



**Law
Commission**
Reforming the law

VALUE OF LAW REFORM – SUMMARY

CHAIR'S INTRODUCTION

The Commission is an apolitical, independent statutory body tasked with improving and modernising the law. We exist to recommend law reform to Government and bring about improvements to the personal and economic wellbeing of the people and businesses of England and Wales. We specialise in complex and difficult projects requiring detailed research and consultation where the Government values our rigour, independence and expertise.

The Commission is comprised of about 60 lawyers and researchers with a tiny support staff. The preponderant portion of our costs are therefore dedicated to front line law reform. Despite the challenges imposed by coronavirus, we are presently working on about 20 live law reform projects which span the full gamut of activity from the digital economy through to hate crime and on-line abuse, from leasehold reform to surrogacy, and from planning law in Wales to weddings.

Our independence, which we defend rigorously, means that we operate in an objective and impartial manner. Because of this we are trusted. It enables us to work closely with Government and other affected stakeholders without being viewed as partisan. We are often seen as the best way in which a seemingly intractable issue can be resolved. Law reform is the art of the workable. The intensity of our work means that we make recommendations which to the greatest possible degree minimise the risk of adverse unintended consequences. We strive to produce reports which contain practical long term and durable solutions to difficult problems.

The Commission has existed since 1965, for well over 50 years, and during that time we have produced over 230 reports. Between 2010 and 2017 we produced 47 reports and only two were not accepted by Government.

But until now we have never set out to measure in any systematic manner our effectiveness. In late 2018 we therefore instructed two independent economists to review our work and assess the extent to which it brought about real and lasting benefit. They conducted their investigation in 2019 and we are now publishing both their full report and a summary of its main conclusions.

We are not aware that any other law reform agency in the world has ever conducted such an exercise. The work of the economists is seminal.

The benefits of law reform are many. Viewed narrowly it can result in making existing laws more efficient and save money for individuals, companies and Government. In some cases, it can expand international markets to generate new funds for businesses and the public purse. But equally (and often more) important is the fact that good laws can improve welfare, modernise sectors of the economy facilitating investment, protect the vulnerable, preserve the security of the state, improve the rule of law, and provide a platform for personal and social development. Good laws can foster happiness and make lives genuinely better even if it is difficult to place monetary values upon those benefits.

We embarked upon this project for many reasons. We need to satisfy everyone that we are a really good use of public money. We need to educate ourselves about the law reform techniques that work best in practice in achieving their goals so that we can fine tune our skills in relation to future projects. This is especially important as we take on more projects in areas affected by digitalisation and AI with all the uncertainties that this entails.

We need also to educate Parliament, Government and the public about the wide range of benefits and outcomes that should be acknowledged as the desired end-result of new laws. We hope that these reports will broaden the horizons and aspirations of those whose task it is to think about the creation of law.

The results of the analysis are startling. The economists took a sizeable and representative sample of recent Law Commission reports to analyse.

If one takes a narrow financial perspective the net present value (measured over ten years) of just five of our largest projects comfortably exceeds £3 billion. Those figures are taken from approved impact assessments. Even quite technical projects, such as that we undertook to codify and simplify sentencing in criminal cases, can lead to substantial savings. In that case the savings will be up to £250 million over ten years.

But we baulk at the suggestion that the benefit of good law reform can or should be measured only in monetary terms. The projects reviewed by the economists touched, in a positive manner, the lives of over 27 million individuals.

Both the summary and the full report provide compelling evidence of the benefits of good law reform.

It is a feature of virtually every project that we have worked upon that its costs represent a miniscule fraction of the benefit which ensues. A typical law reform project costs considerably less than £500k to run from start to finish. But five of our recent projects have a net present value exceeding £3 billion over 10 years. Our work to design a legal and regulatory framework for automated vehicles is said by Government and industry to be an essential precondition to the unlocking of a market estimated to be worth about £60 billion in the United Kingdom alone by 2030.

I hope that readers of this summary and of the full report will conclude that the benefits of independent and objective law reform speak for themselves.

I must, finally, express my gratitude to both Derrick Jones and Ruth Wainwright, the economists, for their work on this important exercise.



