



**Law  
Commission**  
Reforming the law

# The Work of the Law Commission Incorporating the Twelfth Programme

**The Law Commission**

# **The Work of the Law Commission**

Incorporating the Twelfth Programme

August 2016

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are:

- The Right Honourable Lord Justice Bean, *Chairman*
- Professor Nick Hopkins
- Stephen Lewis
- Professor David Ormerod QC
- Nicholas Paines QC

The Chief Executive of the Law Commission is Phillip Golding.

The Law Commission is located at 1st Floor Tower, 52 Queen Anne's Gate, London SW1H 9AG.

**This document is available on the Law Commission's website at [www.lawcom.gov.uk](http://www.lawcom.gov.uk)**

© Crown Copyright 2016

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v3.0.

To view this licence visit [www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/) or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Printed on paper containing 75% recycled fibre content minimum.

# Contents

<b>INTRODUCTION</b>	<b>1</b>
About the Law Commission	1
Law reform in Wales	2
<b>LAW REFORM PROJECTS YEAR BY YEAR</b>	<b>5</b>
<b>LAW REFORM PROJECTS</b>	<b>8</b>
Bills of sale	8
Charity law, selected issues	8
Consumer prepayments on retailer insolvency	9
Contempt of court	10
Electoral law	11
Event fees (previously known as transfer of title and change of occupancy fees in leaseholds)	12
Family financial orders – enforcement	13
Firearms	14
Form and accessibility of the law applicable in Wales	14
Insurance contract law	15
Land registration	17
Marriage	18
Mental capacity and deprivation of liberty	18
Misconduct in public office	19
Planning and development control in Wales	19
Protection of official Government data	20
Sentencing code	20
Unfitness to plead	21
Wills	22
<b>STATUTE LAW</b>	<b>24</b>
Consolidation	24
Statute law repeals	24
20th century legislation	24
British India	25
Churches	25



# Introduction

## About this document

This report provides an overview of our current work, including projects from the 12th Programme of Law Reform and ongoing projects from previous programmes. For each project, we explain why we believe there is a need for law reform in the area, and summarise the potential impact and benefits of reform.

## About the Law Commission

The Law Commission of England and Wales is an advisory, non-departmental public body which was created by the Law Commissions Act 1965, and forms part of the family of Ministry of Justice arm's-length bodies.

Our role is to review areas of the law and make recommendations for change, with the aim of ensuring that the law is as simple, accessible, fair, modern and cost-effective as possible. Our remit includes codification and consolidation of the law, removal of anomalies and the repeal of obsolete and unnecessary legislation.

Over the years we have established a reputation for excellence at home and abroad for our expertise in tackling technically complex areas of the law, for the thoroughness of our research and the wide-ranging nature of our consultations.

Underpinning the way we work is our independence from Government and the objective way in which we conduct ourselves. Stakeholders tell us that it is this strong ethos that sets us apart as an organisation. It means that the public can be confident that proposals will be considered impartially, and that we will always seek the best solutions, free from any political bias.

“Outside of Parliament itself and the Departments of State it is probably true to say that no body has had greater impact on the law and the lives of our citizens than the Law Commission since its creation in 1965.”

The Rt Hon Lord Justice Etherton, Chancellor of the High Court. Evidence to the 2013 Triennial Review of the Law Commission.

## Who we are

The Law Commission is headed by a Chairman and four Commissioners, all of whom are appointed by the Lord Chancellor. At 1 October 2015, the Law Commissioners were:

- The Rt Hon Lord Justice Bean, Chairman
- Professor Nick Hopkins, Property, Family and Trust Law
- Stephen Lewis, Commercial and Common Law
- Professor David Ormerod QC, Criminal Law
- Nicholas Paines QC, Public Law

The Commissioners are led by a Chief Executive, and supported by the staff of the Law Commission plus a team of research assistants.

## Our stakeholders

Our work is supported by a wide range of stakeholders. Their input and expertise helps us to ensure that our projects are robust, and that they we are taking into account the full range of views and opinions on any given aspect of the law. Our main stakeholders include the judiciary, parliamentarians, legal experts, subject experts from the third and private sectors and academia, the public sector, government officials and ministers. We also work with our sponsor department the Ministry of Justice, other Law Commissions, schools and universities and the general public.

## The Law Commission Act 2009

Looking back over our work since the Law Commission was established in 1965, around 69 per cent of the law reform reports we have produced have been implemented either in whole or in part. However, in recent years there have been concerns that implementation rates are falling.

The Law Commission Act 2009 sets out some practical ways of tackling this issue, ensuring that reports are considered and implemented in a timely and efficient way. First, it places a requirement on the Lord Chancellor to deliver an annual report to Parliament outlining the Government's progress in implementing our reports.

Second, a Protocol was introduced in March 2010 which stated that the Law Commission would not take on a project without an undertaking by the relevant minister that there is a serious intention to take forward law reform in that area. It also requires the relevant minister to provide an interim response within six months of a report being published, and a final response within a year.

Third, in October 2010 the House of Lords approved a new parliamentary procedure for "uncontroversial" Law Commission Bills. This procedure allows for the Second Reading of technical and politically non-controversial Law Commission Bills to be taken off the floor of the House, enabling valuable legislation that has previously found it difficult to secure a place in the main legislative programme to proceed to the statute book.

"[The Law Commission] is unique, carrying out a much needed task. It has set a model for the rest of the world in independence, scholarship, pragmatism and success. There is a real danger that law would stagnate without it."

The Baroness Deech DBE MA HonLLd. Evidence to the 2013 Triennial Review of the Law Commission.

## Law reform in Wales

A Protocol between the Law Commission and Welsh Ministers was laid before the National Assembly for Wales on 10 July 2015.

The Protocol, which was signed on 2 July, sets out the approach that the Commission and Welsh Ministers will jointly take to the Commission's law reform work in relation to Welsh devolved matters. It covers how the relationship will work throughout all the stages of a project, from our decision to take on a piece of work, through to the Ministers' response to our final report and recommendations.

The Wales Act 2014, which amended the Law Commissions Act 1965 to take account of Welsh devolution, provided for the Protocol to be agreed. The Act also empowers the Commission to give information and advice to Welsh Ministers, and enables Welsh Ministers to refer law reform projects directly to the Commission.

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

In 2013 we set up a Welsh Advisory Committee to give the people of Wales a stronger voice in law reform and help us continue to act as an effective law reform body for both England and Wales. The Committee advises on the exercise of our statutory functions in relation to Wales, and helps us to identify the law reform needs of Wales and to understand who we should be engaging and working with to bring reform about.

The two Welsh projects of the 12th Programme are the first Wales-only projects ever conducted by the Law Commission.

