



**Law
Commission**
Reforming the law

Annual Report 2018 -19

The Law Commission

Annual Report 2018-19

(Law Com No 385)

The Fifty Third Annual Report of the Law Commission

Presented to Parliament pursuant to section 3(3) of the Law Commissions Act 1965

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Law Commission Annual Report 2018-19

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

This annual report covers the period 1 April 2018 to 31 March 2019, although we have also included references beyond the reporting period, up to and including 18 June 2019 when the terms of this report were agreed.



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Chair's introduction



To The Right Honourable David Gauke MP, Lord Chancellor and Secretary of State for Justice

I am proud to introduce the Law Commission's 53rd Annual Report.

I have been in office as Chair for just under one year and for this reason my comments in this report are somewhat more forward looking than retrospective.

During this period the Commission has been extremely active working on a range of projects of real significance to society and to the economy. Our Commissioners, lawyers, researchers and support staff have been busier than ever before. We have 24 projects on the books, with several more identified as candidates for reform within the 13th Programme. We are engaged in discussions with Ministers and senior civil servants about potential new projects, including abusive and offensive online communications and the non-consensual taking and sharing of intimate images.

Projects

We have taken on a review of the law relating to hate crime which focuses upon crimes which risk becoming a modern scourge. This project raises sensitive issues about the polarisation of society, the use of social media and the internet. We expect to take on a project to review the law relating to weddings, which is complex, uncertain and out of date, and in some cases is creating unfairness and hardship.

We are completing projects on official secrets, search warrants and on the crime of misconduct in public

office. We have secured a legislative slot to introduce the new Sentencing Code, which will improve clarity of the law and save up to £250 million over ten years. We are working on proceeds of crime and on anti-money laundering and may also secure future work relating to corporate criminal liability.

We are very busy on three major projects relating to leasehold land comprising leasehold enfranchisement, the right to manage and reinvigorating commonhold as an alternative to leasehold ownership. Collectively these projects will make a substantial difference to the rights and obligations of those who own their homes on long leases. We are providing implementation support in relation to our Making Land Work report and hope that legislation will be enacted through the Law Commission Special Procedure.

We are consulting on the law relating to surrogacy. This is a sensitive and important project which many in society are interested in. There is a widespread view that the law needs to be reformed and updated. We aim to produce a final report on this in 2020.

We are looking at a range of projects which we consider will help liberalise the economy. These include electronic signatures and insurable interest. We will also start work on intermediated securities, a project contained within the 13th Programme designed to produce a scoping study which will provide an accessible account of the law and highlight issues concerning investors, intermediaries and banks for potential future review.

We are working closely with Government on electoral law and hope to produce a report and recommendations in the coming months. This is also the case for our work on Immigration Rules, a project which is designed to simplify the rules regulating the entry and stay of persons in the UK who do not have the right of abode. Finally, we are drawing together proposals for the reform of Employment Law Hearing Structures.

Wales

In our role as the Law Commission of Wales we are delighted that the Legislation (Wales) Bill is passing through the Welsh Assembly. It enshrines the recommendations of the Law Commission for improving the accessibility of law. Wales is one of the first jurisdictions worldwide to enshrine the public importance of a legislative commitment to improving the accessibility of law to individuals. In this context accessibility means making the law simpler and more easily understood by those who are subject to it. It also means seeking to make it easier to find, digitally, and, once found, more easily navigable. In Wales we are also working on a project to codify Welsh planning law and we will embark upon a project relating to the tribunal system in Wales. We have confirmed to Lord Thomas of Cwmgiedd and the Commission on Justice in Wales that we would want to be part of the membership of the proposed Law Council of Wales, should the Commission's proposal for a Law Council be taken forward.

The future work of the Law Commission

Over the next 10 years or so the “big” issues of the day will surround subjects such as: artificial intelligence; bio-ethics; the implications of demographic change; digitisation of the economy, government and the delivery of justice and other public services; security of the state as against freedom of speech and freedom of the individual; and cyber-crime. My fellow Commissioners and I have been giving thought to how the Law Commission should adapt to these existing and future challenges. Future legislation will need to be smarter than it is now. We will need to be able to devise legislative solutions to all sorts of cutting-edge problems arising out of technologies and sciences which are in a state of rapid evolution. We will need to ensure that we have the appropriate skills.

We are already grappling with some of these challenges. We have issued a consultation paper on driverless, automated vehicles. We are seeking to devise a legislative framework for a technology that is not yet fully formed and to address problems the full extent of which are not easy to predict and which

are, as yet, only hypothetical. But we recognise the value in finding solutions which meet the need for consumer safety yet also increase legal certainty for manufacturers.

Diversity

I am anxious to increase the diversity of the Commission and in this connection have launched two widespread outreach programmes.

The first was to encourage those who might not otherwise have considered applying to become Law Commissioners to come and meet us. At the end of 2019 we are replacing two Commissioners, Professor David Ormerod and Stephen Lewis. We are looking to recruit “modern” lawyers who might be from less traditional backgrounds than we have recruited from in the past. We seek individuals who have intellectual excellence but also a curiosity about modern legal issues and themes and an enthusiasm for change. The next five years will present enormous challenges. This will be a fascinating time to be a Commissioner. Our two new appointments will have the opportunity to impress their own personalities and skills upon law reform for the future.

We have also introduced an outreach programme targeted at those from underrepresented backgrounds. We have invited them to come and meet us and spend time in work shadowing. This is a long-term programme. We must increase our interaction with a wider and more diverse group. By showing ourselves to be more approachable we intend to encourage lawyers from a wide variety of backgrounds to consider us at future points in their careers.

I have been delighted at the positive response we have had to these two initiatives.

The value of law reform

I have commissioned two economists to conduct a review of the work of the Law Commission. Government tends to measure success in amounts saved. I recognise that in times of fiscal restraint a law reform measure which saves money is important, but law reform is also about generating

much broader benefits for society and the economy. It is about formulating laws which improve the daily lives of citizens; it is about protecting people from the worst excesses of the internet and new social media; it is about devising laws which create first-mover advantages for the economy and laws which increase legal certainty, and which helps business activity thrive. It is also about improving the access of ordinary people to justice and to social benefits. It is about devising clear ethical rules which govern how science and technology evolve.

The work that we are doing to measure the value of law reform will be important in guiding the Commission when selecting future projects, where we will wish to measure the value that we can bring to society as a whole. We wish to ensure that society gets the maximum return from our use of public funds.

Budgetary and governance matters

As ever, budgets are an issue. Our core funding comes out of the MoJ budget but we have seen this funding cut by 54% since 2010.

The Law Commission has overcome this deficit by engaging with individual Departments to secure new law reform projects on a funded basis. In overall terms, we still receive about the same amount of money from the public purse that we did in 2010. The establishment of strong relationships with Government Departments across Whitehall has enabled the Commission to generate significant income from its project work. But there are also some real practical drawbacks which mean that the Law Commission's funding model needs to be re-examined. In the Tailored Review carried out by the MoJ and published in early 2019 our work was recognised as being of "vital" importance but it was also recognised that there is a need for our funding position to be reviewed. I look forward to this review. I am confident that there are ways in which the work of the Law Commission can be made even more valuable to Government, to Parliament, to society and to the economy.

Independence

The strength of the Law Commission lies in its independence. We are of value to Government because our work is often in controversial areas and is designed to find common ground and produce workable solutions to otherwise intractable problems. Additionally, some of our work is also technical and uncontroversial, but still has significant impact on those affected. Parliament can have confidence that Law Commission proposals have been intensely scrutinised. And we are able to devise workable solutions because we consult very widely. We listen very hard and stakeholders and the public talk to us.

We know that Government also recognises the importance of our independence. But we also live in complicated times and there are pressures placed upon us that means that the Commissioners must form delicate judgment calls about a range of issues. Yet it is that independence that is pivotal to our ability to add value to Government and to Society and it is a characteristic that, as Chair, I am determined to preserve and protect.

I cannot complete this introduction without paying tribute to the staff of the Law Commission, comprising lawyers, legal researchers and support staff. They are an exceptionally talented and dedicated group who work immensely hard, often under extreme pressure. They have skills and expertise which are more or less unparalleled across Government. In my time as Chair I have been constantly amazed at the sheer quality of the work that they undertake.



Sir Nicholas Green
Chair

Chief Executive's comment



This has been a very strong year for the Commission. We have an incredibly diverse range of projects and we are seen across Government and beyond as a very valuable option for helping to tackle complex legal issues affecting individuals, business and wider society. After the unavoidable delay in signing-off the 13th Programme, it has been something of a relief to be able to focus on our core work: law reform.

While we were sorry to lose Sir David Bean as Chair during the year, following the completion of his three-year term, we have been delighted to welcome Sir Nicholas. He has brought new energy and ideas to the organisation. He has also been particularly instrumental in spearheading some of the work we have been undertaking to improve the diversity of our Commissioners. I am also very grateful to Sir David Bell for all his support to the organisation as a Non-Executive Board Member. Sir David decided to step down following his appointment as Vice-Chancellor of Sunderland University and his subsequent relocation to the North East. From 1 June, we welcome Baroness Deech and Joshua Rozenberg to the Commission who join Bronwen Maddox as our Non-Executive Board Members.

We have also been very successful in attracting a large number of projects for which the Commission receives direct funding from relevant Whitehall Departments. This resulted in a degree of financial clarity during 2018-19, which was particularly welcome after several years of uncertainty. Although the Commission was able to balance the books this year, I remain of the view that the operating model is very volatile. It is only a matter of time until we are, through no fault of our own, unable to realise a sufficient number of paid projects, leading to a budget shortfall. It is unclear what would happen in such circumstances. I was therefore particularly pleased to note the recommendation in the independent Tailored Review, undertaken during 2018-19, that the MoJ should work with the Commission to review our financial model. This will be a priority area of work for the Commission.

Our key asset remains our staff. They are the country's leading experts on law reform, which is one of the key reasons why we continue to deliver such a high profile and relevant range of projects. However, they are working under significant pressure and that shows little sign of easing, not least given the constant need to identify new sources of funding from around Whitehall. Our teams have coped with these realities incredibly well and I am grateful to everyone for their hard work and commitment. More than that, I am grateful to everyone for their contribution in helping to make the Law Commission an enjoyable and stimulating place to be; our People Survey results were some of the best in Government and, while I am not complacent, I think it shows that the Commission is in a strong place right now. I am determined to maintain that position in 2019-20.

A handwritten signature in black ink, which appears to read 'Phillip Golding'. The signature is fluid and cursive, written on a white background.

Phillip Golding
Chief Executive

Part One:

Who we are and what we do

The Law Commission

The Law Commission is headed by five Commissioners, all of whom are appointed by the Lord Chancellor. At 31 March 2019, the Law Commissioners were:

- The Rt Hon Lord Justice Green¹, Chair.
- Professor Nick Hopkins², Property, Family and Trust Law.
- Stephen Lewis³, Commercial and Common Law.
- Professor David Ormerod QC⁴, Criminal Law.
- Nicholas Paines QC⁵, Public Law and Welsh Law.

The Rt Hon Lord Justice Bean left the Law Commission on 30 July 2018 after completing his three year term as the 14th Chair of the Commission.

The Commissioners are supported by the staff of the Law Commission. The staff are civil servants and are led by a Chief Executive, Phillip Golding.

The Law Commission was created by the Law Commissions Act 1965 for the purpose of reforming the law. It is a statutory arm's length public body, which is sponsored by the Ministry of Justice (MoJ).

The Law Commission's principal objective is to promote the reform of the law. We do this by reviewing areas of the law and making recommendations for change. We seek to ensure that the law is as simple, accessible, fair, modern and cost-effective as possible.

A number of specific types of reform are covered by the Law Commissions Act 1965:

- Simplification and modernisation of the law.
- Codification.
- Removal of anomalies.
- Repeal of obsolete and unnecessary enactments.
- Consolidation of legislation.

The progress we have made on our law reform projects during 2018-19 is recorded in Part Two.

COMMISSIONER RECRUITMENT

On 28 March 2019, the Law Commission launched a recruitment campaign for two new Commissioners to replace Stephen Lewis and Professor David Ormerod QC who will be leaving the Commission in 2019-20 as they complete their terms as Commissioners.

In addition to the traditional legal skillset and expertise, candidates are expected to be able to react to new challenges arising from Brexit, as well as undertaking work focused on emerging technologies such as AI, bioethics and machine learning. The recruitment campaign has now closed and we expect to announce appointments later in the year.

Alongside this, we have established a Commissioner diversity workshadowing scheme. This will help us to attract as broad and diverse a pool of talent as we possibly can to find our Commissioners of the future. The scheme is aimed at those from under-represented groups and provides candidates with an opportunity to experience the role, helping them to decide whether they wish to take their interest further – whether now or in the future. For more information, see page 13.

LAW COMMISSION BOARD

The Commissioners, Chief Executive and non-executive board members meet as the Law Commission Board on a monthly basis. They are joined by the Law Commission's team heads and Senior Parliamentary Counsel. Board meetings are used to set the Commission's strategic direction, review risk, discuss operational matters and review the financial position.

1 Sir Nicholas Green joined the Commission on 1 August 2018.

2 Professor Nick Hopkins joined the Commission on 1 October 2015.

3 Stephen Lewis joined the Commission on 1 January 2015.

4 Professor David Ormerod QC joined the Commission on 1 September 2010.

5 Nicholas Paines QC joined the Commission on 18 November 2013.

NON-EXECUTIVE BOARD MEMBERS

The Law Commission's non-executive board members provide support, independent challenge and expertise to the Commission when it is meeting as a Board. The selection of projects and the content of Law Commission reports and consultation papers are, however, the responsibility of Commissioners.

As of 31 March 2019, Bronwen Maddox was the Law Commission's sole non-executive board member. On 27 September 2018, Sir David Bell stepped down from his role as non-executive board member following his appointment as Vice-Chancellor of University of Sunderland. Sir David's support and scrutiny of our work provided significant value to the Board and we wish him well.

We recently completed a recruitment process to replace Sir David Bell and were pleased to appoint Baroness (Ruth) Deech DBE QC (Hon) and Joshua Rozenberg QC (Hon) as non-executive board members from 1 June 2019.

OUR OBJECTIVES

We have worked together to identify the characteristics to which the Law Commission should aspire:

- To be the authoritative voice on law reform.
- To make a difference through our law reform work.
- To be proactive in promoting the need for law reform in key areas and achieve "good law".
- To have a strong reputation in the UK and abroad for being effective in the delivery of law reform.
- To attract the best talent and be an excellent place to work.

Our Business Plan⁶ for 2018-19 identified four priority areas:

- Law reform – ensuring that the law is fair, modern and clear.

- A forward looking organisation – to develop the strategic use of the Law Commission across Government.
- A great place to work – to continue to support and develop the Law Commission's staff.
- Good corporate governance – to ensure decision making that is robust and sound.

The commitments to meet these priorities can be found at Appendix D.

OUR RELATIONSHIP WITH THE MINISTRY OF JUSTICE

In July 2015 we agreed a Framework Document with the MoJ⁷, which sets out the broad framework for the Department's sponsorship of the Commission and how the relationship between us and the MoJ should operate.

The document outlines the responsibilities of the MoJ sponsorship team in relation to the Commission. The sponsorship team and ALB Centre of Expertise are our primary contacts within the MoJ. Its members act as advocates for us within the Ministry and other Departments, and ensure that we are aware of MoJ's views and any relevant departmental policies.

The Framework Document makes it clear that, while the sponsorship team has a role in monitoring the Commission's activities, it has "no involvement in the exercise of the Commissioners' judgment in relation to the exercise of their functions".

The frequency with which Ministers of the MoJ and other Departments will meet members of the Commission, and the scope of the Commission's relationship with Parliament are also set out in the Framework Document, albeit that, in recent times, these arrangements have tended to operate more flexibly. It details the Lord Chancellor's statutory duties in relation to the Commission and the direct relationship we have with Parliament through, for example, maintaining contacts with Parliamentarians

⁶ <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/06/201819-Business-plan-Final-.pdf>.

⁷ Framework Document: Ministry of Justice and the Law Commission for England and Wales (2015).

and committee chairs, and giving evidence in relation to our functions or projects.

TAILORED REVIEW

In line with Cabinet Office requirements, the Law Commission was subject to a Tailored Review⁸ in 2018-19. A tailored review evaluates the work of an Arm's Length Body, providing robust challenge to and assurance on the continuing need for the organisation.

The review covered a wide range of areas including the Commission's purpose and objectives, finances and funding model, effectiveness, governance, diversity and transparency, openness and accountability. Overall, the report painted a very positive picture of the work the Commission is doing and the way it operates. Key findings included:

- The Law Commission's functions are still required with stakeholders describing the Commission's existence as '*essential*', '*imperative*' and '*vital*'.
- The Commission is effective in the delivery of its functions.
- The Commission should remain as an Advisory Non-Departmental Public Body to protect operational independence and perception of independence.
- MoJ and Law Commission should conduct a review of the current funding model and arrangements to ensure that the Law Commission's funding is sufficiently robust.

The Tailored Review also provided recommendations for improvements in effectiveness in relation to areas such as diversity, implementation of our recommendations, and hiring new staff. A full list of the recommendations can be found at Appendix C.

The Law Commission was pleased with the positive conclusions that the Government reached. We commit to reviewing and implementing all recommendations.

MEASURING SUCCESS

The implementation of our recommendations for reform is clearly an important indicator of the success of the Law Commission. This is covered in detail in Part Three of this report.

However, implementation does not fully demonstrate the breadth of our impact. In an effort to assess our impact and influence, we take note of instances when the Law Commission is cited in judgments or during business in the Houses of Parliament. During the reporting period the Commission was mentioned 87 times in judgments in England and Wales and our name appears 158 times in Hansard, the official report of Parliamentary proceedings.

Our work is also widely quoted in academic journals and the media, with over 5,000 references to the Law Commission across national, local, trade and academic media during the reporting period. Some were supportive, others not. At the very least these figures show that we continue to engage the attention of people with an interest in the law and what can be achieved through its reform.

Historically, more than two thirds of our reports have been accepted by Government in whole or in part. However, there are many reasons why our recommendations for reform may not be implemented despite being accepted by Government. This may include a lack of Parliamentary time to debate our proposals or a change in ministerial priorities.

THE LAW COMMISSION IN WALES

Working with the Welsh Government

The Wales Act 2014 brought into force amendments to the Law Commission Act 1965 to take account of Welsh devolution, making significant changes to our relationship with the Welsh Government and how we work with Welsh Ministers in relation to devolved matters.

⁸ <https://www.gov.uk/government/publications/tailored-review-of-the-law-commission>.

The Act empowers us to give information and advice to Welsh Ministers. In turn, this enables Welsh Ministers to refer work directly to the Commission whereas, previously, referrals could be made only through the Wales Office. This is a very welcome development.

The 2014 Act also:

- Provides for a protocol⁹ setting out the working relationship between the Law Commission and the Welsh Government.
- Requires Welsh Ministers to report annually to the Welsh Assembly about the implementation of our reports relating to Welsh devolved matters.

Reforming the law in Wales

Our 12th Programme of Law Reform included, for the first time, two law reform projects that related to Wales only:

- The Form and Accessibility of the Law Applicable in Wales – a report was published in June 2016 with the majority of the recommendations accepted. See page 35 for more details.
- Planning Law in Wales – a report setting out recommendations for the simplification of planning law in Wales was published in December 2018. See page 28 for more details.

As part of our 13th Programme of Law Reform, we resolved to undertake at least one law reform project on a devolved area of law. This has since been identified as devolved tribunals in Wales.

We continue to keep the machinery already in place to provide law reform in Wales under review, making improvements where possible. One of our Commissioners, Nicholas Paines QC, also has special responsibility for Welsh law. He and our Chair, Sir Nicholas Green, spoke about law reform

in Wales at the 2018 Legal Wales conference in Aberystwyth.

We are grateful for the support and contributions we have received from our colleagues and stakeholders in Wales.

Welsh Advisory Committee

The support we have received throughout the year from our Welsh Advisory Committee has been much appreciated. We established the Committee in 2013 to advise us on the exercise of our statutory functions in relation to Wales, and to give the people of Wales a stronger voice in law reform.

Commission on Justice in Wales

The Commission on Justice in Wales, chaired by Lord Thomas of Cwmgiedd, has been set up to review the operation of the justice system in Wales and set a long term vision for its future. In June 2018, we were invited to provide written evidence¹⁰ to the Commission setting out the approach taken by the Law Commission to its functions in relation to Wales and how we see the future relationship with Wales developing.

Welsh Language Policy

We published our Welsh Language Policy¹¹ on 4 September 2017. This sets out our commitment to treating with linguistic parity projects relating to Wales and projects which are likely to have significant public interest in Wales. We now routinely publish appropriate project documents, such as report summaries, bilingually.

The policy states that it will be reviewed on an annual basis with progress reported to the Board. This was completed by the Law Commission's Chief Executive in September 2018 and an update on progress against the action plan¹² was published on our website.

9 Protocol rhwng Gweinidogion Cymru a Comisiwn y Gyfraith/Protocol between the Welsh Ministers and the Law Commission (2015).

