of that date. In my view, the Commission has applied the public interest test appropriately and has properly taken into account all the relevant considerations. Accordingly I agree with the line taken in the Commission's letter of 16 May 2013 that, in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information that you seek in both your requests. In my opinion, the Commission has correctly determined your two requests for information. If you need further clarification on any issue raised in this letter, please let me know.

Topic	4) Co-operative and Public Benefit Societies Bill
Date of Response	20 May 2013
Details	In the Law Commission's 2012/13 Business Plan there was an intention to produce a draft Co-operative and Public Benefit Societies Bill by March 2013. However, I have looked on your website and cannot see that this listed as one of the Law Commission's current projects. Please could you tell me: 1. What stage the Law Commission is at in preparing the draft bill and any related reports or guidance notes. 2. When the draft legislation is likely to published. 3. Other than consolidating existing legislation, whether and how the Bill will make any changes to the regulation and operation of co-operatives and public benefit societies, (previously known as industrial and provident societies).

Answer

I can confirm that the Commission holds the information requested by the first of your three questions. The Commission holds some information relevant to your other two questions but does not hold all the information necessary to give a complete answer. That is because they relate to plans for the future that have yet to be made.

However, I will answer your questions as best I can with the information we do hold.

The project you refer to is a technical consolidation exercise. In summary, the purpose of a consolidation Bill is to draw together all the primary legislation on a given topic, expressed in consistent language and in as logical a structure as possible. Where possible dated language will be modernised and obsolete provisions omitted. But this all has to be done without altering the substantive effect of the law, subject only to the Law Commissions' limited power to recommend changes to the law necessary to achieve a satisfactory consolidation (explained further below).

Consolidation Bills are prepared by a parliamentary counsel acting on behalf of the Law Commission and the responsible department (here the Treasury). This is not one of the Commission's law reform projects that usually leads to proposals for the reform of an area of law, following thorough analysis and consultation. This is why this project is not on the list you mentioned. There is an account of consolidation work in the Law Commission's last two Annual Reports if you are interested.

The answers to your questions are as follows:

1. What stage the Law Commission is at in preparing the draft bill and any related reports or guidance notes?

A parliamentary counsel has been working on this consolidation for some months but is still some way from completing the draft Bill. The work is likely to take several more months before anything could be published. It is impossible to be more precise. The work is a significant undertaking and very time-consuming for the drafter, not least because Parliament expects meticulous accuracy in the Bill and the supporting documentation.

The drafter will need to produce various documents for the Parliamentary process including (a) a Table of Origins (shows where the provisions in the Bill originate in the current legislation), (b) a Table of Destinations (shows where the provisions to be repealed by the Bill have ended up in the Bill), (c) a draftsman's note (explaining what the drafter has done). If required there may be a Law Commission Report making recommendations for changes in the legislation necessary to produce a satisfactory consolidated text (see below for further explanation of this). The Report will be published before the Bill is introduced in Parliament.

None of these documents have yet been produced for this consolidation exercise. There are no other formal documents, reports or guidance notes that are produced for a consolidation.

2. When the draft legislation is likely to be published?

It is not yet possible to be sure exactly how long the consolidation will take to complete – so it is not possible to say when the Bill will be published.

Answering your question involves some speculation. However, the Bill is mentioned in Andrew Lansley MP's written statement of 9 May 2013 on the contents of the Government' legislative programme for the current session of Parliament. As the Government have stated an intention to introduce a Bill this Session, the expectation must be that it would be introduced in the House of Lords in time for it to be enacted by the end of the Session. Working back from that suggests introduction before the end of January 2014 (at the very latest) but more likely before Christmas 2013. It is now usual for a draft consolidation Bill to be published for consultation, which would probably happen at least 3 months before introduction.

I must stress that no decisions have yet been made about these events or the timetable. The final decisions on introducing a Bill are for the Government rather than the Commission.

3. Other than consolidating existing legislation, whether and how the Bill will make any changes to the regulation and operation of co-operatives and public benefit societies, (previously known as industrial and provident societies)?

The short answer is that a consolidation Bill is not a suitable vehicle for the Government to make significant policy changes that are simply thought desirable in their own right. I assume that is what you are thinking of when you refer to changes to the "regulation and operation" of these societies. But sometimes technical changes are made to the law in order to produce a coherent consolidation Bill, as explained below.

A consolidation exercise will usually throw up a number of issues that become apparent as the existing provisions are taken apart and re-assembled in a single Bill. As older legislation on a topic is amended or supplemented by new Acts, minor infelicities and inconsistencies of language creep in, errors or ambiguities are found or the original structure of the legislation becomes distorted. Sometimes existing provisions have become spent or obsolete or out of step with wider legal or factual developments (eg, changes in EU law). If sorting these kinds of thing out satisfactorily cannot be done while preserving the effect of the law, it is open to the Law Commission and the Scottish Law Commission (in the case of legislation extending to England and Wales and to Scotland) to make a joint Report recommending the specific changes they think are needed to produce a satisfactory consolidated text. The points at issue are usually highly technical and relatively "minor" in effect.

In making recommendations the Commissions have to take account of the fact that the Parliamentary procedure for consolidation Bills is not designed for making significant or controversial policy changes. Sometimes changes that might be thought "necessary" in one sense cannot be made because of that.

It is too early to be sure whether any substantive changes to the existing law are needed in the current exercise or, if so, whether they are of a kind that can be made on the strength of Law Commission recommendations. But a project of this kind often requires at least some technical changes to the law. The final decision is for the Law Commission and the Scottish Law Commission.

The Joint Committee on Consolidation Bills will consider the Bill and has the opportunity to accept or reject recommendations contained in any Law Commission Report relating to the Bill. Otherwise, the purpose of the Parliamentary procedure is solely to ensure that consolidation is desirable and that the Bill accurately reproduces the existing law. In practice that rules out "new" amendments being tabled to the Bill in Parliament which are designed to change the law being consolidated.

The answers I have given relate only to the proposed consolidation Bill. The law being consolidated is always liable to change independently of the consolidation process, whether by means of a normal new parliamentary Bill or subordinate legislation. For example there are statutory provisions relating to these societies that are not yet in force and also some powers to make subordinate legislation which enable certain aspects of the relevant law to be amended or supplemented. The commencement of existing legislation and the use of such powers is the responsibility of the Treasury and not the Law Commission.

Topic	5) Conspiracy to Cheat the Public Revenue
Date of Response	31 May 2013
Details	I would be grateful if you can inform me which Law Commission Report, statute or case law allows conspiracy to cheat the public revenue to be charged as a statutory conspiracy without referring to any contravening legislation making the offence. Can you also confirm how the maximum sentence is decided when there is no statute for the statutory conspiracy.

Answer

The Law Commission has not produced a report that deals with the issue you raise in your first question. As you know, our 1976 report deals with a number of related issues. Since the Commission has not carried out research into this aspect of law, I am unable to provide you with this information.

I understand your second question to relate to how sentences are determined for statutory conspiracies committed in respect of common law offences. At pages 39-40 of our report Law Com No 76, we stated that:

Conspiracy to commit a common law offence for which no statutory maximum penalty has been provided should continue to have its penalty at large until the relevant common law offence is put into statute with its own maximum penalty.

At page 144 in the same report, we recommended that:

(16) The rules as to maximum penalties should be:

- a) for conspiracy to commit murder or any other offence the sentence for which is fixed by law, imprisonment for life;
- b) for conspiracy to commit an offence for which imprisonment for life is provided or to commit an indictable offence punishable with imprisonment for which no maximum terms of imprisonment is provided, imprisonment for life;
- c) for conspiracy to commit any other indictable offence, the period available as a maximum for that offence or one year's imprisonment, whichever is the greater;
- d) for conspiracy to commit summary offences, one year's imprisonment;
- e) the penalty for conspiracy to defraud should remain at large;
- f) there should be no limit to the amount of the fine which can be imposed for conspiracy.

Since these recommendations date back to 1976 and predate the Criminal Law Act 1977, I recommend you contact a solicitor for legal advice to confirm the position in law today. The Law Society may be able to help you find a solicitor.

If we have misinterpreted your question, then please let us know.

Topic	6) Background to Access to Neighbouring Lands Act 1992
Date of Response	3 June 2013
Details	I am unable to access reference libraries Birmingham or the Bodleian Oxford due disability. Kindly send background information to the above Act like: situation necessitating the passage of the Act; criminal Law element necessitating its passage. What improvements due to the Act in relationship between Dominant and Servient tenements that is the success of the Act. Any other relevant information. No information regarding provisions of the Act is required

Answer

The Access to Neighbouring Land Act 1992 is based on recommendations made by the Law Commission at the conclusion of our project on "Rights of Access to Neighbouring Land", although the Act as enacted differs in some respects to the draft Bill produced by the Law Commission and appended to the final report for the project. I have attached to this email a copy of our working paper for the project (Working Paper No 78, which sought comments on the proposals made in that paper) and a copy of the final report (Law Com No 151), which represents the Law Commission's views prior to the implementation of the 1992 Act. The working paper discusses the terms of reference of the project (in Part 1, pp 1-3) and, in Part 3, discusses the question of whether there should be some general means of obtaining access to neighbouring land, which is the principle underlying the legislation. The issue of criminal liability is discussed in the report at p 46. The report also discussed, in Part 3, the Law Commission's assessment of the defects in the law (as it was then) and provides an outline of the Law Commission's recommendations (discussed more fully in Part 4) which sought to improve the law.