**The Rt Hon Sir Nicholas Green
Chairman,
Law Commission of England and Wales**

THE KEY FINDINGS

Having analysed the impact of the Law Commission's work and law reform, including the use of case studies, a number of key findings were produced. The full list can be found in the full report. They include the following:

- The predicted economic gains from the five highest-value projects in recent years exceed more than £3 billion over ten years.
- The projects assessed by the economists affected, positively, the lives of at least 27 million individuals.
- All 11 projects analysed have or will positively contribute to some of the various benefits of law reform.
- Of the 45 reports published between 2010-17 only two have not been accepted by Government.

Greater detail and analysis on these findings is laid out below, in this summary document.

“Impact assessments conducted by the Law Commission have demonstrated the potential economic value of recommended reforms with predicted benefits from individual projects in some cases exceeding £100 million over 10 years.”

Case study 1: The Fraud Act

Approximately one in 17 adults are victims of fraud in England and Wales resulting in annual losses to the economy of £4.7 billion.

The Law Commission recommended the repeal of existing offences and the creation of new statutory offences in the Fraud Act 2006.

These changes have facilitated action from investigation through to prosecution, as law enforcement officers in England and Wales seek to tackle increasingly complex and costly fraudulent activities. The new offences allow the criminal justice system to deal far more effectively and efficiently with modern fraudsters.

Three key benefits from this project include harm prevention, greater access to justice and technology driven growth.

THE LAW COMMISSION'S OUTPUTS

The Law Commission produces a substantial number of reports and consultations that are of high quality and which have resulted in significant reforms to the law.

Publishing reports

Since its inception in 1965, the Law Commission of England in Wales has published 232 sets of recommendations in the form of final reports. This is a significant body of work. On average, the Law Commission of England and Wales publishes 4.5 final reports a year, a figure which compares favourably with other reform bodies reviewed.

Conducting consultations

The Law Commission receives high volumes of responses to its consultations. It has an established reputation for conducting consultations extremely successfully. It encourages engagement by publishing consultation papers, conducting consultation events and approaching stakeholders directly.

Case study 2: Adult Social Care Law

Most citizens will need adult social care services at some time in their lives, either for themselves or for a family member or friend. £21.2 billion is spent annually by the UK government on adult social care.

The Care Act 2014, based on Law Commission recommendations, set out a new legal framework for the provision of care and support services to older and disabled people, and their carers, and established duties for safeguarding vulnerable adults from abuse and neglect.

Three key benefits of the project include wellbeing improvement, modernising the legal system and efficiency gains.



The number of responses that a consultation exercise leads to will vary significantly. By way of example the three projects on leasehold reform in 2018 generated over 3,600 responses (2,000 written responses and 1,650 responses to a survey).

Implementation of the Commission's recommendations

Since 1965 two-thirds of the recommendations made in Law Commission final reports have been implemented in whole or in part. Whilst a further 8% have been accepted by Government without yet being implemented. Only a tiny fraction of our reports have been explicitly rejected by the Government – of the 45 reports published between 2010-17 only two have not been accepted, less than 5%.

Following the CIDR Act 2012, the HM Treasury “estimated the savings to be £700,000 per year in complaint handling costs”, whilst the Law Commission estimated “savings from the reduction in fraudulent claims to be £5.25 million.”

THE BENEFITS OF LAW REFORM

Whilst the benefits of law reform will vary from project to project, the independent report identified key ways in which the Commission's work can and does benefit the country.

Harm prevention

Good law reform can protect citizens and save resources by amending ineffective laws and extending or improving protections. Law reform can also ensure that modern technologies are better utilised and deployed safely, and environmental protections put in place to reduce environmental degradation and promote sustainable economic growth.

Improving wellbeing

Legal reforms can lead to direct improvements in the wellbeing of citizens. Citizen-focused law reform can help to ensure that the welfare of individuals is fully taken into account by decision-makers, which can help to bring about a more tolerant and inclusive society. Further, effective and modern law can help improve wellbeing by helping to empower citizens, for example by being more economically or socially active, or by offering improved health outcomes for the most vulnerable in society.

Technology driven growth

A responsive legal system that keeps up to date with modern technology, and introduces legislation to facilitate innovation, enables technological gains to be realised and can stimulate inward investment.

Changes to legislation can allow citizens to benefit from increased availability of modern technologies, and support investment driven growth, whilst signalling the country's intention to encourage innovation.