10 <https://gov.wales/submission-justice-commission-law-commission>.

11 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/06/LC-Welsh-Language-Policy.doc>.

12 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/11/Update-on-progress-with-Welsh-Language-Policy-Action-Plan.pdf>.

Commissioner outreach programme

One of the Law Commission's missions is to ensure the law is fair and to do this, it is necessary that the Commission is inclusive and representative of the public we serve.

While Commissioner appointments are made by the Lord Chancellor, the Law Commission has been keen to increase its diversity. In November 2018, we launched a Commissioner outreach scheme to support this aim. The scheme is specifically targeted at encouraging applications from under-represented groups at the Commission, which at present, includes:

- Women.
- Black, Asian and Minority Ethnic (BAME).
- Socially or economically disadvantaged.
- Those who consider themselves to have a disability within the meaning of the Equality Act 2010.

Our work, over the next few years, will take place in a challenging constitutional, technical, economic and social climate. Law Commissioners will be at the heart of this endeavour and will need to have the skills that equip them to deal with the challenges posed by these changes.

Whilst all future Commissioners must have the legal expertise required for the role, this scheme will ensure we look to as broad and diverse a pool of talent as we possibly can to find our Commissioners of the future.

We are looking beyond our traditional recruiting grounds and are encouraging those who might never have considered themselves to be "Law Commission" material to apply. This could include those from Government or in a non-university academic setting, interested and qualified to undertake a legally focussed role.

If they have the abilities and drive we that we are looking for, then we are interested in meeting them.

The scheme

The scheme has three aims:

- To alert people who may not know much about the Commission or our work and encourage them to consider whether it is something that might interest them.
- To show what the role is like, highlighting the vast variety in tasks and opportunities for Commissioners.
- To provide the chance to meet Commissioners and gain first-hand experience of what the role entails.

In order to maximise the impact and increase awareness of the scheme, the Chair spoke to the Law Gazette for an article on the importance of diversity in the law. The Chair also wrote to stakeholders, encouraging them to share details with colleagues and apply if interested, whilst we advertised the scheme on our social media channels.

For those interested in learning even more, we offered the opportunity to shadow a Commissioner for a day to gain first-hand experience of the role.

Success so far

This is a long-term scheme, the success of which will be measured over a number of years. While it is in its infancy, the results are encouraging. The Commissioner diversity landing pages on our website have received over 2,000 unique page views. 18 people have engaged with us about the forthcoming Commissioner appointments and we have had 13 requests around our diversity work shadowing scheme. This has led to several people who have so far shadowed a Commissioner for the day.

In this uncertain future, we are determined to keep abreast of developments and remain relevant. This scheme and a desire to represent the entirety of England and Wales will help us to achieve this.

If you are interested in taking part in the scheme or would like to find out more, then please visit our website.¹³

Part Two:

Review of our work in 2018-19

Commercial and common law

Commissioner: Stephen Lewis



Insurable Interest	Draft Bill published for comment	June 2018	page 12
Electronic Execution of Documents	Consultation opened	August 2018	page 12
Right to Manage	Consultation opened	January 2019	page 13
Smart Contracts	Project paused	March 2019	page 13

Insurable Interest

At its simplest, the requirement for insurable interest means that, for a contract of insurance to be valid, the person taking out the insurance must have an interest in the subject matter of the insurance. This generally means they must stand to gain a benefit from its preservation or to suffer a disadvantage should it be lost or damaged. The Life Assurance Act 1774 and the Marine Insurance Act 1906 provide that the absence of insurable interest renders an insurance contract void and unenforceable.

The current law is unclear in some respects and antiquated and restrictive in others. It is inhibiting the insurance market's ability to develop products for which there is demand. As a result we, together with the Scottish Law Commission, are working to develop recommendations which will simplify and update the law in this area, and draft a Bill to implement those proposals. We have consulted on this difficult issue several times, including on two drafts of a Bill.

Responses to our consultations have shown strong support for retaining the principle of insurable interest. It is said to guard against moral hazard, protect insurers from invalid claims and distinguish insurance from gambling. Stakeholders have particularly emphasised the need for reform of insurable interest in the context of life and related insurances, such as health insurance.

Our proposals are intended to be relatively permissive, to ensure that, broadly speaking, any legitimate insurance products that insurers want to sell and people wish to buy, can be made available. Whether insurance is appropriate in any given circumstances should be left to the market to determine, with regulatory intervention if necessary.

In our most recent consultation, we consulted on a draft Bill which would remove archaic restrictions in order to allow people to insure the lives of their children and cohabitants, and a greater ability to insure the lives of employees. We are now analysing responses to the consultation and will produce a report with final recommendations and a draft Bill in 2019.

Electronic Execution of Documents

Most modern businesses have embraced technology to conduct transactions online and electronically. However, we have been told that uncertainty around the electronic execution of documents is preventing some businesses from moving towards fully electronic transactions, which could be faster and more efficient.

Our project focuses on two aspects of the electronic execution of documents:

- The use of electronic signatures to execute documents where there is a statutory requirement that a document must be “signed”.
- The electronic execution of deeds, including the requirements of witnessing and attestation and delivery.

In August 2018, we published our consultation paper with the provisional conclusion that an electronic signature is capable, in general, of meeting a statutory requirement for a signature. We asked whether consultees agreed that legislative clarification was not necessary. You can read more about our consultation and proposals on page 14.

We expect to publish the report in Autumn 2019.

Right to Manage

The commercial and common law team is responsible for delivering the Right to Manage project, which falls under the Residential Leasehold programme of work. A full update on all of the Residential Leasehold projects, including Right to Manage, can be found on page 21.

Smart Contracts

“Smart contracts” refer to the technology which runs on blockchain and by which legal contracts may be executed automatically, at least in part. The use of smart contracts is expected to increase efficiency in business transactions and it is suggested that the use of blockchain technology will increase trust and certainty. It is important to ensure that English courts and law remain a competitive choice for business.

This project was intended to consider how the existing law applies to smart contracts, to ensure that the law is sufficiently certain and flexible to apply in a global, digital context and to highlight any topics which lack clarity or certainty.

We commenced our preparatory work in September 2018, and engaged with over 60 stakeholders about smart contracts and related issues. We also spoke at an All Party Parliamentary Group on blockchain, and other technology events. We planned to publish a call for evidence in early 2019, and hold a symposium to discuss emerging issues. However, in March 2019 we announced that we have paused our work on smart contracts to avoid potential duplication with work being carried out by the Law Tech Delivery Panel announced by the Lord Chancellor. Pending the outcome of that work, we stand ready to assist if further review is required to ensure that the law of England and Wales can provide a suitable foundation for LawTech and commerce in the digital age.

Electronic execution of documents

Individuals and businesses demand modern, convenient methods of making binding transactions. Increasingly, parties are concluding agreements entirely electronically. But lingering uncertainty around the legal validity of electronic signatures, at least in some circumstances, can discourage parties from executing documents electronically. This may disproportionately affect small businesses and start-ups, who may not have ready access to legal expertise.

Stakeholders highlighted particular concerns in relation to the execution of deeds, which must be signed “in the presence of a witness” and “attested”. Stakeholders asked whether the signatory and witness must be physically in the same room, even where electronic signatures are being used.

Our project considers whether reform of the law relating to the electronic execution of documents is required or would be beneficial.

Our approach

We took a technology-neutral approach, meaning that we did not favour a particular type of technology. We use the term “electronic signatures” broadly, to cover everything from a scanned manuscript signature that is added to documents to digital signatures and Public Key Infrastructure.

As well as researching the law in England and Wales, including applicable EU law, we examined the position in other jurisdictions including Australia, Estonia, Hong Kong, New York, Scotland, and Singapore.

And in the course of preparing our consultation paper, published in August 2018, we spoke to a broad range of stakeholders including law firms, notaries, academics and technology experts, including providers of electronic signature services.

We are currently in the process of analysing the 177 responses received to the consultation. Early indications suggest that stakeholders agree with several of our provisional proposals as well as our technology neutral approach.



We also wish to express our appreciation for the considerable work that has been undertaken by the Law Commission in researching and preparing the consultation paper.

(CMS LLP in response to the Law Commission’s consultation paper on Electronic Execution of Documents (LCCP237))



Provisional conclusions and proposals

Electronic Signatures

There are already measures in place in England and Wales which address the question of whether an electronic signature will satisfy a statutory requirement for a signature. The Court of Appeal and the High Court have held in several cases that electronic methods of signing, such as a typed name in an email, and clicking on an “I Accept” button, are capable of satisfying a statutory requirement for a signature.

Furthermore, an EU regulation known as “eIDAS” provides that an electronic signature cannot be denied legal effectiveness solely because of its electronic nature. Section 7 of the Electronic Communications Act 2000 provides that an electronic signature is admissible in evidence.

Our provisional view in the consultation paper was that, under the current law of England and Wales, an electronic signature is capable of meeting a statutory requirement for a signature, provided that an “intention to authenticate” can be demonstrated.

We acknowledged that some stakeholders would like a clear legislative statement to avoid any doubt, but we provisionally concluded that it was not necessary. We also thought it could upset the existing confidence in electronic signatures if there was a delay in implementing any legislation. However, the issues were finely balanced, and we asked for consultees' views.

Deeds

We acknowledged the particular issues relating to the electronic execution of deeds, and said that the current law requires the signatory and witness to be physically together in the same room, even if executing the deed electronically. We discussed various options, including whether witnessing by video-link, or via an online signing platform, should be permitted.

Many of the issues stakeholders raised about deeds related to all deeds, not just those executed electronically. We were not able to deal with these issues within the scope of our current project, which is focused on electronic execution, but asked whether consultees felt a more general review of deeds was required.



Security and other practical issues

Legal stakeholders told us that it is not only the question of legal validity which is impeding the electronic execution of certain transactions. Practical issues, such as the security and reliability of electronic signatures, are also important. Some stakeholders were particularly concerned about vulnerable people and the risk of fraud, such as in the context of lasting powers of attorney.

Attempting to legislate for these concerns could risk tying parties to limited types of technology, which may become outdated almost immediately. Instead, we proposed the creation of an industry working group to consider practical, technical issues which may be influencing a party's decision to execute a document electronically, and give guidance as to how such issues could be managed. As well as security and reliability, these issues may include questions of trust and identity, the interoperability of electronic signature systems, and the archiving of information. We also noted that it can be tempting for parties to over-emphasise the security of "wet ink" signatures over electronic signatures.



We would like to first thank the Law Commission for the work it has invested in this project and for the very helpful contents of the Consultation Paper.

(Hogan Lovells LLP in response to the Law Commission's consultation paper on Electronic Execution of Documents (LCCP237))



Criminal law

Commissioner: Professor David Ormerod QC

Misconduct in Public Office	Consultation opened	September 2016	page 16
Protection of Official Data	Consultation opened	February 2017	page 16
Search Warrants	Consultation opened	June 2018	page 17
Sentencing Code	Report published	November 2018	page 17
Abusive and Offensive Online Communications	Scoping report published	November 2018	page 18
Confiscation of the Proceeds of Crime	Project started	November 2018	page 18
Hate Crime	Project started	March 2019	page 18
Anti-money Laundering	Report published	June 2019	page 18

Misconduct in Public Office

Misconduct in public office is a common law offence: it is not set out in any statute. The offence is widely considered to be ill-defined and has been subject to criticism by the Government, the Court of Appeal, the press and legal academics.

We are reviewing the current law with the aim of providing options for reform and modernisation.

We published an issues paper in January 2016, and a further consultation paper in September 2016. As part of our consultation, we proposed the creation of two criminal offences to replace the common law offence of misconduct in public office: an offence criminalising a breach of duty causing or risking serious harm and an offence criminalising an abuse of position for the purpose of achieving a benefit or causing a detriment.

Our proposals were based on an analysis of the harms and wrongs underlying the current offence. We also propose ways to define public office more clearly and consistently. Finally, we sought consultees' views on additional reforms, such as a review of sexual offences and the specification of public office as an aggravating factor for the purposes of sentencing.

The boundaries of the current law are unclear. New statutory offences would improve clarity, transparency and fairness, and should lead to better charging decisions and fewer difficult cases needing extensive judicial consideration.

We are working towards publication of the report in Autumn 2019.

Protection of Official Data

In 2015 we were asked by the Cabinet Office to undertake an independent review of the law around the protection of official data, including the Official Secrets Acts, to ensure that the relevant statutes keep pace with the challenges of the 21st Century.

We launched an open public consultation in February 2017 and received a large number of responses. The focus of our work has been primarily upon the Official Secrets Acts 1911-1989. We have also analysed the numerous other offences (over 120) that exist to criminalise the unauthorised disclosure of information. In addition, we have examined matters that might arise in the investigation and prosecution of Official Secrets Act cases. Finally, we have examined the argument that could be made for the introduction of a statutory public interest defence to

the unauthorised disclosure offences contained in the Official Secrets Act 1989.

Clear, modern offences should assist with the proper protection of official data, enhancing justice and transparency and providing the right protection to citizens.

We are working towards publication of the report in Autumn 2019.

Search Warrants

A search warrant is a court order authorising a police officer or other official to enter a building or other place and search for articles specified in the warrant. The complexity of the present law means that decisions to issue a search warrant as well as the way the warrants are executed are prone to error and legal challenge.

The Home Office has asked us to identify and address problems with the law governing search warrants and to produce reform which will clarify and rationalise the law.

In our consultation paper, which was launched in June 2018, we made provisional proposals designed to simplify the law, introduce extra protections for the public and modernise the powers needed by law enforcement to investigate serious crime.

Reform would bring clarity to the agencies applying for warrants and to those whose premises are subject to them. It should also allow better and more efficient processes for application, issue, execution and challenge of warrants. Most importantly, reform will clarify the position of electronic material stored overseas.

We are scheduled to publish a final report in Summer 2019.

Sentencing Code

The law on sentencing procedure affects all criminal cases, and is applied in hundreds of thousands of trials each year. Currently, the law lacks coherence and clarity. It is spread across many statutes, frequently updated and has a variety of transitional arrangements. This makes it difficult for the courts to understand the present law.

We published our report on 22 November 2018 and recommended the introduction of a single sentencing statute that will act as the comprehensive source of sentencing law – the “Sentencing Code”. The Sentencing Code would:

- Help stop unlawful sentences by providing a single reference point for the law of sentencing, simplify many complex provisions and remove the need to refer to historic legislation.
- Save up to £250 million over the next decade by avoiding unnecessary appeals and reducing delays in sentencing clogging up the court system.
- Rewrite the law in modern language, improving public confidence and allowing non-lawyers to understand sentencing more easily.
- Remove the unnecessary layers of historic legislation.
- Allow judges to use the modern sentencing powers for both current and historic cases, making cases simpler to deal with and ensuring justice is better served.

We are now working with MoJ to prepare for the Sentencing Code to be implemented. The pre-consolidation amendments Bill was introduced into the House of Lords on 22 May 2019. The Sentencing Code should follow in due course.

Abusive and Offensive Online Communications

The Prime Minister announced in February 2018 that the Law Commission was to conduct a review of the application of existing criminal offences of offensive communication to conduct online, with a view to identifying deficiencies in the law.

We published our scoping report on 1 November 2018 concluding that abusive online communications are, at least theoretically, criminalised to the same or even a greater degree than equivalent offline offending although there is considerable scope for reform. For more information, see page 19.

Confiscation of the Proceeds of Crime

We have agreed with the Home Office to review the law on confiscation in Part 2 of the Proceeds of Crime Act 2002. The law on confiscation enables the state to deprive offenders of the benefit of their criminal conduct.

The review will aim to improve the process by which confiscation orders are made, ensure the fairness of the confiscation regime, and optimise the enforcement of confiscation orders. The review will also consider alternative legal models.

We aim to publish a consultation paper in late 2019.

Hate Crime

In September 2018 Lucy Frazer MP, the then Parliamentary Under-Secretary of State for Justice, announced that she would be asking the Law Commission to complete a wide-ranging review into hate crime to explore how to make current legislation more effective and consider if there should be additional protected characteristics.

Building on our 2014 Report, this project will review the adequacy and parity of protection offered by the law relating to hate crime and to make recommendations for its reform. It will also consider which characteristics (for example gender, age, disability) deserve enhanced protection in criminal law and on what basis.

We aim to publish a consultation paper in early 2020.

Anti-money Laundering

We were commissioned by the Home Office to review the consent provisions of the anti-money laundering regime in Part 7 of the Proceeds of Crime Act 2002 and of the counter-terrorism financing regime in Part 3 of the Terrorism Act 2000. We published our report on 18 June 2019.

The primary purpose of the review was to improve the prevention, detection and prosecution of money laundering and terrorism financing in the UK. The review focussed on the current consent regime and analysed the benefits and problems arising from it to produce reform options.

Our report outlines the need for a more efficient system in which there is an improved understanding of existing obligations. This should lead to better quality reports being submitted by the regulated sector allowing law enforcement agencies to act on opportunities to disrupt, prevent and investigate crime.

To facilitate this, we recommend creating a single authoritative source of statutory guidance on what to look for and a set format for submitting suspicious activity reports. The guidance will also provide detail as to what amounts to a defence of "reasonable excuse" for not making a suspicious activity reports and on the concept of "appropriate consent". We also recommend ensuring oversight and cooperation in the administration of the SARs regime through the creation of a POCA Board drawing representation from across the sector. We also suggest providing legal protection for banks which choose to lock into an account the suspected criminal funds but leave the rest of the account open to trade thereby minimising the risk of severe financial loss for those who are the subject of a disclosure.

Abusive and offensive online communications

Current law

The rise of the internet and social media in recent decades has fundamentally reshaped the way we engage with each other and as a society. This radical shift has brought many benefits, but there are also associated risks and harms, and it has proved challenging for the law to keep pace with this rapidly changing environment.

As part of the Government's efforts to make the UK the safest place online in the world, the Prime Minister announced in February 2018 that the Law Commission was to review the current law around abusive and offensive online communications and highlight any gaps in the criminal law which cause problems in tackling this abuse.

Our agreed Terms of Reference asked us to consider the applicable criminal law, identifying any deficiencies, focusing on whether the criminal law provides equivalent protection both online and offline. We also considered whether specific groups in society are more vulnerable to abuse than others.

Our approach

As this Scoping Report makes no substantive recommendations for reform, we did not hold a formal public consultation as we would do if we were suggesting any change to the law. However, in making an assessment of how the law works in practice, it was important that we understood the perspectives of those affected by it.

Stakeholders generously gave up their time and shared their experiences with us. They included victims and the charities which support them, Members of Parliament affected by this issue, representatives from the technology companies, the Crown Prosecution Service, lawyers, civil liberties groups and many others. We also liaised with Government departments including the Department for Digital, Culture, Media and Sport (DCMS), and the Government Equalities Office, as well as the London Mayor's Office for Policing and Crime. In total, we estimate we have asked more than 400 stakeholders for their views on this project or to share their

experiences of the law in this area with us. We have held individual meetings or round table conversations with at least 150 people.

As part of our review, we sought evidence from jurisdictions other than England and Wales to see if any lessons could be learnt for potential reform. Select academics from Australia, Canada, Germany, Ireland and New Zealand were asked to provide a succinct analysis of the laws governing abusive and offensive communication in their jurisdiction.

Our proposals

Our scoping report sets out the current criminal law and highlights some of the ways in which the exponential growth of online communication has created challenges for the applicable criminal law. It indicates areas where future consultation and policy development should be considered and it calls for:

- Reform and consolidation of existing criminal laws dealing with offensive and abusive communications online, to also consider specifically the issues of glorification of violent crime online and the encouragement of self harm online.
- A specific review considering how the law can more effectively protect victims who are subject to a campaign of online harassment.
- A review of how effectively the criminal law protects personal privacy online.

Importance of the project

While the challenge of addressing the scale and reach of abusive and offensive online communications may seem overwhelming, we consider that the law, and in this particular context the criminal law, has an important role to play in punishing and deterring the most serious conduct, and in shaping community attitudes as to its unacceptability.

One of the participants in our stakeholders' experiences event summarised the situation aptly when she stated:

“

Online abuse is like domestic violence in the 1980s. People used to say it was just something that happened. Police didn't step in on disputes between a husband and wife. But every part of society changed when prosecutions started being brought.

”

Our report concluded that whilst we did not consider there to be major gaps in the current state of the criminal law concerning abusive and offensive online communications, there is considerable scope to improve the criminal law in this area.

Looking ahead

The Department for Digital, Culture, Media and Sport have asked us to move on to consider how the Communications Offences, the glorification of violence and self-harm online, and “pile on” harassment could be reformed.

In parallel, MoJ and the Home Office have asked us to conduct a review of hate crime legislation which will allow us to consider further the nature of hate crime in an online context.

The then Parliamentary Under-Secretary of State for Justice, Lucy Frazer MP, announced in Parliament that we would be asked to consider the law around the non-consensual making, taking and sharing of intimate images.



