

THE LAW COMMISSION

(LAW COM No 306)

ANNUAL REPORT 2006–07

The Forty-First Annual Report of the Law Commission

*Laid before Parliament by the Lord Chancellor and Secretary of
State for Justice pursuant to section 3(3) of the Law
Commissions Act 1965*

*Ordered by The House of Commons to be printed
13 June 2007*

THE LAW COMMISSION

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.

Commissioners: The Honourable Mr Justice Etherton,¹ *Chairman*
Professor Hugh Beale QC, FBA
Mr Stuart Bridge
Professor Jeremy Horder
Mr Kenneth Parker QC

Special Consultant: Professor Martin Partington CBE

Chief Executive: Mr Steve Humphreys

The Commission is located at Conquest House, 37-38 John Street, Theobalds Road, London, WC1N 2BQ.



The Law Commission (from left to right)
Standing: Kenneth Parker, Steve Humphreys (Chief Executive), Stuart Bridge
Seated: Hugh Beale, Sir Terence Etherton (Chairman), Jeremy Horder.

The terms of this report were agreed on 1 May 2007.

The text of this report is available on the Internet at: <http://www.lawcom.gov.uk>.

It was announced on 29 March 2007 that the Department for Constitutional Affairs (DCA), which we refer to several times in this report, would become the Ministry of Justice on 9 May 2007.

¹ The Honourable Mr Justice Etherton was appointed on 1 August 2006, succeeding the Honourable Mr Justice (now Lord Justice) Toulson as Chairman.

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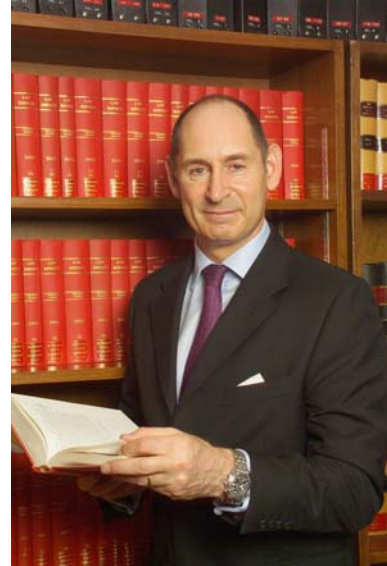
To the Right Honourable the Lord Falconer of Thoroton, Lord Chancellor and Secretary of State for Justice

A NOTE FROM THE CHAIRMAN

We are pleased to present the Law Commission's 41st Annual Report, the first under my chairmanship.

I joined the Law Commission at a prolific and dynamic time. This reporting year we have published 6 reports, 1 consultation paper, a scoping report, 3 issues papers and 3 seminar papers on a wide range of issues.

Due to the high public profile of 2 of our major projects, we are currently enjoying more widespread attention than ever before. Our Consultation Paper "Cohabitation: The Financial Consequences of Relationship Breakdown" generated over 250 responses and has continued to excite a steady level of media interest.



Sir Terence Etherton

There has also been considerable interest in our recommendations for reforming the law of homicide, which we presented to Government in December 2006.

Since the Commission was established in 1965, it has been instrumental in the introduction of many vital reforms which have made our laws fit for a modern Britain. Until recently, this work has gone largely unnoticed outside the tightly knit legal world. I am delighted to be leading the Commission at a time when it is enjoying greater recognition and we are engaging more widely with those who will or may be affected by our work.

Communicating with our stakeholders to ensure that we have the broadest understanding of the issues surrounding our projects is one of our top priorities.

In August 2006 we became ePolitix stakeholders. Through regular news releases, stakeholder interviews and attendance at policy symposiums, we are raising our profile in Westminster and Whitehall, and sending more clearly our message to those who need to hear it.

Consultation is at the heart of what we do. We have a strong history of engaging effectively with a wide range of individuals and bodies. We have recently chartered new territory by launching a web discussion forum to enable online public contribution and debate on law reform. The views put forward will be considered when we decide the content of our 10th Programme. This is the first time we have tried this method of consulting. It has worked very effectively. In the next reporting year we will evaluate what we have learned from this exercise with a view to employing innovative online technologies when consulting in the future.

These have the potential to enhance considerably the more traditional methods we have always used such as regular seminars, meetings, written correspondence and, more recently, email and our website.

Another novel aspect of our work in the last reporting year, was the completion of our report on “Post-Legislative Scrutiny”, which was referred to us by the then Deputy Leader of the House of Commons. We were asked to consider whether, and if so how, there might be more effective means of scrutinising the impact of legislation than currently exists. We are still awaiting an official response to our report, but the report was generally favourably received, and is another example of the impact the Law Commission can potentially make on every aspect of the legal framework of the nation.

A continual concern of the Commission since its inception has been the rate and speed of implementation of the Commission’s recommendations. The 1965 White Paper that proposed the establishment of the Commission said:

“If a comprehensive programme of law reform is to be implemented, means will have to be found of facilitating the passage of the necessary Bills through Parliament”.¹

It is important that we find a way of achieving that aim. We had hoped that the Legislative and Regulatory Reform Bill would provide a solution, but its approach was felt by Parliament to provide inadequate safeguards of Parliament’s right and duty to scrutinise proposed legislation. In the debates in both Houses there was, nevertheless, general agreement that something should be done to assist more speedy enactment of appropriate Law Commission proposals. The discussions that we have had with Baroness Ashton, and now Vera Baird MP, as the Minister responsible to the Lord Chancellor for the Commission, as well as with the Lord Chancellor and others, give us hope that a solution will be found.

Baroness Ashton has also been instrumental in revitalising the Lord Chancellor’s Ministerial Committee on the Law Commission. This is now providing a useful avenue of communication between the Commission and Ministers.

I, along with the appropriate Commissioner and the Chief Executive, have met individually every Minister on the Committee to discuss existing work, proposals for our next Programme, outstanding reports, and generally how the Commission can assist the Minister’s department with law reform. Details of the current status of our reports can be found at Part 3 and Appendix A.

I must acknowledge the debt of gratitude that the Commission owes to my predecessor Sir Roger Toulson. Under his leadership the Commission took steps to make its work more widely known and its consultations more focused. He was heavily involved in our projects on partnership law reform, partial defences to murder, post-legislative scrutiny and our wider project on the law of homicide. My fellow Commissioners and I are profoundly grateful for all that he accomplished during his chairmanship.

It is with a great pride in the work of the Commission and profound gratitude to all those who work for the Commission that I conclude my first reporting year as chairman. As this report demonstrates, the pace of activity at the Law Commission has never been faster and our reach is greater than ever. As I look forward to the next reporting year, I am filled with optimism.



¹ Proposals for English and Scottish Commissions (1965) Cmnd 2573.

PART 1

THE COMMISSION

Who we are

- 1.1 The Law Commission was created in 1965 for the purpose of reforming the law. The Commission is headed by five Commissioners who are appointed by the Lord Chancellor.
- 1.2 The current Commissioners are:
 - The Honourable Mr Justice Etherton,¹ Chairman
 - Professor Hugh Beale QC, FBA, Commercial and Common Law
 - Stuart Bridge, Property, Family and Trust Law
 - Professor Jeremy Horder, Criminal Law, Evidence and Procedure
 - Kenneth Parker QC, Public Law
- 1.3 Professor Martin Partington CBE, who was a Commissioner from January 2001 to December 2005, is Special Consultant to the Law Commission. In that capacity, he undertakes the role of Commissioner in relation to housing law reform projects.
- 1.4 The Commissioners and Special Consultant are supported by the Chief Executive, Steve Humphreys, members of the Government Legal Service, Parliamentary Counsel (who draft the Bills to reform and consolidate the law), and some 15 research assistants (mostly recently qualified law graduates), as well as a librarian and a corporate services team. Details of the members of each legal team and the work they do is covered in Parts 4 to 8.

What we do

- 1.5 The Law Commission's main task is to review areas of the law and to make recommendations for change. The Commission seeks 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:
 - codification
 - removal of anomalies
 - repeal of obsolete and unnecessary enactments
 - consolidation
 - the simplification and modernisation of the law.

¹ The Honourable Mr Justice Etherton succeeded the Honourable Mr Justice (now Lord Justice) Toulson on 1 August 2006.

Developing the programme of work

- 1.6 In January 2005, we submitted our Ninth Programme of Law Reform² to the Lord Chancellor. It came into effect on 1 April 2005 and runs for three years. Parts 4 to 8 provide updates on the progress of the programme. In 2007 we began consultation on the contents of the Tenth Programme of Law Reform, which will be presented to the Government in January and begin on 1 April 2008.
- 1.7 Decisions about whether to include a particular subject in a programme of reform are based on the importance of the issues it will cover, the availability of resources in terms of both expertise and funding, and whether the project is suitable to be dealt with by the Commission.
- 1.8 As part of our aim to “take and keep under review *all* the law”, we are currently carrying out a Strategic Review of the work of the Commission. It is important that our efforts are directed towards areas of the law that most need reform, where change will deliver real benefits to the people, businesses, organisations and institutions to which that law applies. We have met with senior officials in every Government department to identify areas where the Commission might usefully undertake work. The outcome of these discussions will inform decisions about projects to be included in the Tenth Programme of Law Reform.

The Law Commission’s role and methods

- 1.9 Increasingly projects start with the production of a scoping or discussion paper. The aim of this is to consider how extensive the project should be, find out the key issues as seen by others, and identify interested parties. At an early stage it is useful to establish a core group of interested individuals and organisations to advise and support the work.
- 1.10 Where the scope has been agreed in advance, the project will start by consulting many of the acknowledged experts and interested parties in the area. Often an Advisory Group is established to meet and discuss the key concerns and potential solutions. Other possible routes are issues papers and pre-consultation seminars. A consultation paper is then produced to describe the present law and its shortcomings and set out provisional proposals for reform. Responses are analysed and considered very carefully.
- 1.11 The Commission’s final recommendations are set out in a report, which often contains a Bill drafted by Parliamentary Counsel, where the implementation of any recommendations would involve primary legislation. The report is laid before Parliament. It is then for the Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless a Private Member or Peer agrees to do so. After publication of a report the Commission and members of Parliamentary Counsel who worked on the draft Bill often give further assistance to Government Ministers and departments.

² Law Com No 293.