Efficiency gains

Streamlining and clarifying the law can eradicate inefficiency, reducing costs resulting in a more efficient allocation of resources. Legal reforms can lead to savings for groups across society such as:

- **Businesses** – reforms can make the legal system more predictable and reduce the cost of doing business in England and Wales.
- **Publicly funded organisations** – reforms that makes the legal position easier for judges to interpret can save trial costs and reduce the likelihood of appeals.
- **Individuals** – reforms that result in improvements to the court system can reduce the direct legal costs incurred by citizens involved in cases and other associated costs such as time taken off work.

Rule of law

Ensuring that the law is simple, clear and that ineffective systems are eliminated helps maintain the integrity of the legal system and increases confidence in the rule of law which promotes civil peace and confidence in good government. Reforms that help uphold the rule of law promote compliance and reduce costs elsewhere in the system, for example in civil and criminal justice.

Access to justice

Legal reform can promote access to justice which can improve citizens' wellbeing. Projects enabling citizens to have their voice heard, exercise their rights, challenge discrimination or hold decision makers to account, all improve access to justice.

Such changes enable the legal system to become more inclusive and accessible, and foster a society in which vulnerable individuals and groups are better protected. This helps ensure that legal procedures are more likely to yield fairer outcomes.

Modernising the legal system

Keeping the legal system up to date with current domestic and international norms helps to ensure that it remains relevant and appropriate, and increases confidence and compliance among citizens. It helps the legal system keep up with international obligations and maintains and improves the standing of the UK internationally, underpinning its reputation and position.

MEASURING THE IMPACT OF THE LAW COMMISSION'S REFORMS

The economists undertook a contribution analysis to explore whether intended outcomes have or have not been achieved, examine how and why change has happened and assess the contribution of a project to change. Contribution analysis is an established tool for assessing impact. It is used in situations where experimental and quasi-experimental designs (for example, randomised control trials) are not feasible or practical.

The impact of the Law Commission's reforms

Whilst benefits from the Law Commission's recommendations differ from project to project, the report arrives at some broad conclusions about the economic value of law reform and the positive impact it has on society.

The report shows contributions to the benefits of law reform outlined above across all 11 projects that were considered.

The overall impact of the ongoing projects addressed in the report will be calculated once the final recommendations are made. Details of the benefits of each of the 11 projects captured by the economists' contribution analysis, are outlined in further detail on page 120 of the full report.



The economic value of these benefits

The report found that in those cases where data was available the gains to the economy from the implementation of the Law Commission recommendations were significant and benefited citizens, Government, and businesses. These benefits considerably outweighed the cost of conducting the project and implementing the recommendations.

For example, the Law Commission project on the creation of a Sentencing Code should save the Government over £250 million over 10 years by reducing court time and legal costs. The cost of this project is less than 0.5% of the total potential savings and implementation costs are negligible.

The 2017 project on event fees in retirement properties is estimated to stimulate about £805 million of investment into retirement housing over 10 years. The total project cost is about 0.05% of the benefits and implementation costs are also minimal.

Reduced regulatory burden on the taxi and private hire industry – if implemented – would save the industry just over £240 million over 10 years. This project cost is less than 0.02% of the estimated benefit whilst the transition and annual implementation costs would be approximately 5% of the benefits.

Finally, the policies being implemented by the Department for Health and Social Care in response to the Law Commission's Mental Capacity and Deprivation of Liberty recommendations would improve health outcomes and reduce harms. Latest available estimates from the Department of Health suggest £1.64 billion in health benefits over 10 years. See Table 1 on the following page.

Table 1: Five Law Commission Projects 2014-2018 with Highest Estimated Net Present Value

Year	Project	Estimated Net Present Value (benefits minus implementation costs) over 10 years	Main benefits	Cost of Project to Law Commission as Percentage of Estimated NPV	Cost of Implementation
2018	Sentencing code	£256 million	Reduction in court time / legal costs	< 0.5%	Negligible
2017	Event fees in retirement properties	£805 million	Investment in retirement housing	<0.05%	£4.76 million transition, £90,000 annually
2017	Mental capacity and deprivation of liberty*	£1.64 billion	Improved health outcomes and harm prevention	<0.02%	£41 million transition, £339 million annually (average)
2016	Form and accessibility of the law applicable in Wales	£194 million	Reduced research by legal practitioners	<0.02%	£220,000 transition, £440,000 annually
2014	Taxis and private hire**	£242 million	Reduced regulatory burden	<0.02%	£4.47 million transition, £780,000 annually

*The figures are based on the Department of Health and Social Care's economic analysis of the reforms it is planning to take forward, based on Law Commission recommendations.