Property, family and trust law

Commissioner: Professor Nick Hopkins

Leasehold enfranchisement	Solutions for leaseholders of houses Consultation opened	July 2018 September 2018	page 21
Right to manage	Consultation opened	January 2019	page 22
Commonhold	Consultation opened	December 2018	page 22
Surrogacy	Consultation opened	June 2019	page 23
Weddings	Awaiting terms of reference	TBC	page 23
Making a will	Project paused	N/A	page 24

Residential Leasehold and Commonhold

In England and Wales, properties can either be owned as freehold or as leasehold. Leasehold is a form of ownership where a person owns a property for a set number of years (for example, 99 or 125 years) on a lease from a landlord, who owns the freehold. Flats are almost always owned on a leasehold basis, but in recent years leasehold has also increasingly been used for newly built houses.

The Government has estimated that there are at least 4.2 million leasehold properties in England alone. However, we have been told that the law which applies to leasehold is far from satisfactory. The Ministry of Housing, Communities and Local Government (MHCLG) and the Welsh Government have tasked us with improving consumer choice, and with providing greater fairness and transparency for leaseholders. Our project examines three issues: (1) leasehold enfranchisement and (2) the right to manage, both of which are statutory rights for leaseholders, and (3) commonhold, which provides an alternative form of ownership to residential leasehold.

We are currently analysing the responses to our consultations and deciding on our final recommendations for reform. We will publish our final reports at the end of 2019 or start of 2020

and then assist with the implementation of our recommendations. More information on the three strands of the project can be found below.

[Leasehold enfranchisement](#)

Enfranchisement is the statutory right of leaseholders to obtain a leasehold extension or buy their freehold. For leaseholders of flats, this involves joining together with their neighbours to buy the freehold of their block (also known as “collective enfranchisement”).

Our project on leasehold enfranchisement seeks to make the enfranchisement process simpler, easier, quicker and more cost effective, and to examine the options to reduce the price payable by leaseholders to enfranchise.

We published our summary of solutions for leaseholders of houses in July 2018, followed by a detailed consultation on a new enfranchisement regime in respect of leasehold houses and flats: *Leasehold home ownership: buying your freehold or extending your lease*, in September 2018. Our provisional proposals would:

- Provide a better deal for leaseholders by making enfranchisement easier, quicker and more cost effective.

- Reform the existing rights of leaseholders, including removing the separate rules for houses and for flats.
- Simplify and reduce the legal and other costs of the procedure for acquiring a freehold or an extended lease.

As requested by Government, we also set out options for reducing the price payable by leaseholders to exercise those rights, whilst ensuring sufficient compensation for landlords to reflect their legitimate property interests.

Right to manage

The right to manage gives leaseholders the ability to take over the management of their building without buying the freehold. They can take control of lease obligations relating to, for example, services, maintenance and insurance. Leaseholders who exercise the right to manage may manage the building themselves, or choose to appoint their own managing agents.

This project aims to improve access to, and the operation of, the right to manage for the benefit of all parties, making the procedure simpler, quicker and more flexible.

In January 2019, we published our consultation paper, *Leasehold home ownership: exercising the right to manage*. We proposed:

- Relaxing the qualifying criteria, so that leasehold houses, and buildings with more than 25% non-residential space, could qualify for the right to manage.
- Permitting multi-building right to manage on estates.
- Reducing the number of notices that leaseholders must serve, and giving the tribunal the power to waive procedural mistakes.
- Setting out clearer rules for the transfer of information about management functions, and for the management of property which is not exclusive to the premises claiming the right to manage.

- Requiring each party to bear its own costs of any tribunal action, and exploring options for the landlord's non-litigation costs.

This project is being led by the Law Commission's commercial and common law team.

Commonhold

Commonhold provides a structure which enables the freehold ownership of flats and other types of interdependent properties, offering an alternative way of owning property which avoids the shortcomings of leasehold ownership. It was introduced in 2002, but fewer than 20 commonholds have been created.

This project seeks to identify and reform aspects of the law of commonhold which impede its success, in order to reinvigorate commonhold as a workable alternative to leasehold for both existing and new homes.

We published a call for evidence in February 2018, and our consultation paper, *Reinvigorating commonhold: the alternative to leasehold ownership*, in December 2018. We proposed to:

- Enable commonhold to be used for larger, mixed-use developments which accommodate not only residential properties but also commercial units such as shops, restaurants and leisure facilities.
- Allow shared ownership leases to be included within commonhold.
- Make it easier for existing leaseholders to convert to commonhold and gain greater control over their properties.
- Improve mortgage lenders' confidence in commonhold to increase the choice of financing available for home buyers.
- Provide homeowners with a greater say in how the costs of running their commonhold are met.

Surrogacy

Surrogacy is where a woman – the surrogate mother (or surrogate) – bears a child on behalf of someone else or a couple, who then intend to become the child’s parents (the intended parents). Intended parents may enter into a surrogacy arrangement because of a medical reason. Or, in the case of same-sex male couples, surrogacy may be the only way for the couple to have a child with a genetic link with them.

In the UK surrogacy is principally governed by the Surrogacy Arrangements Act 1985 and certain provisions of the Human Fertilisation and Embryology Acts 1990 and 2008. The increased use of surrogacy has brought to light significant concerns with the law. While our terms of reference for the project are broad, the project focuses on three key areas – the regulation of surrogacy including what payments the intended parents can make to their surrogate; parental orders and parenthood to consider the legal parents of a child at birth; and the international dimensions of surrogacy.

We published a consultation paper in June 2019 with provisional proposals to make surrogacy law fit for purpose, and invited consultees’ views on a range of issues. Our key provisional proposals and questions include:

- The creation of a new pathway to parenthood that will allow intended parents to acquire legal parenthood of the child born of a surrogacy arrangement when the child is born, rather than legal parenthood being transferred after the birth by a parental order.
- The regulation of non-profit surrogacy organisations by the Human Fertilisation and Embryology Authority, which, along with licensed clinics, will provide oversight of the new pathway to parenthood. And an overhaul of the other laws around surrogacy currently contained in the SAA 1985.

- Asking a series of questions about what sort of payments it should be possible for intended parents to make to surrogates, to better understand stakeholder views, with a view to building consensus on permissible payments.
- The creation of a national register of surrogacy, to safeguard access to information for children born of a surrogacy arrangement about their intended parents, surrogate and (if applicable) gamete donors.
- For international surrogacy arrangements: unified government guidance and suggestions regarding applications for passports and visas to practically assist intended parents travelling overseas for surrogacy to bring their baby into the UK, and a power to enable, on a country by country basis, the recognition in the UK of legal parenthood in surrogacy cases conferred under the law of other jurisdictions.

Weddings

In December 2014, the Government asked the Law Commission to conduct a review of the law governing how and where people can marry in England and Wales. A year later, we published a scoping paper, called “Getting Married”, in which we concluded that there is a clear need for reform of the law. The current law about how and where couples can marry dates from 1836. It is not meeting the needs of modern couples: the law is complex, uncertain and out of date, and is creating unfairness and hardship in some cases.

In the Budget 2018, the Government asked us to “...undertake a full review of the law on how and where couples can marry...and propose options for a simpler and fairer system to give modern couples meaningful choice.” We are now in the process of finalising terms of reference before being able to formally commence the project.

The full project will look at how and where people can get married in England and Wales, with a focus on giving couples greater choice within a simple, fair and consistent legal structure. We will look at what should happen before, during and after the ceremony. The guiding principles for reform will be certainty and simplicity; fairness and equality; protecting the state's interest; respecting individuals' wishes and beliefs; and removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples. The detailed review is expected to last two years.

Making a Will

The law of wills is largely a product of the 19th century, with the main statute being the Wills Act 1837. The law that specifies when a person has the capacity to make a will ("testamentary capacity") is set out in the 1870 case of *Banks v Goodfellow*.

Our project aims to modernise the law to take into account the changes in society, technology and the medical understanding of capacity that have taken place since the Victorian era. It considers a wide range of topics relating to how wills are made and interpreted.

We published a consultation paper in July 2017. Our provisional proposals include the introduction of a dispensing power enabling a court, on a case by case basis, to admit a will when formality requirements have not been complied with but the court is satisfied that a document represents the testator's final wishes. It also provisionally proposed a new mental capacity test which takes into account the modern understanding of conditions like dementia and changes to protect vulnerable people from being placed under undue pressure as to their testamentary intentions. Alongside that there was a suggestion that the age for making a will should be lowered from 18 to 16. We also want to pave the way for the introduction of electronic wills, to better reflect the modern world once the technology is in place which would enable fraud to be prevented.

The remaining stages of our work will be to complete our analysis and policy formulation, to prepare a final report and to instruct Parliamentary Counsel to draft a Bill that would give effect to our recommendations.

The timetable for the wills project is being reviewed as the Government has asked the Commission to consider the law relating to how and where couples can be married.

Consultation on residential leasehold and commonhold reform

During the year, we conducted three extensive and high-profile public consultations about residential leasehold and commonhold reform. All three projects involve complicated and technical laws. But they are laws that have a direct impact on an issue as fundamental to millions of people as how they own their home, and how that home is managed and maintained. How did we meet the challenge of consulting to ensure that we heard from everyone – from professionals who understand the intricacies of the law, to leaseholders who need to understand how reform will impact on them?

Consultation

Consultation lies at the heart of any Law Commission project. As we prepared our consultation papers we spoke to a range of stakeholders and formed representative advisory groups (including a stakeholder group, a legal group, a valuer group, and (for commonhold) an overseas advisory group) so that we could discuss the problems with the law and possible reform options. We then published our reform proposals for public consultation. Our consultation papers were necessarily long, and so, alongside our consultation paper, we produced short and accessible summary papers, presented our proposals as clearly as possible, and set up leaseholder surveys.

Following publication, we undertook a three-month public consultation for each of these projects. We engaged extensively with the full range of stakeholders interested in our projects, ensuring in particular that our consultation reached as many leaseholders as we could.

“

Thank you very much for the very helpful events yesterday. I learned a lot.

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Why do we hold consultation events?

We ran a variety of face-to-face consultation events in order to:

- Tell people about our proposals for reform.
- Elicit views on our proposals, to help inform our final recommendations.
- Encourage people to send us written responses.
- Trigger discussion and debate about our proposals, and allow people to hear others' views on our proposals before responding.

We wanted to hear from everyone who had an interest in reform. To do so, we held a range of face-to-face consultation events.

What consultation events did we hold?

- A series of public consultation events, some of which were aimed at leaseholders, and some of which were aimed at professionals, but all of which were open to all. The events were held in Birmingham, Brighton, Cardiff, London, Manchester, Newcastle, and Southampton. We provided presentations on different aspects of our proposals and invited comments, questions and discussion from attendees.
- Three day-long symposia, in London and Manchester, with an invited group of experts in the field, to discuss the technical detail of some of our proposals. We provided short presentations and invited three or four experts to join a panel to comment on the proposals and participate in a debate with all attendees.
- A series of roundtable meetings with particular interest groups, such as managing agents, insurers, lenders, landlords, developers and social landlords.
- We spoke at various conferences and other events about our proposals.

“

Broken down nicely. The consultation seems very overwhelming, but this was a good way to get a handle on the key points.

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What was the result?

Our consultation events allowed us to speak directly to hundreds of people who are directly or indirectly affected by these areas of law. They gave us a good impression of the strength of feeling on particular issues. And they provided an opportunity for attendees to raise various questions and comments about our proposals, some of which we had not previously considered.

We received positive feedback, with stakeholders being grateful for the explanations we had given of our work and for the opportunity for them to comment on it.

We are also very pleased to have received so many written responses to our consultations. We received over 1,100 responses to our enfranchisement consultation, over 250 responses to our right to manage consultation, and over 550 responses to our commonhold consultation. We also received over 1,650 responses to our surveys of leaseholders, in which we asked about leaseholders' experiences to improve our understanding of the different situations that arise and the difficulties that people face.

We are now analysing consultation responses and deciding on our final recommendations for reform. Every response that we received will be read in detail and carefully considered. The responses will form the basis of discussion and debate by the project team in developing our final recommendations.

The Law Commission's recommendations for law reform are always heavily guided by consultation responses, which improve the quality of our recommendations.

We are very grateful to all consultees who provided written responses, attended consultation events, and contributed to the debate about reform of these important areas of law.



“

Very well managed Consultation. Very good interesting day with excellent chairs for each session. Good cross section of attendees.

”

Public and Welsh Law

Commissioner: Nicholas Paines QC

Electoral Law	Policy development	Ongoing	page 27
Employment Law Hearing Structures	Consultation opened	September 2018	page 27
Automated Vehicles	Consultation opened	November 2018	page 28
Planning Law in Wales	Report published	December 2018	page 28
Simplification of Immigration Rules	Consultation opened	January 2019	page 28

Electoral Law

Electoral law in the UK is complex, voluminous, and fragmented, with many statutes and secondary legislation governing a long list of elections and referendums.

As part of our 11th Programme of Law Reform we set out to streamline the legislative framework governing all elections and referendums, and to simplify and modernise the law governing the conduct of elections and referendums.

We published an interim report, jointly with the Scottish and Northern Ireland Law Commissions, in February 2016. The central thrust of our reforms is to enable elections to take place within a holistic and coherent legal governance structure. One Act of Parliament would cover the core structure for running electoral events within the UK Government's legislative competence, supplemented by simplified secondary legislation.

We have been working with the Cabinet Office, the Electoral Commission and the Association of Electoral Administrators to formulate ways in which some of our recommendations can be implemented through secondary legislation. This would replace many existing instruments. This aspect of our work is under review by the Cabinet Office.

Employment Law Hearing Structures

Following Lord Justice Briggs' Civil Court Structure Review in 2016, we agreed to undertake this project to seek to resolve problems caused by the shared jurisdiction of the employment tribunal and the ordinary civil courts, as well as reviewing what some perceive to be outdated and arbitrary limits on the Employment Tribunal's jurisdiction.

As part of our consultation, we reviewed the exclusive jurisdiction of the employment tribunals, and areas of overlap between the civil courts, probing what adjustments should sensibly be made in order to update the law, and enable the effective determination of all or most employment disputes in one forum.

Our proposals would lead to a hearing system which is fairer to the parties, more agile and effective, without compromising the uniqueness of the employment tribunal system.

We are currently considering consultation responses and hope to publish a report later in 2019.

Automated Vehicles

The Government's Centre for Connected and Autonomous Vehicles (CCAV) has asked the Law Commission to undertake a far-reaching review of the UK's regulatory framework for road-based automated vehicles.

In a joint project with the Scottish Law Commission, we will identify pressing problems in the law that may be barriers to the use of automated vehicles, from road traffic legislation which focuses on “the driver”, to product liability, criminal offences, and public transport. This will build on the work of CCAV and the insurance law reforms in the Automated and Electric Vehicles Bill. This project will help promote confidence in the laws around the safe use of automated vehicles, and in the UK as a vibrant, world-leading venue for the connected and automated vehicle industry.

On 8 November 2018, we published a preliminary consultation paper focused on the safe deployment of automated vehicles for private use by consumers. It asked a range of questions aimed at anticipating the challenges and disruption to long-established driver-centric laws that highly automated vehicles will present.

We are presently analysing the responses to our first consultation paper; and working on our second consultation paper which considers the use of automated vehicles for the provision of passenger services and how these may be integrated with public transport. We expect to publish this consultation paper in October 2019.

For more information on the project, see page 29.

Planning Law in Wales

Planning law in Wales is unnecessarily complicated and, in places, difficult to understand. Since planning law was last consolidated in the Town and Country Planning Act 1990, a number of piecemeal changes have been made. Points of divergence have emerged between the law in Wales and England. What emerged from our 12th Programme of Law Reform was a need for planning law in Wales to be simplified and modernised.

On 3 December 2018, we published our report with recommendations to make the principles underlying the planning system in Wales clearer, by simplifying, clarifying and tightening up planning permission, applications and conditions, introducing helpful improvements and reforms, simplifying the law on High Court challenges, and repealing obsolete provisions.

The interim response from the Welsh Government on our report was received on 17 May 2019, stating that the Welsh Government has started work on a major consolidation Bill, which will incorporate many of the reforms put forward in our final report.

Simplification of Immigration Rules

The Immigration Rules are long and complex. Since 2008, when a new points-based system was introduced, they have been increasingly criticised for being poorly drafted and confusingly organised. A number of decisions under the rules have been challenged in the highest courts, where the Rules have been the subject of adverse comments by senior members of the judiciary.

Our project will not review substantive immigration policy. It will instead aim to make the Rules simpler and more accessible to the user. A simplified set of Immigration Rules will be easier to understand and apply for Home Office staff, legal professionals and applicants. It will promote consistency of style and substance across the Rules and should to reduce the risk of adverse decisions and comment by the courts.

We published a consultation paper on 21 January 2019 that asked about a range of possible reforms which might bring about simpler rules and make them clear, comprehensible, and organised in a way which is suitable to the needs of users. We are currently in the process of analysing consultation responses and expect to publish a report in Autumn 2019.

Automated vehicles

Driving automation refers to a broad range of technologies. Some have already hit the market and are widely used to assist human drivers, such as cruise control. But automated driving systems are in development which will see vehicles driving themselves with no human intervention, for at least part of the journey. The Law Commissions' project will identify what changes to the legal framework may be necessary to promote the safe and effective deployment of automated vehicles.

Our recently published consultation paper covers three key themes: assuring safety, exploring the implications of criminal and civil liability, and considering how road rules should be adapted for artificial intelligence.

Safety assurance before and after deployment

At present, road vehicles are subject to regulatory approval before they are placed on the market. This works well for mass-produced vehicles, but many automated driving systems are likely to be installed as modifications to registered vehicles, or to feature in vehicles manufactured in small numbers which fall outside the existing approval scheme. We suggest a new safety assurance scheme for those scenarios. We also suggest that every automated driving system should be backed by an entity which takes responsibility for the safety of the system.

Safety testing does not stop at placement of a vehicle on the market, and safety judgements will continue to be made as vehicles are used in the real world. Our consultation paper moots the idea of an Accident Investigation Branch for high profile accidents involving automated vehicles. We also consider the regulation of advertisements, market surveillance, new or modified traffic laws and additional training for users.

Criminal and civil liability

Human drivers are the lynchpin of accountability for compliance with road traffic laws. Automated vehicles may change this. Our consultation paper considers who would be responsible for offences such as an automated vehicle speeding, driving while uninsured or failing to stop after an accident.

Where an accident occurs caused by an automated vehicle driving itself, the Automated and Electric Vehicles Act 2018 introduces a compulsory insurance scheme. This is a crucial step in making sure victims have a clear route to compensation. We ask how the UK might build on these provisions. We also consider whether the current law on the liability of manufacturers and suppliers is fit for this purpose.

Adapting road rules for artificial intelligence

Road rules have been developed for human drivers. They often leave a considerable margin of appreciation, both in how drivers interpret them and in how the police enforce them. We explore how road rules could be adapted for machines and consider some tough questions. Should automated vehicles be programmed never to mount the pavement? Should they never exceed the speed limit?

Next steps

Our next consultation paper will cover the use of automated vehicles as a transport service. It will consider which changes to current regulatory frameworks for passenger services may be needed to allow flexible transportation models. Our final report, setting out our recommendations in the light of both consultations, is due in 2021.



Part Three

Implementation of Law Commission law reform reports 2018-19

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

- The Law Commission Act 2009, which places a requirement on the Lord Chancellor to report to Parliament annually on the Government's progress in implementing our reports.
- Protocols between the Law Commission and the United Kingdom and Welsh Governments, which set out how we should work together.

Law Commission Parliamentary Procedure

One further development is a dedicated Parliamentary procedure, approved by the House of Lords on 7 October 2010 as a means of improving the rate of implementation of Law Commission reports. Bills are suitable for this procedure if they are regarded as “uncontroversial”, this is generally taken to mean that all three Front Benches in the House are supportive in principle.

Eight Law Commission Bills have now followed this procedure:

- Sentencing (Pre-consolidation Amendments) Bill introduced into the House of Lords on 22 May 2019.
- Intellectual Property (Unjustified Threats) Act 2017, received Royal Assent on 27 April 2017.
- Insurance Act 2015, received Royal Assent on 12 February 2015.
- Inheritance and Trustees' Powers Act 2014, received Royal Assent on 14 May 2014.
- Trusts (Capital and Income) Act 2013, received Royal Assent on 31 January 2013.
- Consumer Insurance (Disclosure and Representations) Act 2012, received Royal Assent on 8 March 2012.
- Third Parties (Rights against Insurers) Act 2010, received Royal Assent on 25 March 2010.
- Perpetuities and Accumulations Act 2009, received Royal Assent on 12 November 2009.

In our report on *The Form and Accessibility of the Law Applicable in Wales* we recommended that the Welsh Assembly should adopt a similar procedure, echoing an earlier call for this from the Assembly's Constitutional and Legislative Affairs Committee.

Implementation of our Reports 2018-19

Between 1 April 2018 and 31 March 2019 we published 3 final reports and 1 scoping report with recommendations for law reform:

- Updating the Land Registration Act 2002, 24 July 2018.
- Abusive and Offensive Online Communications (scoping report), 1 November 2018.
- Sentencing Code, 22 November 2018.
- Planning Law in Wales, 3 December 2018.