## How we work

### Law reform

Every three or four years we consult widely, asking for suggestions for appropriate law reform projects. Although we have a duty to “take and keep under review all the law”, it is important that our efforts are directed towards areas of the law that most need reform and towards reforms that are most likely to be implemented, in line with the 2010 Protocol. There should be a focus on change that will deliver real benefits to people, businesses, organisations and institutions.

We also undertake law reform projects that have been referred to us directly by Government Departments, giving us the flexibility to respond to pressing issues that emerge outside the cycle of our programme.

Before starting a law reform project, we will agree terms of reference with the relevant Department and, in some cases, set one or more review points. This provides an opportunity to stop and look at whether there is still a need for a substantive law reform project in the light of the research and analysis carried out so far.

“The Government holds the excellent work of the Law Commission in very high regard and the progress we have made during this past year demonstrates the continued relevance and resilience of the Commission’s work.”

The Rt Hon Chris Grayling MP, Lord Chancellor.  
Report on the Implementation of the Law Commission Proposals Jan 2013 to Jan 2014, May 2014.

### Statute law

Consolidation of statute law and the repeal of statutes that are obsolete or no longer serve any useful purpose have been important functions of the Law Commission since its creation.

#### *Statute law repeals*

By modernising the statute book and leaving it clearer, shorter and more accessible, our

statute law repeals work helps to save time and costs for practitioners who work with the law and others who need to use it, and makes it easier for citizens to access justice.

Since 1965, 19 Statute Law Repeals Bills have been enacted, repealing more than 3,000 Acts in their entirety and thousands more in part. On 3 June 2015, we published our 20th Statute Law Repeals Report with a Bill that we hope will be introduced into Parliament at the earliest opportunity. As social and technological change continue to be reflected in new legislation, so the need for systematic and expert review of older legislation will remain.

#### *Consolidation*

Over 200 consolidation Acts have been enacted since the Commission was established in 1965. The aim of this work is to make statute law more accessible and comprehensible; it can have real practical benefits.

A consolidation Bill draws together different enactments on the same subject to produce a single statutory text while preserving the effect of the current law. The text usually replaces provisions in a number of different Acts or instruments. But a good consolidation does much more than produce an updated text. The cumulative effect of amendments and new law can distort the structure of legislation. Consolidation will make it more rational and intelligible. It will also aim to remove obsolete material, modernise language and resolve minor inconsistencies or ambiguities that have arisen.

#### **Implementation**

Crucial to the implementation of our consolidation and statute law repeals Bills is a dedicated parliamentary procedure. The Bills are introduced into the House of Lords and, after Lords Second Reading, are scrutinised by the Joint Committee on Consolidation Bills, which was appointed by both Houses specifically to consider consolidation and statute law repeal Bills, before returning to the House of Lords for the remaining stages.



This process ensures that the Bills take up a minimum of parliamentary time on the floor of each House and that they should always be enacted once introduced.

## Consultation

Some projects begin with a scoping or discussion paper, in order to help us understand the key issues, identify interested parties and establish the extent of the project. Then, following initial research, we publish a consultation paper outlining the problems with the current law and setting out provisional proposals for reform.

We are committed to consulting fully with all stakeholders that could potentially be affected by our proposals. The consultation stage includes meetings with individuals and organisations, public events, conferences and symposia. We often work in partnership with representative organisations in order to reach their members and stakeholders.

### Why consultation matters

Consultation is the cornerstone of our law reform projects, and is critical to the final outcome. Wide-ranging consultation allows us to gain an in-depth, up-to-date and thorough understanding of an area of law, the problems that arise and how they are experienced by the courts, legal practitioners and other interested parties, including business, the voluntary sector and members of the public. The result of our consultation process is virtually always to produce a more effective set of final recommendations.

“It is the responses of consultees which is a vital part of the dynamics of law reform.”

Stephen Worthington QC, Chairman, Law Reform Committee, Bar Council, letter to the Chairman.

We ask consultees to submit formal, written responses through a choice of different channels, including online. All the responses we receive are analysed and considered carefully. They are published, either separately or in the final project report. Throughout the process, where

appropriate, we act in consultation or work jointly with the Northern Ireland Law Commission and the Scottish Law Commission.

At the end of the consultation period, we will make our recommendations in a report to government. These could be in the form of guidance, advice to government, or law reform recommendations. In cases where implementation would require primary legislation, the report will usually contain a Bill drafted by Parliamentary Counsel. The report is laid before Parliament, and it is then for Government to decide whether to accept the recommendations and introduce any necessary Bill, often working in partnership with the Commissioner, members of the relevant legal team and the Parliamentary Counsel who drafted the Bill.

## Law reform projects year by year

The following table shows the projects on which the Law Commission will be working during each year. Shading indicates the years during which the project is expected to run. Not all projects are full-term law reform projects. Some are scoping exercises only; some are conducted in phases, with review points at which the Commission and lead Department take stock and decide whether to move on to the next phase.

Name of project	Lead department	Key dates	2014	2015	2016	2017
Bills of sale	HM Treasury	Start: summer 2014 Consultation: September 2015 Conclude: law reform recommendations, summer 2016				
Charity law, selected issues	Office for Civil Society, Cabinet Office	Start: April 2013 Consultation: (1) April 2014 ; (2) March 2015 Conclude: law reform recommendations and draft Bill, end 2016				
Consumer prepayments on retailer insolvency	Department for Business, Innovation and Skills	Start: summer 2014 Consultation: June 2015 Conclude: scoping report, autumn 2016				
Contempt of court	Ministry of Justice	Start: May 2012 Consultation: (1) Scandalising the court, August 2012; (2) Contempt generally, November 2012 Conclude: end-2016				
Electoral law	Cabinet Office	Start: 2011 Scoping consultation: June 2012 Consultation: December 2014 Interim report: February 2016 Conclude: law reform recommendations and draft Bill, 2017				
Event fees (previously known as transfer of title and change of occupancy fees in leaseholds)	Department for Communities and Local Government	Start: October 2014 Consultation: October 2015 Review point: interim law reform review, summer 2016				

Name of project	Lead department	Key dates	2014	2015	2016	2017
Family financial orders, enforcement	Ministry of Justice	Start: March 2014 Consultation: March 2015 Conclude: law reform recommendations and draft Bill end 2016				
Firearms	Home Office	Start: early 2015 Consultation: July 2015 Conclude: scoping report, December 2015; wider codification project under consideration				
Form and accessibility of the law applicable in Wales	Welsh Government	Start: summer 2014 Consultation: July 2015 Conclude: advice to Government, summer 2016				
Insurance contract law	HM Treasury	Start: 2006 Consultation: (1) Misrepresentation, non-disclosure and breach of warranty by the insured, July 2007; (2) Post-contract duties and other issues, December 2011; (3) The business insured's duty of disclosure and law of warranties, June 2012. This has resulted in Consumer Insurance (Disclosure and Representations) Act 2012 and Insurance Act 2015. Our recommendations relating to late payment were implemented in the Enterprise Act 2016. Conclude: summer 2016				
Land registration	Department for Business, Innovation and Skills; Land Registry	Start: spring 2015 Consultation: March 2016 Conclude: recommendations and draft Bill, late 2017				
Marriage	Ministry of Justice	Start: Early 2015 Conclude: scoping report, December 2015				
Mental capacity and deprivation of liberty	Department of Health	Start: summer 2014 Consultation: July 2015 Conclude: law reform recommendations and draft Bill end 2016				