**The government is still considering this report.

Taken together, the combined value of these projects is over £3 billion over ten years.

Impact on groups in society

The Law Commission's work has the potential to affect millions of businesses, households and individuals across England and Wales. Table 2 below illustrates how some of the projects undertaken in the last decade have had the potential to affect sizeable groups within society.

Table 2: Examples of Largest Affected Groups in recent Law Commission Projects

Project	Largest Affected Group	Scale
Sentencing code	All those involved in the Criminal Justice system – including defendants, victims, practitioners and administrators – benefit from greater clarity and accuracy in Sentencing, which increases confidence in the system, and avoids wasted court time.	1.2 million offenders in 2018-19
Adult social care	Recipients of adult social care services from local authorities in England and Wales benefit by having a clearer, modern and more cohesive framework, helping to ensure they better understand their rights.	1.8 million new clients in 2017-2018, 0.9 million existing clients receiving long-term care
Mental capacity and deprivation of liberty	DoLS applicants in England and Wales benefit through improved health outcomes and greater harm prevention.	0.2 million in 2017-2018
Form and accessibility of the law applicable in Wales	Welsh population benefit because the law applicable in Wales is simpler and easier to access.	3.2 million in 2019
Consumer insurance	Households in England and Wales benefit because their duty to disclose information to insurers is clearer and easier to comply with, and fewer insurance claims will be rejected on the basis of outdated law.	27 million in 2019

CONCLUSION AND RECOMMENDATIONS

The independent report was commissioned to consider the value of law reform in the context of the work of the Law Commission of England and Wales. It explores the types of impacts the Law Commission's projects can have, domestically and internationally, as they affect individuals and groups in society and contribute to a wide range of social and economic outcomes.

The conclusions, set out in the full report, demonstrate that the significant benefits of the Law Commission's work are enjoyed by widespread and diverse sections of our society including government, citizens and businesses of all types and size.

It is important to note that whilst economic benefit is not the sole focus of the Law Commission's work, just five of the Commission's projects published in the last five years delivered an estimated benefit of more than £3 billion over ten years. The scale of this figure illustrates the value of law reform and the Law Commission's work.

Case study analysis illustrates the importance of the Law Commission's work in increasing confidence in the legal system and citizen expectations of fair treatment under the law. Whilst such benefits are difficult to quantify, the key themes provide a means to consider potential impacts.

Finally, the report argues that Government support is critical to the effective realisation of the benefits that the Law Commission recommendations would bring. It shows that there are not only sound economic reasons for the Government to implement the reports, but that it is essential to ensure that adequate funding is provided to enable the Law Commission to carry out the work that generates these benefits.

Recommendation for further research

The authors put forward two recommendations for future research both of which are measures to address the paucity of data which would have strengthened positions on the impact of law reform. These include more extensive data collection post-implementation and the development of systematic evidence based post-legislative assessments.