The statistics from the creation of the Commission in 1965 to 31 March 2019 are:

- Law reform reports published – 231.
- Implemented in whole or in part – 150 (65%).
- Accepted in whole or in part, awaiting implementation – 16 (7%).
- Accepted in whole or in part, will not be implemented – 5 (2%).
- Awaiting response from Government – 19 (8%).
- Rejected – 31 (13%).
- Superseded – 10 (4%).

REPORTS IMPLEMENTED

Fiduciary Duties of Investment Intermediaries

- Report published on 1 July 2014.¹⁴
- Response received from Government on 1 October 2014.

We published our report on fiduciary duties of investment intermediaries in July 2014. The report explained the nature of fiduciary duties and other duties to act in the best interests of savers, and clarified how far those who invest on behalf of others may take account of factors such as social and environmental impacts and ethical standards. The report concludes that legislation on this issue is not required.

The Government published its response in October 2014, welcoming the findings and our clear guidance that trustees should not focus exclusively on maximising short term goals.

Our report made a number of specific recommendations to Government departments, and to the Financial Conduct Authority (FCA) and the Pensions Regulator (TPR), aimed at embedding its findings in relevant regulations and guidance, and addressing other issues identified in the course of the review. These recommendations have been implemented in part.

Our report included recommendations in respect of the Occupational Pension Schemes (Investment) Regulations 2005.¹⁵ The Government has now implemented these recommendations as part of its implementation of our Pension Funds and Social Investment report.¹⁶

Hate Crime

- Final report published 28 May 2014.¹⁷

This project was referred to us by the MoJ following the publication of the Government's three-year Hate Crime Action Plan in March 2012. As part of our extensive consultation work we hosted a symposium with over 100 interested stakeholders and received over 150 responses to our consultation.

The police and Crown Prosecution Service record a crime as a "hate crime" if the victim or anyone else believes that it is motivated by hostility based on any one or more of five characteristics: (1) disability; (2) transgender identity; (3) race; (4) religion; and (5) sexual orientation. Currently, the substantive criminal law regarding hate crime falls under three Acts:

- The Crime and Disorder Act 1998 (which covers "aggravated offences" on grounds of race or religion).
- The Public Order Act 1986 (which covers stirring up hatred on grounds of race, religion or sexual orientation).
- Sections 145 and 146 of the Criminal Justice Act 2003 (which cover enhanced sentencing for offences motivated by hostility to any of the five protected characteristics).

The project examined the case for extending the aggravated offences and the offences of stirring up hatred to include all five of the protected characteristics. We also considered use of the current powers for a judge when sentencing to reflect in the penalty imposed any evidence of hostility demonstrated in the commission of the offence.

¹⁴ (2014) LC 350.

¹⁵ <http://www.legislation.gov.uk/uksi/2005/3378/contents/made>.

¹⁶ (2017) LC 374.

¹⁷ (2014) LC 348.

In our report we made the following key recommendations, that:

- The enhanced sentencing system for hate crimes be strengthened and that anyone given an enhanced sentence for hostility should have this recorded on the Police National Computer.
- The Sentencing Council should produce sentencing guidelines to deal with hate crime.
- There should be a full-scale review of aggravated offences or, in the absence of this, the aggravated offences should be extended to include disability, sexual orientation and transgender identity.
- The stirring up offences should not be extended.

In October 2018, the Government formally announced that the Law Commission would conduct a further, and wider review of hate crime laws in line with our earlier recommendations. For more information, see page 18.

Mental Capacity and Deprivation of Liberty

- Final report published 13 March 2017.¹⁸
- Interim response from Government, 30 October 2017.
- Detailed response from the Government, 14 March 2018.

On 13 March 2017, we published our final report and draft Bill recommending that the Deprivation of Liberty Safeguards (DoLS) be replaced as a matter of urgency. The report sets out a replacement scheme for the DoLS – which we have called the Liberty Protection Safeguards.

In its detailed response, the Government has accepted, or accepted in principle, all of the recommendations except the recommendation relating to a statutory codification of capacity law in relation to children, and four areas which it has left for the independent Mental Health Act review to consider.

The Government introduced the Mental Capacity Amendment Bill in the summer of 2018. While the Bill replicated the Law Commission’s broad approach, it omitted a number of provisions which were considered superfluous or a matter for best practice. Some of these provisions were reintroduced by amendments in the Lords. The Bill received Royal Assent on 16 May 2019.

REPORTS IN THE PROCESS OF BEING IMPLEMENTED

Abusive and Offensive Online Communications

- Scoping report published 1 November 2018.¹⁹

This project reviewed the current law around abusive and offensive online communications with a view to highlighting any gaps in the criminal law which cause problems in tackling this abuse.

The scoping report was published in November 2018. For more information on this project, see page 18.

Our recommendations for further work will be taken forward as part of our review of hate crime legislation and as the second phase of this work (to include work on the communications offences and related matters, and the non-consensual taking and sharing of intimate images).

18 (2017) LC 372.

19 (2018) LC 381.

Conservation Covenants

- Final report and draft Bill published 24 June 2014.²⁰
- Response received from Government on 28 January 2016.

Currently, landowners can agree to use or not to use their land in a particular way. But any agreement will be enforceable against future owners only if certain conditions are met. It must impose only restrictions (for example, not to build on the land), not positive obligations (for example, to maintain a dry stone wall). And those restrictions must “touch and concern” other land nearby by providing an identifiable benefit to that land. This limitation can make it difficult to pursue long-term conservation goals.

This project considered the case for permitting landowners to enter into long-lasting and enforceable agreements where a conservation objective would be met by an obligation to use, or not use, land in a particular way. These types of agreements, which already exist in other jurisdictions such as the USA, Canada, Australia, New Zealand and Scotland, are not specifically linked to nearby land. They allow a landowner to agree, for example, to maintain a woodland habitat and allow public access to it, or to refrain from using certain chemicals on land.

The consultation for this project ran from March to June 2013 and we published our final report and draft Bill on 24 June 2014.²¹ The report recommended the introduction of a new statutory scheme of conservation covenants in England and Wales. In this scheme, a conservation covenant would:

- Be formed by the agreement of two parties – a landowner (a person with a freehold estate or leasehold estate of more than seven years), and a responsible body drawn from a limited class of organisations.

- Be able to contain both restrictive and positive obligations.
- Be capable of binding the landowner’s successors in title (that is, all subsequent owners) after he or she has disposed of the land.
- Be made for the public good.

The then Secretary of State for the Environment, Food and Rural Affairs (Rt Hon Elizabeth Truss MP) wrote to the Commission on 28 January 2016 praising the quality of our work and giving a commitment to explore the role conservation covenants could play in the 25-year Environment Plan being prepared by the department. In the 25 Year Plan published in 2018,²² Government has confirmed that, working with landowners, conservation groups and other stakeholders, it will review and take forward our proposals for a statutory scheme of conservation covenants.

Between September 2018 and February 2019, we worked with DEFRA reviewing our draft proposals with a view to them being taken forward in accordance with the 25 Year Environment Plan commitments. DEFRA consulted on the proposals (suggesting some minor changes) between 22 February and 22 March 2019. DEFRA is currently analysing the responses to the consultation.

Enforcement of Family Financial Orders

- Final report published on 15 December 2016.²³
- Response from Government received on 23 July 2018.

Each year thousands of separating couples apply to the family courts for financial orders. Sometimes these orders are not complied with. We published our report on the enforcement of these family financial orders in December 2016, following concerns raised by practitioners that the legal routes and procedures for enforcing payment of financial orders, contained

²⁰ (2014) LC 349.

²¹ (2014) LC 349.

²² HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (2018) p 62.

²³ (2016) LC 370.

in a range of legislation and court rules, were unnecessarily complex. This means that it can be difficult for parties, particularly litigants in person, to recover the money they are owed. The aim of the project was to make recommendations suggesting how this difficult area of law could be made more effective, efficient and accessible, and to strike a fairer balance between the interests of the creditor and the debtor.

Our report recommended the consolidation of all procedural rules dealing with the enforcement of family financial orders. It would create a “route map” for enforcement proceedings, in the form of an Enforcement Practice Direction, and provide comprehensive guidance for litigants in person. We recommended changes to the enforcement procedure to ensure early disclosure of the financial circumstances of the debtor so that an appropriate method of enforcement can be selected, with provision for the court to obtain information from third parties (Government Departments and private bodies such as banks). The report also recommended reforms to bring more of the debtor’s assets, including those held in pensions and in joint bank accounts, within the scope of enforcement. Where debtors can pay, but will not, the report recommended new powers to disqualify debtors from driving, or to prevent them travelling abroad, in order to apply pressure to pay.

Our recommendations could result in creditors recovering additional funds of £7.5 million to £10 million each year, while debtors who cannot pay would be protected from undue hardship. The burden on the state would be reduced by making savings on welfare benefits. More widely, the benefits would include savings in court time; an increase in parties’ access to and understanding of effective enforcement; and an increase in public confidence in the justice system.

We received the Government’s full response in a letter from the then Parliamentary Under-Secretary of State for Justice (Lucy Frazer MP) in July 2018. Government has agreed to take forward those

of our recommendations which do not require primary legislation to put into effect. These non-statutory reforms can be implemented through changes in court rules and practice directions; court administration; and the provision of guidance. This will implement much of what we recommended and we believe that these changes will go a long way towards making enforcement in this area more efficient, effective and accessible.

The Government has decided to await the implementation of the non-statutory reforms before taking a view on whether to implement the reforms which do require primary legislation.

The Form and Accessibility of the Law Applicable in Wales

- Final report published on 29 June 2016.²⁴
- Response received from Welsh Government on 19 July 2017.

We published our report on the form, presentation and accessibility of the law relating to Wales on 29 June 2016. The report made a number of recommendations to the Welsh Government that seek to secure improvements in those aspects of both the existing law and future legislation in Wales.

The Welsh Government issued its final response on 19 July 2017. The report provides a helpful blueprint as to how the Welsh Government and others can take action to ensure the law of Wales are more accessible. The Welsh Government was able to accept, or accept in principle, all except one of the recommendations.

The Welsh Government has already begun to implement these recommendations by starting a pilot programme of consolidation, codification and better publication. It introduced, on 3 December 2018, the Legislation (Wales) Bill, Part 1 of which imposes a duty on the Counsel General and the Welsh Ministers to take steps to improve the accessibility of Welsh law.

24 (2016) LC 366.

Pension Funds and Social Investment

- Final report published 21 June 2017.²⁵
- Interim Government response published on 18 December 2017.
- Final Government response published in June 2018.

This project was referred to us in November 2016 by the then Minister for Civil Society. We were asked to look at how far pension funds may or should consider issues of social impact when making investment decisions.

Our report found that barriers to social investment by pension funds are, in most cases, structural and behavioural rather than legal or regulatory. We identified steps which could be taken by Government, regulators and others to minimise these barriers, and made recommendations for reform. We also suggested further options for reform, for Government to consider in due course.

The Government's final response was received in June 2018, agreeing to implement the recommended reforms.

In particular, the Government has implemented our recommended reforms in relation to trust-based pension schemes. The relevant provisions in the Occupational Pension Schemes (Investment) Regulations 2005 will come into force on 1 October 2019.²⁶ The Financial Conduct Authority intends to consult on making similar changes to rules applying to contract-based pension schemes.

The Government's final response also identified further action in relation to some of the options for reform, including further work by The Pensions Regulator and the Financial Conduct Authority.

Planning Law in Wales

- Final report published 3 December 2018.²⁷
- Interim Government response received on 17 May 2019.²⁸

In December 2018, we published a wide-ranging report proposing over 190 technical reforms to planning law as it applies in Wales. This will hopefully lead to the appearance of a new Planning Act, as the centrepiece of a new Planning Code for Wales.

The interim response from the Welsh Government on our report was received on 17 May 2019, stating that the Welsh Government has started work on a major consolidation Bill, which will likely incorporate many of the reforms put forward in our final report.

Sentencing Code

- Final report and draft Bill published 22 November.²⁹

Over the last 3 years the Law Commission has been working to produce a Sentencing Code to bring the law of sentencing procedure into one place, simplifying the law and providing a coherent structure while repealing old and unnecessary provisions. The report was published in November 2018.

On 22 May 2019, the Sentencing (Pre-consolidation Amendments) Bill was introduced in the House of Lords. This will pave the way for the introduction of the Sentencing Code in due course. For more information on this project, see page 17.

²⁵ (2016) LC 374.

²⁶ Amendments made by the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018 (SI 2018/988).

²⁷ (2018) LC 383.

²⁸ <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/05/Interim-Response-to-the-Report-on-Planning-Law-in-Wales-English.pdf>.

²⁹ (2018) LC 382.

REPORTS AWAITING IMPLEMENTATION

Consumer Prepayments on Retailer Insolvency

- Final report published on 13 June 2016.³⁰
- Government response received on 28 December 2018.

In the UK, online retail sales and the gift card and voucher market are booming, and consumers frequently pay in advance for products – from flights and theatre tickets to gym memberships and bathroom suites.

If the business that has taken the prepayment becomes insolvent, consumers may be left with neither the item they paid for, nor any real prospect of a refund through the insolvency process (although they may have other avenues such as through their card provider).

In September 2014, the then Department for Business, Innovation and Skills (BIS, now BEIS) asked the Law Commission to examine the protections given to consumer prepayments and to consider whether such protections should be strengthened. We published our recommendations in July 2016, setting out five recommendations which would improve consumers' position on insolvency, particularly in cases where they are most vulnerable.

The Government has already worked with the card payment industry, insolvency practitioners, business and consumer groups to implement the Law Commission's recommendation that consumers should be given more information about chargeback when a retailer becomes insolvent.

The Government's response said that the Law Commission's work will be further reflected upon in the light of BEIS' consumer green paper, published in April 2018. In particular, the Government said:

- It will engage with stakeholders in relation to creating a power for the Secretary of State to regulate in sectors where it is needed.
- It intends to take action to regulate Christmas savings schemes once the necessary legislative capability has been established by the new power.
- It has already taken action, working with UK Finance and insolvency practitioners to encourage IPs to let consumers know about their rights to remedies through their debit or credit card provider.

The Government said it considers the Law Commission's recommendations on transfer of ownership to be sensible, and acknowledged that this issue will be increasingly important as internet sales grow. It indicated that more work and consultation would be required to determine whether, and how, to take this forward.

The Government said it would not implement any change to the insolvency hierarchy to give a preference to the most vulnerable category of prepaying consumers. In this Government's view this recommendation could increase the cost of capital, harm enterprise and lead to calls for preferential status for other groups of creditors.

Contempt of Court: Court Reporting

- Final report published 26 March 2014.³¹

This report aims to modernise the way court reporting restrictions are communicated to the media. Reporting restrictions can be imposed by the judge in a case where publication of certain information may prejudice a fair trial. Typically, the order will provide that publication should be postponed until after the trial (or any linked trial) has finished. If the media breach such an order they will be in contempt of court and liable to criminal penalties. Under current law these important orders are communicated to the media by printing a copy of the order and posting it on the door of the court. This makes it difficult for the

30 (2016) LC 368.

31 (2014) LC 344.

media to find out whether a reporting restriction is in place, leading to increased risks of prejudicing a fair trial, as well as the media being sometimes overly cautious in reporting, to avoid the risk of being found to be in contempt. In the report we recommended:

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

These recommendations would greatly reduce their risk of contempt for publishers – from large media organisations to individual bloggers – and enable them to comply with the court’s restrictions or report proceedings to the public with confidence. We also undertook a pilot study that demonstrated the likely efficiency of such a scheme.

The Government has welcomed these recommendations, and will consider how an online reporting restriction database could be taken forward as part of a wider digital court reform programme.

Event Fees in Retirement Homes

- Final report published 31 March 2017.³²
- Interim Government response received on 26 November 2017.
- Final Government response received 27 March 2019.

This project was referred to us by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government). It asked the Law Commission to investigate terms in long leases for retirement properties which require the consumer holding the lease to pay a fee on certain events – such as sale,

sub-letting or change of occupancy. We called these “event fees”.

In March 2017, we published a report recommending reforms to address concerns that event fees are charged in unfair circumstances. They will also ensure that consumers are provided with clear information about event fees at an early stage in the purchase process. This will enable consumers to make informed decisions about purchasing a retirement property, and to appreciate what that means for their future financial obligations.

The Government said in March 2019 that it will implement the report’s recommendations, with exception of two issues which the Government wishes to explore in further detail. In respect of these, the Government will:

- Seek to determine the best means of providing information to prospective buyers through an online database.
- Give further consideration to the recommendation for spouses’ and live-in carers’ succession rights to stay at a property without payment of an event fee, to explore the implications both for consumers and new supply.

Making Land Work: Easements, Covenants and Profits à Prendre

- Final report and draft Bill published 8 June 2011.³³

This project examined the general law governing:

- Easements – rights enjoyed by one landowner over the land of another, such as rights of way.
- Covenants – promises to do or not do something on one’s own land, such as to mend a boundary fence or to refrain from using the land as anything other than a private residence.
- Profits à prendre – rights to take products of natural growth from land, such as rights to fish.

³² (2017) LC 373.

³³ (2011) LC 327.

These rights are of great practical importance to landowners and can be fundamental to the use and enjoyment of property. We looked closely at the characteristics of these rights, how they are created, how they come to an end, and how they can be modified.

Our report recommended reforms to modernise and simplify the law underpinning these rights, making it fit for the 21st century and introducing a modern registration system. The recommendations would remove anomalies, inconsistencies and complications in the current law, saving time and money by making it more accessible and easier to use. This would benefit those who rely on and engage with these interests most: homeowners, businesses, mortgage lenders and those involved in the conveyancing process. They would give new legal tools to landowners to enable them to manage better their relationships with neighbours and facilitate land transactions. Furthermore, the reforms would give greater flexibility to developers when building estates where there would be multiple owners and users.

The Government announced in the Housing White Paper published on 7 February 2017 that: “The Government also intends to simplify the current restrictive covenant regime by implementing the Law Commission’s recommendations for reform and will publish a draft Bill for consultation as announced in the Queen’s Speech”. This supplemented the earlier announcement on 18 May 2016 that the Government intended to bring forward proposals in a draft Law of Property Bill to respond to the Commission’s recommendations.³⁴ We are assisting Government with the preparation of an updated draft Bill for consultation with a view to implementation.

Public Services Ombudsmen

- Final report published 14 July 2011.³⁵

Our 2011 report focuses on five ombudsmen: the Parliamentary Commissioner; the Health Service Ombudsman; the Local Government Ombudsman; the Public Services Ombudsman for Wales; and the Housing Ombudsman.

The report makes a series of recommendations aimed at improving access to the public services ombudsmen, ensuring that they have the freedom to continue their valuable work and improving their independence and accountability. The report’s key recommendation for a wider review has now taken place, which in turn has led to legislative reform to enable the creation of a single Public Service Ombudsman.

The Government published the draft Public Service Ombudsman Bill on 5 December 2016. If enacted, the draft Bill would abolish the present Parliamentary and Health Service Ombudsman and the Local Government Ombudsman and create a new organisation with strengthened governance and accountability. It would improve access to the ombudsman’s services by allowing for all complaints to be made with or without the help of a representative and in a variety of formats to meet the digital age.

The draft Bill was scrutinised by the Communities and Local Government Select Committee on 6 March 2017, with next steps still to be confirmed.

34 See also the then Department for Communities and Local Government, Tackling unfair practices in the leasehold market, Summary of consultation responses and Government response (December 2017), para 36, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670204/Tackling_Unfair_Practices_-_gov_response.pdf.

35 (2011) LC 329.

Regulation of Health and Social Care Professionals

- Final report and draft Bill published 2 April 2014.³⁶

This project dealt with the professional regulatory structure relating to 32 health care professions throughout the UK, and social workers in England – more than 1.5 million professionals in total. It was the first ever tripartite project conducted jointly with the Scottish Law Commission and the Northern Ireland Law Commission.

Our final report and draft Bill set out a new single legal framework for the regulation of health and social care professionals and reforms the oversight role of Government in relation to the regulators.

The Government published its response on 29 January 2015, noting the need for further work on refining our recommendations to achieve the priorities of better regulation, autonomy and cost-effectiveness while maintaining a clear focus on public protection. On 31 October 2017 the Government published a consultation paper on reforming regulation which builds upon our report.

The Health and Social Care (Safety and Quality) Act 2015 implemented our recommendations that all regulatory bodies and the Professional Standards Authority have the consistent overarching objective of promoting public protection and that regulatory bodies have regard to this objective in fitness to practise proceedings.

Taxi and Private Hire Services

- Final report and draft Bill published 23 May 2014.³⁷

This project was proposed as part of the 11th Programme by the Department for Transport. Its aim was to take a broadly deregulatory approach to the process of modernising and simplifying the regulatory structures for this important economic activity.

In May 2012 we published our consultation paper, proposing a single statute to govern both the taxi and private hire trades, and the setting of national standards in order to free up the private hire market. The interest was such that we had to extend the consultation period twice. We received just over 3,000 responses, a then record number for any of our consultations.

Some of our proposals provoked a great deal of controversy. In April 2013 we published a short interim statement explaining that we had changed our views on abolishing the ability of local licensing authorities to limit taxi numbers and had refined our views in other areas. We also published all of the responses received.