- 1.12 The work of the Commission is based on thorough research and analysis of case law, legislation, academic and other writing, law reports and other relevant sources of information both in the United Kingdom and overseas. It takes full account of the European Convention on Human Rights and of relevant European law. We act in consultation with the Scottish Law Commission, and work jointly with our Scottish colleagues on a number of projects.
- 1.13 The Commission also has the task of consolidating statute law, substituting one Act, or a small group of Acts, for statutory provisions found in many different Acts. In addition, the Commission proposes the repeal of statutes which are obsolete or unnecessary. See Part 8 for more details on statute law reform and consolidation.

Equality and diversity

- 1.14 The Commission is committed to consulting fully with those likely to be affected by its proposals, including different groups within society, and to assessing the impact of its proposed policies and removing or mitigating any adverse effect on particular groups within society wherever possible. The Commission's full Equality and Diversity Action Statement may be seen on our website at www.lawcom.gov.uk/docs/Equality_Statement.pdf.

Code of best practice for Law Commissioners

- 1.15 In accordance with Government policy for all non-departmental public bodies, there is a written code for Law Commissioners, agreed with the Department for Constitutional Affairs. It incorporates the Seven Principles of Public Life and covers matters like the role and responsibilities of Commissioners. Copies are available from the Law Commission.

What's in this Annual Report?

- 1.16 Part 2 reviews 2006-07, and looks at the targets for publication of reports and consultation papers the Law Commission has set for the period 2007-08. Part 3 looks at the progress that has been made in getting the Government to accept and implement the recommendations made in our reports. Parts 4 to 8 cover the work of each law team in the Law Commission over the course of the year. Part 9 looks at our relations with external agencies, and Part 10 relates to the Commission's staffing and resources.

PART 2

A REVIEW OF 2006-07

WORK OF THE COMMISSION

Publications in 2006-07

2.1 Reports:

- Renting Homes: The Final Report, 5 May 2006, (LC297)
- Inchoate Liability for Assisting and Encouraging Crime, 11 July 2006 (LC300)
- Trustee Exemption Clauses, 19 July 2006 (LC301)
- Post-Legislative Scrutiny, 25 October 2006 (LC302)
- Termination of Tenancies for Tenant Default, 31 October 2006 (LC303)
- Murder, Manslaughter and Infanticide, 29 November 2006 (LC304)

2.2 Consultation Papers:

- Cohabitation: The Financial Consequences of Relationship Breakdown, 31 May 2006 (LCCP179 and Overview)

2.3 Discussion/ Issues/ Scoping Papers:

- Insurance Contract Law: Misrepresentation and Non-Disclosure – An Issues Paper, 22 September 2006
- Remedies against Public Bodies – A Scoping Report, 11 October 2006
- Insurance Contract Law: Warranties – An Issues Paper, 28 November 2006
- Insurance Contract Law: Intermediaries and Pre-Contract Information – An Issues Paper, 21 March 2007

2.4 Other publications:

- Intermediated Investment Securities – Objectives for a Common Legal Framework: Seminar Paper No 1, 22 March 2006
- Intermediated Investment Securities – Issues Affecting Account Holders and Intermediaries: Seminar Paper No 2, 23 June 2006
- Intermediated Investment Securities – Issues Affecting Transferees of Intermediated Securities: Seminar Paper No 3, 27 July 2006

2.5 Electronic versions of the publications listed above can be accessed from the Law Commission website: www.lawcom.gov.uk/publications.

Implementation

Involuntary manslaughter

- 2.6 In July 2006 the Government introduced the Corporate Manslaughter and Corporate Homicide Bill.¹

Assisting and encouraging crime

- 2.7 In January 2007 the Government introduced the Serious Crime Bill. Part 2 of the Bill is based on our report,² and the provisions reflect for the most part the draft Bill we included in the report.³

Limitation of actions

- 2.8 In January 2007 the Department for Constitutional Affairs announced that it intended to consult further on our recommendations.⁴

The forfeiture rule and the law of succession

- 2.9 In December 2006 the Government announced that it accepted all our recommendations, subject to minor modifications.⁵

Unfair contract terms

- 2.10 In July 2006 DTI minister, Ian McCartney, wrote to us to say that the Government accepted our recommendations⁶ in principle, subject to an evaluation of the impact of the reforms.

Partnership law

- 2.11 In July 2006 the Government announced that it would implement our recommendations on limited partnerships by means of a Regulatory Reform Order.⁷

¹ Further information about this subject is available in paras 3.12 to 3.17 of this report.

² Inchoate Liability for Assisting and Encouraging Crime (2006) Law Com No 300.

³ Further information about this subject is available in paras 5.8 to 5.13 of this report.

⁴ Limitation of Actions (2001) Law Com No 270. Further information on this subject is available in paras 3.22 to 3.25 of this report.

⁵ (2005) Law Com No 295. Further information on this subject is available in paras 3.32 to 3.33 of this report.

⁶ Unfair Terms in Contracts (2005) Law Com No 292, Scot Law Com No 199. Further information on this subject is available in paras 3.34 to 3.35 of this report.

⁷ Partnership Law (2003) Law Com No 283, Scot Law Com No 192. Further information on this subject is available in paras 3.36 to 3.38 of this report.

Commissioners

- 2.12 Sir Roger Toulson's term of office as Chairman came to an end at the end of July 2006, during the period covered by the Annual Report. It was particularly pleasing to us to see that he was appointed to the Court of Appeal earlier this year. He was succeeded by Sir Terence Etherton, a judge of the Chancery Division of the High Court. Sir Terence was called to the bar in 1974. He was appointed Queen's Counsel in 1990 and then appointed as a High Court Judge in 2001, assigned to the Chancery Division.
- 2.13 The Commission also noted with sadness the death of Professor Aubrey Diamond in July 2006. Professor Diamond was a Commissioner from 1971 to 1975. He is remembered with affection by those who worked with him in the early days of the Commission.

Targets

2.14 Table 2.1 summarises our main targets for the year 2006-07 and how we met those targets.

Table 2.1: 2006-07

TARGET	OUTCOME
To complete Reports on:	
Renting Homes	Final Report published May 2006 (LC297).
Assisting and Encouraging Crime	First Report (on Inchoate Liability) published July 2006 (LC300). Second Report (on Participating in Crime) to be published in May 2007 (LC305).
Illegal Transactions	Further consultation (on the presumption of advancement) conducted in December 2006. Final report planned for late 2007. See para 4.13.
Murder, Manslaughter and Infanticide	Published November 2006 (LC304).
Post-Legislative Scrutiny	Published October 2006 (LC302).
Termination of Tenancies for Tenant Default	Published October 2006 (LC303).
Trustee Exemption Clauses	Published July 2006 (LC301).
To complete Consultation Papers on:	
Cohabitation	Published May 2006 (LCCP179).
Easements and Covenants	Deferred. We hope to publish a consultation paper late in 2007. See paras 6.4 to 6.6.
Property Interests in Investment Securities	We hope to publish our advice to HM Treasury in mid-2007. See paras 4.8 to 4.12.
The High Court's Jurisdiction in relation to Criminal Proceedings in the Crown Court	Deferred until work on the Homicide project was completed. We hope to publish a consultation paper in mid-2007. See paras 5.14 to 5.15.
Resolving Housing Disputes	We hope to publish a consultation paper on courts and tribunals in mid-2007. See paras 7.10 to 7.15.
To publish the following scoping or issues papers	
Insurance Contract Law	Published January 2006 (jointly with Scottish Law Commission).
Housing: Proportionate Dispute Resolution	Published July 2006.
To begin the following projects:	
Bribery	The terms of reference were announced on 5 March 2007.
Ensuring Responsible Letting	We hope to publish a consultation paper in mid-2007. See paras 7.16 to 7.20.
Remedies against Public Bodies	We published a Scoping Report in October 2006. We hope to publish a consultation paper in autumn 2007. See paras 7.1 to 7.9.
To publish the following consolidations:	
Parliamentary Costs	Published June 2006.

2.15 Table 2.2 summarises our major targets for 2007-08.

Table 2.2: 2007-08

We expect to publish the following reports:
Participating in Crime
Cohabitation
Illegal Transactions
Intoxication and Criminal Liability
Statute Law Revision
We expect to publish the following consultation papers:
Criminal Attempt
Conspiracy
Remedies against Public Bodies
Easements and Covenants
Ensuring Responsible Letting
The High Court's Jurisdiction in relation to Criminal Proceedings in the Crown Court
Housing Disputes (Courts and Tribunals)
Insurance Contract Law (1st of 2)
We expect to publish the following issues papers:
Bribery
We expect to publish the following consolidations:
Health Service Commissioner for England
The most up to date projected publication dates for all projects are available from the Law Commission website: www.lawcom.gov.uk

PART 3 IMPLEMENTATION OF LAW COMMISSION REPORTS

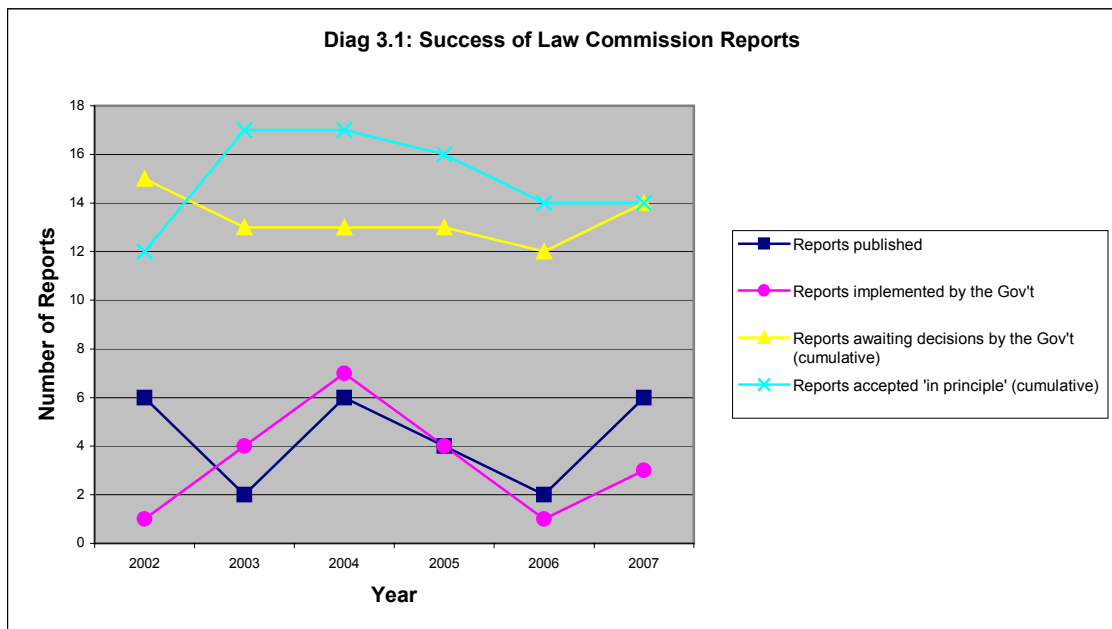
INTRODUCTION

- 3.1 This part of our Report looks at the outcome of our work in terms of whether the Government has yet expressed a view about accepting our recommendations, or where they have accepted our recommendations when we can expect the necessary legislation to be enacted. It is some time since the Commission last reported on the outcomes of all its reports since 1965 and we have taken the opportunity this year to produce in Appendix A the complete list including reports issued to 31 March 2007. Alongside each report we have shown whether the report was accepted fully or in part, rejected, accepted but not implemented, or pending. Where there is enacting legislation, that is also shown.
- 3.2 Below is an update of the status of current projects. For full details of the status of all of our reports, please see Appendix A.