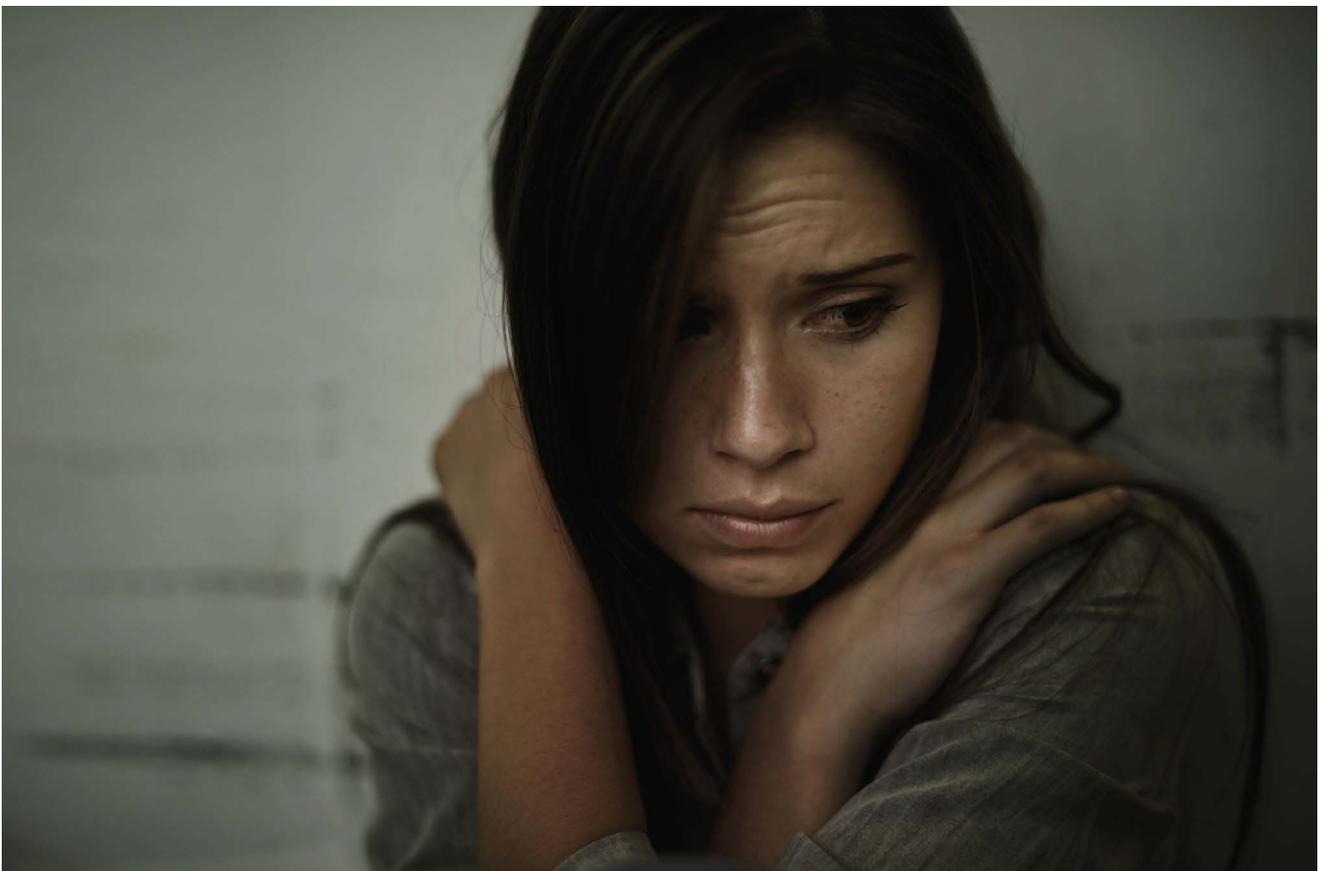
Full details of these recommendations can be found in the report.

Case study 3: Hate crime

The police recorded 94,000 hate crimes in 2017-18 while the Crime Survey for England and Wales estimated that there are as many as 180,000 per year.

The project is reviewing the adequacy and parity of protection offered by the law relating to hate crime and to make recommendations for its reform. It is also considering whether additional characteristics (for example gender or age) deserve enhanced protection in criminal law and on what basis.

The anticipated key benefits are harm prevention, modernising the law and improved rule of law.



Case study 4: Consumer insurance

Under the old law, consumers had a duty to tell insurers anything which would “influence the judgment of a prudent insurer” before taking out insurance. However, consumers often have little idea of what might influence a prudent insurer and the penalties for failure to disclose information to insurers were severe.

Prior to the implementation of the Consumer Insurance (Disclosure and Representations Act) 2012, the Financial Ombudsman Service received around 1,000 complaints per year about non-disclosure and misrepresentation, with approximately 50% being upheld.

The Law Commission’s recommendations were instrumental in bringing insurance legislation from 1906 up-to-date line with market practice and other global insurance markets, helping to ensure the UK consumer insurance industry, worth £53 billion, remains competitive.

The key benefits are efficiency gains, harm prevention and improved consumer confidence and access to justice.

For the confiscation of the proceeds of crime project, “even just a 1% increase in recovery rates would generate £2 million for the Government, although potential savings are far greater – if reforms improved recovery rates to 50% of the total, this would generate approximately £800 million.”