Topic	7) Responses to consultation on unfair terms in consumer contracts
Date of Response	7 June 2013
Details	I would be very grateful if you could provide information on name of the organisations representing persons with disabilities that have responded to the consultation below, as well as the full responses to this consultations provided by these organisations: Law Commission & Scottish Law Commission. Unfair Terms in Consumer Contracts: a new approach? Issue Paper (July 2012)

Answer

I have checked the list of respondents to that paper and it appears that none of them specifically represented the interests of persons with disabilities. Three consumer organisations replied to our consultation, but they represented the interests of consumers in general. A full list of consultation respondents can be found in appendices A and B to the Advice Paper, which is available at: http://lawcommission.justice.gov.uk/docs/unfair_terms_in_consumer_contracts_advice.pdf. If you would like to see any of these responses in full or if we can help in any other way, please let me know.

Topic	8) Miscellaneous requests relating to the work of the Commission – further internal review
Date of Response	1 July 2013
Details	Pursuant to my email of 22 May, I am now responding to the answers that the Commission provided to the questions that I put in my email dated 18 April 2013 and to which the Commission responded by invoking section 22 Freedom of Information Act 2000. The thrust of the Commission's response to those questions is that the public interest in withholding the information requested outweighs the public interest in disclosing the information. That may or may not be a correct judgment. However, I am not in position to form a view as to whether it is a correct judgement because the Commission has not provided me with any reasons for the conclusion it has reached. The answer rehearses the considerations that the Commission has taken into account. What I need to know are the reasons why the factors favouring non-disclosure outweigh those favouring disclosure . Once I know those reasons I can form a view. In the absence of any reasons, the Commission's response is a mere assertion that non-disclosure is better than disclosure. Accordingly, I am not satisfied with the Commission's response. Therefore, I ask that the Commission conduct an internal review of the way that it has responded to the questions that I posed.

Answer

Thank you for your email dated 4 June 2013 asking for a review of the Law Commission's responses to two requests that you made on 18 April 2013 under the Freedom of Information Act 2000. I have conducted an internal review of both responses as set out below.

1 Insanity and automatism

Your email of 18 April 2013 to the Commission's Chief Executive referred to the Insanity and Automatism scoping paper published by the Commission in July 2012. You asked the following questions:

- (a) *How many responses to the Scoping Paper did the Commission receive?*
- (b) *Which individuals and organisations responded?*
- (c) *Is the Commission still of the view that its decision to publish a Scoping Paper rather than a Consultation Paper was justified?*
- (d) *Will the next paper to be published on this topic be a Consultation Paper? If the answer is "no", what form will the paper take?*

The Commission responded by letter dated 16 May 2013 which was emailed to you that day. The response, so far as relevant, stated:

I can confirm that the Law Commission holds the information you are seeking.

Section 22 of the Freedom of Information Act 2000 exempts this information from disclosure under the Act because the information is intended for publication at a future date – this is expected to be this summer.

Section 22 is subject to a public interest test. For the section 22 exemption to operate, the public interest in maintaining the exemption until general publication has to outweigh the public interest in disclosing the information immediately.

Considerations in support of an early disclosure of the information might include:

- *Special urgency informing public debate on this issue*
- *Possible prejudicial effects of delaying publication*
- *A considerable period of time before the planned publication date*

Considerations in support of maintaining the exemption in this case include:

- *It is in the public interest that the publication of information by public authorities (including the Law Commission) is a conveniently planned and managed activity within the reasonable control of those authorities*
- *Where public authorities have taken the decision in principle to publish, they have a reasonable entitlement to make their own arrangements to do so.*

In my view the public interest in withholding the information requested outweighs the public interest in disclosing the information.

2 Fitness to plead

Your email of 18 April 2013 to the Commission's Chief Executive also asked the following question:

Why has the Commission not published a supplementary Consultation Paper on Fitness to Plead?

The Commission responded by letter dated 16 May 2013 which was emailed to you that day. The response, so far as relevant, stated:

I can confirm that the Law Commission holds the information that you are seeking.

Section 22 of the Freedom of Information Act 2000 exempts this information from disclosure under the Act because the information is intended for publication at a future date – this is expected to be this Summer.

As outlined above, section 22 is subject to a public interest test.

For the same reasons as apply to your request for information in relation to Insanity and Automatism, in my view the public interest in withholding the information requested outweighs the public interest in disclosing the information.

Your request for a review

On 4 June 2013 you sent an email to the Commission commenting on both responses. This email, as far as relevant, stated:

I am now responding to the answers that the Commission provided to the questions that I put in my email dated 18 April 2013 and to which the Commission responded by invoking section 22 Freedom of Information Act 2000.

The thrust of the Commission's response to those questions is that the public interest in withholding the information requested outweighs the public interest in disclosing that information. That may or may not be a correct judgment. However, I am not in a position to form a view as to whether it is a correct judgment because the Commission has not provided me with any reasons for the conclusion it has reached. The answer rehearses the considerations that the Commission has taken into account. What I need to know are the reasons why the factors favouring non-disclosure outweigh those favouring disclosure. Once I know those reasons I can form a view. In the absence of any reasons, the Commission's response is a mere assertion that non-disclosure is better than disclosure. Accordingly, I am not satisfied with the Commission's response. Therefore, I ask that the Commission conduct an internal review of the way that it has responded to the questions that I posed.

Review decision

I have reviewed the two responses in the light of the conditions set out in section 22 of the Freedom of Information Act 2000.

The effect of section 22 is that information is exempt information for the purposes of the Act if:

- (a) it is held by the public authority with a view to its publication at some future date;
- (b) it was so held when the request was made;
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the proposed publication date; and
- (d) in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Dealing first with (a) and (b), I have spoken to members of the Commission's Criminal Law team and I am satisfied from my discussions with them that the information that your requests seek is information held by the Commission with a view to publication at some future date. It was held by the Commission when you made your request on 18 April 2013. I understand that the proposed date of the publication is 23 July 2013.

Turning to (c), I have considered whether the decision to withhold the information prior to publication is reasonable, in line with accepted practice and fair to all concerned. There is some overlap here with the public interest balance in (d), but my judgment is that the Commission has reached a correct and reasonable decision in managing the availability of the information that you seek, on both your requests, as part of the Commission's process for planning and controlling the publication of its views.

The public interest test in (d) means that the Commission needs to show that the public interest in maintaining the exemption is greater than the public interest in providing the information that you seek.

The Commission's response of 16 May 2013 set out a number of considerations that might support early disclosure of the information sought. These are set out above and concern special urgency to inform public debate, possible prejudicial effects of delay and a considerable delay before publication.

The Commission's response also set out considerations in support of maintaining the exemption in this case. These are also set out above and concern the value of allowing public authorities like the Commission to plan and manage the publication of information and make appropriate arrangements for doing so.

Your request for this review seeks the reasons for the Commission determining the public interest test in favour of non-disclosure and why the factors favouring non-disclosure outweigh those favouring disclosure.

The answer to this is that the information that both your requests seek raises complex and inter-related issues that should be published at the same time and to the world at large. In common with much of the Commission's work, it is important to control the release date of information so as to allow everyone to view it at the same time. Early release of the information, or parts of it, may result in the information being mis-reported or misunderstood. Moreover, relations with the media and with key stakeholders may be damaged if information is released early to particular (apparently privileged) individuals. It is also often the case that the impact of the information is blunted if it is prematurely "leaked".

These are the principal factors in support of non-disclosure of the information you seek. By contrast, it is difficult to assess the strength of the factors supporting early disclosure. As far as I am aware, no interests will be prejudiced by the information being withheld pending the proposed publication on 23 July 2013. Nor am I aware of any special urgency in the information being released ahead of that date.

In my view, the Commission has applied the public interest test appropriately and has properly taken into account all the relevant considerations. Accordingly I agree with the line taken in the Commission's letter of 16 May 2013 that, in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information that you seek in both your requests.

Conclusion

In my opinion, the Commission has correctly determined your two requests for information. If you need further clarification on any issue raised in this letter, please let me know.

Topic	9) Wildlife
Date of Response	4 July 2013
Details	<p>Under the Freedom of Information Act 2000 I request that the Law Commission provide me with the following information: A copy of the Review Report on Wildlife Law and any other related documents. I would prefer to receive this information in hard copy and electronically. If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all non-exempt material. I reserve the right to appeal your decision to withhold any information or to charge excessive fees. I would be grateful if you would confirm in writing that you have received this request. I look forward to hearing from you in the near future.</p>

Answer

I can confirm that the Law Commission holds the information you are seeking.