ACTION DURING THIS PERIOD

In summary

- 3.3 Between 1 April 2006 and 31 March 2007, the Law Commission published 6 law reform reports and the Government enacted recommendations from 3 of our previous reports.¹ Also during this period, the Government has triggered the commencement of provisions that will bring into force recommendations from a further two of our previous reports.²



¹ See paras 3.6, 3.7 and 3.8.

² See paras 3.5 and 3.38.

In March 2007:

- (1) 14 law reform reports that have been accepted by the Government still await implementation;
 - (2) 14 other reports still await decisions by the Government.³
- 3.4 Diagram 3.1 on the previous page gives a six-year overview of the number of Law Commission reports submitted to the Government; the number agreed by the Government, but where legislation has not been introduced; the number awaiting a decision by the Government; and the number implemented by legislation or through court decisions.

Implemented reports

MENTAL INCAPACITY

- 3.5 The Mental Capacity Act 2005 was enacted in April 2005. The Act implements the majority of the recommendations in the Commission's 1995 report and draft Bill on this topic.⁴ The Commission assisted with the passage of the Bill through Parliament. The Act was due to come into force in April 2007.

COMPANY LAW

- 3.6 We have published reports on Directors' Duties⁵ and Shareholder Remedies.⁶ Both were endorsed by the Company Law Review Steering Group,⁷ and in May 2004 the Department of Trade and Industry confirmed that it intended to implement our recommendations.⁸ The substance (though not the full detail) of our recommendations has now been incorporated in the Companies Act 2006, which received Royal Assent on 8 November 2006. A statement of directors' duties is set out in sections 170 to 177 of the Act; while Part 11 contains a new derivative procedure, with more flexible and accessible criteria for determining the remedies available to minority shareholders.

³ For details of all reports that have not received a decision from the Government, or where a decision has been made but the report has not been implemented, see Appendix A.

⁴ Mental Incapacity (1995) Law Com No 231.

⁵ Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties (1999) Law Com No 261, Scot Law Com No 173.

⁶ (1997) Law Com No 246.

⁷ *Final Report*, DTI, June 2001.

⁸ DTI, *Company Law – Flexibility and Accessibility*, A Consultative Document, May 2004.

FRAUD

- 3.7 The Fraud Act 2006 was enacted in November 2006 and came into force on 15 January 2007. The Act implements the majority of the recommendations in the Commission's 2002 report and draft Bill on this topic.⁹ It also implements a recommendation in the Commission's 2002 report on multiple offending,¹⁰ namely that the offence of fraudulent trading by companies contrary to section 458 of the Companies Act 1985 should be extended to non-corporate fraudulent traders, irrespective of whether they are in any relationship such as a partnership.

EFFECTIVE PROSECUTION OF MULTIPLE OFFENDING

- 3.8 On 8 January 2007 sections 17 to 21 of the Domestic Violence, Crime and Victims Act 2004 came into force. These sections implement the majority of the recommendations in the Commission's 2002 report.¹¹

Reports in the process of being implemented

ASSISTING AND ENCOURAGING CRIME¹²

- 3.9 In July 2006 the Commission published a report and draft Bill on inchoate liability for assisting and encouraging crime.¹³ We recommended that there should be two inchoate offences of assisting and encouraging crime: intentionally encouraging or assisting crime and encouraging or assisting crime believing that an offence, or one or more offences, will be committed. The offences would replace the common law inchoate offence of incitement and fill the gap at common law whereby D incurs no criminal liability for assisting the commission of an offence which P does not subsequently commit.
- 3.10 We recommended that it should be a defence to each offence that D acted in order to prevent crime or to prevent or limit the occurrence of harm. In addition, we recommended that it should be a defence to the offence of encouraging or assisting believing that an offence, or one or more offences, will be committed that D acted reasonably in the circumstances.
- 3.11 In January 2007 the Government introduced its Serious Crime Bill. Part 2 of the Bill is based on our report and draft Bill. The provisions in Part 2 for the most part reflect our draft Bill. The major difference is that under the Government's provisions the fault element of the offences would be less stringent than under our recommendations.

⁹ Fraud (2002) Law Com No 276.

¹⁰ The Effective Prosecution of Multiple Offending (2002) Law Com No 277.

¹¹ Above.

¹² Further information on this subject is available in paras 5.8 to 5.13 of this report.

¹³ Inchoate Liability for Assisting and Encouraging Crime (2006) Law Com No 300.

INVOLUNTARY MANSLAUGHTER

- 3.12 In 1996 the Law Commission published a report¹⁴ and draft Bill which recommended the replacement of the common law offence with statutory offences of “reckless killing” and “killing by gross recklessness”, together with a new offence of corporate killing. The recommendations that we made in relation to offences of “reckless killing” and “killing by gross negligence” have been superseded by the recommendations we have made in our report Murder, Manslaughter and Infanticide.¹⁵ For more information, see paragraphs 5.1 to 5.7.
- 3.13 With regard to corporate killing, the Home Office published a draft Corporate Manslaughter Bill in March 2005. The Bill proposed a new criminal offence of corporate manslaughter that would apply if the way in which an organisation’s activities were managed or organised by its “senior managers” caused a person’s death and amounted to a gross breach of a duty to take reasonable care for the safety of the deceased.
- 3.14 These proposals were considered by the House of Commons Home Affairs and Works and Pensions Sub-Committees. In December 2005 the Committees published a report criticising the proposed “senior manager” test and advising a return to the Law Commission’s more general approach of ‘management failure’.
- 3.15 In March 2006 the Government published its response to the joint report of the Committees.¹⁶ The Government said that it welcomed the Committees’ strong support for a statutory offence of corporate manslaughter, adding that it intended to legislate without delay as soon as Parliamentary time allows.
- 3.16 In July 2006 the Government introduced the Corporate Manslaughter and Corporate Homicide Bill.¹⁷ Under the Bill as published, an organisation is guilty of corporate manslaughter if the way in which any of its activities are managed or organised by its *senior* managers causes a person’s death and amounts to a *gross* breach of a relevant duty of care owed by the organisation to the deceased. The offence is triable only on indictment and is punishable by way of unlimited fine.
- 3.17 The Bill abolishes Crown immunity for the offence. It allows prosecution of the new offence against Government departments and other bodies which are specified in schedule 1 to the Bill. These include the Crown Prosecution Service and the Serious Fraud Office. The Bill permits prosecution of a police force but not when the death arose out of a police operation for dealing with terrorism, civil unrest or serious public disorder in which the police come under attack or face violent resistance.

¹⁴ Legislating the Criminal Code: Involuntary Manslaughter (1996) Law Com No 237.

¹⁵ (2006) Law Com No 304.

¹⁶ Cm 6755.

¹⁷ The title of the Bill reflects the fact that it creates a new offence that in England and Wales and Northern Ireland is to be called corporate manslaughter and in Scotland is to be called corporate homicide.

DISTRESS FOR RENT

- 3.18 The Commission's report on this subject was published in 1991.¹⁸ It recommended the complete abolition of the remedy of distress for non-payment of rent for both commercial and residential tenancies.
- 3.19 In March 2003, the Government indicated its acceptance of the recommendation in relation to residential tenancies only. For commercial tenancies distraint would be reformed rather than abolished.
- 3.20 The Tribunals, Courts and Enforcement Bill (at the time of publication before the House of Commons Public Bill Committee) entirely abolishes the existing law of distress (clause 13), but introduces a new statutory enforcement right for the landlord to seize the tenant's goods in commercial cases.

Reports awaiting implementation

AGGRAVATED, EXEMPLARY AND RESTITUTIONARY DAMAGES

- 3.21 We published a report in 1997.¹⁹ In November 1999 the Department for Constitutional Affairs (DCA) said that it accepted our recommendations on aggravated and restitutionary damages, though not those on exemplary damages, and would legislate when a suitable opportunity arose. We understand that in view of the length of time that has elapsed DCA intends to reconsider the recommendations on aggravated and restitutionary damages in its consultation on our other damages reports.

LIMITATION OF ACTIONS

- 3.22 In 2001 we published a report²⁰ and draft Bill, in which we recommended replacing the many complex rules by a single "core regime". Most claimants would have three years to bring an action, starting when they knew, or ought reasonably to have known, the relevant facts. Except in personal injury claims, defendants would be protected by a "long stop", preventing claims brought more than 10 years after the relevant events took place.
- 3.23 In personal injury cases, we recommended that the court should have a broad discretion to allow late claims at any stage. We thought this was particularly important in sex abuse cases where, at present, adults must bring claims within six years, and those abused as children must bring claims before their 24th birthday. The issue of discretion to allow late claims also came to public attention when a man convicted of an attempted rape won the lottery. His victim attempted to sue him 17 years after the event, but was prevented from doing so because the six year limitation period had expired.²¹ We think the current law is excessively rigid and greater flexibility is needed to do justice in the individual case.

¹⁸ Landlord and Tenant: Distress for Rent (1991) Law Com No 194.

¹⁹ (1997) Law Com No 247.

²⁰ Limitation of Actions (2001) Law Com No 270.

²¹ *A v Hoare* [2006] EWCA Civ 395.