Name of project	Lead department	Key dates	2014	2015	2016	2017
Misconduct in public office	Ministry of Justice	Start: summer 2014 Consultation: January 2016 Conclude: law reform recommendations, spring 2016				
Planning and development control in Wales	Welsh Government	Start: summer 2014 Scoping paper: summer 2016 Consult: early 2017 Conclude: law reform recommendations				
Protection of official Government data	Cabinet Office	Start: February 2016 Consultation: Sept – Dec 2016 Conclude: report end February 2017				
Sentencing code	Ministry of Justice	Start: January 2015 Initial consultation: July-August 2015 Current law consultation: Oct 2015-Apr 2016 Main consultation: summer 2017 Conclude: law reform recommendations and draft Bill, 2018/19				
Unfitness to plead	Ministry of Justice	Start: 2010 Consultation: October 2010 Issues paper: May 2014 Conclude: law reform recommendations and draft Bill, early 2016				
Wills	Ministry of Justice	Start: 2015 Consultation: Spring 2017 Conclude: law reform recommendations and draft Bill, end 2018				

## Law reform projects

### Bills of sale

*Source: 12th Programme*

*Lead Department: HM Treasury*

*Start: Summer 2014*

*Consultation: September 2015*

*Scheduled completion: Summer 2016*

*Outcome: Law reform recommendations*

A bill of sale is a way for people to use their existing goods as security for a loan. A common example is the so-called “logbook loan”, where a person hands over the ownership document for their vehicle, while continuing to use it. This often happens where the borrower cannot access credit from mainstream lenders.

The use of bills of sale has grown dramatically, from 2,840 in 2001 to 38,000 in 2008, and it seems likely that their use will continue to grow. The complexity of the law in this area means that consumers and businesses rarely understand the implications of using bills of sale; in any case, the existing legislation offers them little protection.

Interest rates can be in excess of 500 per cent APR; if the borrower fails to make the repayments, the property can be seized without notice. It is very difficult to tell whether a piece of property is subject to a bill of sale, so purchasers can be left out of pocket. All of these issues have a disproportionate impact on the most vulnerable in society, who can find it hard to access properly regulated credit, and on small businesses experiencing short-term cash flow problems.

The law covering this area is set out in the Bills of Sale Acts 1878 and 1882, and is complex, arcane and out-dated. It imposes unnecessary costs on businesses, but fails

to give consumers the standard protections associated with other forms of credit, such as hire purchase. All bills of sale must be registered, but the system is paper-based and inefficient. A voluntary code of conduct, which came into force in February 2011, seems to have had little impact on lenders’ behaviour.

There are good reasons to believe that the use of bills of sale will continue to increase, and with it consumers’ need for protection. This project reviews the existing legislation and registration regime for bills of sale, which has been described as “untenable” by the Citizens Advice Bureau, with the aim of modernising and simplifying the law. It also looks at the growing use of bills of sale in the consumer credit market, with a view to providing borrowers with greater protection.

### Charity law, selected issues

*Source: 11th Programme*

*Lead Department: Office for Civil Society, Cabinet Office*

*Start: April 2013*

*Consultation(1): Social investments, April to June 2014*

*Consultation(2): Technical Issues in Charity Law, March to July 2015*

*Scheduled completion: 2016*

*Outcome: Law reform recommendations and draft Bill*

This project looks at a range of issues concerning how charities are constituted and how their activities are regulated. One part looks at the way charities incorporated by Royal Charter and by Act of Parliament amend their governing documents, while the rest comprises issues arising from Lord Hodgson’s 2012 review of the Charities Act 2006 that were referred to us by the Office for Civil Society in the Cabinet Office. One of these issues is whether the law is clear enough with regard to charity trustees’ powers and duties when making social investments.

## Social investment

A “social investment” is one that delivers a financial return at the same time as helping the charity achieve its specific goals.

Examples include offering low-interest loans to start-up businesses, buying empty properties in order to let them at low cost to homeless people and investing in medical research or green technologies.

Social investment is an important and developing area for charities, enabling them to combine investment with direct spending so that they are generating more resources at the same time as pursuing their objectives. Charities registered with the Charity Commission hold combined investment assets worth £126 billion: if these assets can be put to more effective use, there is significant potential benefit to the public.

Many charities are already involved in social investment, and the existing law is not an impediment. But there is concern that a lack of clarity as to their precise powers and duties means that some charity trustees are not confident about making social investments.

Our initial consultation paper proposed a new default statutory power for charity trustees to make social investments, along with a list of factors that trustees may take into account when investing. This new power – combined with the accompanying checklist – would make it clear to trustees that they should consider all the potential benefits of a social investment, rather than focusing solely on achieving the best financial return.

Following an 8-week consultation, we published our recommendations and then drafted a Bill to give effect to our recommendation for the creation of a new statutory power, which the Government has included within the Charities (Protection and Social Investment) Act 2016. We await the response of

Government to our other recommendations on social investment by charities.

## Technical issues

Our second consultation paper covers the remaining areas of the project, including: the power of charities to amend their governing documents; the obligations on charity trustees when they sell land; restrictions on spending; ex gratia payments; mergers, incorporations and insolvencies; the powers of the Charity Tribunal.

### Consumer prepayments on retailer insolvency

*Source: 12th Programme*

*Lead Department: Department for Business, Innovation and Skills*

*Start: Summer 2014*

*Consultation: June 2015*

*Scheduled completion: Summer 2016*

*Outcome: Scoping study*

A study by Consumer Focus in 2009 found that approximately 24.5 million prepayment transactions are made each year in the UK by around 20 million consumers.

Prepayments are popular because they can be used to budget for big spends, such as Christmas, or as a deposit for major purchases like cars or new kitchens. On a smaller scale, gift vouchers and cards solve the dilemma of choosing the “right” gift. The benefits for businesses are that prepayments provide a cheap source of working capital and can lock in consumers to a particular brand.