It may help if I explain the context in which the document was created. The Commission is undertaking a review of the law relating to wildlife, at the request of DEFRA (see the Commission's 11th Programme of Law reform, page 21, http://lawcommission.justice.gov.uk/docs/lc330_eleventh_programme.pdf).

At present, we are at the review point in the project: DEFRA ministers are considering the future of the project on the basis of a report to ministers prepared for the purposes of that review. The intention of the Commission is to publish the information in the review report as soon as reasonably practicable after the conclusion of the review. The exact form that publication would take will depend on the outcome of the review.

We have therefore concluded that the information you seek is excluded under section 22 of the Freedom of Information Act 2000, on the basis of intended future publication.

We consider that withholding the information before publication is reasonable in all the circumstances, as the section requires. Once the review is complete, we will be in the best position to determine the optimal way of publishing the information. In particular, while we will certainly publish all of the information contained in the review report, we may also publish at greater length and in more detail if the result of the review is not to proceed to the next stage of the project. If we released the information at this stage, it would lead to the information becoming public in a less than optimal way, and would be confusing.

We do not think that there was any expectation that the information would be released prior to the conclusion of the review and we do not think that withholding information until the review process has been concluded is unfair. We have benefited from very helpful input from a wide variety of stakeholders during our consultation process, and it would be fairer to them to release the information to all of them at the same time and in the best way. Releasing the information in the way we propose would accord with accepted practice.

For the same reasons, we do not think it would be in the public interest to release the information at this stage in our process, although we have considered this test separately. This is not a case where it could be reasonable in all the circumstances to withhold release, but not be in the public interest to do so.

Your request included the release of "related documents". We understand this to mean documents used to prepare the report for ministers, such as earlier drafts and minutes dealing with matters which were subsequently included in drafts. If that is so, we consider that these documents contain the same information that we intend to publish in due course, and do not think that different considerations apply in respect of them.

If you had other descriptions of documents in mind, please clarify what you intend.

Topic	10) Conspiracy
Date of Response	29 July 2013
Details	Thank you for your letter dated 31 May 2013. Question 1 – You state the Law Commission has not produced any document to allow a common law offence of Cheat the Public Revenue be charged as a statutory conspiracy without referring to a statute for contravention. My understanding is all law reforms of this nature are drafted by your organisation. Is it safe to assume all statutory conspiracies require a contravening legislation making the offence? If not, someone can be charged for conspiring to go shopping and get a life sentence as a statutory conspiracy. Question 2 – Your answer with extracts from page 144 of the 1976 report refers to offences specified by a statute except 144(16)(e). I am sure you already know page 144(16)(e) was revised by section 12 of Criminal Justice Act 1987. Effectively making common law conspiracy to defraud having a maximum sentence of 10 years. My question was how is the maximum sentence decided when a statute does not specify the offence in a statutory conspiracy. Please clarify your answers in detail. I did refer to Criminal Law Act 1977, Archbold, Blakstones Criminal Practice and others before raising these questions.

Answer

Thank you for your letter dated 8 July. I am dealing with your letter as a request for information under the Freedom of Information Act 2000. You have asked two questions: (1) whether it is safe to assume all statutory conspiracies require a contravening legislation making the offence; and (2) how the maximum sentence is decided when a statute does not specify the offence in a statutory conspiracy.

Question 1

You have written that it is your understanding that all law reforms relating to offences charged as statutory conspiracy are drafted by the Law Commission. In fact this is not the case.

The function of the Law Commission is to keep the law under review and to make recommendations for its reform. We are an independent body set up by statute. We review specific areas of the law that may be in need of reform. Many laws are passed by Parliament which relate to areas of law that have not been reviewed or considered by the Law Commission. Even when we do make recommendations for reform of particular areas of law, these are not always implemented, or may be partially implemented or implemented in a different form than we recommended. In short, it is not the case that all law reforms relating to offences charged as statutory conspiracy are drafted by the Law Commission. In 1976, the Law Commission recommended that there should be a statutory conspiracy to commit “any offence”. The words “any offence or offences” were used in section 1(1) of our draft Bill, which can be found on page 152 of our report, Law Com 76. The position was, therefore, that the offence of statutory conspiracy should not be limited to agreements to commit statutory offences, but should also apply to common law offences. Since then, we have not considered the specific point on which you have written to us. The current law is likely to be different from our draft Bill. The interpretation and application of laws can develop and change over time and it is possible for there to be differing opinions of how the law should be interpreted. In order to provide a detailed answer to your question of whether all statutory conspiracies require a contravening legislation making the offence, we would need to carry out legal research and then provide you with our opinion as to the position. However, our statutory function is to keep the law under review. We cannot provide opinions on points of law to individuals. Although the Law Commission has access to legal resources which might, following research, provide us with the answer to your questions, this information is exempt from disclosure under section 21 of the Freedom of Information Act 2000 because it is accessible to you by other means, as it is already in the public domain. You mention that you have referred to Archbold and Blackstone’s Criminal Practice. You may also find it useful to consult other resources, including criminal law textbooks such as Simester and Sullivan or Smith and Hogan.

Question 2

The Law Commission has not carried out research into how the maximum sentence is decided when a statute does not specify the offence in a statutory conspiracy. Again, although the Law Commission has access to legal resources which might, following research, provide us with the answer to your questions, this information is exempt from disclosure under section 21 of the Freedom of Information Act 2000 because it is accessible to you by other means, as it is already in the public domain. As we recommended previously, you may wish to contact a solicitor to confirm the position in law today. The Law Society may be able to help you find a solicitor. They can be contacted by telephone on 020 7242 1222 or via their website www.lawsociety.org.uk. I hope this information will help you find the answer to the point that interests you.

Topic	11) Vehicle Excise Duty and related issues – (a) internal review and (b) ICO decision notice
Date of Response	29 July 2013
Details	NOTE – This was a request for an internal review of an answer given by the Law Commission to a previous request for information followed by an appeal by the requester to the Information Commissioner

(A) INTERNAL REVIEW

Thank you for your email dated 8 July 2013 asking for a review of the Law Commission's response to the request that you and [M] made on 4 July 2013 under the Freedom of Information Act 2000. I have conducted an internal review of this response as set out below.

Your email of 4 July 2013, so far as relevant, stated that:

1. You should provide us with an up to date copy of the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) 1997 No 2439 as amended by the 2008 No 2266 which came into force on the 1st October 2008.
2. I believe that you do have a copy of the Finance Act 2008 Schedule 45.
3. The Protection of Freedoms Act 2012. This had made some changes where Wheel Clamping had been abolished.
4. You do have a copy of Section 232 of the Highways Act 1980.
5. [Request for a topic to be included in the Law Commission's 12th Programme of Law Reform].

I am requesting that you provide us with an up to date copy of Schedule 2A of the Vehicle Excise and Registration Act 1994.

6. I am not responsible for updating the HMSO Legislation, as the Acts and Statutory Instruments have been amended by other Acts and Statutory Instruments.

You do have access to the West Law Legislation and Statutory Instruments that has been updated.

7. The [A] Library in [B], they either don't have the Updated and Amended Statutory Instruments, whilst they have not subscribed to West Law.

The Commission responded by email dated 8 July 2013 which was emailed to you that day. The response, so far as relevant, stated:
Your suggestion for the 12th Programme has been filed with the others.

In respect of your request for us to supply you with various statutory materials, it is not the function of the Law Commission to provide access to free legal research facilities to members of the public.
I have, however, also considered your request as a freedom of information request, under the Freedom of Information Act 2000. I can confirm that we hold the information. The information is exempt under section 21 of the Freedom of Information Act, because it is accessible to you, because it is already in the public domain. All statutory materials are available free of charge on legislation.gov.uk. Although the material is not updated by amendments, you can use the search facilities on the site to find amending provisions and cut and paste them into a single document for your own use (as lawyers did before the advent of the internet).

Alternatively, on-line resources are available at the British Library (for details, see http://www.bl.uk/eresources/socsci/lawandlegalstudies/united_kingdom.html). A temporary readers card for the library can be obtained for a fee of £5.00 (see <http://www.bl.uk/reshelp/inrooms/stp/register/temp/temp/pass.html>).

Your request for a review

On 8 July 2013 you sent an email to the Commission commenting on this response. This email, as far as relevant, stated:

1, [N] do hereby request your attention that your decision should be reviewed, since the Freedom of Information Act 2000, this has been amended, whilst there are other Statutory Instruments that have been issued by the Minister of the Crown.

2. I am aware that the Statutory Acts and Statutory Instruments are now available on the HMSO Legislation, but I am not liable and responsible for updating those Acts and Statutory Instruments.

Review decision

I have reviewed the response sent to you on 8 July 2013.

Section 21 of the Freedom of Information Act 2000 provides that information that is reasonably accessible to a person requesting information under the Act is exempt information. In other words, the information does not have to be supplied under the Act. Section 21 makes it clear that it makes no difference if the applicant has to pay to get access to the information.