- 3.24 In July 2002 DCA accepted our recommendations in principle, saying it “would give further consideration to some aspects of the report, with a view to introducing legislation when an opportunity arises”.²² However, despite increasing public concern and the comments of the Court of Appeal,²³ the Government was unable to find time in its legislative programme.
- 3.25 In January 2007, DCA ministers announced their intention to consult on our recommendations during Spring 2007.²⁴ We look forward to seeing the results of this consultation and hope that time can now be found to implement our recommendations.

OFFENCES AGAINST THE PERSON

- 3.26 Fourteen years ago the Law Commission published a report and draft Bill recommending an overhaul of the current legislation, which dates back to Offences Against the Person Act 1861.²⁵ In 1997 the Home Office partially accepted these recommendations in principle. In 1998 the Home Office published a consultation paper²⁶ setting out their initial proposals for reforming the law in this area, based on the Commission’s report. In 2003, the Court of Appeal referred to the “need for radical reform” of section 20 of the 1861 Act.²⁷
- 3.27 One of the report’s recommendations, namely that common assault should be an arrestable offence, has been implemented by the Domestic Violence Crime and Victims Act 2004. The Government has said that it plans to legislate on the other recommendations that it has accepted in principle when Parliamentary time allows.

PERPETUITIES AND ACCUMULATIONS

- 3.28 The rule against perpetuities limits the extent to which a property owner can control the devolution of that property into the future. The rule is extremely complicated and applies to the tying up of property by various means, including trusts, options, rights of pre-emption and easements. It is capable of causing significant difficulties in practice, particularly in the context of commercial transactions. The Commission’s report²⁸ recommends that the rule should continue to apply, but in a simplified form and only in circumstances where it performs an essential role. The report also recommends the repeal of the connected rule restricting accumulations of income (except in relation to charitable trusts).

²² *Hansard* (HL), 16 July 2002, col 127.

²³ See, for example, *A v Hoare* [2006] EWCA Civ 395, at paras 5 to 6 and *KR v Bryn Alyn Community Ltd* [2003] EWCA Civ 85 at para 100.

²⁴ Written Ministerial Statement, Baroness Ashton, *Hansard* (HL), 9 January 2007, col WS5.

²⁵ *Legislating the Criminal Code: Offences Against the Person and General Principles* (1993) Law Com No 218.

²⁶ *Violence: Reforming the Offences against the Person Act 1861*.

²⁷ *Cort* [2003] 3 WLR 1300, 1304.

²⁸ *The Rules against Perpetuities and Excessive Accumulations* (1998) Law Com No 251.

- 3.29 The Government indicated its acceptance of the Commission's report on this topic in an answer to a Parliamentary Question in March 2001. The Department for Constitutional Affairs has, since then, been unable to find Parliamentary time to introduce legislation. Most recently, a private Peers' Bill was refused permission to proceed by the Legislative Programme Committee on grounds of the pressure of work before both Houses.

THIRD PARTIES' RIGHTS AGAINST INSURERS

- 3.30 In 2002, we published a report jointly with the Scottish Law Commission to strengthen the rights of claimants to seek a remedy against their defendant's insurer where the defendant was in financial difficulties.²⁹ In July 2002, DCA accepted our recommendations in principle. Then in September 2002 it issued a consultation paper proposing to implement our report by way of Regulatory Reform Order (RRO).³⁰ In February 2004 DCA published an analysis of responses, which reported that the Law Officers had advised that only certain recommendations could be carried out by way of an RRO. The others would require primary legislation.³¹
- 3.31 The Government is still considering whether the report can be implemented through primary legislation or by other means. We hope that a slot in the legislative programme or some other method of implementation will be found soon.

THE FORFEITURE RULE AND THE LAW OF SUCCESSION

- 3.32 In July 2005 we published a final report³² and draft Bill to solve problems with both intestacy and wills. We recommended that where a person forfeits the inheritance of property because they kill the person from whom they would inherit, the property should be distributed as if the killer had died. The effect is that property will normally pass to the next in line, such as the grandchildren. Our recommendations would also apply where the heir voluntarily disclaims the property.
- 3.33 In December 2006, the Government announced that it accepted all our recommendations, subject to minor modifications.³³ Legislation would be introduced when parliamentary time allows.

²⁹ (2002) Law Com No 272, Scot Law Com No 184.

³⁰ Lord Chancellor's Department, *Third Parties – Rights against Insurers: A Consultation Paper on the implementation of the joint Law Commission and Scottish Law Commission Report by way of a Regulatory Reform Order*, September 2002.

³¹ Department for Constitutional Affairs, *Analysis of Responses to the Consultation Paper, Third Parties – Rights against Insurers* February 2004. For a short summary of which proposals could be implemented by RRO, see last year's Annual Report, pp 12-13.

³² (2005) Law Com No 295.

³³ Written Ministerial Statement, Baroness Ashton, *Hansard (HL)*, 18 December 2006, col WS223.

UNFAIR CONTRACT TERMS

- 3.34 The present law on unfair contract terms is unacceptably confusing. It is covered by two pieces of legislation, containing inconsistent and overlapping provisions. In February 2005 we published a report and draft Bill jointly with the Scottish Law Commission.³⁴ The draft Bill rewrites both laws as a single regime, in a way that is much more accessible to consumer and business advisers. The report also recommended improving protection for the smallest and most vulnerable businesses, employing nine or fewer staff.
- 3.35 In July 2006 DTI minister, Ian McCartney, wrote to us to say that the Government accepted the Commissions' recommendations in principle, subject to an evaluation of the impact of the reforms.³⁵ We await further developments.

PARTNERSHIP LAW

- 3.36 Our joint report with the Scottish Law Commission on Partnership Law was published in November 2003.³⁶ It was in two parts. Most of the recommendations concerned general partnerships. We drafted a new Partnerships Act, under which general partnerships in England and Wales would become legal entities. This would reflect the reality of their role in the commercial life of Britain, and bring together the law of partnership across England, Wales and Scotland.
- 3.37 We also made recommendations about limited partnerships, which are widely used for venture capital funds. Limited partnerships (as distinct from limited liability partnerships) allow general partners and limited partners to join together. A general partner manages the business and has unlimited liability for its obligations, while limited partners take no part in the management and assume only limited liability. Our recommendations were designed to clarify the relationship between limited partnerships and general partnership law, and provide guidance on the activities a limited partner can undertake without losing limited liability status.
- 3.38 In April 2004 the Department of Trade and Industry consulted on the costs and benefits of these proposals and received 30 responses.³⁷ In July 2006 the Government announced that it would implement the recommendations on limited partnerships by means of a Regulatory Reform Order. However the rest of the report would not be taken forward.³⁸

³⁴ (2005) Law Com No 292, Scot Law Com No 199.

³⁵ See www.dti.gov.uk/consumers/buying-selling/sale-supply/unfair-contracts/index.html

³⁶ (2003) Law Com No 283, Scot Law Com No 192.

³⁷ DTI, Summary of Responses to the Consultation on Reform of Partnership Law: the Economic Impact, July 2006. See: <http://www.dti.gov.uk/bbf/corp-governance/partnership/page25911.html>.

³⁸ Written Ministerial Statement, Ian McCartney, *Hansard (HC)*, 20 July 2006, col 53WS.

Reports awaiting Government decisions

- 3.39 In February 2005, the Ministerial Committee agreed that Government Departments should be in a position to say how they are going to respond within six months of receiving recommendations from the Law Commission. If, after a further two years, the Department has still not reached any conclusions, the Committee will stop pursuing them. As stated above, we are currently awaiting a response from the Government on 14 of our reports.

RENTING HOMES

- 3.40 In May 2006, we published our major review of housing tenure law.³⁹ It recommended sweeping away the vast majority of existing tenure types, and replacing them with two “occupation contracts”. The contracts would be based on model agreements prescribed by the Secretary of State or National Assembly for Wales, allowing for a “consumer protection” approach to housing law. In November, the Department for Communities and Local Government (DCLG) wrote to inform us that “ministers are keen to stress that we are generally supportive of the thrust of the Law Commission’s proposals”. Recognising that the proposals were not wholly uncontroversial, the Department went on to say that they would look further at the issues in the light of the results of a review of social housing by Professor John Hills, which was then pending. The Hills review was published in February 2007. In our view, there is little in the review that would prevent the implementation of our report, and much that would be facilitated by it. We await a further response from the Department.
- 3.41 In Wales, the Welsh Assembly Government has shown considerable understanding of and support for the proposals. The final report recommended that if DCLG either rejected Renting Homes, or accorded it a low priority in terms of Parliamentary time, the First Minister should seek an order in council under the Government of Wales Act 2006 to secure legislative competence to allow the National Assembly for Wales to legislate for Wales alone. Whether this is necessary will depend on progress with DCLG for England.

TRUSTEE EXEMPTION CLAUSES

- 3.42 A trustee exemption clause is a provision in a trust instrument which excludes or restricts a trustee’s liability for breach of trust. Such clauses are capable of protecting trustees from the consequences of any actions or omissions, however negligent, provided they have not acted dishonestly.
- 3.43 The Commission published a consultation paper⁴⁰ on trustee exemption clauses in 2003, which set out a range of options for reform. The paper invited the views of consultees on these options and on the economic implications of any regulation of trustee exemption clauses. We received 118 consultation responses, including a detailed paper from a Working Group of the Financial Markets Law Committee on the impact of the provisional proposals on trusts in financial markets.

³⁹ Renting Homes (2006) Law Com No 297.

⁴⁰ Trustee Exemption Clauses (2003), Law Com No 171.

- 3.44 The Commission's report,⁴¹ published in July 2006, recommends that the use of trustee exemption clauses would be most effectively regulated by the adoption across the trust industry of a non-statutory rule of practice governing the disclosure and explanation of relevant clauses. This should be enforced by the regulatory and professional bodies who govern and influence trustees and trust drafters. A number of bodies have taken steps to implement, or have already implemented, the rule.⁴² The Report recommends that Government should promote the application of the rule of practice as widely as possible across the trust industry.