However, recent high-profile retailer insolvencies have highlighted the lack of protection for consumers making these kinds of payments. The collapse of the Farepak Christmas savings club in 2006 left many consumers out of pocket. More recently, the collapse of Comet reportedly

caused consumers to lose £4.7 million in unused gift vouchers.

When a retailer becomes insolvent, the law imposes a strict hierarchy of creditors to be paid out from any remaining assets.

Consumers, who are classed as unsecured creditors, are very near the bottom of the list.

This lack of protection is causing concern. The issues are complex and go to the heart of the insolvency regime. In 1982, the Cork report rejected greater protection for consumers, noting that consumers typically lose small and affordable amounts while the effect on suppliers can be catastrophic. But following the Farepak collapse the Treasury Select Committee described the existing safety net as “inadequate and incomplete”. The OFT carried out a review, and ministers asked the Department for Business, Innovation and Skills to consider providing more protection for consumers.

We do not believe that the problem will go away. If anything, given the current economic climate, retailer insolvencies may increase. There are also good reasons for giving consumers more protection, not least to maintain consumer confidence in these products. But we must bear in mind that greater protection for consumers will necessarily lead to less protection for others.

The project will consider possible ways forward, gathering empirical evidence about the scale of the problem and consulting on possible solutions.

## Contempt of court

*Source: 11th Programme*

*Lead Department: Ministry of Justice*

*Start: May 2012*

*Consultation:*

*Scandalising the Court, August 2012 to October 2012*

*Contempt of court generally, November*

*2012 to February 2013*

*Scheduled completion: end 2016*

*Outcome: Law reform recommendations, in four reports*

## Scandalising the court

In August 2012, we published a consultation paper on scandalising the court – a historic form of contempt of court covering conduct likely to undermine the administration of justice or public confidence in courts and judges. This work was brought forward in order to feed into the Government’s deliberations on the Crime and Courts Bill. Our recommendation that the offence be abolished was accepted as an amendment to the Bill in December 2012.

Abolition of the offence of scandalising the court was implemented in the Crime and Courts Act 2013.

## Contempt of court – other areas

Contempt of court covers a wide variety of activities and behaviour that undermine or threaten to undermine the course of justice. The law covering contempt of court is vast. In our consultation paper we therefore chose to focus on a number of specific areas, including:

- Contempt by publication: We looked at how best to balance the right to a fair trial with the right to freedom of expression
- The impact of new media: Much of the law pre-dates the internet, and there are concerns as to whether it can deal effectively with contempts involving new media and in particular social media.
- Contempts by jurors: We looked at the issue of jurors using external sources

to find information about the case they are trying. There is a need to strike a balance between ensuring that justice is done, the defendant's right to a fair trial and jurors' own rights.

- Contempt in the face of the court: The law in this area is confusing, with gaps and inconsistencies between the provisions that apply to the Crown Court and those applying to the magistrates' courts.
- Reporting restrictions: Current law gives courts the power to postpone court reporting where this is necessary to avoid prejudicing the proceedings, but there is no formal system for communicating these orders to the media.

## Juror misconduct and internet publications

In this first post-consultation report, published in December 2013, we made recommendations including:

- Making it a criminal offence for jurors to conduct prohibited research.
- Introducing an exemption from contempt liability for publishers relating to archived online material.
- Making a limited exception to the prohibition on jurors revealing their deliberations where it could highlight miscarriages of justice, or where they are taking part in controlled research.

The first recommendation was given legislative effect by section 71 of the Criminal Justice and Courts Act, which was given Royal Assent in February 2015.

## Court reporting

We published our second report in March 2014, recommending:

- that all postponement orders on court reporting be posted on a single publicly accessible website (as already happens in Scotland), and adding a paid-for service where users can access the terms of the order and sign up for automated email alerts of new orders.

## Final report

The remaining report in this project will deal with contempt in the face of the court and aspects of contempt by publication not already covered in our previous reports.

## Electoral law

*Source: 11th Programme*

*Lead Department: Cabinet Office*

*Start: 2011*

*Scoping consultation: June to September 2012*

*Consultation: January 2016*

*Scheduled completion: 2017*

*Outcome: Law reform recommendations and draft Bill*

The law covering the administration of elections is old, disparate, confusing and sometimes contradictory. Particularly since 1997, the original 19th century structure has been patched up and adapted to accommodate new elections to new institutions with new voting systems. People are now often asked to vote for a range of representatives at the same time. Each type of election comes with its own set of rules and systems, and combining different types into one electoral event introduces yet more layers of electoral law. To keep running, the system has come to depend on the production of voluminous guidance, and on the considerable energy and ingenuity of electoral administrators.

Our project to reform electoral law is split into three stages. In accordance with the scoping stage, which ran from July 2011 to



December 2012, we are now considering substantive law reform in the following areas:

- the administration of local campaigns;
- the law covering polling days and counts;
- combination of polls (when more than one election is taking place at the same time);
- election timetables;
- challenges to the result and criminal offences; and
- the administration of referendums.

Consultees responding to our scoping paper agreed that there was a clear need to:

- review the legislative framework for electoral law to provide a clear, principled and consistent structure;
- review electoral administration law to rationalise, simplify and modernise the rules governing the conduct of elections, so as to reduce the risk of mistakes;
- identify where the electoral process – and the electorate – would benefit from rules that are more specific and clear; and
- recommend how existing rules could be less prescriptive and more flexible to reduce the complexity and volume of laws, and reflect the best interests of voters.

The reforms also look at the circumstances under which electoral administration might be challenged. The current system leaves little room for investigating, and drawing conclusions from, a complaint about how an election was run if the outcome of the election was not affected. The reforms will not cover matters of a fundamentally political nature, like the franchise, voting systems, electoral boundaries and the national funding of political parties.

The third stage will be the writing of a draft Bill, after we deliver a report of our proposals.

The project has, since the start of the second phase, been a tripartite project with the Scottish and Northern Ireland Law Commissions.

### **Event fees (previously known as transfer of title and change of occupancy fees in leaseholds)**

*Source: Ministerial reference*

*Lead Department: Department for Communities and Local Government*

*Start: October 2014*

*Consultation: October 2015*

*Review Point: Summer 2016*

*Outcome: Interim law reform review*

The project looks at leasehold terms that oblige a person leasing a property to pay a fee when the title to that property is transferred or where there is a change in occupancy.

These sorts of leasehold terms are most often found in retirement home and similar developments. Concerns were raised with the Office of Fair Trading (OFT) about their operation. The fee is usually calculated as a percentage of the sale price or the original purchase price. Fees can be charged where the transfer of title is voluntary, for example when the property is sold, or involuntary such as under a property transfer order. Change of occupancy can be broadly defined and fees can be triggered on more than one occasion over the lifetime of a lease, for example if the occupant has to go into hospital for a time.