Our report and draft Bill were published in May 2014. Although the Government has not yet responded formally to our recommendations, two taxi and private hire measures – based on our recommendations – were included in the Deregulation Act 2015, which received Royal Assent in March 2015. In 2017, the Government commissioned a report by the Task and Finish Group on taxis and private hire vehicle licensing. Following that Group's report, the Government in February 2019 declined, in the short term, a full replacement of the law. But it did suggest this would be considered as part of its work on the Future of Mobility (of which the Law Commission's project on automated vehicles is an aspect).

The Welsh Government has recently concluded a consultation on taxi and private hire vehicle licensing which is based heavily on our recommendations.

³⁶ (2014) LC 345.

³⁷ (2014) LC 347.

Wildlife

- Report on the control of invasive non-native species published February 2014.³⁸
- Recommended reforms given effect in the Infrastructure Act 2015.
- Final report on remaining elements, with draft Bill, published 10 November 2015.³⁹

Wildlife law is spread over numerous statutes and statutory instruments, dating back to the 19th century. The legislation is difficult for people and businesses to access, for policy makers to adapt and for everyone to understand.

This project was proposed by the Department for Environment, Food and Rural Affairs (Defra) and included in our 11th Programme. It considered the transposition of key EU directives on wild birds and those animals and plants characterised as European Protected Species, and their integration with other, domestic, legal structures. It also sought to bring various purely domestic protection regimes for specific species into the same legislative structure. In March 2012 the Government asked us to add consideration of the possibility of appeals against licensing decisions by regulatory bodies to the project.

We held a consultation in 2012 proposing a single statute bringing together most of the law relating to wildlife. In addition to making specific proposals on the most appropriate way of transposing the EU directives, we also looked at the current regime for the enforcement of wildlife legislation, including both criminal offences and civil sanctions, and at appeals.

Following a request by Defra to bring forward one element of the project, we published a report on the control of invasive non-native species in February 2014. Our recommendations in relation to species control orders were given effect in the Infrastructure Act 2015. Our final report and draft Bill on the

remaining elements of the project were published in November 2015.

The Government issued its response on 22 November 2016, explaining that exit from the EU provides an opportunity to re-examine our regulatory framework so that it meets our needs in future including our international obligations. The Government will therefore consider the implications of EU Exit on wildlife policy before deciding whether and how to implement our recommendations.

REPORTS ACCEPTED BUT WHICH WILL NOT BE IMPLEMENTED

Bills of Sale

- Original report published 12 September 2016.⁴⁰
- Updated report with draft Bill published 23 November 2017.⁴¹

In 2014, HM Treasury asked the Law Commission to review the Victorian-era Bills of Sale Acts. Bills of sale are a way in which individuals can use goods they already own as security for loans while retaining possession of those goods. They are now mainly used for “logbook loans”, where a borrower grants security over their vehicle. The borrower may continue to use the vehicle while they keep up the repayments, but if they default the vehicle can be repossessed, without the protections that apply to hire-purchase and conditional sale transactions.

In September 2016 the Law Commission recommended that the Bills of Sale Acts should be repealed and replaced with modern legislation that provides more protection for borrowers and imposes fewer burdens on lenders. The Government agreed with the majority of our recommendations and supported the Law Commission in drafting legislation to implement them. The Bill was announced in the Queen’s Speech in June 2017.

38 (2014) LC342.

39 (2015) LC362 (two volumes).

40 (2016) LC 369.

41 (2017) LC 376.

Our final recommendations are set out in a draft Goods Mortgages Bill, published in November 2017. After conducting a short consultation, the Government announced in May 2018 that it would not introduce legislation at this point in time. It cited the “small and reducing market and the wider work on high-cost credit”.

Level Crossings

- Final report, with draft Bill and draft regulations published 25 September 2013.⁴²

This joint project with the Scottish Law Commission seeks to improve the law relating to the 7,500 to 8,000 level crossings in Great Britain.

Our recommendations would:

- Create a new, more streamlined procedure to close individual level crossings where it is in the public interest to do so.
- Bring safety regulation entirely under the umbrella of the Health and Safety at Work etc. Act 1974, and provide tools to support this.
- Impose a statutory duty on railway and highway operators to consider the convenience of all users, and to co-operate with each other when carrying out their obligations in respect of level crossings.
- Provide clarity regarding the position of statutory level crossings.
- Disapply outdated or obsolete statutory provisions.

The Government provided a final response to the report in October 2014, accepting both the case for reform and the majority of our recommendations.⁴³

In May 2018, the Minister of State for Transport, Jo Johnson, wrote to the Commission stating the Department’s final view on reform. The Minister agreed that reform is needed but stated that the best way to achieve this is through the administrative changes

rather than through legislative reform. The Government stressed that these administrative changes were ‘in the spirit of the Law Commission’s recommendations’.

REPORTS AWAITING A GOVERNMENT DECISION

Cohabitation

Cohabitation: The Financial Consequences of Relationship Breakdown

- Final report published 31 July 2007.⁴⁴
- Holding response from Government 6 September 2011.⁴⁵

In this project, at the Government’s request, we examined the financial hardship suffered by cohabitants or their children on the termination of cohabitants’ relationships by breakdown or death. The existing law is a patchwork of legal rules, sometimes providing cohabitants with interests in their partners’ property, sometimes not. The law is unsatisfactory: it is complex, uncertain and expensive to rely on. It gives rise to hardship for many cohabitants and, as a consequence, for their children.

Our report recommended the introduction of a new scheme of financial remedies that would lead to fairer outcomes on separation for cohabitants and their families. The scheme is deliberately different from that which applies between spouses on divorce and, therefore, does not treat cohabitants as if they were married. It would apply only to cohabitants who had had a child together or who had lived together for a specified number of years (which the report suggests should be between two and five years).

In order to obtain financial support – which might be in the form of a cash lump sum or transfer of a property, but not ongoing maintenance – applicants would have to prove that they had made contributions to the relationship that had given rise to certain

⁴² (2013) LC 339.

⁴³ (2015) HC 1062.

⁴⁴ (2007) LC 307.

⁴⁵ Written Ministerial Statement, Hansard (HC), 6 September 2011, col 16WS.

lasting financial consequences at the point of separation. For example, one partner might have enjoyed an enhanced earning capacity because the other partner took on responsibility for childcare.

In broad terms, the scheme would seek to ensure that the financial pluses and minuses of the relationship were fairly shared between the couple. For example, if one partner was disadvantaged in the job market as a result of time spent bringing up the couple's children, they might receive some financial compensation from their former partner to support them while retraining or otherwise preparing to return to work.

The report recommended that there should be a way for couples, subject to necessary protections, to opt out of any such agreement, leaving them free to make their own financial arrangements.

In 2011 the Government announced that it did not intend to take forward our recommendations for reform during that Parliament. Government is still considering the recommendations.

Intestacy and Family Provisions Claims on Death (Cohabitants)

- Final report and draft Inheritance (Cohabitants) Bill published 14 December 2011.⁴⁶
- Holding response from Government 21 March 2013.⁴⁷

In this project we examined two important aspects of the law of inheritance: the intestacy rules that determine the distribution of property where someone dies without a will; and the legislation that allows certain bereaved family members and dependants to apply to the court for family provision.

Our final report, *Intestacy and Family Provision Claims on Death*, was accompanied by two draft Bills to implement our recommendations. The first Bill was implemented and became the *Inheritance and Trustees' Powers Act 2014*. The second Bill, the draft *Inheritance (Cohabitants) Bill*, would:

- Reform the law regarding an application for family provision by the survivor of a couple (who were not married or in a civil partnership) who had children together.
- In defined circumstances, entitle the deceased's surviving cohabitant to inherit under the intestacy rules where there was no surviving spouse or civil partner. Generally speaking, this entitlement would arise if the couple lived together for five years before the death or for two years if they had a child together.

The Government announced in March 2013 that it did not intend to implement the draft *Inheritance (Cohabitants) Bill* during the then current Parliament. Government is still considering the recommendations.

Criminal Records Disclosures: Non-Filterable Offences

- Final report published 1 February 2017.⁴⁸
- Awaiting Government response.

In July 2016, the Commission was asked by the Home Office to review one specific aspect of the criminal records disclosure system, known as "filtering".

On 1 February 2017, the Commission published its report. Within the narrow confines of this project, the report includes a recommendation that a statutory instrument should set out a single, itemised list of non-filterable offences in the future. We recommended a wider review of the disclosure system and the Government is considering our recommendations.

46 (2011) LC 331.

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

48 (2017) LC 371.

Data Sharing Between Public Bodies

- Scoping report published 11 July 2014.⁴⁹
- Interim Government response received on 24 December 2014.

Public bodies frequently report difficulties in sharing data with other public bodies, to an extent that impairs their ability to perform their functions for citizens. Some of these problems stem from defects in the law itself, and some from problems with understanding the law.

We conducted this project as a scoping review designed to identify where the problems truly lie and what should be done to address them. We ran a consultation during Autumn 2013 and published our scoping report in July 2014. In the report we concluded that a full law reform project should be carried out in order to create a principled and clear legal structure for data sharing.

The Government welcomed the publication of our scoping report and sent an interim response on 24 December 2014, which noted the usefulness of the scoping report and its resonance with the Government's work in the open policy making space. The open policy making process and subsequent public consultation identified a number of priority areas taken forward in the Digital Economy Act, which received Royal Assent on 27 April 2017.

The High Court's Jurisdiction in Relation to Criminal Proceedings

- Report and draft Bill published on 27 July 2010.⁵⁰
- Holding response from Government 13 March 2015.⁵¹

This project made recommendations for rationalising and simplifying the ways that judicial review and

appeals by way of case stated can be used to challenge Crown Court decisions.

The Government is continuing to consider these recommendations.

Kidnapping

- Final report published 20 November 2014.⁵²
- Awaiting a Government response.

The aim of the recommendations we made in our November 2014 report was to modernise the law on kidnapping and false imprisonment and address the gaps in the law relating to child abduction. Specifically, we recommended that:

- The kidnapping offence be redefined in statute but should remain triable in the Crown Court only.
- The existing offence of false imprisonment be replaced by a new statutory offence of unlawful detention.
- The maximum sentence for offences under sections 1 and 2 of the Child Abduction Act 1984 be increased from seven to 14 years' imprisonment.
- Section 1 of the 1984 Act be extended to cover cases involving the wrongful retention of a child abroad – this would close the gap in the law highlighted in the case of *R (Nicolaou) v Redbridge Magistrates' Court*.⁵³

This work forms part of a wider project, Simplification of the Criminal Law, which originated in our 10th Programme of Law Reform. The Government has been considering the feasibility of the Law Commission's recommendations and we hope to receive a response to the report in due course.

⁴⁹ Data Sharing between Public Bodies: A Scoping Report (2014) LC 351.

⁵⁰ (2010) LC 324.

⁵¹ Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015), paragraph 99.

⁵² Kidnapping and related Offences (2014) LC 355.

⁵³ [2012] EWHC 1647 (Admin); [2012] 2 Cr App R 23.

Matrimonial Property, Needs and Agreements

- Final report and draft Bill published 27 February 2014.⁵⁴
- Interim response from Government 18 September 2014.

This project was set up, initially under the title “Marital Property Agreements” to examine the status and enforceability of agreements (commonly known as “pre-nups”) made between spouses and civil partners (or those contemplating marriage or civil partnership) concerning their property and finances.

In February 2012 the scope of the project was extended to include a targeted review of two aspects of financial provision on divorce and dissolution, namely provision for the parties’ financial needs and the treatment of non-matrimonial property.

We published our final report in February 2014, making the following recommendations:

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

The Government’s interim response was published on 18 September 2014. The Government has accepted and taken action on the recommendation for guidance. The Family Justice Council developed financial guidance for separating couples and unrepresented litigants, which it published in September 2015, followed by publication of guidance for the judiciary on financial needs in June 2016.

The Government is considering the Law Commission’s recommendations on a financial tool for separating couples and on qualifying nuptial agreements as part of a wider consideration of family law and will respond in due course.

Offences Against the Person

- Scoping report and draft Bill published 3 November 2015.⁵⁵
- Awaiting Government response.

This was a project for the modernisation and restatement of the main offences of violence, which are:

- Those contained in the Offences Against the Person Act 1861.
- The offences of assault and battery, which are common law offences.
- Assault on a constable, which is an offence under the Police Act 1996, section 89.

Our aim was to replace all these offences with a single modern and easily understandable statutory code largely based on a draft Bill published by the Home Office in 1998 but with some significant changes and updating. Our best estimate of the gross savings from the recommended reform is around £12.47 million per annum.

We published our report in November 2015 and are awaiting a response from the Government.

Public Nuisance and Outraging Public Decency

- Final report published 24 June 2015.⁵⁶
- Awaiting a Government response.

This report recommends retaining the offences and restating them in statute largely in their existing form. However, as the offences are serious ones, punishable by up to life imprisonment, the recommendations provide that the defendant

54 (2014) LC 343.

55 (2015) LC 361.

56 (2015) LC 358.

should be liable only if there is proof of intention or recklessness. At present public nuisance only requires proof of negligence, and outraging public decency has no requirement of fault.

This work forms part of a wider project, Simplification of the Criminal Law, which originated in our 10th Programme of Law Reform. The Government is considering this report and will respond in due course.

Rights to Light

- Final report and draft Bill published 4 December 2014.⁵⁷
- Awaiting Government response.

Rights to light are easements that entitle landowners to receive natural light through defined apertures (most commonly windows) in buildings on their land. The owners of neighbouring properties cannot substantially interfere with the right, for example by erecting a building that blocks the light, without the consent of the landowner.

We published our final report and draft Bill on 4 December 2014.⁵⁸ We recommend:

- Establishing a statutory notice procedure allowing landowners to require their neighbours to tell them within a set time limit if they plan to seek an injunction to protect their right to light.
- Introducing a statutory test to clarify when the courts may order damages to be paid, rather than halting development or ordering a building to be demolished by granting an injunction (this takes into account the Supreme Court decision in the case of *Coventry v Lawrence*).
- Updating the procedure whereby landowners can prevent their neighbours from acquiring rights to light by prescription.
- Amending the law governing when an unused right to light is to be treated as having been abandoned.

- Giving power to the Lands Chamber of the Upper Tribunal to discharge or modify obsolete or unused rights to light.

Government has been carefully considering the report. We are still awaiting Government's final response.

Technical Issues in Charity Law

- Final report published 14 September 2017.⁵⁹
- Awaiting Government response.

There are about 167,000 charities registered with the Charity Commission and thousands more that are not required to register. Charities are a force for good and millions donate regularly to help them to help others. But there are problems with the law within which charities operate, which means that time and money is spent on administration when it could be used to further charitable causes.

We were asked by Government to focus initially on social investment by charities. We reported on that topic in 2014. The majority of our recommendations for reform were implemented in the Charities (Protection and Social Investment) Act 2016, which received Royal Assent on 16 March 2016.

We then returned to consider a wide range of other technical issues in charity law. We consulted on a range of reforms designed to support and equip the charities sector by ensuring the legal framework in which it operates is fair, modern, simple and cost effective.

These recommendations will remove unnecessary administrative and financial burdens faced by charities as a result of inappropriate regulation and inefficient law, while safeguarding the public interest in ensuring that charities are run effectively. The reforms will save charities a large amount of time, as well as money. Those cost savings include

⁵⁷ (2014) LC 356.

⁵⁸ (2014) LC 356.

⁵⁹ (2017) LC 375.

an estimated £2.8 million per year from increased flexibility concerning sales of land.

We await Government's response to our recommendations.

Termination of Tenancies for Tenant Default

- Final report published 31 October 2006.⁶⁰
- Awaiting Government response.

This project examined the means whereby a landlord can terminate a tenancy because the tenant has not complied with his or her obligations. This is an issue of great practical importance for many landlords and tenants of residential and commercial properties. The current law is difficult to use and littered with pitfalls for both the layperson and the unwary practitioner. It does not support negotiated settlement and provides insufficient protection for mortgagees and sub-tenants.

Our report recommended the abolition of forfeiture and its replacement by a modern statutory scheme for the termination of tenancies on the ground of tenant default that would balance the interests of all parties affected and promote more proportionate outcomes.

The Government's 2018 report on the implementation of our proposals stated that, due to work on other Government priorities, consideration of our proposals has not been able to progress over the last year.⁶¹ However, in March 2019, the Ministry of Housing, Communities and Local Government Report into leasehold reform recommended that Government should immediately take up the Law Commission's proposals to reform forfeiture.

Unfitness to Plead

- Final report and draft Bill published 13 January 2016.⁶²
- Interim Government response received on 30 June 2016.

The law relating to unfitness to plead addresses what should happen when a defendant who faces criminal prosecution is unable to engage with the process because of his or her mental or physical condition. The law aims to balance the rights of the vulnerable defendant with the interests of those affected by an alleged offence and the need to protect the public. However, the current law in this area is outdated, inconsistently applied and can lead to unfairness.

After a wide-ranging consultation conducted in winter 2010-11⁶³ we published an analysis of responses⁶⁴ and an issues paper in 2013⁶⁵ and our final report and draft Bill in January 2016.⁶⁶

Government provided an interim response on 30 June 2016, acknowledging our work and noting that a substantive response would be provided in due course.

Updating the Land Registration Act 2002

- Final report published 24 July 2018.⁶⁷
- Interim Government response received on 31 January 2019.

An effective land registration law is essential for everyone who owns land, whether the land is a home, a business or an investment. The core purpose of a register of title is to make conveyancing faster, easier and cheaper. However, time has shown that some aspects of the Land Registration Act 2002 are unclear, inefficient, or have unintended outcomes.

60 (2006) LC 303.

61 Report on the Implementation of Law Commission Proposals, Ministry of Justice (2018) Cm 9652.

62 (2016) LC 364 (two volumes).

63 (2010) LCCP 197.

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

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

66 (2016) LC 364 (two volumes).

67 (2018) LC 380.

With over 25 million registered titles in England and Wales – ranging from residential flats to farms and shopping centres – any inefficiencies, uncertainties or problems in the land registration system have the capacity to have a significant impact on the property market, and the economy as a whole. Uncertainty also makes advising clients difficult, incentivises litigation, and increases costs for landowners.

Our project was designed to update the Land Registration Act 2002. The project was not designed to fundamentally reformulate the Act, but to improve specific aspects of its operation within the existing legal framework. The 2002 Act was the product of a joint project between HM Land Registry and the Law Commission. While this was not a joint project, Land Registry funded the work, and we liaised closely with them as a key stakeholder so that we could fully understand the operational implications of our recommendations.

Our final report recommended some technical reforms to iron out the kinks in the law, help prevent fraud and make conveyancing faster, easier and cheaper for everyone.

We received an interim response from Government in January 2019 which stated that many of the recommendations were likely to be acceptable in principle but, due to the breadth of subject matter and complexity of the corresponding recommendations, the Government will set out its final conclusions in due course.

20th Statute Law (Repeals) Report

- Published on 3 June 2015.⁶⁸

The 20th Statute Law Repeals Report recommended the repeal of more than 200 Acts. The Bill accompanying the report covered a wide range of topics from agriculture and churches to trade and industry and taxation. The earliest repeal was from the Statute of Marlborough 1267. Passed during the reign of Henry III, the Statute is one of the oldest surviving pieces of legislation. The most recent repeal is part of the Consumers, Estate Agents and Redress Act 2007.

The draft Bill awaits implementation by Government. For more information statute law repeals, see page 53.

⁶⁸ (2015) LC 357.

Part Four:

How we work

The work of the Commission is grounded in thorough research and analysis of case law, legislation, academic and other writing, and other relevant sources of information both in the UK and overseas. It takes full account of the European Convention on Human Rights and relevant European law. Throughout this process, where appropriate, we act in consultation or work jointly with the Northern Ireland Law Commission and the Scottish Law Commission.

OUR PROGRAMMES OF LAW REFORM

We are required to submit to the Lord Chancellor programmes for the examination of different branches of the law with a view to reform.

Every three or four years we consult widely, asking for suggestions for appropriate projects. During 2018-19 we have continued work on projects selected for our 12th Programme of Law Reform, which we launched in July 2014, and earlier programmes. Details of this work are set out in Part Two of this report. The full list of nine projects selected for our 12th Programme can be found in our annual report for 2014-15.⁶⁹

We published our 13th Programme on 14 December 2017⁷⁰ with work beginning on some of these projects from January 2018. The consultation for this Programme of Law Reform received our largest ever response rate, with over 1,300 responses covering 220 individual suggestions for law reform projects. The full list of fourteen projects selected for our 13th Programme can be found in last year's annual report.

Decisions about whether to include a particular subject in a programme of reform are based on:

- The extent to which the law in that area is unsatisfactory.
- The potential benefits that would flow from reform.
- Whether the independent non-political Commission is the most suitable body to conduct a review in that area of the law.
- Whether the Commissioners and staff have, or can access, the relevant experience.

Although we have a duty to “take and keep under review all the law”,⁷¹ it is important that our efforts are directed towards areas of the law that most need reform and reforms that are most likely to be implemented. We focus on change that will deliver real benefits to the people, businesses, organisations and institutions to which that law applies.