TERMINATION OF TENANCIES FOR TENANT DEFAULT

- 3.45 This project examined the means whereby a landlord can terminate a tenancy⁴³ 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 lay person and the unwary practitioner.
- 3.46 The Law Commission outlined provisional proposals for reform in a consultation paper published in January 2004.⁴⁴ The consultation paper attracted interest and comment from practitioners, academics and groups representing both landlords and tenants.
- 3.47 The Commission's report,⁴⁵ published in October 2006, recommends the abolition of forfeiture and its replacement by a modern statutory scheme for the termination of tenancies on the ground of tenant default. The scheme is designed to encourage the negotiated settlement of disputes at an early stage. Where differences are irreconcilable, the scheme offers a court-based procedure, building on the Civil Procedure Rules' central principles of advancing the interests of justice and the efficient use of court resources. The scheme addresses the interests of relevant third parties (notably those with mortgages over the property) by requiring that they are served with notice of the dispute and by entitling them to intervene. The scheme makes available a wide range of orders, including a new type of order that the tenancy be sold and the proceeds distributed. An expeditious extra-judicial procedure is provided for landlords in cases where a tenant would have no defence to a court action (for example, because he or she has abandoned the premises).

⁴¹ Trustee Exemption Clauses (2006) Law Com No 301.

⁴² The Society of Trusts and Estates Practitioners has introduced a version of the rule that binds its members in England and Wales. The Law Society has introduced new guidance to the profession to support the Code of Conduct binding solicitors as from 1 July 2007. The Institute of Chartered Accountants in England and Wales has moved towards introducing regulation for its members.

⁴³ The provisional proposals apply to all tenancies except those short residential tenancies that were considered in the Report on Renting Homes (2003) Law Com No 284.

⁴⁴ Termination of Tenancies for Tenant Default (2004) Consultation Paper No 174.

⁴⁵ Termination of Tenancies for Tenant Default (2006) Law Com No 303.

COMPANY SECURITY INTERESTS

- 3.48 In August 2005 we published a final report and draft legislation on Company Security Interests recommending major reforms.⁴⁶ These would replace the present paper-based system with a new on-line process to register charges cheaply and instantaneously. They would also provide simpler and clearer rules to determine “priority” disputes between competing interests over the same property.
- 3.49 We were disappointed that the Department of Trade and Industry was not able to include our recommendations within the Companies Act 2006. We await a formal decision on whether the Government accepts our recommendations and, if so, how it intends to implement them.

DAMAGES FOR PERSONAL INJURY

- 3.50 During the late 1990s we carried out a major review of damages, which resulted in reports on Liability for Psychiatric Illness,⁴⁷ Damages for Non-Pecuniary Loss,⁴⁸ Damages for Medical, Nursing and Other Expenses⁴⁹ and Claims for Wrongful Death.⁵⁰
- 3.51 Some of our recommendations have been implemented. In February 2000, the Court of Appeal increased the level of awards for non-pecuniary loss in cases of severe injury.⁵¹ In April 2002, the Lord Chancellor’s Department increased the level of bereavement damages from £7,500 to £10,000. The Government has also made provision to extend the recovery of National Health Service costs from road traffic accidents to all personal injury claims.⁵²
- 3.52 On the remaining recommendations, however, we still await a decision. In November 1999, the Government announced that it would undertake a comprehensive assessment of their individual and aggregate effects. In 2004, we were told that a consultation paper would be issued shortly – a response which was repeated in 2005 and 2006. The current position is that DCA has indicated that a consultation paper will be published in 2007.⁵³

⁴⁶ Company Security Interests (2005) Law Com No 296.

⁴⁷ (1998) Law Com No 249.

⁴⁸ (1999) Law Com No 257.

⁴⁹ (1999) Law Com No 262.

⁵⁰ (1999) Law Com No 263.

⁵¹ *Heil v Rankin* [2000] 3 WLR 117.

⁵² This was raised in Law Com No 262. See Health and Social Care (Community Health and Standards) Act 2003, s 150.

⁵³ On 4 May 2007, the Ministry of Justice (formerly DCA) began a consultation on the recommendation in our reports on Claims for Wrongful Death; Liability for Psychiatric Illness; Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits; and Aggravated, Exemplary and Restitutionary Damages

PRE-JUDGMENT INTEREST ON DEBTS AND DAMAGES

- 3.53 Our report was published in February 2004.⁵⁴ It recommended giving the courts more guidance on interest rates, by specifying a rate each year, set at 1 per cent above base rate. We also thought that the courts should have the power to award compound interest in appropriate circumstances.
- 3.54 We received an interim response from the Government in August 2004. However, after three years we have not yet heard whether our recommendations are accepted.

REVIEW OF HOMICIDE

- 3.55 In November 2006 the Law Commission published a report setting out recommendations for reform of the law of homicide.⁵⁵ For more information see paragraphs 5.1 to 5.7. The Law Commission's review was the first stage of a two stage process. The next stage will consist of a Home Office consultation which will focus on broader issues of public policy. Accordingly, implementation of the Commission's recommendations will have to await the outcome of that consultation.

Other reports

BRIBERY

- 3.56 In 1998 the Law Commission published a report⁵⁶ and draft Bill which recommended the creation of four new offences to replace those in the Prevention of Corruption Acts 1889–1916. In 2000 the Government consulted on the Law Commission's proposals and in 2003 presented a draft Corruption Bill, based on the Commission's work, for Pre-Legislative Scrutiny (PLS). The Joint Committee which gave the Bill its PLS recommended abandoning the Commission's scheme of reform. It proposed an alternative scheme which the Government rejected. The Government issued a consultation paper in December 2005 in an effort to build a new consensus.
- 3.57 In March 2007 the Government announced that the outcome of the consultation process was that there was broad support for reform of the current law but no consensus as to how it could be best achieved. As a result, the Government has asked the Law Commission to undertake a thorough review of the bribery law of England and Wales. See paragraphs 5.18 to 5.21 of this report for further information on that review.

⁵⁴ Pre-Judgment Interest on Debts and Damages (2004) Law Com 287.

⁵⁵ Murder, Manslaughter and Infanticide (2006) Law Com No 304.

⁵⁶ Legislating the Criminal Code: Corruption (1998) Law Com No 248.

PARTIAL DEFENCES TO MURDER

- 3.58 In August 2004 the Commission published its report on Partial Defences to Murder,⁵⁷ which, among other things, recommended that the law on provocation should be retained, but in a narrowed form. We proposed that provocation could be pleaded by those who either had a justified sense of being seriously wronged, or feared serious violence towards them or another, provided that a person of ordinary tolerance and self restraint in the circumstances might have reacted in the same or a similar way. Consequently, we did not recommend that there should be a specific partial defence to murder based on the excessive use of force in self-defence.
- 3.59 In July 2005 the then Home Secretary announced a comprehensive review of the law of murder. The Law Commission undertook the first stage of that review in 2005–2006. In November 2006 the Commission published a report setting out its recommendations for reform of the law of homicide. Those recommendations have superseded the recommendations in Partial Defences to Murder.

⁵⁷ (2004) Law Com No 290.

PART 4

COMMERCIAL LAW AND COMMON LAW

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Insurance contract law

- 4.1 In 2005 we initiated a joint project with the Scottish Law Commission to review insurance contract law. The law relating to insurance contracts has long been criticised for its obscurity and potential to cause unfairness to policyholders. In several areas it no longer accords with good business practice. Some of these problems have been addressed by codes of practice, regulation and the Financial Ombudsman Service. However, these measures are not a complete response to inadequacies in the underlying law, while the need to consider such a wide range of sources makes the law even more inaccessible.
- 4.2 In 1980, the Law Commission called for reform of the law on non-disclosure and breach of warranty. The recommendations were not implemented and, following a report from the British Insurance Law Association, we decided that these issues should be looked at again.
- 4.3 In January 2006 the two Law Commissions published a scoping study asking whether there are any other areas of law we need to consider. We received over 100 responses, revealing considerable support for a major review of this area.
- 4.4 Over the course of the year the teams working on this project in the two Commissions have produced three initial “issues papers”, designed as a way of promoting discussion of the issues before the formal consultation paper. We published a paper on Misrepresentation and Non-Disclosure in September 2006, a paper on Warranties in November 2006 and a paper on Intermediaries and Pre-Contract Information in March 2007.

¹ Including those who were at the Commission for part of the period.

- 4.5 Between September 2006 and March 2007 we participated in seven private and public seminars to discuss the issues papers, and held another twenty or so meetings with interested parties. These contributions have been invaluable in enabling us to formulate proposals. We are also extremely grateful to the members of our advisory panel who have commented on draft papers and shared their expertise with us.²
- 4.6 Furthermore, we would like to thank the Financial Ombudsman Service for giving us access to around 270 final ombudsman decisions. This research has given us a much clearer idea of how ombudsmen approach disputes concerning non-disclosure, misrepresentation and policy terms.
- 4.7 In summer 2007 we intend to publish a formal consultation paper considering issues of non-disclosure, misrepresentation and warranties. A second consultation paper considering further issues (including insurable interest, fraudulent claims and damages for late payment) is planned for 2008.

Property interests in investment securities

- 4.8 In December 2005 we launched a review of the law on 'intermediated securities', that is, securities such as shares and bonds that are held by the investor through an intermediary such as a bank or broker rather than directly from the issuer. This is now a very common way of holding securities, but English law has lagged behind market developments in its treatment of investors' property rights in these securities. While the basic law is sound, some gaps and uncertainties have arisen.
- 4.9 There is also a need to harmonise laws at an international level. In 2006, a working group appointed by the EU Commission formally proposed the creation of an EU-wide legal framework to deal with intermediated securities. Meanwhile, UNIDROIT has been negotiating a Convention on Intermediated Securities among its 60 or so contracting states (which include all of the member states of the EU and of the G10 nations). The EU working group is currently considering whether it would be better to ratify the UNIDROIT Convention or create parallel but separate European legislation.
- 4.10 The Law Commission's project has explored how best to modernise and clarify English law to keep pace with changes in market practice in light of the EU's legislative initiative on this issue. During summer 2006, we held three successful seminars to consider the principal legal issues affecting intermediated securities. Following the announcement of the EU Commission's decision to consider the UNIDROIT Convention as a possible solution, the focus of our project has switched to a detailed review of the draft UNIDROIT Convention. In September 2006, we produced an interim advice to HM Treasury on the UNIDROIT Convention prior to the most recent negotiations. Law Commission staff also attended UNIDROIT meetings on behalf of the UK Government.

² The members of the panel are: Professor John Birds; Warren Copp; Ken Davidson; Professor Angelo Forte; Teresa Fritz; Alison Green; Chris Hannant; Martin Hill; Peter Hinchliffe; Christopher Jones; Gerard L'Aimable; Professor Robert Merkin; Robert Purves; Sarah Wolfe; and Geraldine Wright.