The OFT concluded that the terms were potentially unfair and there was a lack of transparency, particularly in sales materials. The nature of the terms can be

unclear and some appear to fall outside the existing regulatory regimes. As a result there may be no means by which someone leasing a property can effectively challenge a term or the amount of the fee.

In response to the OFT's report some landlords voluntarily entered into undertakings on the use of the terms.

However, the OFT also recommended that the Government should consider further measures, including legislative reform.

Our project considers the problems caused by terms in residential leases generally that require the lessee to pay a fee on a transfer of title or change of occupancy, and in the retirement home sector and similar markets in particular.

We are looking at how the current law addresses the problems that are identified and considering whether greater protection is needed for lessees, for example through:

- unfair terms legislation
- landlord and tenant law, and/or
- conveyancing procedure.

We are also considering what the impact of any greater protection may be.

## Family financial orders – enforcement

*Source: 11th Programme*

*Lead Department: Ministry of Justice*

*Start: March 2014*

*Consultation: March 2015*

*Scheduled completion: End 2016*

*Outcome: Law reform recommendations and draft Bill*

The courts have statutory powers to order people to make financial provision for their children or for a former spouse or civil partner following divorce or the dissolution of a civil partnership. Sometimes, obtaining

these orders comes at significant financial and emotional cost to those involved. But this damage may be compounded – and have a long-term impact on both adults and children – if the orders are not then enforced.

The current law on the enforcement of family financial orders has been described as “hopelessly complex and procedurally tortuous”. The enforcement mechanisms are contained in a wide range of legislation and members of the public, legal practitioners and even the courts have difficulty understanding how they work. The law may be preventing some sensible arrangements being put in place.

This project looks at the various ways in which family financial orders made under the Matrimonial Causes Act 1973, the Civil Partnership Act 2004 and the Children Act 1989 are enforced. Reform of the law could offer a clear set of rules and the ability to access the full range of enforcement options, without the need for multiple hearings. It would enable the court to consider enforcement against a wide range of assets.

Better law in this area will help to ensure that money that has been ordered to be paid for the support of children and adults is paid. It would also limit the damaging effects of ongoing litigation on families, enabling the parties to move on with their lives. A simpler and more intuitive enforcement process would assist individuals and could ease pressure on the court system and legal advice agencies.

## Firearms

*Source: 12th Programme*

*Lead Department: Home Office*

*Start: Early 2015*

*Consultation: July 2015*

*Scheduled completion: December 2015*

*Outcome: Scoping report; wider codification project under consideration*

The majority of recommendations in our scoping report were taken forward in the Policing and Crime Bill. The Bill was introduced into Parliament on 10 February 2016. A broader firearms codification review is currently under consideration.

The law governing the ownership and use of firearms is complex and difficult to apply. It is spread across a number of pieces of overlapping legislation, creating significant practical difficulties for investigating authorities and prosecutors, and generating uncertainty for the licensed firearms community.

In our scoping report, published in December 2015, we identified pressing problems with the current law and made recommendations as to how these should be addressed. The aims of the recommendations contained within our scoping report are twofold. First, to ensure that the law maximises public safety and secondly, to ensure that those who must both enforce and comply with the law know where they stand.

For example, our recommendations define key terms including “lethal”, “antique firearm” and “component part” for the first time. The failure to define these terms has caused considerable difficulties in practice for the police and CPS as well as the licensed firearms community. It is also hoped that this will mean that enforcement becomes more efficient.

Some areas of firearms law have failed to keep pace with technological developments. For example, the test for determining whether an imitation firearm can be converted into a live firearm originates from 1982, and the law does not take account of the increased availability of specialist tools and equipment. Such tools can be used to convert imitation firearms into real firearms. We therefore recommended the test for whether an imitation firearm is readily convertible into a real firearm be amended to acknowledge the relative ease with which specialist equipment can now be purchased. We also recommended the creation of an offence that criminalizes someone who is in possession of an article with intent to use it unlawfully to convert an imitation firearm into a real firearm. Our aim is to ensure that individuals can no longer possess with impunity tools and equipment intending to use them unlawfully to convert firearms.

In relation to deactivated firearms we identified a significant problem: the law currently does not impose a legal requirement for firearms to be deactivated to an approved standard. This is a gap in the law that has the potential to be exploited by those with criminal intent. To reduce this possibility, we recommended that firearms must be deactivated in a manner that is approved by the Home Office or the European Union. If they are not deactivated to an approved standard, such weapons will continue to be classed as firearms.

## Form and accessibility of the law applicable in Wales

*Source: 12th Programme*

*Lead Department: Welsh Government*

*Start: Summer 2014*

*Consultation: July 2015*

*Scheduled completion: Summer 2016*

*Outcome: Advice to Government*

Problems with the form and accessibility of the law relating to Wales have been apparent for some time, and are becoming more serious. The process of devolution has led to a situation in which it is difficult for both professionals and the public to access the law relating to Wales.

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

As a result, it can be very difficult to find and understand the law in devolved areas. The problem is particularly acute in respect of executive powers, but is certainly not confined to them. For example, a power which, on the face of a statute, appears to be exercised by the Secretary of State may in fact have been transferred to Welsh ministers. However, this will not be apparent without in-depth research. Pre-devolution statutes may have been subsequently amended, so that they now contain some provisions that cover England and Wales, some that relate to England and some that are specific to Wales only.

This project will be purely advisory, and our final report will not contain a draft Bill. We will consider ways in which the earlier legislation can be simplified and made more accessible, and how future legislation could reduce, rather than multiply, the problems.

“Since it was established in 1965 the Law Commission has achieved a deservedly high reputation for the quality of its work and the rigour of its approach to law

reform.”

Maura McGowan QC, Chairman of the Bar.  
Letter to the Chairman, December 2012.

## Insurance contract law

*Source: 9th Programme*

*Lead Department: HM Treasury*

*Start: January 2006*

*Consultations:*

*Misrepresentation, Non-disclosure and Breach of Warranty by the Insured, July to September 2007*

*Post Contract Duties and other Issues, December 2011 to February 2012*

*The Business Insured's Duty of Disclosure and the Law of Warranties, June to August 2012*

*Scheduled completion: Summer 2015*

*Outcome: Law reform recommendations and draft Bills, in three reports*

The current law on insurance contracts dates back to 1906 and is now seriously out of date. The 1906 Act was developed at a time when the person being insured knew their business while the insurer did not, and was designed to protect the fledgling insurance industry against exploitation.

Working with the Scottish Law Commission, we have been conducting a wide-ranging review that aims to simplify the law and bring it into line with modern market practice.

The review is being carried out in phases. Our first priority was consumer insurance law, on which we reported in 2009, leading to the Consumer Insurance (Disclosure and Representations) Act 2012. Our second report will cover four further topics:

- the duty of disclosure in business insurance;
- the law of warranties;

- damages for late payment; and
- the insurer’s remedies for fraud.