Consultation

We are committed to consulting fully with all the people and organisations potentially affected by our proposals. We engage with stakeholders from the outset of a project, even before a piece of work is officially adopted, and conduct thorough, targeted consultations throughout. This allows us to acquire a good understanding of the issues that are arising in an area of law and the effect they are having, and gives us a clear picture of the context within which the law operates. We use this to assess the impact of our proposed policies and refine our thinking.

Our consultations can include meetings with individuals and organisations, public events, conferences, symposia and other types of event, as well as interviews and site visits. We often work through representative organisations, asking them to help us reach their members and stakeholders.

⁶⁹ Annual Report 2014–15 (2015) LC359, p12–13.

⁷⁰ (2017) LC 377.

⁷¹ Law Commissions Act 1965, s 3(1).

During our formal consultations we ask for written responses and provide a number of ways for consultees to submit these. All the responses we receive are analysed and considered carefully. Aggregated analyses are published on our website, and in some cases individual responses, usually alongside our final report.

We follow the Government Consultation Principles issued by the Cabinet Office.⁷²

Making Recommendations for Reform

We set out our final recommendations in a report. If implementation of those recommendations would involve primary legislation, the report will usually contain a Bill drafted by our in-house Parliamentary Counsel. The report is laid before Parliament. It is then for Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless an MP or Peer opts to do so.

After publication of a report the Commissioner, members of the relevant legal team and the Parliamentary Counsel who worked on the draft Bill will often give assistance to Government Ministers and Departments to help them take the work forward.

Other Law Reform Projects

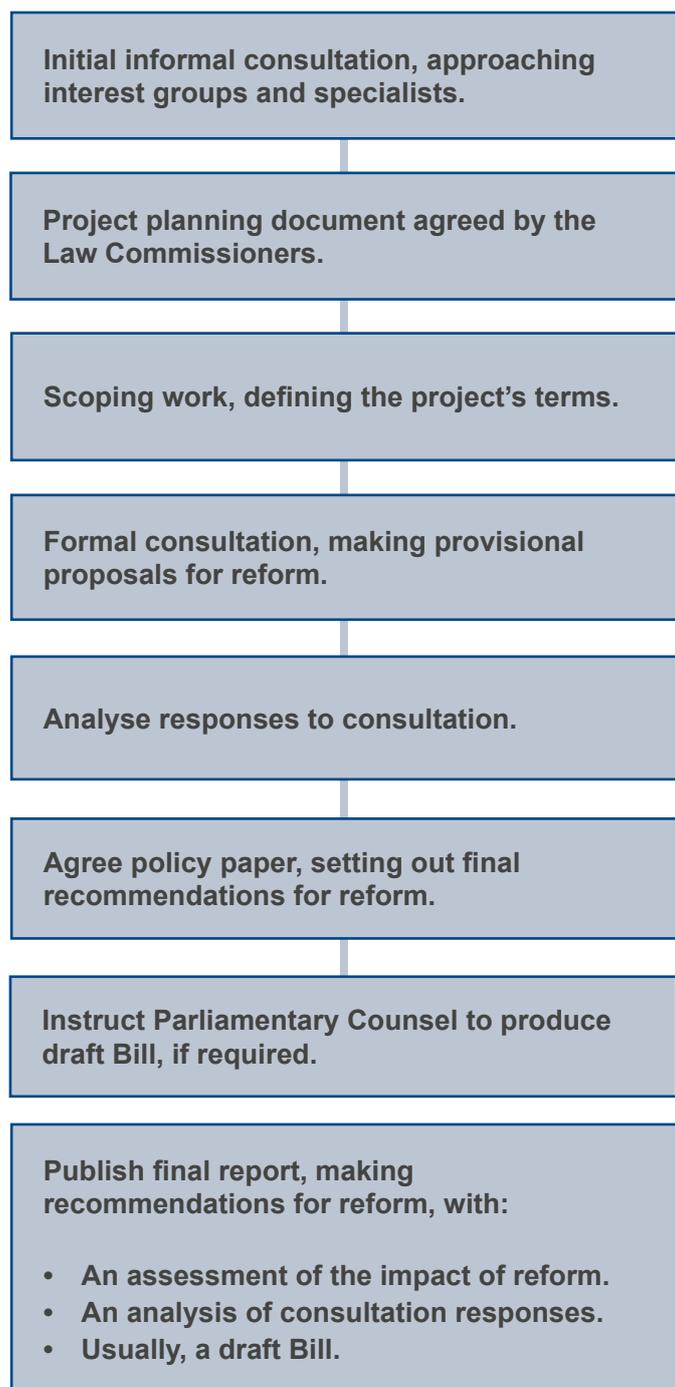
In addition to the law reform projects that make up our programme, we also undertake law reform projects that have been referred to us directly by Government departments.

During 2018-19, three projects were referred to us by Government:

- Abusive and offensive online communications – a review of the application of existing criminal offences of offensive communication to conduct online, with a view to identifying deficiencies in the law. This project was referred to us by the Department for Digital, Culture, Media and Sport (see page 18).
- Confiscation of the proceeds of crime – a review of the law of confiscation to ensure that the law effectively deprives convicted offenders of the benefit of their criminal conduct. This project was referred to us by the Home Office (see page 18).
- Hate crime – a review into hate crime to explore how to make current legislation more effective and consider if there should be additional protected characteristics. This project was referred to us by the Ministry of Justice (see page 18).

72 <https://www.gov.uk/government/publications/consultation-principles-guidance>.

Figure 4.1 Common stages of a law reform project



Statute Law

The Law Commission's statutory functions set out in section 3(1) of the Law Commissions Act 1965 include a duty "to prepare from time to time at the request of the Minister comprehensive programmes of consolidation and statute law revision, and to undertake the preparation of draft Bills pursuant to any such programme approved by the Minister".

Over time a vast body of legislation has built up – this is commonly referred to as the "statute book". Since its creation, the Law Commission has performed two important functions which are designed to modernise the statute book and make it more accessible:

- Removing legislation that is obsolete or which has lost any modern purpose. The legislation appears to be still in force but this is misleading because it no longer has a job to do. This may be because the political, social or economic issue an Act was intended to address no longer exists or because an Act was intended to do a specific thing which, once done, means it has served its purpose.
- Replacing existing statutory provisions, which are spread across multiple Acts, may have been drafted decades ago and have been amended multiple times, with a single Act or series of related Acts, drafted according to modern practice. This process of "consolidation" does not alter the effect of the law, but simply updates and modernises its form.

Outdated, obscure or obsolete legislation can cost time and money for those who work with the law. It makes the law more difficult to understand and interpret, and places a further obstacle in the way of accessibility.

The work of the Law Commission improves the accuracy and modernity of the statute book so it can be used with greater confidence, and navigated more easily. As social and technological change continues to be reflected in new legislation, and as internet access to statutory law increases its availability, the need for systematic and expert review of existing legislation will continue.

Statute Law Repeals

The Law Commission identifies candidates for repeal by research and consultation. The legal background to an Act is examined in detail, as is the historical and social circumstances which might have led to it. We consult on proposed repeals and then prepare a draft Bill. The repeals are carried out by means of Statute Law (Repeals) Acts. Nineteen of these have been enacted so far, between them repealing over 3,000 Acts in their entirety and partially repealing thousands of others.

In recent times, enthusiasm in Government for repeals work has reduced, which in turn makes it difficult for the Commission to allocate resource to this aspect of our work. Nevertheless, we remain committed to repeals work and will continue to consider ways in which we can focus our attention on those areas of law which have the potential to cause genuine confusion.

Consolidation

Between our establishment in 1965 and 2006, we were responsible for 220 consolidation Acts. Since then only two have been produced: the Charities Act 2011 and the Co-operative and Community Benefit Societies Act 2014. This change reflects the fact that, in a time of reduced funding in most areas of public services and, specifically, reduced core funding for the Law Commission, consolidation is perhaps seen by Government to be a lower priority. The need for simplification of the law remains as great as it ever has been, however, and we are encouraged by the reception that some of our recent technical reform work has received.

In November 2018 we published our final report on *The Sentencing Code*. In it we recommended a major consolidation of the legislation which governs sentencing procedure, and included a draft Bill - the "Sentencing Code".

The law on sentencing affects all criminal cases, and is applied in hundreds of thousands of trials and thousands of appeals each year. It is spread across a vast number of statutes, and is frequently

amended. Worse, amendments are brought into force at different times for different cases. The result of this is that there are multiple versions of the law in force and it is difficult to identify which should apply to any given case. 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 leads to delays, costly appeals and unlawful sentences.

We estimate that our proposed Sentencing Code could save up to £250 million over the next decade by avoiding unnecessary appeals and reducing delays in sentencing clogging up the court system.

We hope to see the Sentencing Code enacted as soon as Parliamentary time allows, following the recent introduction of the Sentencing (Pre-Consolidation Amendments) Bill. We are working closely with officials and Ministers in the MoJ to make that happen.

We have also been very pleased by the introduction of the Legislation (Wales) Bill into the National Assembly for Wales. This Bill implements some of the recommendations in our report on the *Form and Accessibility of the Law Applicable in Wales*. In particular it will place a duty on the Counsel General to keep the accessibility of Welsh Law under review. It will place a commitment on the Welsh Ministers and the Counsel General to prepare a programme setting out what they intend to do to improve the accessibility of Welsh law. The programme must include (among other things) activities that are intended to contribute to an ongoing process of consolidating and codifying Welsh law.

We hope that a Bill based in part on our report *Planning Law in Wales* will be the first major piece of consolidating legislation the National Assembly enacts. In their interim response to our report the Welsh Government announced that work had begun on a Planning Consolidation Bill. This would represent a landmark in Welsh law if and when the Assembly passes it.

We welcome the Welsh Government's commitment to providing modern, accessible legislation to

the citizens of Wales in both English and Welsh. We hope to see more consolidation, and even codification, of Welsh law in coming years.

Implementation

Crucial to the implementation of our consolidation and statute law repeals Bills in Westminster is a dedicated Parliamentary procedure. The Bill is introduced into the House of Lords and, after Lords Second Reading, is scrutinised by the Joint Committee on Consolidation Bills. The Committee is appointed by both Houses specifically to consider consolidation and statute law repeal Bills and will hear evidence from the Law Commission. After this, the Bill returns to the House of Lords and continues through its remaining stages.

THE LAW COMMISSION AND GOVERNMENT

Government Response to Law Commission Reports

In March 2010 we agreed a statutory Protocol⁷³ with the Lord Chancellor that governs how the Commission and Government Departments should work together on law reform projects. The latter part of the Protocol sets out departmental responsibilities once we have published a report. The Minister for the relevant Department will provide an interim response to us as soon as possible but not later than six months after publication of the report. We expect to receive a final response within a year of the report being published.

Improving the Prospects of Implementation

The Protocol also says that we will only take on work where there is a “serious intention” to reform the law by the government. As a result this confirmation is sought from the relevant departments before any law reform projects get underway. While this is not a guarantee that the Government will accept or implement our recommendations for reform, it enables us to commit resources to a project in the knowledge that we have a reasonable expectation of implementation.

Accounting to Parliament for Implementation

The Law Commission Act 2009 requires the Lord Chancellor to report to Parliament on the extent to which our proposals have been implemented by the Government. The report must set out the Government’s reasons for decisions taken during the year to accept or reject our proposals and give an indication of when decisions can be expected on recommendations that are still being considered. The Lord Chancellor issued the seventh of these reports on 30 July 2018⁷⁴ covering the period 12 January 2017 to 30 July 2018.

The Law Commission and the Welsh Government

The Wales Act 2014 provides for a protocol⁷⁵ to be established between the Law Commission and the Welsh Government. This protocol was agreed and presented to the National Assembly for Wales on 10 July 2015. It sets out the approach that we and Welsh Ministers jointly take to our law reform work. It covers how the relationship works 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.

73 Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission (2010) LC 321.

74 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730404/implementation-of-law-commission-recommendations-report-2017-2018.pdf.

75 Protocol rhwng Gweinidogion Cymru a Comisiwn y Gyfraith/Protocol between the Welsh Ministers and the Law Commission (2015).

In a direct reflection of the obligations placed on the Lord Chancellor by the Law Commission Act 2009, the 2014 Act also requires Welsh Ministers to report annually to the Assembly about the implementation of our reports relating to Welsh devolved matters. The fourth Welsh Government Report on the Implementation of Law Commission Proposals/ Adroddiad ar weithredu cynigion Comisiwn y Gyfraith was laid before the Assembly on 15 February 2019.⁷⁶

INFORMING DEBATE AND SCRUTINY

We are often invited to give evidence to special committees to assist with their inquiries and their consideration of Bills, some of which may include provisions that have derived from Law Commission recommendations.

On 3 July 2018, the then Chair, Sir David Bean, and Phil Golding were invited to appear before the Justice Committee at a one-off evidence session to provide an update on the Commission's work and funding.⁷⁷ Professor Nick Hopkins also provided evidence to the MHCLG committee on leasehold reform on 14 January 2019.

THE LAW COMMISSIONERS

The five Law Commissioners work full time at the Law Commission, except that the Chair sits as a judge for one working week in four.

In accordance with Government policy for all non-departmental public bodies, there is a Code of Best Practice for Law Commissioners. It incorporates the Seven Principles of Public Life and covers matters such as the role and responsibilities of Commissioners.⁷⁸

EXTERNAL RELATIONS

We work hard to establish strong links with a wide range of organisations and individuals who have an interest in law reform, and greatly value these relationships. We are indebted to all those who send us feedback on our consultation papers, contribute project ideas for our programmes of law reform, and provide input and expertise at all stages of the process of making recommendations to Government.

It would not be possible in this annual report to thank individually everyone who provides us with guidance or offers us their views. We would, however, like to express our gratitude to our Welsh Advisory Committee and all those organisations and individuals who have worked with us as members of advisory groups on our many projects and who have contributed in so many ways to our work during the course of the year.

We also acknowledge the support and interest shown in the Commission and our work by a number of ministers at Westminster and in Cardiff, Members of Parliament and of the Welsh Assembly and Peers from across the political spectrum, and by public officials. We continue to make progress in extending the number of ways in which we engage with our friends and supporters.

76 <http://www.assembly.wales/laid%20documents/gen-ld12170/gen-ld12170-e.pdf>.

77 <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2017/work-of-the-law-commission-17-19/>.

78 <http://www.lawcom.gov.uk/about/who-we-are>.

COMMUNICATIONS

Since 1965 we have changed the lives of many people by reforming the law for the better. Underpinning this is the need to communicate effectively to enable greater public engagement in our consultations, create awareness of what we do amongst Government departments and build momentum behind our recommendations for reform.

The Commission's communications offering is now structured based on the industry best practice – the Government Communications Service Modern Communications Operating Model (MCOM).

Results have continued to improve across our campaigning and marketing channels. During the reporting period almost 250,000 users visited the website, an increase of almost 15%. We have 9,456 new subscribers to receive automatic updates about our work – 29,680 in total. Our Twitter account has also grown and now reaches nearly 15,700 followers.

For our proactive announcements, we have repeatedly secured coverage in the national press and broadcast media. This is all supported by local and trade media.

We have also developed our internal communications, introducing a new intranet to staff at Law Commission and bringing the organisation in line with internal communications best practice.

EDUCATION AND ENGAGEMENT

We have a statutory duty to promote the reform of the law and continue to work hard in this area. Alongside the production of various infographics to explain in plain English each new law reform project, we regularly speak to students and engage with practitioners from across Britain and the world.

Some examples of this over the past year include:

- Meeting with a Minister and representatives from the Malaysian Government to assist with plans to set up a Malaysian Law Commission.
- Meeting a delegation from the Ministry of Justice of the Republic of Kazakhstan.
- Attending the Commonwealth Association of Law Reform Agencies annual conference.
- Once again supporting the Big Voice Model Law Commission project, a volunteer-led project to spark sixth formers' interest in issues of legal identity and the process of law reform.
- Speaking at sessions at universities across the country including at Portsmouth, Lincoln, Swansea and Cardiff.
- Speaking at HMP Warren Hill as part of a Justis Together scheme to educate prisoners alongside Cambridge university students which was featured in the BBC's Law in Action podcast.

SPEAKING ON LAW REFORM

As an outward facing organisation the Commission's Chair, Commissioners and staff have been active speaking at many different events across the country.

Over 2018-19, this has included:

- Speaking about the future of autonomous vehicles at a United Nations Economic Commission for Europe (UNECE) event in Geneva and at CES 2019 in Las Vegas.
- Launching our review of Hate Crime at a roundtable at Oxford Brookes university.
- A roadshow of events including London, Birmingham, Cardiff, Newcastle and others to talk about our three leasehold property consultations.
- Launching our report on online abuse with a number of stakeholders at Manchester Met University.
- Speaking at the @MidwivesRCM Annual Conference on surrogacy law, and the crucial role that midwives play in any surrogacy arrangement.
- Speaking at the Action on Elder Abuse conference around our hate crime project.
- Speaking to the Commercial Real Estate Legal Association about our leasehold law reform and electronic execution of documents projects.

SOCIAL RESPONSIBILITY

Every year a team, made up of our legal and other staff, join members of the judiciary and teams from many of London's law firms and sets of chambers in the annual London Legal Walk. In 2018 the team raised more than £900 for the London Legal Support Trust, which organises the event. The funds go to support free legal advice agencies in and around London, including Law Centres and pro bono advice surgeries.

Our staff have also come together to raise funds for other causes during the year, in a variety of ways, for example a very successful baking day in support of the wellbeing charity, Inner Space.

OUR PARTNER LAW COMMISSIONS AND THE DEVOLVED AUTHORITIES

In June 2018 the Chair and Chief Executive attended the Conference of Law Commissions in Dublin alongside colleagues from the law reform bodies of Jersey, the Republic of Ireland and Scotland. This is an annual event that allows us to exchange experiences and strengthen our relationships. The Law Commission will be hosting the 2019 event in London.

In April 2019, the Commission's Head of Legal Services spoke about programmes of law reform at the Commonwealth Association of Law Reform Agencies conference.

We continue to work closely with our colleagues in the Scottish Law Commission, seeking views as appropriate and engaging on a regular basis.

Part Five:

Our people and corporate matters

The Law Commission is grateful to everyone within the organisation for their hard work, expertise and support as well as their contribution to the work of the Commission.

BUDGET

The Law Commission's core funding, provided to us by Parliament and received through the MoJ, for 2018-19 was £2.277m. This represents a decrease of 8% from 2017-18. The cost of the Commission can be found at Appendix B.

The cost to operate the Commission is approximately £4m. This ensures that we are suitably resourced to undertake effective law reform. Our reducing budget following the Spending Review 2015 means that there is an increased necessity for a greater number of our law reform projects to be funded by monetary contributions, on a cost recovery basis, from the sponsoring Government department. We welcome the recommendations from the recent Tailored Review seeking a review of the Law Commission's funding model.

STAFF AT THE COMMISSION

The Commissioners are supported by the staff of the Law Commission. The staff are civil servants and are led by a Chief Executive.

In 2018-19 there were 62 people working at the Law Commission (full-time equivalent: 55.5 as at 31 March 2019).⁷⁹

Figure 5.1 People working at the Commission (full-time equivalent, at 31 March 2019)

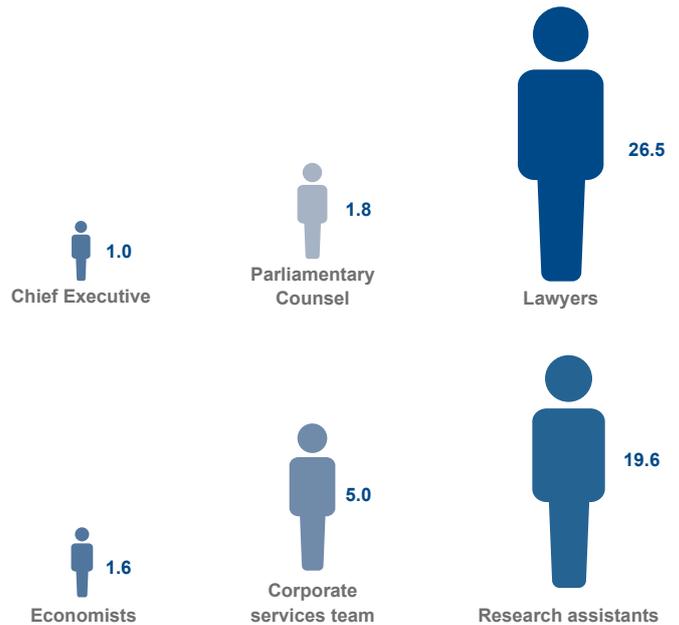
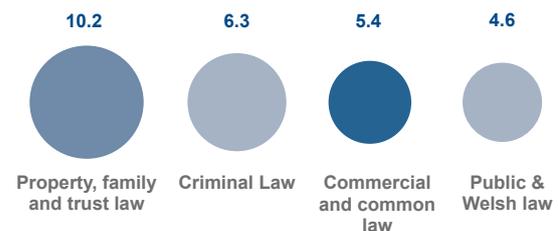


Figure 5.2 Lawyers (full-time equivalent, at 31 March 2019)



79 Excluding the Chair, Chair's Clerk and Commissioners.

Chief Executive

Our Chief Executive is responsible for setting the strategic direction of the Commission, in discussion with the Chair and other Commissioners, and for staffing, funding, organisation and management. The Chief Executive is the Commission's Budget Holder. He is also responsible for the day-to-day management of the Law Commission's relationship with the MoJ, including liaising with and influencing senior Departmental officials and promoting contacts and influence within Government departments.