- 4.11 Our current view is that the UK should support the UNIDROIT Convention as the preferred means of establishing an EU-wide legal framework. Our work has therefore been aimed primarily at advising the UK government during the treaty negotiations, rather than drafting UK legislation. To this end we produced an updated advice to the Treasury in April 2007, prior to the final drafting meeting of the Committee. Although we will be following progress as the Convention proceeds towards ratification, we will not be issuing further consultation papers or drafting legislation in this area. We will also be producing updated advice in the spring and our final advice during the autumn.
- 4.12 We have, however, recommended that English law be changed in one respect, to provide innocent purchasers of intermediated securities with greater protection against third party claims. We hope that the Treasury will find time within the legislative programme to introduce such a measure.

Illegal transactions

- 4.13 We are continuing to review the law of illegal transactions, looking at the effect of illegality on claims in contract and trusts. The law on illegality has been criticised for being complex, uncertain, arbitrary and, on occasion, unjust. One way of removing some of the arbitrary and discriminatory effects of the current law would be to abolish the nineteenth century trust law principle, known as “the presumption of advancement”. In December 2006 we consulted on the merits of doing so. We intend to publish a final report in 2007.



Members of the Commercial Law and Common Law Team

PART 5

CRIMINAL LAW, EVIDENCE AND PROCEDURE

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Professor Jeremy Horder
Commissioner

Review of homicide

- 5.1 In August 2004, the Commission published a report² which concluded that the law of murder in England and Wales “is a mess”. The report recommended that there should be a general review of the law of murder, including the application of the mandatory life sentence. In July 2005 the Government announced that there would be a two-stage review of the law of murder, with the first stage being conducted by the Law Commission. In announcing the review, the Government asked the Law Commission to take account of the continuing existence of the mandatory life sentence.
- 5.2 The Commission published a consultation paper on 20 December 2005.³ Following consultation, the Commission published its final report in November 2006.⁴ We recommended that there should be a new Homicide Act for England and Wales to replace the Homicide Act 1957. We also recommended that, instead of the current two tier-structure of general homicide offences, namely murder and manslaughter, there should be a three-tier structure:
- first degree murder (mandatory life sentence),
 - second degree murder (discretionary life sentence), and
 - manslaughter (discretionary life sentence).

¹ Including those who were at the Commission for part of the period.

² Partial Defences to Murder (2004) Law Com No 290.

³ A New Homicide Act for England and Wales? Consultation Paper No 177. In addition, the Commission also published a shorter paper: A New Homicide Act for England and Wales? An Overview, Consultation Paper No 177 (Overview).

⁴ Murder, Manslaughter and Infanticide (2006) Law Com No 304.

- 5.3 First degree murder would be confined to unlawful killings committed with an intention to kill and unlawful killings committed with an intent to cause serious injury where the killer was aware that his or her conduct involved a serious risk of causing death.
- 5.4 Second degree murder would encompass unlawful killings committed with an intent to cause serious harm and unlawful killings intended to cause injury or fear or risk of injury where the killer was aware that his or her conduct involved a serious risk of causing death. In addition, second degree murder would encompass cases which would constitute first degree murder but for the fact that the accused successfully pleads provocation, diminished responsibility or that he or she had killed pursuant to a suicide pact.
- 5.5 Manslaughter would consist of unlawful killings caused by acts of gross negligence and unlawful killings caused by a criminal act that was intended to cause injury or by a criminal act foreseen as involving a serious risk of causing some injury.
- 5.6 We recommended that duress that should be a complete defence to first degree murder, second degree murder and attempted murder. We recommended that the offence/defence of infanticide should be retained without amendment and that the Government should undertake a public consultation on whether and, if so, to what extent the law should recognise an offence of 'mercy' killing or a partial defence of 'mercy' killing.
- 5.7 The Commission's recommendations will feed into the second stage, in which the Government will conduct a review of the wider policy issues.

Assisting and encouraging crime

- 5.8 The Commission had considered in the past⁵ the scope and structure of the law relating to the liability of those (D) who assist and encourage others (P) to commit offences. That law was and remains complicated, uncertain and anomalous. It also raises important and difficult policy issues.
- 5.9 Under the current law, if D assists or encourages P to commit an offence, the nature and extent of D's liability depends on whether P goes on to commit the offence. If P commits the offence D's liability is secondary. By contrast, if P does not commit the offence, D's liability is inchoate. At common law, D may be inchoately liable provided that he or she *encouraged* P to commit the offence. D is guilty of the common law inchoate offence of incitement. By contrast, if D *assisted* P to commit an offence that P subsequently does not commit, D incurs no criminal liability.

⁵ Assisting and Encouraging Crime (1993) Consultation Paper No 131.

- 5.10 In July 2006 the Commission published a report and draft Bill on inchoate liability for assisting and encouraging crime.⁶ We recommended that there should be two inchoate offences of assisting and encouraging crime: intentionally encouraging or assisting crime and encouraging or assisting crime believing that an offence, or one or more offences, will be committed. The offences would replace the common law inchoate offence of incitement and fill the gap at common law whereby D incurs no criminal liability for assisting the commission of an offence which P does not subsequently commit.
- 5.11 We recommended that it should be a defence to each offence that D acted in order to prevent crime or to prevent or limit the occurrence of harm. In addition, we recommended that it should be a defence to the offence of encouraging or assisting believing that an offence, or one or more offences, will be committed that D acted reasonably in the circumstances.
- 5.12 In January 2007 the Government introduced its Serious Crime Bill. Part 2 of the Bill is based on our report and draft Bill. The provisions in Part 2 for the most part reflect our draft Bill. The major difference is that under the Government's provisions the fault element of the offences would be less stringent than under our recommendations.
- 5.13 The Commission intends to publish a report and draft Bill on secondary liability for assisting or encouraging crime in May 2007.

The High Court's jurisdiction in relation to criminal proceedings in the Crown Court

- 5.14 The High Court has jurisdiction to entertain challenges to decisions made in criminal proceedings in the Crown Court but only if the decision is not a "matter relating to trial on indictment".⁷ The rationale for the exclusion is easily identifiable. Challenges to decisions made in the course of criminal proceedings should not be a means of unnecessarily delaying trials and clogging up the criminal justice process. The problem has been in locating the boundary of the exclusion. The expression "matter relating to trial on indictment" has proved to be a fertile source of argument giving rise on numerous occasions to lengthy and expensive litigation.
- 5.15 The Commission has been considering how the High Court's criminal jurisdiction over the Crown Court might be simplified and, if appropriate, modified together with the implications for the High Court's criminal jurisdiction over magistrates' courts and courts martial. The Commission intends to publish a consultation paper in summer 2007 followed by a final report in 2008.

⁶ Inchoate Liability for Assisting and Encouraging Crime (2006) Law Com No 300.

⁷ Supreme Court Act 1981, s 29(3).

Codification of the criminal law

- 5.16 This project consists of reviewing and revising Part 1 of the Criminal Code of 1989.⁸ Progress has been limited in the past year largely because of the resources that we had to commit to the review of homicide. We have focused on conspiracy, attempt, corporate criminal liability and intoxication.
- 5.17 It is our intention to publish a consultation paper on conspiracy in mid-2007, followed later in the summer with a consultation paper on preparatory offences and criminal attempt. In late autumn 2007, we hope to publish a report and draft Bill on intoxication.

Bribery

- 5.18 In 1998 the Law Commission published a report and draft Bill on Corruption.⁹ This resulted in a draft Government Bill which received its pre-legislative scrutiny by a Joint Committee in 2003. The Joint Committee heavily criticised the Bill and recommended an entirely different scheme of offences.
- 5.19 In an attempt to seek a new consensus on the way forward, the Government published a consultation paper in December 2005. The consultation revealed that there is broad support for reform of the existing law but no consensus as to how it can best be achieved. As a result, in March 2007 the Government asked the Law Commission to take forward the findings of the Government's consultation and to consider the options for reform further.
- 5.20 Our review will consider the full range of structural options for a scheme of bribery offences. It will take into account the issues and views that have emerged since the introduction of the draft Bill in 2003. The review will also look at the wider context on corrupt practices so that it will be clear how existing provisions complement the law of bribery. This part of the review will consist of a summary of provisions as opposed to recommendations for reform.
- 5.21 We intend to publish an issues paper in November 2007 to be followed by the publication of a final report together with a draft Bill in autumn 2008.

⁸ Criminal Law: A Criminal Code for England and Wales (1989) Law Com No 177.

⁹ Legislating the Criminal Code: Corruption (1998) Law Com No 248.



Members of the Criminal Law Team

PART 6

PROPERTY, FAMILY AND TRUST LAW

TEAM MEMBERS¹

Government Legal Service

Matthew Jolley (*Team Manager*)
Judith Cairns, Julia Jarzabkowski, Jo Miles,
Cheryl Morris, Elizabeth Saunders

Consultant

Professor Elizabeth Cooke

Research Assistants

Christopher Draycott, Daniel Robinson,
Michael Clark, Wendy Mathers,
Joel Wolchover, Naomi Winston,
Michael Ashdown, Nicholas Piska



Stuart Bridge
Commissioner

Cohabitation

- 6.1 The Law Commission's cohabitation project focuses on the financial hardship suffered by cohabitants or their children on the termination of their relationship by separation or death. Its scope is restricted to opposite-sex and same-sex couples in clearly defined relationships.²
- 6.2 Particular attention is being given to:
- (1) Whether cohabitants should have access to remedies against one another when they separate such as periodical payments, lump sums and property transfers and, if so, the circumstances in which those remedies should be available.
 - (2) A review of the operation of existing remedies providing capital awards for the benefit of children under Schedule 1 to the Children Act 1989.
 - (3) Intestate succession and family provision on death under the Inheritance (Provision for Family and Dependants) Act 1975.
 - (4) Whether contracts between cohabitants, setting out how they will share their property in the event of the relationship ending, should be legally enforceable, and, if so, in what circumstances.
- 6.3 The Commission published a consultation paper³ on 31 May 2006 and received

¹ Including those who were at the Commission for part of the period.

² See our Ninth Programme of Law Reform (2005) Law Com No 293 for an outline of the types of relationship that are and are not being considered, and also for a list of issues that are specifically excluded from the review.