## Consumer Insurance (Disclosure and Representations) Act 2012

The law under the Marine Insurance Act 1906 requires consumers to volunteer information about everything which a “prudent insurer” would consider relevant. The aim of our project was to remove the duty on consumers to volunteer information to the insurer and replace it with a duty to answer the insurer’s questions honestly and reasonably.

The Consumer Insurance (Disclosure and Representations) Bill, which was derived from our report, was introduced into Parliament using the special procedure for uncontroversial Law Commission Bills. The Consumer Insurance (Disclosure and Representations) Act 2012 came into force on 6 April 2013. The Act:

- abolishes the consumer’s duty to volunteer material facts. Instead, consumers must take reasonable care to answer their insurer’s questions fully and accurately and, if they volunteer information, must take reasonable care to ensure that it is not misleading; and
- prescribes the insurer’s remedies where they have been induced by a misrepresentation to enter into an insurance contract.

## Insurance Act 2015

The Insurance Bill received Royal Assent on 12 February 2015, implementing reforms recommended by the Law Commissions of England and Wales and of Scotland to modernise and simplify insurance contract law across the UK.

The Insurance Act 2015 will give effect to reforms recommended by the Law Commissions in their 2014 report *Insurance Contract Law: Business Disclosure, Warranties, Insurers’ Remedies for Fraudulent Claims, and Late Payment*.

### *The duty of disclosure in business insurance*

In the past, a business policyholder had a duty to disclose every material circumstance it knew about the risk it wanted to insure against. Failure to do so entitled the insurer to “avoid” the contract, ie to treat it as if it did not exist and refuse all claims. The duty was unclear and sometimes poorly understood, and the penalties for failure were too harsh.

Under a new “duty of fair presentation”, business policyholders will still have a duty to volunteer information, but what is required of them is made clearer, and insurers will have to play a more active role in asking questions to the policyholder. A new scheme of proportionate remedies will replace the existing single remedy of avoidance, which allows insurers to refuse the whole of a claim.

### *The law of warranties*

In insurance law, a “warranty” is a particularly onerous term. Typically, a warranty requires the policyholder to take some action to mitigate risk, for example maintaining a burglar alarm. The problem is that any breach discharged the insurer from liability, even if the breach had been remedied.

Under the Insurance Act 2015, insurers will be liable to pay any claim that arises after a breach of warranty has been remedied such as where a broken burglar alarm has been repaired before the claim arises. They will no longer be able to escape liability on the basis of the policyholder’s breach of a contract term that is shown to be completely irrelevant to the loss suffered. And “basis of the contract”

clauses, which used to turn any statement from a policyholder into a warranty, have been abolished.

### ***Damages for late payment***

The Government did not originally include the Law Commissions' recommendations relating to late payment in the Insurance Act 2015 but has implemented them through the Enterprise Act 2016, which received Royal Assent in early May 2016.

### ***Insurers' remedies for fraud***

Insurers are particularly vulnerable to fraud by policyholders, and the law needs to provide well-known, robust sanctions. The law in this area was confused.

Implementing our recommendations, the Act will now provide insurers with clear, robust remedies when a policyholder makes a fraudulent claim. Where any part of a claim is fraudulent, they will be entitled to refuse the whole claim. They will also have the right to refuse any claim arising after the fraud but must pay earlier, valid claims.

### **Insurable interest**

Our final report and Bill on the insurance contract law project will cover the issue of insurable interest. Publication is planned for late 2016.

In March 2015 we published an issues paper setting out updated proposals to clarify the concept of insurable interest in indemnity insurance and to extend the concept for life insurance. We propose that people should be allowed to insure the lives of their children, cohabitants or employees, and the law should not put controls on this.

## **Land registration**

*Source: 12th Programme*

*Lead Department: Department for*

*Business, Innovation and Skills, Land Registry*

*Start: Spring 2015*

*Consultation: March 2016*

*Scheduled completion: Late 2017*

*Outcome: Law reform recommendations and draft Bill*

The Land Registration Act 2002 established a regime for the registration of title to freehold and some leasehold land, and interests affecting such land. The 2002 Act was implemented following a joint project between the Law Commission and Land Registry.

The land registration regime is of enormous and growing importance. Over 80% of the land in England and Wales is registered, with Land Registry maintaining more than 23 million titles.

This project comprises a wide-ranging review of the 2002 Act, with a view to amendment where elements of the Act could be improved in light of experience with its operation. There is evidence that in some areas revision or clarification is needed; the 12th Programme consultation revealed a range of often highly technical issues that have important commercial implications for Land Registry and its stakeholders, including mortgage providers.

Dealings and disputes that engage the land registration regime can be complex and require expert advice. Uncertainty in the regime makes advising clients difficult, incentivises litigation, and increases costs for landowners.

In particular, this project examines the extent of Land Registry's guarantee of title, rectification and alteration of the register, and the impact of fraud.

The project also re-examines the legal framework for electronic conveyancing. We consider how technology might be harnessed to reduce the time and resources

required to process applications while maintaining the reliability of the register and public confidence in it.

## Marriage

*Source: Reference*

*Lead Department: Ministry of Justice*

*Start: Early 2015*

*Scheduled completion: December 2015*

*Outcome: Scoping report*

This project involves a review of the law governing how and where people can marry in England and Wales. The underlying question is whether the current law, which has evolved over a long period of time, provides a clear and coherent legal framework, which meets people's needs and wishes and also recognises the interests of society and the state in protecting the status of marriage.

The Law Commission agreed to carry out some initial work to prepare the way for potential future reform. We have published the results of a preliminary study identifying and providing an initial analysis of the issues that need to be addressed in order to develop proposals for the reform of marriage law.

## Mental capacity and deprivation of liberty

*Source: 12th Programme*

*Lead Department: Department of Health*

*Start: Summer 2014*

*Consultation: July 2015*

*Scheduled completion: end 2016*

*Outcome: Law reform recommendations and draft Bill*

The Mental Capacity Act 2005 provides the framework for assessing whether people have the necessary capacity to make certain

decisions, and where they do not, for others to make those decisions in their best interests.

In 2004, a case before the European Court of Human Rights established that it was possible for decisions taken in a person's best interests about the provision of residential and social services were capable of amounting to a deprivation of liberty under Article 5 of the European Convention on Human Rights. The UK was found to be in breach of the Article, because in such circumstances the law in England and Wales did not provide for an adequate system of authorisation and review of the deprivation of liberty.