In my view, the Commission was correct in treating the statutory information that you requested as being exempt under section 21. The information that you requested is available on the legislation.gov.uk website. In several instances the text on the website does not reflect subsequent amendments. However, the website

does have a facility for finding out what those amendments are, so you can usually easily work out what the current wording is. I did notice that the amendments made to the 1979 Vehicle Excise Duty Regulations by the 2008 Regulations were not specifically listed as amendments. However, if you click onto the 2008 Regulations, you can easily see the effect that they had on the 1979 Regulations.

I agree that it would be better if the legislation.gov.uk website was updated more regularly so you could see the updated text without having to navigate between pages. Some databases, such as Westlaw, enable you to do this. If you follow the link (above) to the readers card facility at The British Library, this will explain how you can get access to The British Library's Westlaw database. You will need to make a personal visit to the British Library to use the database.

I need to clarify one issue. The Law Commission does not have any responsibility for updating the legislation.gov.uk website. That is the responsibility of The National Archives, an organization that is entirely separate from the Commission.

Conclusion

In my opinion, the Commission has correctly determined your request for information.

(B) ICO DECISION NOTICE

Decision (including any steps ordered)

1. The complainant requested from the Law Commission copies of a Statutory Instrument and four named Acts of Parliament. The Law Commission refused the information request relying on the section 21(1) FOIA exemption.
2. The Information Commissioner's decision is that the Law Commission complied with the requirements of FOIA and does not need to take any further action.

Request and response

3. On 4 July 2013, the complainants wrote to the Law Commission to request information in the following terms:

We ... do hereby request that:-

1. *You should provide us with an up to date copy of the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles)*

1997 No 2439 as amended by the 2008 No 2266 which came into force on the 1st October 2008.

- 2. I believe that you do have a copy of the Finance Act 2008 Schedule 45.*

I am requesting that you provide us with an up to date copy of Schedule 2A of the Vehicle Excise and Registration Act 1994.

- 3. The Protection of Freedoms Act 2012.
This had made some changes where Wheel Clamping had been abolished.*
- 4. You do have a copy of Section 232 of the Highways Act 1980.*
- 5. I am requesting the Law Commission should consider on the 12th Programme ... [not a request for information]*
- 6. I am not responsible for updating the HMSO Legislation, as the Acts and Statutory Instruments have been amended by other Acts and Statutory Instruments.*

You do have access to the West Law Legislation and Statutory Instruments that has been updated.

- 4. The Law Commission responded on 8 July 2013 saying that the information requested was held by it but was exempt under section 21 FOIA because it was accessible to the complainants and was already available in the public domain.*
- 5. Following an internal review the Law Commission wrote to the complainant on 29 July 2013 affirming its decision to exempt the information requested under section 21 FOIA. The Law Commission added that it did not have responsibility for updating the legislation.gov.uk website to which it had referred the complainants.*

Scope of the case

- 6. The complainants contacted the Commissioner on 30 July 2013 to complain about the way their request for information had been handled.*
- 7. The Commissioner considered the application by the Law Commission of section 21(1) FOIA.*

Reasons for decision

Section 21 - Information accessible to the applicant by other means

8. Section 21(1) of FOIA states that information held is exempt from disclosure when it is reasonably accessible to the applicant (otherwise than under section 1 FOIA). The exemption is absolute and so there is no public interest test.
9. The Information Commissioner's guidance on section 21 explains that charges may be made in circumstances where there is a statutory scheme under which information is provided for a fee, or where the information is provided under the public authority's publication scheme and the scheme indicates that a charge may be made.
10. The Law Commission explained to the Information Commissioner, as it had already explained to the complainants, that the information requested was available free of charge on the *legislation.gov.uk* website or, on payment of the relevant charges, from on the Westlaw database which could be accessed via the British Library.
11. The Law Commission pointed out that the search facility provided by the *legislation.gov.uk* website was necessary to locate the current version of the text of the relevant legislation. The Law Commission considered that the website could be accessed and navigated with relative ease and that the information the complainants had requested was readily accessible to them or to any other applicant with internet access.
12. The Law Commission said, and the Information Commissioner has seen, that the complainants appeared to be able to access the internet.
13. On 10 October 2013, during the course of the Information Commissioner's investigation, the Law Commission provided the complainants with direct hyperlinks to the relevant legislative instruments within the *legislation.gov.uk* database.
14. The Information Commissioner concluded that the requested information was reasonably accessible to the complainants, otherwise than from the Law Commission, either free of charge from the *legislation.gov.uk* website or via the British Library on payment of the appropriate fee.

Topic	12) Crawford Adjusters and Others v Sagicor General Insurance (Cayman) Ltd and Anor
Date of Response	19 August 2013
Details	Contains various requests for information

Answer

Thank you for your email. It falls to me to respond insofar as it amounts to a request for information under the Freedom of Information Act 2000.

I understand that, in your paragraph 2, you are asking if the jurisdiction of the Parliamentary Commissioner for Administration includes the Law Commission. We do hold that information, and the answer is that yes, it does (see Parliamentary Commissioner Act 1967, schedule 2).

As to your paragraph 3, insofar as it is a request for information, we hold no information on your whereabouts.

Does the remainder of your email relate to proposals for our 12th Programme of law reform? It would be helpful if you could clarify, as it is not readily intelligible at present.

As requested, this email will also be faxed to you.

I have received various documents from you, including a number of court orders, but none that appear to have any relevance to the Law Commission, or me personally.

Topic	13) Trades unions
Date of Response	19 August 2013
Details	<p>I am writing to obtain information about the total amount of money paid to trade unions by your organisation, the amount of staff time spent on trade union duties and/or activities and the payment of subscriptions.</p> <p>To outline my query as clearly as possible, I am requesting:</p> <ol style="list-style-type: none"> 1. A list of trade unions which received payments from your organisation and the total amounts paid to each union for financial years a) 2011-12 and b) 2012-13. If it is not possible to list the amount paid to each union, please provide a total amount paid to all unions. Please do not include membership dues or salary costs. Please only include direct payments. 2. Please state: <ol style="list-style-type: none"> a) Which trade unions your organisation provide staff time to work on trade union duties and / or activities (sometimes called 'Trade Union facility time') in i) 2011-12 and ii) 2012-13. b) The number of full-time equivalent (FTE) staff that were provided for each trade union in i) 2011-12 and ii) 2012-13. For example, if a member of staff spends 2 days per week on union business, this is equal to 0.4 FTE. 3. <ol style="list-style-type: none"> a) Does your organisation provide the facility to deduct trade union subscriptions from staff salaries in the payroll process? b) If so, for each union please state what your organisation charged for this service (whether as a fixed amount per employee or a percentage), and the total amount collected in: <ol style="list-style-type: none"> i) 2011-12 ii) 2012-13 <p>Please note that the guidelines issued by ACAS state that: "An employee who is a member of an independent trade union recognised by the employer in respect of that description of employee is to be permitted reasonable time off during working hours to take part in any trade union activity. An employee who is a member of an independent and recognised trade union is also permitted to take reasonable time off during working hours for the purposes of accessing the services of a Union Learning Representative (provided those services are services for which the Union Learning Representative is entitled to time off)."</p> <p>If the information is not recorded, there is no way of ascertaining whether the time off provided is reasonable. I therefore do not expect the response that the organisation does not hold this information. If a formal record is not kept then I will accept a reasonable estimate.</p> <p>If the response to any of the questions is 'nil' or you are unable to answer any of them, please continue to respond to the other questions</p> <p>My preferred format to receive this information is electronically, but if that is not possible I will gladly accept letters at the address below.</p>

Answer

The payroll of the Law Commission is handled by the provider for the Ministry of Justice. The Law Commission does not keep separate payroll records, except for a list of the names of those who are employed and paid as Law Commission employees.

The answers to your questions, in the order in which you listed them, are as follows:

1. None.

2. a) None. b) None.

3. a) The Commission does not provide this facility. Individual Commission employees can contact a trade union, which will forward an enrolment form to them for completion. The employee sends the completed form to the payroll provider for the Ministry of Justice for processing. b) The Commission does not hold the information you are seeking. It may be, however, that the information you seek is held by the Ministry of Justice.

Topic	14) Tenure of Buckingham Palace
Date of Response	29/08/13
Details	On page 246 of LC 271 "Land Registration for the Twenty-First Century" at footnote 22 it is noted: "We have been told of instances where such merger has been assumed, and we have had some interesting correspondence as to whether Buckingham Palace is held by the Crown in demesne or (as we think) in fee simple" Please could you supply me (in electronically readable form by preference) with that correspondence, or at least so much of it as relates to the question of the tenure (if any) by which Buckingham Palace is held. Are you aware of any other material you possess which bears on the question?

Answer

Interim reply – 08/08/13

Our external storage facility contains many files relating to the 'Land Registration for the Twenty-First Century' report. We have requested a sizeable number of the files - concentrating on those that appear most relevant - and their delivery is expected tomorrow or early next week. Upon receipt, we will look for information relevant to your request.