³ Cohabitation: The Financial Consequences of Relationship Breakdown (2006) Consultation Paper No 179 and Overview.

over 250 responses. The project team has met with many of the groups particularly interested in this area, and participated in a public discussion evening at the Institute for Advanced Legal Studies and a day-long Nuffield Foundation seminar on the consultation paper. The Commission will report to Government with its final recommendations before the end of August 2007.

Easements and covenants

- 6.4 The law of easements,⁴ analogous rights and covenants is of practical importance to a large number of landowners. Recent Land Registry figures suggest that at least 65% of freehold titles are subject to one or more easements⁵ and 79% are subject to one or more restrictive covenants. It is estimated that 99% of leasehold registrations will be subject to both kinds of right.
- 6.5 Easements and covenants can be fundamental to the enjoyment of one's property. For example, many landowners depend on easements in order to obtain access to their property, for support or for drainage rights. The relevant law has never been subject to a comprehensive review, and many aspects are now outdated and a cause of difficulty.
- 6.6 The Commission is therefore examining easements and analogous private law rights with a view to their reform and rationalisation. The Commission intends to publish a consultation paper on the general law of easements, profits and covenants towards the end of 2007. This paper will address the characteristics of such rights, how they are created, how they come to an end and how they can be modified.

Capital and income in trusts: classification and apportionment

- 6.7 The current law on the classification of trust receipts and outgoings as income or capital is complex and can give rise to surprising results.⁶ The complicated rules which oblige trustees to apportion between income and capital in order to keep a fair balance between different beneficiaries are also widely acknowledged to be unsatisfactory. They are technical, rigid and outdated, often causing more difficulties in practice than they solve. As a result, their application is often expressly excluded in modern trust instruments.⁷

⁴ An easement is a right enjoyed by one landowner over the land of another. A positive easement involves a landowner going on to or making use of something in or on a neighbour's land. A negative easement is essentially a right to receive something (such as light or support) from the land of another without obstruction or interference.

⁵ The actual number of freehold titles subject to one or more easements is likely to be much higher than 65%, because this figure relates only to expressly granted easements and does not take into account easements not recorded on the register, such as those arising by prescription or implication.

⁶ For example, where shares in a new company are issued to the shareholders of an existing company on what is known as an "indirect" demerger, those shares will be treated for trust purposes as capital. Where the demerger is "direct" the shares received will be treated as income in the trustee's hands.

⁷ In cases where the rules still apply (generally older trusts and home-made will trusts) the rules are either ignored or require the trustee to undertake complex calculations which are unlikely to have been envisaged by the settlor when setting up the trust.

- 6.8 The distinction between trust income and capital receipts is also an important issue for charities. Many charitable trusts have permanent capital endowments which cannot be used to further the charity's objects; only the income generated can be used and there is generally no power to convert capital into income. This may inhibit performance of the charity's objects and encourage investment practices which concentrate on the form of receipts rather than on maximising overall return.
- 6.9 The Commission published a consultation paper on this subject in July 2004.⁸ It provisionally proposed new, simpler rules for the classification of corporate receipts by trustee-shareholders, a new power to allocate investment returns and trust expenses as income or capital (in place of the existing rules of apportionment) and the clarification of the mechanism by which trustees of permanently endowed charities may invest on a "total return" basis.
- 6.10 Work on this project has been suspended pending completion of other Property, Family and Trust Law team work and will recommence on publication of the Commission's final report on cohabitation.

The rights of creditors against trustees and trust funds

- 6.11 Details of the Commission's third trust law project can be found in last year's Annual Report. Work on this project will commence when resources allow.

Feudal land law

- 6.12 Details of the Commission's feudal land law project can be found in last year's Annual Report. Work on this project will commence when resources allow.



Members of the Property, Family and Trust Law Team

⁸ Capital and Income in Trusts: Classification and Apportionment (2004) Consultation Paper 175.

PART 7

PUBLIC LAW

TEAM MEMBERS¹

Government Legal Service

Richard Percival (*Team Manager*)
Tola Amodu, Chantal Bostock, Eleanor Cawte
Lydia Clapinska, Charlotte Crilly

Special Consultants

Professor Martin Partington CBE

Visiting Academic Consultants

Professor David Cowan, Alex Marsh

Research Assistants

Daniel Bovensiepen, Frances McClenaghan,
Ed Kirton-Darling, Regan Morris, Doug Rhodes,
Hafsah Masood, Changez Khan



Kenneth Parker QC
Commissioner

Remedies against public bodies

- 7.1 This project was included in the ninth programme of law reform (effective from April 2005), but had earlier roots.
- 7.2 The initial concern was with a perception that there was a “gap” in the law. Where a public authority has acted unlawfully in a public law sense, but has not breached either the European Convention on Human Rights, or European Union law, and thereby causes economic loss to an individual, the individual has no claim for compensation against the authority. This was the central concern of a Discussion Paper that we published in October 2004.
- 7.3 Subsequently, we convened a seminar, in November 2005. Presided over by Lord Phillips, the Master of the Rolls, the seminar was attended by judges, academics, practising lawyers, ombudsmen and officials. Although it is important to recognise that participants were far from unanimous, we felt able to draw some general lessons from it. Those were that a concentration on monetary remedies was too narrow; that it was important to focus on the difficulties faced by public authorities and the utility of feedback to improve public administration; and that tort law did not provide the right template for any new remedy designed to secure appropriate monetary redress in a public law situation.
- 7.4 The proposal in the ninth programme was to precede the substantive project with a scoping review. That scoping report was published in October 2006. We acknowledged in that report that we had found it a difficult task to delineate the scope of the substantive project so that it was both manageable in terms of workload and likely to produce real public benefit.

¹ Including those who were at the Commission for part of the period.

- 7.5 In the scoping paper, we concluded that rejecting the development of tort law, particularly by the courts, as the main way forward should not mean side-lining the importance of tort liability. On the contrary, our considerations leading up to the scoping paper led us to conclude that tort, particularly negligence, was central to the project. To come to a principled conclusion necessarily requires looking equally at the remedies available in tort and in public law.
- 7.6 In the scoping paper, we reviewed the current range of non-court options open to those who think they have been wronged by a public body. However, recognition of the role of such mechanisms does not mean that it would be either practical or desirable for us to seek to review and make recommendations on the entire range of options for complaints handling and redress across the public sector. Our central concern must remain the law as implemented by the courts. The challenge for the project is to ensure that the law is constructed in such a way as to ensure that such mechanisms are given the space they need. One area in which specific recommendations on the relationship between the courts and alternatives may be both possible and necessary is in relation to the ombudsmen, principally the Parliamentary Commissioner, the Local Government Ombudsman and the Public Service Ombudsman for Wales.
- 7.7 The scoping report identifies as the big question for the substantive project:
- When and how should the individual be able to obtain redress against a public body that has acted wrongfully?
- The report qualifies the scope of the question.
- 7.8 First, it makes clear that the target area is not the ordinary liability in tort of state bodies in circumstances identical to those in which a private person would be liable. Rather, the target is those activities which are of a truly governmental nature. Secondly, by “redress” we primarily mean the award of a monetary remedy. The substantive project will not examine in detail other remedies, such as the orders that can be made on judicial review, nor make free-standing recommendations on matters such as internal complaints systems. However, it will seek to ensure that non-monetary remedies are accorded an appropriate place within the general structure. Finally, we mean by “wrongfully” a situation in which a public body has acted unlawfully in public law, or in such a way as to render it liable in tort. We do not see the project as reforming the nature of public law unlawfulness nor, in general, of tort liability. Having said that, a central part of the project will be a consideration of how the general rules of tort liability might be modified in our target area.
- 7.9 Since publication of the scoping paper, the team has been engaged on preparing the consultation paper for the substantive project itself. In the course of doing so, we have arranged a number of pre-consultation meetings with, among others, the ombudsmen and Government officials. The Commissioner has spoken at events, including the Government Legal Conference Administrative Law Conference and a seminar organised by the London School of Economics. The consultation paper will be published in the autumn of 2007.

Housing projects

- 7.10 Following the publication of our final report² in May 2006 (fully discussed in our previous annual report)³, our major project on housing tenure law reform, we have continued work on two follow-up housing projects.

Resolving housing disputes

- 7.11 Work has continued on the project on housing disputes, following the reference from the Department for Constitutional Affairs. We received 61 responses to our issues paper,⁴ published in April 2006.
- 7.12 In the light of those responses, and our further consideration of the issues raised, we concluded that it would be appropriate to develop the thinking set out in the issues paper using two distinct tracks.
- 7.13 The first relates to our proposals for what we provisionally designated “triage plus”. The idea here was to bring together three distinct functions: *sign-posting* individuals through the complexities of the housing disputes resolution system; maintaining *oversight* of the system as a whole, both nationally and locally, and *gathering intelligence* to provide a knowledge bank in support of the other two functions. We received a great deal of help from consultees both on how such functions are performed now and suggestions for developing them. But we considered that what was necessary now was to engage in more detailed work with the Legal Services Commission and other stakeholders to develop the triage plus proposal into a form that could operate in a practical way on the ground.
- 7.14 The second track is the establishment of the proper balance between courts and tribunals for final adjudication of disputes in relation to housing. It has become clear to us that there isn’t a clear choice between either a specialist forum (a tribunal) or a generalist one (the county court). Rather, there is a multi-layered system, which necessarily involves both specialist and generalist elements. The questions then raised are: first, is the balance right now? If not, how can it be adjusted? Secondly, how can the system enable the balance to be adjusted as necessary over time?
- 7.15 These are matters on which we think a general consultation paper would be of assistance. A paper will therefore be published in the summer of 2007.
- 7.16 The two tracks will be reunited in the publication of a final report before the end of 2007.

² Renting Homes: The Final Report (2006) Law Com No 297.

³ Annual Report 2005–06 (2006) Law Com No 299, paras 7.6 to 7.9.

⁴ Housing Disputes: Proportionate Dispute Resolution.