In 2007, in reaction to the finding, the deprivation of liberty safeguards (DOLS) were introduced into the Mental Capacity Act 2005 by the Mental Health Act 2007. They were introduced in order to plug the gap identified in the case, and to ensure that such situations are properly regulated in line with the person's human rights. DOLS applies only to deprivations of liberty that take place in hospitals and care homes.

If a person's right to liberty is compromised in other settings, his or her deprivation of liberty has to be authorised and supervised by the Court of Protection.

The DOLS provisions have been criticised since they were introduced for being overly complex and excessively bureaucratic. It is said that staff often do not understand them and that there is confusion over the differences between the powers of the Mental Health Act 1983 and DOLS.

In March 2014 a House of Lords select committee conducting a post-legislative scrutiny of the Mental Capacity Act found that DOLS were not "fit for purpose" and called for them to be replaced. The committee also recommended that the new system should extend to cover people in supported living arrangements, not just hospitals and care homes. Shortly afterwards, the Supreme Court found that a person will be deprived of their liberty in

more situations than had previously been thought to be the case.

The Department of Health has accepted that there are difficulties with DOLS and has announced various measures designed to improve the way the safeguards operate.

Our project considers how deprivation of liberty should be authorised and supervised in settings other than hospitals and care homes, where it is possible that Article 5 rights would otherwise be infringed. In addition to considering these settings, the project will also assess the implications of this work for DOLS to ensure that any learning which may be relevant is shared.

## Misconduct in public office

*Source: 11th Programme*

*Lead Department: Ministry of Justice*

*Start: Summer 2014*

*Consultation: January 2016*

*Scheduled completion: Spring 2017*

*Outcome: Law reform recommendations*

Misconduct in public office is a common law offence but there is no exhaustive definition. As a result the boundaries of the offence are uncertain and despite there being relatively few prosecutions each year a disproportionately high number of those cases are the subject of appeal. Areas of difficulty identified in recent appeals include the fact that the fault element of the offence varies according to the conduct that is the subject of prosecution and that there is uncertainty as regards the liability of private individuals who discharge public functions.

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

This project will involve the simplification, clarification and codification of a common

law offence. It will also ensure that the law takes into account practices whereby traditionally public functions are discharged by private individuals and volunteers to ensure that the scope of the offence is neither over- nor under-inclusive.

“The Commission continues to fulfil an important function within the justice system and the commitment of those working at the Commission to continue to do this despite various pressures [is] impressive.”

Triennial Review of the Law Commission, Report of Stage Two (2014), p11.

## Planning and development control in Wales

*Source: 12th Programme*

*Lead Department: Welsh Government*

*Start: Summer 2014*

*Scoping paper: summer 2016*

*Consultation: summer 2017*

*Outcome: Law reform recommendations*

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

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



This project considers the benefits of a simplified and modernised system that reflects the needs of Wales, a smaller country with different types of land use, and where there is a close connection between government bodies.

A simplified and modernised planning system for Wales will have the potential to promote economic growth, housing supply and protection of the environment, as well as increasing efficiency and reducing transaction costs.

## Protection of official Government data

*Source: Reference*

*Lead Department: Cabinet Office*

*Start: February 2016*

*Consultation: Sept-Dec 2016*

*Scheduled completion: end February 2017*

*Outcome: Report*

In February 2016 the Law Commission began work on a project referred to us by the Cabinet Office. The aim of the project is to examine the effectiveness of the law surrounding the protection of official data.

More specifically, the project is examining the effectiveness of the criminal law provisions that protect Government information from unauthorised disclosure. Our focus is on assessing the extent to which there are any deficiencies in the law, and research options for improving the protection of official information with the aim of providing an effective and coherent legal response to unauthorised disclosures. The project is also examining the provisions that criminalise those who illegitimately obtain or attempt to obtain official information.

In terms of legislation, the project is paying particular attention to the Official Secrets Acts 1911 – 1939 and the Official Secrets Act 1989. We are also considering other criminal provisions that protect information

held by Government from unauthorised disclosure and is examining the relevant aspects of the Data Protection Act 1998, the Public Interest Disclosure Act 1998 and the protections for information exempt from release under the Freedom of Information Act 2000. We are taking a holistic approach and examine how the legislative landscape could be rationalised and made more coherent.

## Sentencing code

*Source: 12th Programme*

*Lead Department: Ministry of Justice*

*Start: January 2015*

*Initial consultation: July-August 2015*

*Current law consultation: Oct 2015-Apr 2016*

*Main consultation: summer 2017*

*Scheduled completion: 2018/19*

*Outcome: Law reform recommendations and draft Bill*

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

This makes it difficult, if not impossible at times, for practitioners and the courts to understand what the present law of sentencing procedure actually is. This can lead to delays, costly appeals and unlawful sentences. A survey of 400 Court of Appeal cases from 2012 by the sentencing expert Robert Banks found that 262 were appeals against sentences and that of these, 95 related to sentences that had been unlawfully passed in the Crown Court. Banks wrote, “[This] figure shows that we can no longer say the sentencing system is working

properly. Cases since then have indicated that these figures are not unrepresentative.”

There seems to be near unanimity from all in practice, on the bench and in academia that the law in this area is in urgent need of reform. The courts have repeatedly complained about the complexity of modern sentencing procedure. There is strong evidence that the high number of unlawful sentences being handed down is a direct result of the inability of sentencing tribunals to find their way through the relevant provisions. This undermines public confidence in sentencing and costs a great deal of public money to rectify on appeal. Our aim in this project is to introduce a single sentencing statute that will act as the first and only port of call for sentencing tribunals. It will set out the relevant provisions in a clear and logical way, and ensure that all updates to sentencing procedure can be found in a single place. It is not the aim of this project to interfere with mandatory minimum sentences or with sentencing tariffs in general. Those will remain entirely untouched, but the process by which they come to be imposed will be streamlined and much improved.

In July 2015 we published an issues paper, examining how the New Sentencing Code should be introduced, sweeping away layers of historic sentencing law. This met with strong support, and we published a final report summarising consultees’ views and outlining our recommendations on transition to the New Code in May 2016.

Our published collection of the law currently in force governing sentencing has also been well received, and this forms our starting point for drafting the New Sentencing Code, which will be the subject of a full consultation in 2017.

“I can state unequivocally that in my view the Law Commission continues to play a vital role in helping the shape the criminal law in England and Wales.”

Keir Starmer QC, Director of Public Prosecution. Evidence to the 2013 Triennial Review of the Law Commission.

## Unfitness to plead

*Source: 10th Programme*

*Lead Department: Ministry of Justice*

*Start: 2010*

*Initial consultation: October 2010 to January 2011*

*Further questions: May 2014 to July 2014*

*Scheduled completion: Early 2016*

*Outcome: Law reform recommendations and draft Bill*

When a defendant facing criminal prosecution is “unfit to plead”, they cannot engage with the process because of their mental or physical condition. These defendants are tried using a different process and if it is found that they did commit the act in question, they may be detained in a hospital or supervised in the community.