Final reply – 29/08/13

As mentioned in our email of 8 August there are a number of files that relate to the relevant project. We have retrieved many of these files from our off-site archives and concentrated our efforts on those that appear most relevant to your request for the correspondence referred to in the footnote mentioned in your email. We have located three items of correspondence that we think form the basis of the footnote. The correspondence touches upon numerous matters and we have reproduced below only the text that is relevant to your question.

----- **Letter dated 8 August 2000 from Mr Christopher Jessel of Farrer & Co solicitors to Mr Charles Harpum of the Law Commission:**

23. The land in question includes the Royal Palaces (to the extent that these are not under the management delegated by the Department of Culture Media and Sport to Historic Royal Palaces) the Royal Parks (again to the extent that they are not managed under statute) and certain other areas which come to light from time to time. In practice the most important areas are the Occupied Royal Palaces. It possible [sic] that a fee simple may exist in land such as Buckingham Palace (although I have some doubt of this) but I doubt if it can exist in the occupied parts of Windsor Castle. There are also some peculiar provisions relating to Somerset House which although it can be leased by the Secretary of State would appear by virtue of statue [sic] passed in the early 19th century to be allodial and not held in fee simple.

Letter dated 23 August 2000 from Mr Charles Harpum of Law Commission to Mr Christopher Jessel of Farrer & Co Solicitors (in response to the letter dated 8 August):

3. Paragraph 23 of Instructions to the Crown:

I was not quite sure where these comments really fitted in, in relation to the Instructions. I was, incidentally, intrigued by the comment that Buckingham Palace might be held in demesne. I am not as familiar as I perhaps should be with the history of the Crown's title to Buckingham Palace, but I confess that I had assumed first, that it had been acquired by the Crown, and secondly, that it was acquired otherwise than by escheat. On that basis, I could not understand how it could be held in demesne. As I understand the matter, where the Crown acquires freehold land, there is no merger in the demesne. I suppose that there is always the possibility, however theoretical, of a mesne lord.

Letter dated 31 August from Mr Christopher Jessel of Farrer & Co Solicitors to Mr Charles Harpum of the Law Commission (in response to the letter dated 23 August 2000):

3. I have to say that I have never had to investigate the title to Buckingham Palace and like you I understand it was acquired by purchase. The other example of Somerset House however makes it quite clear that in that case by statute the land did cease to be freehold because the relevant Act distinguished clearly between land in Pimlico which was to be vested in His Majesty in fee simple and Somerset House which was to be vested in His Majesty.

You also asked whether we are aware of any other material in our possession which bears on the question (of the tenure of Buckingham Palace). We have focused on locating the requested information in correspondence. However, we noted a single reference in a footnote to an internal minute dated 12 February 2001 prepared by Charles Harpum (the Law Commissioner with responsibility for the project). It reads as follows (the text in square brackets has been added to make clear the subject matter):

16 We had a learned debate with the Crown as to whether [land held by the Crown as feudal overlord] included Buckingham Palace. In my view it plainly cannot, but statutory provisions concerning Somerset House apparently cast doubt on such heresy.

Other than the footnote above, we are not aware of any other information in our possession that bears on the question of the tenure of Buckingham Palace.

Topic	15) Taxi and private hire services
Date of Response	6 September 2013
Details	<p>Could I have some information regarding the consultation for taxis and private hire services.</p> <ol style="list-style-type: none"> 1. How was this conducted? 2. Which organisations/companies & assoc. were consulted? 3. What geographical area was covered for consultation? 4. Are there any further consultations proposed? <p>I would be most grateful if you could supply the above and any other related information and additionally how I can keep track of the developments of this proposed bill.</p>

Answer

It may assist to first provide a brief overview of how we work. The Law Commission is an independent statutory body whose function is to keep the law under review and to make recommendations for its reform. We do this by taking on projects which relate to a particular area of the law which has been shown to be in need of reform. We consult with the public, making an effort to reach all interested parties, and then formulate recommendations (and usually a draft Bill) which we present to government. It is then for government to decide whether to take forward our recommendations, and for Parliament to decide whether to enact any new legislation in the area under review.

The taxi and private hire project is one of our current law reform projects. The project examines the legal framework relating to taxis and private hire vehicles with a view to making it simpler and more modern. The project relates only to the law in England and Wales, and takes account of the fact that the matters under consideration fall within the devolved competence of the Welsh Government. Work began on the project in autumn 2011, and we published our consultation paper on 10 May 2012. In the consultation paper, we set out in detail the law relating to taxi and private hire services in England and Wales and put forward a series of provisional proposals (and some open questions) about how the law should be reformed. It was open to anyone to respond, whether they be involved in the trade, licensing or consumers. Consultees could respond in writing, discuss their views with us over the phone or attend meetings with us. Consultees were initially given three months to respond, but we extended the deadline by an additional month due to the amount of interest generated by the project.

In the course of our initial investigations we convened an Advisory Group, which gave us the opportunity both to discuss those areas of the law which were problematic and allowed us to sound out opinion on some initial views and ideas we had. During the consultation period we also convened an Expert Legal Panel, which met to discuss the possibility of creating a legal definition of plying for hire.

Like all Law Commission consultations, the consultation was open to all members of the public. However, we focused our efforts on engaging with groups that are particularly strongly affected by taxi and private hire law. Before and during the consultation, we attended 88 meetings all over the country, with representatives from the trades, licensing authorities, disability groups, the police, and others. In addition, we contacted a large number of publications related to the taxi and private hire regulatory system to ensure that news of the consultation reached a wide audience, and a number of regional news outlets ran stories about our proposals. The result of these efforts was that we received over 3000 responses to the consultation.

We have published the responses on our website. You can access them at <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>. You may be particularly interested in this document, which lists all of the individuals and organisations who responded http://lawcommission.justice.gov.uk/docs/Master_index.xls.

I also attach the submission of one individual whose response we did not publish online, as they wished to remain anonymous. This means that they cannot be taken to have consented to us publishing their name, and so we have redacted it. This is in line with section 40 of the Freedom of Information Act 2000, which states

that information is exempt if disclosure would breach the data protection principles contained within section 1 of the Data Protection Act 1998. The first of these principles is that the data subject must have given their consent to the processing of their information.

We also received three further responses which we are not disclosing on the basis that section 41 of the Freedom of Information Act 2000 provides an exemption where disclosure would constitute an actionable breach of confidence.

Attached is a record of the meetings we have attended during the project and a note of the membership of both the Advisory Group and the Expert Legal Panel. The record of meetings also indicates where they took place.

The Law Commission is not proposing any further consultations on this area. The next (and final) stage of this project will be the publication of our report and draft Bill, which will set out our recommendations for reform. It will then be for government to decide whether to take our proposals forward, and ultimately for Parliament to decide whether to pass any new legislation in this area. Should the Bill reach Parliament, this would provide those with an interest in this area an opportunity to engage with the Parliamentary process, for example by making submissions to their MP.

Further information about the consultation, including all consultation materials, responses, and an interim statement setting out our current broad thinking on policy, is available on our website at <http://lawcommission.justice.gov.uk/areas/taxi-and-private-hire-services.htm>. Updates on the project will be posted on the website as and when they occur.

Topic	16) Blackburn v The Attorney General (1971)
Date of Response	12 September 2013
Details	Contains various requests for information

Answer

I can confirm that we did receive a copy of the case of Blackburn v Attorney General from you. I have since disposed of it. Insofar as your original request for a confirmation of receipt by us was a freedom of information request under the Freedom of Information Act 2000, this email disposes of it. I re-state that there is no need to send us reported cases or cases appearing on bailii or casetrack. or statutory materials. We have access to all of these. We will also not consider any such materials you send us, unless there is a good reason relating to the functions of the Law Commission to do so

Topic	17) The Bern Convention
Date of Response	27 September 2013
Details	I understand from Reference 1 that the Bern Convention was adopted in Bern, Switzerland in 1979, and came into force in 1982 through incorporation into UK law by the passing of various acts as referred to in Reference 1. If you can, please advise me if the UK was obliged to adhere to the terms of the Bern Convention in 1980 and 1981 through a requirement to comply with EU law. If possible, I would prefer you to treat this as a Freedom of Information request. If you are able to respond, a reply by email would be preferred.

Answer

Thank you for your request under the Freedom of Information Act. Your question relates to a matter that would require us to conduct legal research and analysis to determine. It is not therefore information that we hold.

We do hold copies of the legal materials that you mention, and other materials. These are available to you by other means, whether upon payment or otherwise (section 21 of the Freedom of Information Act 2000). You may find the following sources useful, however:

The Bern Convention, including the list of signatories and the dates of ratification is available at:

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=104&CM=8&DF=&CL=ENG>

Also relevant is Title V of the Treaty on the Functioning of the European Union (in particular article 216). This is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>

The Vienna Convention on the Law of Treaties is available at: http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

We also hold the following textbook on EU law that has a useful section on the relation between international law, EU law and obligations on EU Member States: K. Lenaerts and P. Van Nuffel (2011) *European Union Law*, Sweet and Maxwell, Third Ed. (see in particular pp 861-884). This textbook is available because you could purchase it. Alternatively, it is available in your area (reference only) at the University of Exeter's library.