Our Chief Executive provides advice and assistance to the Chair and other Commissioners, including support of the Chair in his relationships with ministers, the senior judiciary, relevant Parliamentary committees and the media.

Legal Staff

Our lawyers are barristers, solicitors or legal academics from a wide range of professional backgrounds, including private practice and public service.

We organise the legal staff into four teams to support the Commissioners: commercial and common law; criminal law; property, family and trust law and public and Welsh law.

The four teams undertake law reform work, with one Commissioner responsible for the work of the team. The teams are led by a team head, a senior lawyer who provides direct support to the relevant Commissioner and leads the team of lawyers and research assistants working with the Commissioner to deliver their projects. One of the team managers also acts as Head of Legal Services, working closely with the Chief Executive on strategic law reform and staffing issues, and representing the Commission in dealings with key legal stakeholders. Team heads generally do not lead on specific law reform projects themselves; their role focuses on project managing the team's work, providing legal and policy input into those projects, recruiting, mentoring and managing staff and working with the Chief Executive on corporate matters. The team heads also lead on relationships with key stakeholders inside and

outside Government for the projects in their area. Team heads report to the Chief Executive.

Individual lawyers within teams ordinarily lead on law reform projects. They will, with the support of a research assistant, research the law, lead on the development and drafting of policy proposals and papers, and liaise with key stakeholders alongside the team head. The lawyers will undertake much of the day-to-day work on a law reform project.

We are fortunate to have in-house Parliamentary Counsel who prepare the draft Bills attached to the law reform reports, and who are seconded to the Law Commission from the Office of the Parliamentary Counsel. We are delighted to have their expertise available to us.

Research Assistants

Each year we recruit a number of research assistants to assist with research, drafting and creative thinking. They generally spend a year or two at the Commission before moving on to further their legal training and careers.

For many research assistants working at the Commission has been a significant rung on the ladder to a highly successful career.

The selection process is extremely thorough and we aim to attract a diverse range of candidates of the highest calibre through contact with faculty careers advisers, as well as through our website and social media channels. A comprehensive outreach programme was undertaken as part of the 2018 recruitment process, targeting law faculties at a wider range of universities and on campus presentations.

In 2018 we recruited 15 research assistants and the 2019 RA campaign is now complete, with the new recruits due to start in September 2019.

We recognise the contribution our research assistants make, particularly through their enthusiastic commitment to the work of law reform and their lively participation in debate.

Economic and Analytical Services

The Commission benefits from the expertise of an economist who provides specialist advice in relation to the assessment of the impact of our proposals for law reform. As a member of the Government Economic Service, our economist also provides an essential link with the MoJ and other Government department analytical teams.

We have recently expanded the team on a short term basis to undertake an assessment of the economic impact of law reform. We hope to share the findings of this work later in 2019-20.

Corporate Services

The corporate services team play a key role in ensuring the efficient and effective operation of the organisation. During 2018-19, the corporate services team went through a period of transition with a number of staff securing promotions elsewhere in the civil service. Following a successful recruitment campaign, the team is at full complement and has quickly been able to deliver a high quality service to the Commission.

The corporate services team leads on providing the following services for the Commission:

- Governance.
- Transformation.
- Strategy and planning.
- Human Resources.
- Information Technology.
- Financial Management.
- Internal, external and strategic communications.
- Knowledge and records management.
- Information assurance.
- Health and safety.
- Business continuity.

SENIOR MANAGEMENT TEAM

Our Senior Management Team is formed of the Chief Executive, legal team heads, head of corporate services, Parliamentary Counsel and the economist. They meet twice a month and take decisions on the

day-to-day running of the Commission as well as reviewing all programme and project planning relating to our law reform projects.

WORKING AT THE COMMISSION

Staff Engagement

The results of the annual People Survey show the Law Commission with an engagement index of 76% for 2018. This represented a 4% increase from the previous year and an improvement across most areas within the survey. The results in all three areas targeted as part of the people survey action plan increased – My Manager (+6%), My team (+2%) and Inclusion and Fair Treatment (+11%). As in previous years, a People Survey Action Group will be created to develop an action plan and monitor and report on progress in implementing the actions.

To help create networks across peer groups, the Commission created cohorts for each role in 2017. This has provided colleagues with the opportunity to regularly meet, input on corporate initiatives and progressively improve their skills through sharing advice on training and development as well as providing a coaching role to support each other.

In addition, to try to help our staff maintain a good work-life balance, we also offer a wide variety of flexible working arrangements such as home-working, part-time and compressed hours.

Investing in our People

The Law Commission is keen to invest in the continuing professional development of all our staff. In addition to providing access to formal training, such as recent sessions on project management, we run a series of lunchtime seminars throughout the year and have been building on our efforts over the last year. This has included running sessions on legislative drafting, life at the Bar and the role of Parliamentary Counsel. During the course of the year, we have also run a series of talks from inspirational women lawyers in and around Parliament, such as Baroness Hale, Baroness Chakrabarti and First Parliamentary Counsel, Elizabeth Gardner.

WHISTLEBLOWING

All civil servants are bound by the Civil Service Code, which sets out the core values; integrity, honesty, objectivity and impartiality, expected of all MoJ employees.

Staff are encouraged to raise immediately any concerns they have about wrongdoing or breaches of the Civil Service Code by following the whistleblowing procedure. We follow the MoJ whistleblowing procedure, which is made available to all staff via the Law Commission intranet.

FREEDOM OF INFORMATION

The Freedom of Information Act encourages public authorities to make as much information as possible available to the public. Under the Act, we are required to adopt a publication scheme that contains information we routinely make available, and ensure that information is published in accordance with the scheme.

We make a significant amount of information available under our publication scheme. One of its benefits is that it makes information easily accessible and free-of-charge to the public, which removes the need for a formal Freedom of Information request to be made.

The Information Commissioner's Office has developed and approved a model publication scheme that all public authorities must adopt. We have adopted this scheme and we use the definition document for non-departmental public bodies to identify the type of information that we should publish. Among this is a quarterly disclosure log of requests made under the Freedom of Information Act that we have received and dealt with. More details can be found on our website.

GENERAL DATA PROTECTION REGULATION (GDPR)

As a consultative organisation, the Commission takes its responsibilities for the effective handling of personal data seriously. As a result, we ensured that a policy⁸⁰ setting out how we process and store personal data was in place prior to GDPR coming into force in May 2018. We hold regular holding to account meetings with MoJ to ensure that we are meeting our GDPR obligations.

INFORMATION ASSURANCE

In 2018-19 we reported a total of three notifiable incidents, the majority which related to the loss of passes. Each incident was dealt with swiftly, in line with MoJ policies.

HEALTH AND SAFETY

During the year, there was one notifiable incident in relation to staff of the Commission and the Health and Safety at Work etc Act 1974. This was dealt with in line with MoJ guidelines on health and safety.

SUSTAINABILITY

Our actions in relation to energy saving contribute to the overall reduction in consumption across the MoJ estate.

Paper is widely recycled in the office. All our publications are printed on paper containing a minimum of 75% recycled fibre content, and we are actively exploring ways to reduce the quantity of our printed materials.



80 <https://www.lawcom.gov.uk/document/handling-personal-data/> (last accessed 8 May 2019).



Nicholas Green.

Sir Nicholas Green, Chair



David Ormerod

Professor
David Ormerod QC



N.P. Hopkins

Professor Nick Hopkins



Nicholas Paines

Nicholas Paines QC



S Lewis

Stephen Lewis



Phillip Golding

Phillip Golding
Chief Executive

APPENDICES

Appendix A

Implementation status of Law Commission law reform reports

LC No	Title	Status	Related Measures
2018			
384	Anti-money laundering: the SARS regime	Pending	
383	Planning Law in Wales	Accepted	
382	Sentencing Code	Accepted	Sentencing (Pre-Consolidation Amendments) Bill
381	Abusive and Offensive Online Communications: A Scoping Report	Accepted	
380	Updating the Land Registration Act 2002	Pending	
2017			
376	From Bills of Sale to Goods Mortgages	Accepted but will not be implemented	
375	Technical issues in Charity Law	Pending	
374	Pension Funds and Social Investment	Accepted	
373	Event Fees in Retirement Properties	Accepted in part; pending in part	
372	Mental Capacity and Deprivation of Liberty	Implemented in part	Mental Capacity (Amendment) Act 2019
371	Criminal Records Disclosures: Non-Filterable Offences	Pending	
2016			
370	Enforcement of Family Financial Orders	Accepted in part; pending in part	
369	Bills of Sale	Accepted but will not be implemented	
368	Consumer Prepayments on Retailer Insolvency	Pending	
366	Form and Accessibility of the Law Applicable in Wales	Accepted	
365	A New Sentencing Code for England and Wales Transition	Superseded	Conclusions carried forward into LC382
364	Unfitness to Plead	Pending	
2015			
363	Firearms Law – Reforms to Address Pressing Problems	Implemented	Policing and Crime Act 2017 (Part 6)
362	Wildlife Law	Implemented in part; pending in part	Infrastructure Act 2015
361	Reform of Offences against the Person (HC 555)	Pending	
360	Patents, Trade Marks and Designs: Unjustified Threats	Implemented	Intellectual Property (Unjustified Threats) Act 2017
358	Simplification of Criminal Law: Public Nuisance and Outraging Public Decency	Pending	

LC No	Title	Status	Related Measures
2014			
356	Rights to Light (HC 796)	Pending	
355	Simplification of Criminal Law: Kidnapping and Related Offences	Pending	
No LC Number	Social Investment by Charities	Implemented	Charities (Protection and Social Investment) Act 2016
353	Insurance Contract Law (Cm 8898;SG/2014/131)	Implemented	Insurance Act 2015; Enterprise Act 2016
351	Data Sharing between Public Bodies: A Scoping Report	Pending	
350	Fiduciary Duties of Investment Intermediaries (HC 368)	Accepted	
349	Conservation Covenants (HC 322)	Accepted	
348	Hate Crime: Should the Current Offences be Extended? (Cm 8865)	Accepted in part	
347	Taxi and Private Hire Services (Cm 8864)	Implemented in part, pending in part	Deregulation Act 2015
346	Patents, Trade Marks and Design Rights: Groundless Threats (Cm 8851)	Superseded	Superseded by LC360
345	Regulation of Health Care Professionals: Regulation of Social Care Professionals in England (Cm 8839 / SG/2014/26 / NILC 18 (2014))	Accepted	
344	Contempt of Court (2): Court Reporting (HC 1162)	Pending	
343	Matrimonial Property, Needs and Agreements (HC 1039)	Implemented in part; pending in part	
342	Wildlife Law: Control of Invasive Non-native Species (HC 1039)	Implemented	Infrastructure Act 2015
2013			
340	Contempt of Court (1): Juror Misconduct and Internet Publications (HC 860)	Implemented	Criminal Justice and Courts Act 2015
339	Level Crossings (Cm 8711)	Accepted but will not be implemented	
337	Renting Homes in Wales/Rhenttu Cartrefi yng Nghymru (Cm 8578)	Implemented	Renting Homes (Wales) Act 2016
336	The Electronic Communications Code (HC 1004)	Implemented	Digital Economy Act 2017
2012			
335	Contempt of Court: Scandalising the Court (HC 839)	Implemented	Crime and Courts Act 2013 (s33)
332	Consumer Redress for Misleading and Aggressive Practices (Cm 8323)	Implemented	Consumer Protection (Amendment) Regulations 2014; Consumer Rights Act 2015

LC No	Title	Status	Related Measures
2011			
331	Intestacy and Family Provision Claims on Death (HC 1674)	Implemented in part	Inheritance and Trustees' Powers Act 2014
329	Public Service Ombudsmen (HC 1136)	Pending	
327	Making Land Work: Easements, Covenants and Profits à Prendre (HC 1067)	Accepted	
326	Adult Social Care (HC 941)	Implemented	Care Act 2014 and Social Services and Well-Being (Wales) Act 2014
325	Expert Evidence in Criminal Proceedings in England and Wales (HC 829)	Implemented	Criminal Procedure Rules
2010			
324	The High Court's Jurisdiction in Relation to Criminal Proceedings (HC 329)	Pending	
322	Administrative Redress: Public Bodies and the Citizen (HC 6)	Rejected	
320	The Illegality Defence (HC 412)	Rejected	
2009			
319	Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (Cm 7758)	Implemented	Consumer Insurance (Disclosure and Representation) Act 2012 (c6)
318	Conspiracy and Attempts (HC 41)	Accepted but will not be implemented	
317	Consumer Remedies for Faulty Goods (Cm 7725)	Implemented	Consumer Rights Act 2015
315	Capital and Income in Trusts: Classification and Apportionment (HC 426)	Implemented	Trusts (Capital and Income) Act 2013
314	Intoxication and Criminal Liability (Cm 7526)	Rejected	
2008			
313	Reforming Bribery (HC 928)	Implemented	Bribery Act 2010 (c23)
312	Housing: Encouraging Responsible Letting (Cm 7456)	Rejected	
309	Housing: Proportionate Dispute Resolution (Cm 7377)	Accepted in part	
2007			
307	Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182)	Pending	
305	Participating in Crime (Cm 7084)	Pending	

LC No	Title	Status	Related Measures
2006			
304	Murder, Manslaughter and Infanticide (HC 30)	Implemented in part	Coroners and Justice Act 2009 (c25)
303	Termination of Tenancies (Cm 6946)	Pending	
302	Post-Legislative Scrutiny (Cm 6945)	Implemented	See Post-Legislative Scrutiny: The Government's Approach (2008) Cm 7320
301	Trustee Exemption Clauses (Cm 6874)	Implemented	See Written Answer, Hansard (HC), 14 September 2010, vol 515, col 38WS
300	Inchoate Liability for Assisting and Encouraging Crime (Cm 6878)	Implemented	Serious Crime Act 2007 (c27)
297	Renting Homes: The Final Report (Cm 6781)	Rejected for England, Accepted in principle for Wales	
2005			
296	Company Security Interests (Cm 6654)	Pending	
295	The Forfeiture Rule and the Law of Succession (Cm 6625)	Implemented	Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011
292	Unfair Terms in Contracts (SLC 199) (Cm 6464; SE/2005/13)	Implemented	Consumer Rights Act 2015
2004			
291	Towards a Compulsory Purchase Code: (2) Procedure (Cm 6406)	Accepted but will not be implemented	
290	Partial Defences to Murder (Cm 6301)	Implemented	Coroners and Justice Act 2009 (c25)
288	In the Public Interest: Publication of Local Authority Inquiry Reports (Cm 6274)	Accepted but will not be implemented	
287	Pre-judgment Interest on Debts and Damages (HC 295)	Rejected	
2003			
286	Towards a Compulsory Purchase Code: (1) Compensation (Cm 6071)	Accepted but will not be implemented	
284	Renting Homes (Cm 6018)	Superseded	See LC 297
283	Partnership Law (SLC192) (Cm 6015; SE/2003/299)	Implemented in part; Accepted in part; Rejected in part	The Legislative Reform (Limited Partnerships) Order 2009
282	Children: Their Non-accidental Death or Serious Injury (Criminal Trials) (HC 1054)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
281	Land, Valuation and Housing Tribunals: The Future (Cm 5948)	Rejected	

LC No	Title	Status	Related Measures
2002			
277	The Effective Prosecution of Multiple Offending (Cm 5609)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
276	Fraud (Cm 5560)	Implemented in part	Fraud Act 2006 (c35)
2001			
273	Evidence of Bad Character in Criminal Proceedings (Cm 5257)	Implemented	Criminal Justice Act 2003 (c44)
272	Third Parties – Rights against Insurers (SLC 184) (Cm 5217)	Implemented	Third Parties (Rights Against Insurers) Act 2010 (c10); Third Parties (Rights against Insurers) Regulations 2016
271	Land Registration for the Twenty-First Century (jointly with HM Land Registry) (HC 114)	Implemented	Land Registration Act 2002 (c9)
270	Limitation of Actions (HC 23)	Rejected	
269	Bail and the Human Rights Act 1998 (HC 7)	Implemented	Criminal Justice Act 2003 (c44)
267	Double Jeopardy and Prosecution Appeals (Cm 5048)	Implemented	Criminal Justice Act 2003 (c44)
1999			
263	Claims for Wrongful Death (HC 807)	Rejected	
262	Damages for Personal Injury: Medical and Nursing Expenses (HC 806)	Rejected	
261	Company Directors: Regulating Conflicts of Interests (SLC 173) (Cm 4436; SE/1999/25)	Implemented	Companies Act 2006 (c46)
260	Trustees' Powers and Duties (SLC 172) (HC 538; SE2)	Implemented	Trustee Act 2000 (c29)
257	Damages for Personal Injury: Non-Pecuniary Loss (HC 344)	Implemented in part	See Heil v Rankin [2000] 3 WLR 117
1998			
255	Consents to Prosecution (HC 1085)	Accepted (Advisory only, no draft Bill)	
253	Execution of Deeds and Documents (Cm 4026)	Implemented	Regulatory Reform (Execution of Deeds and Documents) Order 2005
251	The Rules against Perpetuities and Excessive Accumulations (HC 579)	Implemented	Perpetuities and Accumulations Act 2009 (c18)
249	Liability for Psychiatric Illness (HC 525)	Rejected	
248	Corruption (HC 524)	Superseded	See LC 313

LC No	Title	Status	Related Measures
1997			
247	Aggravated, Exemplary and Restitutory Damages (HC 346)	Rejected	
246	Shareholder Remedies (Cm 3759)	Implemented	Companies Act 2006 (c46)
245	Evidence in Criminal Proceedings: Hearsay (Cm 3670)	Implemented	Criminal Justice Act 2003 (c44)
1996			
243	Money Transfers (HC 690)	Implemented	Theft (Amendment) Act 1996 (c62)
242	Contracts for the Benefit of Third Parties (Cm 3329)	Implemented	Contracts (Rights of Third Parties) Act 1999 (c31)
238	Responsibility for State and Condition of Property (HC 236)	Accepted in part but will not be implemented; Rejected in part	
237	Involuntary Manslaughter (HC 171)	Implemented in part	Corporate Manslaughter and Corporate Homicide Act 2007 (c19); see LC 304
1995			
236	Fiduciary Duties and Regulatory Rules (Cm 3049)	Rejected	
235	Land Registration: First Joint Report with HM Land Registry (Cm 2950)	Implemented	Land Registration Act 1997 (c2)
231	Mental Incapacity (HC 189)	Implemented	Mental Capacity Act 2005 (c9)
230	The Year and a Day Rule in Homicide (HC 183)	Implemented	Law Reform (Year and a Day Rule) Act 1996 (c19)
229	Intoxication and Criminal Liability (HC 153)	Superseded	See LC 314
1994			
228	Conspiracy to Defraud (HC 11)	Implemented	Theft (Amendment) Act 1996 (c62)
227	Restitution: Mistakes of Law (Cm 2731)	Implemented in part	See <i>Kleinwort Benson v Lincoln City Council</i> [1999] 2 AC 349
226	Judicial Review (HC 669)	Implemented in part	Housing Act 1996 (c52); Access to Justice Act 1999 (c22); Tribunals, Courts and Enforcement Act 2007 (c15)
224	Structured Settlements (Cm 2646)	Implemented	Finance Act 1995 (c4); Civil Evidence Act 1995 (c38); Damages Act 1996 (c48)

LC No	Title	Status	Related Measures
222	Binding Over (Cm 2439)	Implemented in part	In March 2007, the President of the Queen's Bench Division issued a Practice Direction
221	Termination of Tenancies (HC 135)	Superseded	See LC 303
220	Delegation by Individual Trustees (HC 110)	Implemented	Trustee Delegation Act 1999 (c15)
1993			
219	Contributory Negligence as a Defence in Contract (HC 9)	Rejected	
218	Legislating the Criminal Code: Offences against the Person and General Principles (Cm 2370)	Implemented in part	Domestic Violence Crime and Victims Act 2004 (c28)
217	Effect of Divorce on Wills (Cm 2322)	Implemented	Law Reform (Succession) Act 1995 (c41)
216	The Hearsay Rule in Civil Proceedings (Cm 2321)	Implemented	Civil Evidence Act 1995 (c38)
215	Sale of Goods Forming Part of a Bulk (SLC 145) (HC 807)	Implemented	Sale of Goods (Amendment) Act 1995 (c28)
1992			
208	Business Tenancies (HC 224)	Implemented	Regulatory Reform (Business Tenancies) (England and Wales) Order 2003
207	Domestic Violence and Occupation of the Family Home (HC 1)	Implemented	Family Law Act 1996 (c27), Part IV
205	Rape within Marriage (HC 167)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
1991			
204	Land Mortgages (HC 5)	Rejected	
202	Corroboration of Evidence in Criminal Trials (Cm 1620)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
201	Obsolete Restrictive Covenants (HC 546)	Rejected	
199	Transfer of Land: Implied Covenants for Title (HC 437)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
196	Rights of Suit: Carriage of Goods by Sea (SLC 130) (HC 250)	Implemented	Carriage of Goods by Sea Act 1992 (c50)
194	Distress for Rent (HC 138)	Implemented in part	Tribunals, Courts and Enforcement Act 2007 (c15), Part III (enacted, but not yet brought into force)