The legal test used to decide whether a defendant is “unfit to plead” dates from 1836, and does not adequately reflect advances in modern psychiatric and psychological thinking.

In addition, the law has developed piecemeal and independently of the development of the right to “effective participation” that forms part of the fair trial guarantees set out in the European Convention on Human Rights. The test needs to be reformed so that it achieves a fair balance between protecting vulnerable defendants and ensuring that the rights of victims and the security of the general public are properly addressed.

In our consultation, we made provisional proposals for comprehensive reform of the law on unfitness to plead in England and Wales. Having reviewed the responses, and taking into account changes to the

criminal justice system since the consultation, we returned to stakeholders with a number of additional questions. These included:

- How can special measures to enhance the defendant's ability to participate in trial be fairly incorporated into the test for unfitness?
- Should the procedure in the magistrates' and youth courts be the same as that in the Crown Court?
- What should the process be for dealing with a defendant who has been found unfit to plead?
- At a hearing to deal with a defendant found unfit, what issues should be considered by the court?
- What options should the court have in dealing with unfit defendants?

These aim of these additional questions is to ensure that our final recommendations to Government are practical and properly reflect the experience and views of all those who encounter these issues, whether by working within the criminal justice system or experiencing it as a victim, witness, defendant or general member of the public.

"The Commission's commitment to openness was...greatly welcomed by the Commission's stakeholders. Its open and transparent approach to law reform and policy making is an exemplar of the kind of open policy making championed in the Civil Service Reform Plan."

Triennial Review of the Law Commission, Report of Stage Two (2014), p12.

## Wills

*Source: 12th Programme*

*Lead Department: Ministry of Justice*

*Start: Early 2016*

*Consultation: Spring 2017*

*Complete: tbc*

*Outcome: Law reform recommendations and draft Bill*

It is estimated that 40% or more of the adult population does not have a will, and where they do, the state of the law means it may be found to be invalid. Where there is no will or a will is invalid, the intestacy rules will apply; they are a blunt instrument that cannot replace the expression of a person's own wishes. Certain individuals and bodies cannot benefit under the rules, including cohabitants and charities. It is therefore important that people make wills and that the law supports this.

The primary wills statute, the Wills Act 1837, dates from the Victorian era. The law governing testamentary capacity, the mental capacity to make a will, derives from a case from 1870. There is concern that the current law discourages some people from making wills, that it is out of step with social and medical developments, and that it may not work in such a way as to give best effect to a person's intentions on death. It has been criticised for being difficult to understand and apply, and for sometimes being unworkable in practice. In the case of mental capacity, this presents a growing problem, since conditions that affect capacity are becoming more common as people live longer.

This project will review the law of wills, focusing on four key areas that have been identified as potentially needing reform: testamentary capacity, the formalities for a valid will, the rectification of wills, and mutual wills. It will consider whether the law could be reformed to encourage and

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

We had planned to commence the project early in 2015, but at the start of 2015 the Government asked us to prioritise work on marriage law. We returned to the wills project following publication in December 2015 of our scoping report on marriage.

## Statute law

Consolidation of statute law and the repeal of statutes that are obsolete or no longer serve any useful purpose have been important functions of the Law Commission since its creation. By modernising the statute book and leaving it clearer, shorter and more accessible, this work helps to save time and costs for practitioners who work with the law and others who need to use it, and makes it easier for citizens to access justice.

### Consolidation

Over 200 consolidation Acts have been enacted since the Commission was established in 1965. The aim of this work is to make statute law more accessible and comprehensible; it can have real practical benefits.

“I end by thanking the Law Commission, which does an extremely good job for us in this country. I add my tributes to it for the work that it does all the time to present us with considered and measured proposals for legislation.”

Simon Hughes MP, HC Debate, 26 March 2014, C427.

### Statute law repeals

The work set out in this section forms the basis of the 20th Statute Law (Repeals) Bill, which we recommended to Government in June 2015.

## 20th century legislation

*Consultation: late 2014*

*Complete: February 2015*

*Outcome: Statute Law Repeals report and draft Bill*

A review of 20th century legislation suggests the existence of a considerable amount of comparatively modern but obsolete law that has fallen outside our previous repeals projects.

We completed a chronological examination of 20th century Acts and recommended repeals in a number of areas.

### *Finance, taxation and other repeals*

*Consultation: late 2014*

The largest single component is obsolete Acts relating to finance and taxation. We consulted on potential repeals of obsolete Acts relating to the police, criminal law, shipping and social security.

### *Trade and industry*

*Consultation: June 2014*

We recommended the repeal of 37 obsolete Acts and the partial repeal of 11 other Acts relating to trade and industry. The Acts span the period 1860 to 2007.

The repeals are in two groups. The first covers coal industry legislation starting just before the nationalisation of the coal industry in 1947. Much of the post-Second World War legislation relates to the Government's funding of the coal industry and the National Coal Board and is now obsolete.

The second group relates more generally to trade and industry legislation. Mostly dating from the 1940s, the obsolete enactments

reflect economic and social changes in the second half of the 20th century.

The recommendations include the repeal of:

- five Acts passed to regulate the telegraph industry;
- a 1938 Act passed to maintain stocks of food and fuel in the event of war;
- a 1939 Act passed to restrict the advertisement of insurance aimed at protecting home owners against war risks;
- a 1975 Act passed to prevent important manufacturing firms passing to non-residents; and
- a 1979 Act passed to regulate the Crown Agents.

## British India

*Consultation: 2012*

*Complete: June 2015*

*Outcome: Statute Law Repeals report and draft Bill*

This work represents the third and final phase of the Commission's review of obsolete or spent UK legislation relating to British India.

We reviewed some 24 statutes that enabled companies to be established and operate a variety of commercial undertakings either in, or in connection with, what was – until 1947 – British India (today principally India, Pakistan and Bangladesh).

## Churches

*Consultation: July 2014*

*Complete: June 2015*

*Outcome: Statute Law Repeals report and draft Bill*

This project examined 18th and 19th century Acts that were passed to raise money for the repair or rebuilding of ancient churches in England and Wales.

Parliamentary authority had been needed for these works because the costs were met by rates levied on the inhabitants of the parishes. In nearly every case, the Acts became obsolete once sufficient money had been raised from parishioners. Indeed, many of the churches in question no longer exist.

We have recommended the repeal of 121 obsolete Acts.



**Law Commission**

1st Floor, Tower  
52 Queen Anne's Gate  
London  
SW1H 9AG

020 3334 0200

[www.lawcom.gov.uk](http://www.lawcom.gov.uk)

@Law\_Commission