Topic	18) Structure of the Law Commission
Date of Response	27 September 2013
Details	Please could you provide me with a structure chart of the legal team.

Answer

The information you requested is attached. The structure chart of our organisation is published on the website at <http://lawcommission.justice.gov.uk/about/who-we-are.htm>.

Topic	19) An overview of the total spend on ICT within your organisation
Date of Response	29/10/13
Details	Various questions

Answer

1. FY13-14 budget is £11,000 and for FY14-15 we forecast it will be £5,000 but this will not be confirmed until February 2014 when we receive notification of our final allocation from MoJ.

2. FY13-14 actual spend is £2,463 and the breakdown so far is as follows:

Hardware £2,333

Software licenses £130

Services outside of outsourcing contracts £0

Services under IT outsourcing contracts £0

Communications £0

Staff £0

% as a service is zero.

For FY-14 the budget split is estimated to be:

Hardware £4,500

Software licenses £500

Services outside of outsourcing contracts £0

Services under IT outsourcing contracts £0

Communications £0

Staff £0

3. The ICT projects that you are undertaking – none known at present.

4. Public sector organisations (either organisations which you fund, or shared service partners) that are included within the total ICT – none.

Topic	20) (i) Administration of Justice (Miscellaneous Provisions) Act 1933 Section 2 (As repealed by The Coroners and Justice Act 2009) and Criminal Procedure Rules Part 14; (ii) 9th February 2012 Treasury Solicitors LT52943G_MLC_A4 & others: (iii) Section 20, 40, 41, 45 of the Consumer Protection Act 1987 001 and other related Acts
Date of Response	(i) 02/10/13; (ii) 25/10/13; (iii) 15/11/13
Details	Various questions

Answer

(i) Paragraph 1 of your email has been interpreted as a request for information from the Law Commission under the under the Freedom of Information Act 2000. I do not know if this was your intention. In any event, I am writing now to advise you that the Commission does not hold the information which you are, or may be, seeking.

(ii) It is our understanding that you are asking us to undertake research on your behalf and to supply you with various cases. I have considered your request as a freedom of information request, under the Freedom of Information Act 2000. I can confirm that we hold the information. The information we hold is exempt under section 21 of the Freedom of Information Act, as it is accessible to you because it is already in the public domain.[Sources supplied]

(iii) After making enquiries I am satisfied that we do not hold this information.

Topic	21) Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997 and several related Regulations
Date of Response	10/10/13
Details	Request for Internal Review No 1

Answer

In my letter of 29 July 2013 I explained that the statutory provisions that you were requesting are available on the legislation.gov.uk website. I have since checked this website and can confirm that it provides the information that you requested. The only practical difference between this website and commercial websites such as Westlaw is that the legislation.gov.uk website involves clicking more links to show any amendments to the original statutory provision.

Since the legislation.gov.uk website does not update statutory instruments, you also need to call up later amending statutory instruments to see what effect they have on the original instrument. In the case of your first request, you need to call up five later sets of Regulations to see the effect they had on the Vehicle Excise Duty etc Regulations 1997 (S.I. 1997 No. 2439).

In case this is helpful, I am attaching the legislation.gov.uk URL links to the statutory information that you are requesting.

In my view, having regard to the relative ease with which anyone with internet access may use the websites referred to above to find the required information, the Commission was correct in treating the statutory and law report information that you requested as being exempt under section 21.

In my opinion, the Commission has correctly determined your request(s) for information.

Topic	22) 9th February 2012 Treasury Solicitors LT52943G_MLC_A4 & others 001 and several related cases
Date of Response	18/11/13
Details	Request for Internal Review No 2

Answer

I have reviewed the response sent to you on 25 October 2013.

Section 21 of the Freedom of Information Act 2000 provides that information that is reasonably accessible to a person requesting information under the Act is exempt information. In other words, the information does not have to be supplied under the Act. Section 21 makes it clear that it makes no difference if the applicant has to pay to get access to the information.

So far as the law reports are concerned, the information requested is available using the British Library option referred to above. I have given you information about this in my letters to you of 29 July 2013 and 11 November 2013. In some cases, reports are available from the Bailii website referred to above.

In my view, having regard to the relative ease with which anyone with internet access may use the websites referred to above to find the required information, the Commission was correct in treating the law report information that you requested as being exempt under section 21.

As a separate matter (not relating to section 21 of the 2000 Act), I am of the view that the Commission was correct in treating your request for clarification about the status of the 2003 court order as a request for legal advice and not a request for information under the 2000 Act. I also agree that the Commission's decision to treat your suggestion for criminal law reform as a possible candidate for the Commission's future work was appropriate.

The only outstanding matter is the sending to you of the Commission's report on Contempt of Court. The report has not yet been published but it will be sent to you in electronic form once it is published. My understanding is that the publication date is not yet fixed.

In my opinion, the Commission has correctly determined your requests for information.

Topic	23) Statutory Instrument 2009 No 1307, SI 2008 no 2853, Protection of Freedoms Act 2012
Date of Response	05/12/13
Details	Request for Internal Review No 3

Answer

Your emails raised a number of issues but, as far as I can see, the only issues that amount to requests for information relate to: Providing you with a copy of three law reports: MFI Furniture v Hibbert (1996); Holman v Johnson (1775); the decision of Arnold J in Servier v Apotex (2001) (you refer to but do not specifically request a copy of the last two reports).

The Commission responded by email dated 20 November 2013. The response, so far as relevant, stated that the Commission did not hold a copy of the information that you requested.

I have reviewed the response sent to you on 20 November 2013.

Section 1 of the Freedom of Information Act 2000 provides that persons making a request to a public authority are entitled to be informed by the public authority whether it holds the information requested and, if it does, to have that information communicated to them.

When the Law Commission moved office last month, space considerations meant that the Commission could no longer keep its collection of law reports. The collection was disposed of. Accordingly it is the case that none of the law reports requested by you is now held by the Commission. It follows that they do not count as information that the Commission might otherwise be obliged to send you pursuant to the Freedom of Information Act 2000.

In my view the Commission was correct in informing you that it does not hold any of the information that you requested. All three law reports are, however, available to you through the British Library option that I referred to in my letters to you of 29 July 2013 and 11 November 2013.

In my opinion, the Commission has correctly determined your requests for information.

Topic	24) Suppliers of food to your organisation
Date of Response	08/11/13
Details	<p>I am writing to request the following information under the Freedom of Information act:</p> <ol style="list-style-type: none"> 1) The percentage of fresh meat purchased by your organisation or its sub-contractors that is of British origin. 2) The percentage of frozen meat purchased by your organisation or its sub-contractors that is of British origin. 3) The percentage of meat-related products purchased by your organisation or its sub-contractors that is of British origin. 4) Whether you require your suppliers to only supply the organisation with fresh meat of British origin. 5) Whether you require your suppliers to only supply the organisation with frozen meat of British origin. 6) Whether you require your suppliers to only supply the organisation with meat related products of British origin. 7) Whether you require your suppliers to only supply the organisation with milk of British origin. 8) Whether you require your suppliers to only supply the organisation with milk-related products of British origin. 9) Whether your contracts with organisations that provide catering services or other food related services to your organisation include a clause requiring them to only use/buy British fresh meat. 10) Whether your contracts with organisations that provide catering services or other food related services to your organisation include a clause requiring them to only use/buy British frozen meat. 11) Whether your contracts with organisations that provide catering services and other food related services to your organisation include a clause requiring them to only use/buy British meat-related products.

Answer

We do not purchase any fresh or frozen meat ourselves directly. However, on occasions, we may purchase food products of a buffet nature locally from local supermarkets for small catering/hospitality with our business stakeholders. We do not specify the origin of the food to be supplied. I think this general answer covers all of your 11 separate questions. However, if you require further information, please let me know.

Topic	25) Responses to consultation on taxi and PHV regulation
Date of Response	25/11/13
Details	<p>I need to see myself the way the survey results are collated and the way they are read, before I lobby my MP one way or another. I can clearly question ■■■■■'s results and I can state ■■■■■ results show 15 people making 51 answers the same and more or less ■■■■■ 47 drivers the same on the national survey. Can that be right? What are the odds on that happening over 51 questions in two of ■■■■■'s 10 council areas? ■■■■■ and ■■■■■'s associations are fighting both councils for lower license fees with ■■■■■ already lowering – operators fees i.e. £60 per one vehicle operators license per annum and driver license down £17.00 every 3 years. {That's the cheapest since 2001 yet ■■■■■ Council hasn't offered any refunds so far} Would it be possible to get copies of the ■■■■■ results? {Survey within the national association} as the national association don't hold the originals or any copies of that data.</p>

Answer

We have managed to find a box of documents containing some of the information you had been seeking. ... We are now working through it, identifying the surveys deriving from ■■■■■, and will be sending you copies in response to your freedom of information request.