LC No	Title	Status	Related Measures
1990			
193	Private International Law: Choice of Law in Tort and Delict (SLC 129) (HC 65)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
192	Family Law: The Ground for Divorce (HC 636)	Implemented	Family Law Act 1996 (c27), Part II (enacted, but never brought into force)
1989			
188	Overreaching: Beneficiaries in Occupation (HC 61)	Implemented in part	Trusts of Land and Appointment of Trustees Act 1996 (c47)
187	Distribution on Intestacy (HC 60)	Implemented in part	Law Reform (Succession) Act 1995 (c41)
186	Computer Misuse (Cm 819)	Implemented	Computer Misuse Act 1990 (c18)
184	Title on Death (Cm 777)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
181	Trusts of Land (HC 391)	Implemented	Trusts of Land and Appointment of Trustees Act 1996 (c47)
180	Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC 318)	Implemented	Criminal Justice Act 1993 (c36), Part I
178	Compensation for Tenants' Improvements (HC 291)	Rejected	
177	Criminal Law: A Criminal Code (2 vols) (HC 299)	Superseded	Superseded by the criminal law simplification project: see Tenth Programme.
1988			
175	Matrimonial Property (HC 9)	Rejected	
174	Landlord and Tenant: Privity of Contract and Estate (HC 8)	Implemented	Landlord and Tenant (Covenants) Act 1995 (c30)
173	Property Law: Fourth Report on Land Registration (HC 680)	Superseded	See LC 235
172	Review of Child Law: Guardianship (HC 594)	Implemented	Children Act 1989 (c41)
1987			
168	Private International Law: Law of Domicile (SLC 107) (Cm 200)	Rejected	
166	Transfer of Land: The Rule in <i>Bain v Fothergill</i> (Cm 192)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)

LC No	Title	Status	Related Measures
165	Private International Law: Choice of Law Rules in Marriage (SLC 105) (HC 3)	Implemented	Foreign Marriage (Amendment) Act 1988 (c44)
164	Formalities for Contracts for Sale of Land (HC 2)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
163	Deeds and Escrows (HC 1)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
161	Leasehold Conveyancing (HC 360)	Implemented	Landlord and Tenant Act 1988 (c26)
160	Sale and Supply of Goods (SLC 104) (Cm 137)	Implemented	Sale and Supply of Goods Act 1994 (c35)
	1986		
157	Family Law: Illegitimacy (Second Report) (Cmnd 9913)	Implemented	Family Law Reform Act 1987 (c42)
	1985		
152	Liability for Chancel Repairs (HC 39)	Rejected	
151	Rights of Access to Neighbouring Land (Cmnd 9692)	Implemented	Access to Neighbouring Land Act 1992 (c23)
149	Criminal Law: Report on Criminal Libel (Cmnd 9618)	Rejected	
148	Property Law: Second Report on Land Registration (HC 551)	Implemented	Land Registration Act 1988 (c3)
147	Criminal Law: Poison Pen Letters (HC 519)	Implemented	Malicious Communications Act 1988 (c27)
146	Private International Law: Polygamous Marriages (SLC 96) (Cmnd 9595)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
145	Criminal Law: Offences against Religion and Public Worship (HC 442)	Implemented	Criminal Justice and Immigration Act 2008 (c4)
143	Criminal Law: Codification of the Criminal Law: A Report to the Law Commission (HC 270)	Superseded	See LC 177
142	Forfeiture of Tenancies (HC 279)	Rejected	
141	Covenants Restricting Dispositions, Alterations and Change of User (HC 278)	Implemented in part	Landlord and Tenant Act 1988 (c26)
138	Family Law: Conflicts of Jurisdiction (SLC 91) (Cmnd 9419)	Implemented	Family Law Act 1986 (c55), Part I
	1984		
137	Private International Law: Recognition of Foreign Nullity Decrees (SLC 88) (Cmnd 9347)	Implemented	Family Law Act 1986 (c55), Part II

LC No	Title	Status	Related Measures
134	Law of Contract: Minors' Contracts (HC 494)	Implemented	Minors' Contracts Act 1987 (c13)
132	Family Law: Declarations in Family Matters (HC 263)	Implemented	Family Law Act 1986 (c55), Part III
127	Transfer of Land: The Law of Positive and Restrictive Covenants (HC 201)	Rejected	
1983			
125	Property Law: Land Registration (HC 86)	Implemented	Land Registration Act 1986 (c26)
124	Private International Law: Foreign Money Liabilities (Cmnd 9064)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
123	Criminal Law: Offences relating to Public Order (HC 85)	Implemented	Public Order Act 1986 (c64)
122	The Incapacitated Principal (Cmnd 8977)	Implemented	Enduring Powers of Attorney Act 1985 (c29)
121	Law of Contract: Pecuniary Restitution on Breach of Contract (HC 34)	Rejected	
1982			
118	Family Law: Illegitimacy (HC 98)	Implemented	Family Law Reform Act 1987 (c42)
117	Family Law: Financial Relief after Foreign Divorce (HC 514)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
116	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (HC 513)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
114	Classification of Limitation in Private International Law (Cmnd 8570)	Implemented	Foreign Limitation Periods Act 1984 (c16)
114	Property Law: The Implications of Williams and Glyn's Bank Ltd v Boland (Cmnd 8636)	Superseded	See City of London Building Society v Flegg [1988] AC 54
1981			
112	Family Law: The Financial Consequences of Divorce (HC 68)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
111	Property Law: Rights of Reverter (Cmnd 8410)	Implemented	Reverter of Sites Act 1987 (c15)
110	Breach of Confidence (Cmnd 8388)	Rejected	
1980			
104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd 8064)	Rejected	
102	Criminal Law: Attempt and Impossibility in Relation to Attempt, Conspiracy and Incitement (HC 646)	Implemented	Criminal Attempts Act 1981 (c47)
99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (HC 369)	Implemented	Matrimonial Homes and Property Act 1981 (c24)

LC No	Title	Status	Related Measures
1978			
96	Criminal Law: Offences Relating to Interference with the Course of Justice (HC 213)	Rejected	
95	Law of Contract: Implied Terms in Contracts for the Sale and Supply of Goods (HC 142)	Implemented	Supply of Goods and Services Act 1982 (c29)
91	Criminal Law: Report on the Territorial and Extra-Territorial Extent of the Criminal Law (HC 75)	Implemented in part	Territorial Sea Act 1987 (c49)
89	Criminal Law: Report on the Mental Element in Crime (HC 499)	Rejected	
88	Law of Contract: Report on Interest (Cmnd 7229)	Implemented in part	Administration of Justice Act 1982 (c53); Rules of the Supreme Court (Amendment No 2) 1980
86	Family Law: Third Report on Family Property: The Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods (HC 450)	Implemented	Housing Act 1980 (c51); Matrimonial Homes and Property Act 1981 (c24)
1977			
83	Criminal Law: Report on Defences of General Application (HC 566)	Rejected	
82	Liability for Defective Products: Report by the two Commissions (SLC 45) (Cmnd 6831)	Implemented	Consumer Protection Act 1987 (c43)
79	Law of Contract: Report on Contribution (HC 181)	Implemented	Civil Liability (Contribution) Act 1978 (c47)
1976			
77	Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (HC 637)	Implemented	Domestic Proceedings and Magistrates' Courts Act 1978 (c22)
76	Criminal Law: Report on Conspiracy and Criminal Law Reform (HC 176)	Implemented in part	Criminal Law Act 1977 (c45)
75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd 6428)	Implemented	Occupiers' Liability Act 1984 (c3)
74	Charging Orders (Cmnd 6412)	Implemented	Charging Orders Act 1979 (c53)
73	Report on Remedies in Administrative Law (Cmnd 6407)	Implemented	Rules of Supreme Court (Amendment No 3) 1977; Supreme Court Act 1981 (c54)

LC No	Title	Status	Related Measures
1975			
69	Exemption Clauses: Second Report by the two Law Commissions (SLC 39) (HC 605)	Implemented	Unfair Contract Terms Act 1977 (c50)
68	Transfer of Land: Report on Rentcharges (HC 602)	Implemented	Rentcharges Act 1977 (c30)
67	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (HC 377)	Rejected	
1974			
62	Transfer of Land: Report on Local Land Charges (HC 71)	Implemented	Local Land Charges Act 1975 (c76)
61	Family Law: Second Report on Family Property: Family Provision on Death (HC 324)	Implemented	Inheritance (Provision for Family and Dependants) Act 1975 (c63)
60	Report on Injuries to Unborn Children (Cmnd 5709)	Implemented	Congenital Disabilities (Civil Liability) Act 1976 (c28)
1973			
56	Report on Personal Injury Litigation: Assessment of Administration of Damages (HC 373)	Implemented	Administration of Justice Act 1982 (c53)
55	Criminal Law: Report on Forgery and Counterfeit Currency (HC 320)	Implemented	Forgery and Counterfeiting Act 1981 (c45)
53	Family Law: Report on Solemnisation of Marriage in England and Wales (HC 250)	Rejected	
1972			
48	Family Law: Report on Jurisdiction in Matrimonial Proceedings (HC 464)	Implemented	Domicile and Proceedings Act 1973 (c45)
1971			
43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (SLC 21) (Cmnd 4654)	Implemented in part	Finance Act 1972 (c41), s 82
42	Family Law: Report on Polygamous Marriages (HC 227)	Implemented	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c38); now Matrimonial Causes Act 1973 (c18)
1970			
40	Civil Liability of Vendors and Lessors for Defective Premises (HC 184)	Implemented	Defective Premises Act 1972 (c35)
35	Limitation Act 1963 (Cmnd 4532)	Implemented	Law Reform (Miscellaneous Provisions) Act 1971 (c43)

LC No	Title	Status	Related Measures
34	Hague Convention on Recognition of Divorces and Legal Separations: Report by the two Commissions (SLC 16) (Cmnd 4542)	Implemented	Recognition of Divorces and Legal Separations Act 1971 (c53); now Family Law Act 1986 (c55), Part II
33	Family Law: Report on Nullity of Marriage (HC 164)	Implemented	Nullity of Marriage Act 1971 (c44), now Matrimonial Causes Act 1973 (c18)
31	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd 4497)	Implemented	Administration of Estates Act 1971 (c25)
30	Powers of Attorney (Cmnd 4473)	Implemented	Powers of Attorney Act 1971 (c27)
29	Criminal Law: Report on Offences of Damage to Property (HC 91)	Implemented	Criminal Damage Act 1971 (c48)
1969			
26	Breach of Promise of Marriage (HC 453)	Implemented	Law Reform (Miscellaneous Provisions) Act 1970 (c33)
25	Family Law: Report on Financial Provision in Matrimonial Proceedings (HC 448)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45); now largely Matrimonial Causes Act 1973 (c18)
24	Exemption Clauses in Contracts: First Report: Amendments to the Sale of Goods Act 1893: Report by the Two Commissions (SLC 12) (HC 403)	Implemented	Supply of Goods (Implied Terms) Act 1973 (c13)
23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (HC 369)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45)
21	Interpretation of Statutes (HC 256)	Rejected	
20	Administrative Law (Cmnd 4059)	Implemented	See LC 73
19	Proceedings against Estates (Cmnd 4010)	Implemented	Proceedings against Estates Act 1970 (c17)
18	Transfer of Land: Report on Land Charges affecting Unregistered Land (HC 125)	Implemented	Law of Property Act 1969 (c59)
17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (HC 38)	Implemented	Law of Property Act 1969 (c59)
1968			
16	Blood Tests and the Proof of Paternity in Civil Proceedings (HC 2)	Implemented	Family Law Reform Act 1969 (c46)
1967			
13	Civil Liability for Animals	Implemented	Animals Act 1971 (c22)
11	Transfer of Land: Report on Restrictive Covenants	Implemented in part	Law of Property Act 1969 (c59)

LC No	Title	Status	Related Measures
10	Imputed Criminal Intent (Director of Public Prosecutions v Smith)	Implemented	Criminal Justice Act 1967 (c80), s 8
9	Transfer of Land: Interim Report on Root of Title to Freehold Land	Implemented	Law of Property Act 1969 (c59)
	1966		
8	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd 3149)	Implemented	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c63)
7	Proposals for Reform of the Law Relating to Maintenance and Champerty	Implemented	Criminal Law Act 1967 (c80)
6	Reform of the Grounds of Divorce: The Field of Choice (Cmnd 3123)	Implemented	Divorce Reform Act 1969 (c55); now Matrimonial Causes Act 1973 (c18)
3	Proposals to Abolish Certain Ancient Criminal Offences	Implemented	Criminal Law Act 1967 (c58)

Appendix B

The cost of the Law Commission

The cost of the Commission is met substantially from core funding provided by Parliament (section 5 of the Law Commissions Act 1965) and received via the Ministry of Justice. The Commission also receives funding contributions from departments towards the cost of some law reform projects, in accordance with the Protocol between the Government and the Law Commission.

	2017–2018 (April–March)		2018–2019 (April–March)	
	£000	£000	£000	£000
Commissioner salaries (including ERNIC) ¹	559.9		559.9	
Staff costs ²	3131.5		3406.1	
		3691.4		3966.0
Research and consultancy	40.0		10.4	
Communications (printing and publishing, translation, media subscriptions, publicity and advertising)	141.8		127.7	
Design, print and reprographics				
Events and conferences (non-training)				
Information technology				
Equipment maintenance				
Library services (books, articles and online subscriptions)				
Postage and distribution				
Telecommunications				
Accommodation recharge (e.g. rent, rates, security, cleaning) (met by MoJ) ³	575.9		604.4	
Travel and subsistence (includes non-staff)	7.6		44.9	
Stationery and office supplies	22.4		45.2	
Recruitment				
Training and professional bodies membership				
Recognition and reward scheme awards				
Childcare vouchers				
Health and Safety equipment/services				
Hospitality	0.0		3.1	
		787.7		835.7
TOTAL		4479.1		4801.7⁴

1 Excludes the Chairman who is paid by HM Courts and Tribunals Service (HMCTS).

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

3 In November 2013 the Law Commission moved to fully managed offices within the MoJ estate. This cost is met by MoJ directly.

4 Figures will form part of the wider MoJ set of accounts which will be audited.

Appendix C

Tailored review recommendations

	Recommendation
1	The Law Commission of England and Wales should continue to carry out the functions required by the Law Commissions Acts of 1965 and 2009.
2	The Law Commission of England and Wales should remain in its current delivery form as an Advisory Non-Departmental Public Body.
3	With a view to maintaining the independence and capability of the Law Commission, the MoJ ALB Centre of Expertise, Finance Business Partners, Policy Sponsors and the Law Commission should conduct a review of the current funding model and other funding arrangements to ensure that the Law Commission's funding model is sufficiently robust.
4	With a view to improving awareness and engagement, the Law Commission should consider, as part of planned website changes, how project pages on the website could clearly display 'next steps' post-publication of the report and recommendations, for quick reference by stakeholders and consultation respondents.
5	With a view to increasing implementation rates, the Law Commission should be clear in job descriptions for the Chair and Commissioners that they have a role in networking and meeting with parliamentarians and Senior Officials to increase awareness of the Law Commission and its work. Training and/or supporting guidance should be developed by the Law Commission on how and when Commissioners should seek to build relationships with Parliamentarians.
6	With a view to maintaining good corporate governance, the Commission's Code of Best Practice should be updated in line with guidance provided by the 2017 Functional Review of Public Bodies Providing Expert Advice to Government.
7	With a view to improving the working relationship with the MoJ, the Law Commission should work with the MoJ ALB Centre of Expertise to review and update the Framework Document. Specific consideration should be given to:
7a	Whether the current meetings between Ministers and the Law Commission remain an effective means of engagement.
7b	Requirements that representatives of the Law Commission meet with senior policy officials from the MoJ for strategy discussions to ensure MoJ Projects are conducted successfully.
7c	Clear division of responsibilities between assurance partnership provided by ALB Centre of Expertise and sponsorship provided by Policy Sponsor team.
8	With a view to improving the diversity of Commissioners, the Law Commission should work in collaboration with the MoJ Public Appointments Team, to attract a more diverse range of individuals by undertaking more outreach and promotion activity regarding the role of the Commissioner by utilising the Commission's stakeholder network and targeting more diverse groups within the sector.
9	With a view to improving all elements of diversity at all levels, the Law Commission should prioritise the publication of a Diversity and Equality Strategy, in line with that of Government, during the year 2019-20. The strategy should include a plan for implementation and monitoring of progress.

Appendix D

Our business plan priorities for 2018-19

Ensure that the law is fair, modern and clear
<p>We will:</p> <ul style="list-style-type: none"> • Make recommendations to UK and Welsh Government that improve the current law. • Assist Government with the myriad of technical legal challenges associated with Brexit and support the Global Britain agenda. • Ensure that our recommendations are shaped by input from experts, interested stakeholders and members of the public. • Continue to identify future areas of law reform, working with relevant Government Departments to secure project references. • Ensure best law reform practice is shared across all teams and consistency of approach achieved wherever possible.
A forward looking organisation
<p>We will:</p> <ul style="list-style-type: none"> • Continue work to build relationships with Government and promote the strategic use of the Law Commission. • Leverage our strong relationships with academia to encourage mutually beneficial empirical research that will help to further strengthen the evidence base for our recommendations. • Embed the communications strategy within the Law Commission, maximising the impact of our work and the benefits of reform to individuals.
A great place to work
<p>We will:</p> <ul style="list-style-type: none"> • Work with staff across the Law Commission to identify actions to improve the organisation, making use of the People Survey scores to support the action plan. • Develop a diversity policy which ensures that the Commission is able to draw on the widest possible pool of candidates for research assistant, lawyer, Commissioner and corporate roles. • Achieve professional excellence through expanding the learning and development programme to help support staff in developing themselves and their career. • Strengthen the relationship between the Board and staff, ensuring that all colleagues are aware of the role of the Board.
Good corporate governance
<p>We will:</p> <ul style="list-style-type: none"> • Successfully appoint a new Chair for the Commission, seamlessly integrating them into the organisation and fully utilising their skills and experiences. • Ensure that the Commission continues to deliver effectively and efficiently, underpinned by good corporate governance. • Successfully embed new ways of working following changes to the Law Commission's accommodation in 102 Petty France. • Ensure that the Law Commission complies with its obligations under the new General Data Protection Regulation (GDPR). • Ensure a robust financial position by keeping the variance against total budget under control.

Appendix E

Targets for 2018-19 and 2019-20

Targets for 2018-19

Target	Outcome
To publish reports on:	
Land registration	Published on 24 July 2018 (LC380)
Offensive Online Communications (scoping report)	Published on 1 November 2018 (LC381)
Sentencing Code	Published on 21 November 2018 (LC382)
Planning Law in Wales	Published on 3 December 2018 (LC383)
Anti-Money Laundering	Published on 18 June 2019 (LC384)
Misconduct in Public Office	Carried over to 2019-20
Protection of Official Data (September 2018)	Carried over to 2019-20
Search Warrants (December 2018)	Carried over to 2019-20
To publish consultations on:	
Search Warrants	Published on 5 June (LCCP235)
Anti-Money Laundering	Published on 20 July 2018 (LCCP236)
Electronic Signatures	Published on 21 August 2018 (LCCP237)
Enfranchisement	Published on 20 September 2018 (LCCP238)
Employment Law Hearing Structures	Published on 25 September 2018 (LCCP239)
Automated Vehicles scoping paper	Published on 8 November 2018 (LCCP240)
Commonhold	Published on 10 December 2018 (LCCP241)
Simplifying the Immigration Rules	Published on 21 January 2019 (LCCP242)
Right to Manage	Published on 28 January 2019 (LCCP243)
Confiscation and the Proceeds of Crime	Carried over to 2019-20

Targets for 2019-20

Target	
To publish reports on:	To publish consultations on:
Anti-Money Laundering (June 2019)	Surrogacy (June 2019)
Search Warrants (Summer 2019)	Automated Vehicles (October 2019)
Employment Law Hearing Structures (Autumn 2019)	Confiscation of the Proceeds of Crime (November 2019)
Electronic Signatures (Autumn 2019)	Hate Crime (early 2020)
Misconduct in Public Office (Autumn 2019)	Review of the Communications Offences (January 2020)
Breaches of Protected Government Data (Autumn 2019)	
Simplification of Immigration Rules (Autumn 2019)	
Insurable Interest (December 2019)	
Electoral Law (December 2019)	
Enfranchisement (late 2019 or early 2020)	
Commonhold (February 2020)	
Right to Manage (February 2020)	

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