Topic	26) Treason Felony Act 1848
Date of Responses	06/01/14
Details	<p>I believe section 3 of the 1848 Treason Felony Act was recently included in a list of 309 offences due to be repealed before May 2014. I require the following information. (1) Who exactly put section 3 of the 1848 Treason felony Act forward for repeal? (2) What date was this submitted for repeal? (3) Had the Law Commission looked at this treason act for repeal? (4) If yes, what was considered when looking at the act for repeal? (5) Was the fact this would remove a protection from around Her majesty Queen Elizabeth II considered? (6) Was it discussed that to remove the protection afforded to Her Majesty would place Her Majesty at grave risk, and would constitute an act of high treason in its own right? (7) Bearing this in mind, was any consideration given to the fact that for the Law Commission to recommend a repeal of section 3 of the 1848 Treason Felony Act would constitute on the part of the Law Commission a conspiracy at common law to commit high treason against her Majesty Queen Elizabeth II by removing the protections around her and placing Her Majesty at grave risk. (8) Has the Law Commission recommended the repeal of section 3 of the 1848 Treason Felony Act? (9) Has the fact that this section 3 is the very section of the 1848 Treason Felony Act under which allegations of high treason against Anthony Lynton Blair, David Cameron and Nicholas Clegg have been submitted to, and have been accepted and recorded as a crime by, a number of county police forces? Over the House of Commons overawing the House of Lords with the 1999 House of Lords Act and the plans to replace the House of Lords with an alternative more subject to the will of the House of Commons been considered? (10) Can you supply a list of all 309 offences submitted for repeal along with the 1848 Treason Felony Act?</p> <p>NOTE – An identical request was received by the Law Commission from 10 individuals – An identical response was sent to each requester, as below.</p>

Answer

As I understand it, your letter refers to a Ministry of Justice bulletin issued on 12 December 2013. This listed 309 criminal offences which had allegedly been abolished between June 2009 and May 2013. The Ministry of Justice withdrew the bulletin when it was noticed that section 3 of the Treason Felony Act 1848 was included in the list, although that section has not been repealed. I have enclosed a copy of the notice issued by the Ministry of Justice to explain the situation. The bulletin was not a list of proposed repeals, and the Law Commission is unaware of any proposal to repeal section 3 of the 1848 Act.

In response to your specific questions:

Q 1-2: As far as I am aware, section 3 has not been proposed for repeal.

Q 3: The Law Commission has not considered the repeal of section 3. In 2009, the Commission's criminal law team considered undertaking a project on the modernisation and simplification of the law of treason in general. However, this was not pursued because the political and constitutional nature of the project was deemed to be inappropriate for the Commission, which is a non-political body. Since the project was discussed only at a preliminary stage, the Commission did not make a detailed examination of the options for reforming any particular statutes.

Q 4-7: The Law Commission has not considered any arguments for or against the repeal of section 3.

Q 8: The Law Commission has not recommended the repeal of section 3.

Q 9: The Law Commission has not considered any arguments for or against the repeal of section 3.

Q 10: The list of repealed criminal offences was issued by the Ministry of Justice and not the Law Commission. Since it has been withdrawn, I am unable to access it and therefore cannot supply you with a copy. The enclosed notice advises that the bulletin will be re-issued as soon as possible, and includes contact details for the relevant Ministry of Justice officials.

Topic	27) Divorce
Date of Responses	13/01/14
Details	I am currently in the UAE, and am going through a divorce. I am British and my husband British too. However, my husband has filed for a divorce out here as it is more beneficial to men in this part of the world using Sharia laws for a divorce and custody of our children. I have just been informed by my lawyer, that because we are both British, it may be possible to use UK laws. But I need to show the laws that state: Custody rights in the UK; Child maintenance; Spouse maintenance; And division of assets. Please could you provide me with these laws or let me know where I could get these laws, as I would need to prove them and get them stamped by a UK body to show they are true and translate them here Dubai. In the UAE, they have articles that they follow according to the personal status laws. What is it we use for a divorce??

Answer

Thank you for your email of 11 January 2014 when you requested information about child custody, child maintenance and divorce law in England and Wales. The Law Commission is a statutory body whose function is to keep the law under review and to make recommendations for its reform. The Commission is unable to give advice on individual cases or points of law. There are some alternative sources you may wish to try. A significant body of law reports are available free of charge at <http://www.bailii.org>. Alternatively, on-line resources (for example LexisLibrary, Westlaw) are available at the British Library (for details, see http://www.bl.uk/eresources/socsci/lawandlegalstudies/united_kingdom.html). A temporary readers card for the library can be obtained for a fee of £5.00 (see <http://www.bl.uk/reshelp/inrooms/stp/register/temp/temppass.html> and see <http://www.bl.uk/reshelp/inrooms/stp/register/temp/temppass.html>). Legislation is available on the [legislation.gov.uk](http://www.legislation.gov.uk) website. The website address is <http://www.legislation.gov.uk>. We are handling your request for information under the Freedom of Information Act 2000. I can confirm that the Law Commission holds this information. However the information is exempt under section 21 of the Freedom of Information Act, because the information is accessible to you, as it is already in the public domain. Please see above for sources. You may find it helpful to seek the advice of a solicitor who specialises in Family law in England and Wales. If you are experiencing difficulty finding a solicitor I suggest you contact the Law Society who will be able to recommend local firms of solicitors with the relevant expertise. The Law Society have a Find a Solicitor page on their website (<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>) or they can be contacted by telephone on 020 7242 1222.

Topic	28) Responses to the Law Commission 1998 Report "Land Registration For The Twenty-First Century - A Consultative Document"
Date of Responses	(a) 10/01/14; (b) 15/01/14
Details	My name is [REDACTED] and I am a Senior Law Lecturer at [REDACTED]. I am also undertaking my PhD at [REDACTED] under the supervision of [REDACTED]. My research and thesis is in relation to E-Conveyancing. The move from paper to an electronic system and the attempt to create an effective system of e-conveyancing in England and Wales at the turn of the century. As part of my research, I am looking at the profession and public's perception of and views towards electronic conveyancing both at the consultation stage and during the system's development and pilot scheme. I therefore would like to obtain copies of the 70 responses to the Law Commission 1998 Report "Land Registration For The Twenty-First Century – A Consultative Document" ("Law Comm No. 254"). I should be grateful if you could advise whether this information is freely available please and if so where I may be able to find it? Alternatively, if not, would it be possible to obtain this information under a Freedom of Information request please? I can confirm that the information is being obtained solely in connection with my PhD work at [REDACTED] and any academic publications stemming from this. Any material obtained and used as part of the final thesis would be fully referenced and credited. Additionally, I can confirm that I would be happy to sign documentation confirming that any material used and quoted in the research papers and PhD thesis could be done on an anonymous basis so that the individuals who had submitted to the consultation paper could not be identified from my work.

Answer

(a) I refer to our conversation earlier today and the email chain below. I attach an email that, in turn, attaches a number of consultee responses to the land registration consultation. The responses have been, in some cases, been redacted. As discussed, I have not attached every response that we have located at this time. I will try to send only one further email attaching the remainder of the responses, which is likely to be with you on Monday. Should you wish to discuss anything arising from the attached then please do not hesitate to contact me.

(b) I attach (over three emails) the final set of responses that we have located in our files. A number of responses - either attached to this email or the others that I have sent to you - attach extracts from journal articles and other sources. For this reason, in particular, I have set out below standard text regarding the disclosure of material that might be affected by copyright under the Freedom of Information regime (under which we have sent the requested material).

The supply of information in response to a freedom of information request - as is the case here - does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission. For other forms of re-use, for example publishing the information, you would need the permission of the organisation or person who owns the copyright. In the case of information produced by government departments and agencies you can re-use the information under the Open Government Licence. For information about this please see <http://www.nationalarchives.gov.uk/doc/opengovernment-licence/open-government-licence.htm>. If, however, the copyright is identified as belonging to somebody else, you will need to apply for permission. For information about how to obtain permission from a third party, please go to the Intellectual Property Office's website at www.ipo.gov.uk.

You will see redactions in a number of places. Mostly this has been done to remove direct contact details for a consultee or, in some cases, the names (or other ways of identifying) people that the consultee has referred to in his or her response. If the redaction causes you any difficulty, or if you have any other queries regarding the material supplied then please do not hesitate to get in touch with me

Topic	29) Trespass Law - Non-nuclear power stations
Date of Response	23/01/14
Details	I am a law student, and I was wondering if you could shed light on the trespass law surrounding power stations such as coal and gas-fired ones? The rule of trespass on nuclear sites is clear, it being a criminal offence under SOCPA 2005. However, the law of trespass on other power stations is less clear. Taking Didcot Power Station as a hypothetical example, excluding the offence of aggravated trespass (such as environmental protests), is this trespass in its most basic form a civil or criminal offence? Even in its most basic form, would the act of trespass still be classed as an act of potential terrorism? The reason I am asking is because I have been told that trespass on live utility sites is a criminal matter, but I have not found any evidence to support that claim unless it is aggravated.

Answer

You requested information from the Commission under the Freedom of Information Act 2000. We acknowledged receipt of your request on 22 January 2014. Your request has been handled by the Criminal Law team. Thank you for your enquiry concerning trespass on land belonging to public utilities. After a check through our publications, it appears that none of our projects has concerned any offence of trespass to power stations, nuclear or otherwise, and that we have never undertaken research relevant to the point you raise. We are therefore not in possession of the information sought. The Law Commission is a statutory body whose function it is to keep the law under review and to make recommendations for its reform. The Commission does not give advice on individual cases or points of law.

Topic	30) Complaint referred to Law Commission by Information Commissioner's Office
Date of Response	23/01/14
Details	<p>We wrote to you previously to let you know that we have accepted this case for investigation. I have now been asked to investigate it. On 8 November 2013 the complainant made the following request for information under the Act for:</p> <p>There is a Judgment given MFI Furniture Centre Ltd Versus Hibbert (1996) 160 JP 178- Section 20 of the Consumer Protection Act 1987. You should provide us with a copy of the Law Report, as we want the High Court Judge to refer our complaints to the Court of Justice of the European Communities in Luxembourg.</p> <p>You responded on 20 November 2013 and denied holding the requested information. You provided an internal review on 6 December 2013 in which you maintained your original position. In order to help the Commissioner reach a decision for this case please provide details to the following questions:</p> <ol style="list-style-type: none"> 1. What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information? 2. If the information were held would it be held as manual or electronic records? 3. If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails. 4. If searches included electronic data, which search terms were used? 5. Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed? 6. If recorded information was held but is no longer held, when did the Law Commission cease to retain this information? 7. If the information is electronic data which has been deleted, might copies have been made and held in other locations?

Answer - see also ICO response on page 42

The complaint is about the handling of a request for information. The request dated 8 November 2013 was for a copy of a law report: MFI Furniture Centre Ltd v Hibbert (1996). The Commission's refusal dated 20 November 2013 to supply this information was upheld by the Commission's review dated 5 December 2013. I attach a copy of that review for reference. As suggested in your email, we have reconsidered the way the Commission has handled this request. We have also considered the guidance provided in the ICO's website and the relevant case law in this area. The Commission remains of the view that it acted appropriately in informing the applicant on 20 November 2013 that it did not hold the information requested. As explained to the applicant in the Commission's review dated 5 December 2013, the Commission disposed of its collection of law reports when it vacated its previous office on 1 November 2013. This was because of space limitations in the Commission's new office. Accordingly, the Commission no longer held the law report requested by the applicant at the time of the request (8 November 2013). Since moving into its new offices on 4 November 2103, the Law Commission would be able to access the law report requested only by using one of the on-line databases to which the Commission subscribes. One such database is available at little or no cost at the British Library. The existence of this database was made know to the applicant in earlier correspondence with him, including by letter dated 11 November 2013: letter attached. The applicant was reminded of this option in the Commission's review letter dated 5 December 2013. Following the applicant's request, the Commission did search its records in order to be certain that it did not hold the law report. To answer your specific questions on this (using your numbering):

1. Physical searches were carried out in areas of the office where a copy of the law report might have been retained because of previous relevant project work carried out by individual teams at the Commission. For the same reason, electronic searches of the Commission's files were carried out.
2. The law report, if retained, might have been in hard copy or electronic form.
3. The electronic searches covered all the relevant shared networks used by the individual teams.
4. The electronic search terms included the name of the case (and permutations of it), the case citation and the legislation that it related to. I can supply further details if you need them.
5. The law report was part of a series that the Commission held before it moved office (but which was disposed of at the time of the move).
6. The Commission held the law report until it vacated its old office on 1 November 2013.
7. No electronic copies of the information have been made and retained by the Commission.

Topic	31) Office accommodation for trade union business
Date of Response	19/02/14
Details	1. Please provide details of any office accommodation your organisation provides to staff to carry out trade union business. Please include details of: space measured in square feet; how much of this space is contained within entirely separate buildings (i.e. occupied solely by staff carrying out trade union business); whether a professional valuation of the market rental value of the space has been sought either in-house or externally, and if so, what the valuation of the space was; any charges the council levy for office space given to trade unions. 2. Please advise any estimates for other costs met for those staff on trade union facility time apart from salaries - including travel expenses, office supplies, telephone expenses and energy bills.

Answer

Thank you for your enquiry. The answers to your questions are as follows: 1) The Law Commission does not provide any separate accommodation for its staff to carry out trade union business. 2) The Law Commission does not have any staff who have Trade Union Facility Time.

Topic	32) Law of Chancel Repair Liability
Date of Response	03/03/14
Details	I am looking for the Law Commission Working Paper No 86 of 1983 on the Law of Chancel Repair Liability. I cannot find this paper on your website or on the internet. I would be very grateful if you could email me a digital version of the paper or direct me to an internet source for this publication.

Answer

Thank you for your Freedom of Information request. I attach Working Paper No 86, as requested.

Topic	33) Expert evidence
Date of Response	11/03/14
Details	I am a life sentence prisoner. Recently I became aware of certain false information and evidence which has been found in files revealed only because of the Data Protection Act and Freedom of Information Act. Some of this information and evidence relates to questionable scientific evidence, both fact and opinion which I am to challenge. It amazes me that it is not appreciated by organisations that prisoners do not have access to the internet, when offering advice and/or publications. Many only provide internet addresses for contact, which is so frustrating, to say the least. The reason I write to you is because I have had sight of a publication of yours, namely: "The Law Commission Consultation Paper No 190: The Admissibility of Expert Evidence in Criminal Proceedings in England and Wales – A Consultation Paper". As this appears to have been produced in 2009, I assume the subject was finalised and brought into law. I am writing therefore to request a copy of this paper and, hopefully, a copy of the final outcome. I trust you will assist in this matter as we have no other means of obtaining this information. As I have already said, the reference material on law matters in this prison library is scarce, as is the opportunity to view it.

Answer

As requested, I am enclosing a copy of the Law Commission's consultation paper issued in 2009 on the subject of expert evidence. We subsequently published our recommendations in 2011 and I also enclose a copy of our report. These recommendations have been presented to the Government, and the Government's substantive response is currently awaited.

Topic	34) Rights to light
Date of Response	19/03/14
Details	I am a student, currently writing my dissertation on the current law surrounding rights to light and its subsequent effect on development. Within your consultation paper on this area, a letter from the Association of Light Practitioners (dated 7 December 2012) is regularly referred to. I am emailing in the hope that it is possible to gain access to this letter. I am unable to find it published anywhere and was wondering whether you are able to assist in anyway?

Answer

I refer to my email towards the end of last week, and your initial email of 25 February. I have treated your request for the Association of Light Practitioner's letter of 7 December 2012 as one made under the freedom of information regime established by the Freedom of Information Act 2000. An electronic version of the letter that you have requested is attached. I have set out below the Commission's standard text regarding the disclosure of material under the Freedom of Information regime (under which we have sent the requested material) that might be affected by copyright. The supply of information in response to a freedom of information request - as is the case here - does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission. For other forms of re-use, for example publishing the information, you would need the permission of the organisation or person who owns the copyright. In the case of information produced by government departments and agencies you can re-use the information under the Open Government Licence. For information about this please see <http://www.nationalarchives.gov.uk/doc/opengovernment-licence/open-government-licence.htm>. If, however, the copyright is identified as belonging to somebody else, you will need to apply for permission. For information about how to obtain permission from a third party, please go to the Intellectual Property Office's website at www.ipo.gov.uk.

Scope of the case

5. The complainant contacted the Commissioner on 6 December 2013 to complain about the way his request for information had been handled as he considers that the Law Commission holds a copy of the requested information.
6. The Commissioner considers the scope of the case to be whether the Law Commission holds the requested information.

Reasons for decision

7. Section 1 of the Act provides that a public authority must respond to a request and confirm or deny whether the relevant information is held. If there is no reason why the information is exempt from disclosure then the public authority must provide the information to the requester.
8. In this instance the Law Commission has denied that it holds the relevant information. However, the complainant considers that the Law Commission does hold the relevant information and that it should be provided to him.
9. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in accordance with a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
10. In its internal review the Law Commission stated that when it moved offices on 1 November 2013 it disposed of its collection of law reports, including the report the complainant had requested. In its submissions to the Commissioner the Law Commission confirmed this was the case. It also stated that it had searched other parts of its records to ensure that another version of the report was not held separate to the collection, and this had not located any relevant information.
11. The Commissioner considers that the Law Commission's explanation is reasonable and he is satisfied that the Law Commission has carried out the necessary searches to identify information relevant to the complainant's request. The Commissioner has seen no evidence to suggest that any relevant information is held. Therefore on the balance of probabilities the Commissioner's decision is that it is unlikely the Law Commission holds the relevant information. No further action is required.