Ensuring responsible letting

- 7.17 This project appears in the ninth programme. The origins of the project in some ways go back to what was originally thought of as a second phase to our Renting Homes project (specifically, a project on harassment and unlawful eviction). Now, however, we have come to see it as centrally a question about how the private rented sector can best be regulated. Over the years, Parliament has laid down a number of standards which landlords are expected to meet. With these standards have come a wide variety of mechanisms for attempting to ensure that these standards are met. The project is primarily concerned with how effective these mechanisms are, and how they might be improved upon.
- 7.18 In developing proposals in this area, we have sought to engage with, in particular, the academic and practical study of regulatory theory. Although this is an area in the development of which lawyers have played a central role, it also draws heavily on economics and public policy studies. This project is innovative in seeking to apply the lessons of this learning to the private rented sector.
- 7.19 We will publish a consultation paper in the early summer, with a report before the end of 2007.



Members of the Public Law Team

PART 8

STATUTE LAW

TEAM MEMBERS

Consolidation

The Chairman

Sir Edward Caldwell KCB, QC, Francis Coleman, Jessica de Mounteney, Louise Davies and Christopher Packer (until September 2006)

Robin Dormer, Helen Caldwell and Tanya Killip (from October 2006)

Statute Law Revision

The Chairman, John Saunders, Jonathan Teasdale and Ruth Wilkinson

CONSOLIDATION

- 8.1 The consolidation of statute law has been an important function of the Law Commission since its creation. Consolidation consists in drawing together different enactments on the same subject matter to form a rational structure and to make more intelligible the cumulative effect of different layers of amendment. Usually this is done by preparing a single new statute. However, in the case of a large consolidation, it may be done by means of several new statutes. The aim is to make statutory law more comprehensible, both to those who have to operate it and to those who are affected by it.
- 8.2 In recent years we have prepared fewer consolidation measures than in previous years. One reason for this has been the change since the 1970s to the way Parliament amends legislation. Amendments are now routinely done by textual amendment: that is, by inserting, removing or replacing text in the original statute. This means that with modern electronic sources of legislation, and with existing reference material which is constantly updated, it is much easier now than it used to be to read the up-to-date version of an Act. The Statute Law Database will add to the sources of such material. The need to consolidate simply to take account of textual change has therefore largely disappeared.
- 8.3 However, consolidations can do things which cannot be replicated by a version of an Act which is merely an updated version of its text. There is still a need for consolidation, especially where there has been a large amount of legislative activity. This is because the law on the subject may now be found in a number of different Acts, or because the structure of the original Act has become distorted by subsequent amendment.

8.4 Consolidations are technically difficult to do and require a considerable amount of work, often extending over periods of years. It is not just a matter of identifying the amendments made to an original Act. Changes elsewhere in our statute law, changes in European law, or changes resulting from court decisions may also need to be reflected in a consolidated text. The effects of devolution can be particularly complex, and the impact of the Human Rights Act 1998 may need to be considered. Provisions that have become obsolete need to be identified and repealed. In some cases the substantive law needs to be altered before a satisfactory consolidation can be produced. All of this requires meticulous accuracy. It also requires the application of significant resources, both at the Law Commission and in the Department responsible for the area of law in question. There are often competing priorities for consolidation, and (especially in Departments) other priorities of theirs may mean that they cannot devote resources to consolidation.



Members of the Parliamentary Drafting Team

8.5 The increasing volume of legislation also poses a problem. The Public General Acts enacted by Parliament ran to 2,866 A4-sized pages in 2005, 3,470 pages in 2004, and 4,030 pages in 2003. By contrast, in 1965, the year in which the Law Commission was created, the figure is 1,817 pages, and those are pages of the smaller format then in use. Consolidation cannot sensibly be undertaken unless the legislation to be consolidated remains relatively stable during the period it takes to complete the consolidation. It is not unknown for a consolidation to be postponed or even abandoned completely because of new changes in the legislation to be consolidated.

- 8.6 During the past year, we have seen the successful passage of a number of consolidation measures.
- 8.7 A large and complex consolidation of the legislation on the National Health Service in England and Wales was completed: it takes the form of two Acts, one relating to England and one relating to Wales, together with a third Act containing repeals and consequential provisions,¹ all passed on 8 November 2006. This is an example of a consolidation which has done more than simply update the text of the original Act.
- 8.8 A consolidation of the legislation on wireless telegraphy has also been completed and passed,² as has a small consolidation of the legislation on Parliamentary costs.³
- 8.9 Following the completion of the National Health Service consolidation, we are working on a consolidation of the legislation relating to the Health Service Commissioner for England.
- 8.10 Even before the Charities Act 2006 (c 50) was passed it became apparent that the passing of the Act would create a need for the law on charities to be consolidated.⁴ Work has now started on the consolidation. This is a major exercise which will extend over more than a year.
- 8.11 Following the passing of the Electoral Administration Act 2006 (c 22), we are updating work previously undertaken on a consolidation of the legislation on representation of the people. That consolidation was suspended some time ago, at the request of the Department for Constitutional Affairs, pending the passage of the Electoral Administration Bill. There has also been another development, in the form of the decision of the European Court of Human Rights in the case of *Hirst v United Kingdom (No 2)*.⁵ It was held in that case that our law on prisoners' voting rights was not compatible with Article 3 of Protocol 1 to the European Convention on Human Rights. The Department for Constitutional Affairs has published a consultation paper on this subject.⁶ No decision has yet been taken about whether the consolidation can be safely revived.
- 8.12 Work continues on a consolidation of the legislation about private pensions. The Department for Work and Pensions has made funds available to enable the Law Commission to engage a freelance drafter (formerly a member of the Office of the Parliamentary Counsel) to undertake the consolidation.

¹ National Health Service Act 2006 (c 41), National Health Service (Wales) Act 2006 (c 42) and National Health Service (Consequential Provisions) Act 2006 (c 43).

² Wireless Telegraphy Act 2006 (c 36).

³ Parliamentary Costs Act 2006 (c 37).

⁴ *Report of the Joint Committee on the Draft Charities Bill*, pub. 30 September 2004, HL Paper 167-I, HC 660-I (session 2003-04), p.103; House of Lords Select Committee on the Constitution, 9th Report of Session 2005-06: *Third Progress Report*, pub. 28 March 2006, HL Paper 151 (session 2005-06), paras. 3-5 and Appendix 1.

⁵ (2006) 42 E.H.R.R. 41.

⁶ *Voting Rights of Convicted Prisoners Detained within the United Kingdom*, CP29/06, 14 December 2006.

STATUTE LAW REVISION

- 8.13 Statute Law Revision is the process of removing legislation from the statute book if it is obsolete or if it otherwise has no further practical utility. The work helps to modernise the statute book, leaving it clearer and shorter, and is an integral part of the general process of statute law reform. The vehicle for repealing legislation is the Statute Law (Repeals) Bill. The Law Commission has drafted 17 such Bills since 1965. All have been enacted. They have repealed more than 2000 Acts in their entirety and have achieved the partial repeal of thousands of other Acts.
- 8.14 The work of the Statute Law Revision team during 2006 has concentrated on four projects – turnpikes, the East India Company, tax and London.
- 8.15 The turnpike project examined fifty obsolete turnpikes Acts dating from 1695 to 1851 relating to the building, repair and maintenance of roads in Essex, Suffolk and Norfolk. These Acts reflect the absence of any national framework for repairing and maintaining British roads until the late nineteenth century. Travellers along a turnpike road were charged a toll each time they used the road. The team will examine the turnpike Acts of other English counties in due course.
- 8.16 The East India Company was a significant catalyst in the creation of the British Empire. Starting life as a trading concern in 1600, it gradually developed into a licensed private arm of government. Although the Company was dissolved in 1874, twelve unrepealed statutes relating to the Company remain on the statute book covering the period 1796 to 1832. They form the basis of our project.
- 8.17 The tax project has identified a dozen enactments which, in most cases, had become obsolete because the tax that they imposed was abolished without the underlying legislation itself being repealed. These taxes include the excess profits tax, the excess profits levy and a one-off tax imposed in 1948 called the special contribution. The earliest of these obsolete statutes is an Act of 1852 which was designed to protect the competitive position of the Port of Hull by reducing local taxes.
- 8.18 The London project covered some forty or so statutes that relate to London. They concern such issues as poor relief and workhouses, coal duties, markets and the Court of Chancery. They include an Act of 1799 to limit the fees charged by London innkeepers for holding packages and by porters for delivering them.



Members of the Statute Law Revision Team

- 8.19 Consultation on all these repeal projects was carried out during 2006 or in early 2007. Other repeal projects in 2007 will include rating and Indian railways.
- 8.20 In all statute law revision work the team produces a consultation document inviting comments on a selection of repeal proposals in each area. These documents are then circulated to Departments and other interested bodies and individuals. Subject to the response of consultees, repeal proposals relating to all the projects mentioned above will be included in the next Statute Law Revision report which we hope to publish early in 2008.

PART 9

EXTERNAL RELATIONS

- 9.1 The Law Commission greatly values its strong links with a variety of organisations and individuals committed to reforming the law. We are indebted to those who give feedback on our consultation papers, and who provide input and expertise at all stages of the process of making recommendations to Government.
- 9.2 In our published reports, consultations, issues and discussion papers we list the assistance and support we receive from a wide range of people. It would not be possible to list everyone who provides guidance or feeds in views here.
- 9.3 In addition to our published work, the Law Commission plays a wide role in the national and international business of law reform. In particular we have worked with the following people.

PARLIAMENT AND MINISTERS

- 9.4 The Department for Constitutional Affairs (DCA) is our sponsor Department.
- 9.5 The Chairman and Commissioners have met with a number of Ministers during the reporting year to further the development of projects. These include:
- Lord Chancellor and Secretary of State for Constitutional Affairs, the Rt Hon Lord Falconer of Thoroton.
 - Minister of State at DCA, the Rt Hon Harriet Harman QC, MP.
 - Parliamentary Under-Secretary at DCA, the Rt Hon Baroness Ashton.
 - Parliamentary Under-Secretary at DCA, Vera Baird QC, MP.
 - Leader of the House of Commons, the Rt Hon Jack Straw MP.
 - Deputy Leader of the House of Commons, Nigel Griffiths MP.
 - Solicitor General, the Rt Hon Mike O'Brien QC, MP.
 - Chair of the Constitutional Affairs Select Committee, Alan Beith MP.
 - Minister of State at the Home Office, the Rt Hon Baroness Scotland QC.
 - Government Chief Whip (Lords), Lord Grocott.
 - Minister of State (Housing and Planning) at the Department for Communities and Local Government, Yvette Cooper MP.
 - Parliamentary Under-Secretary at the Department for Communities and Local Government, Baroness Andrews.

- Chairman of the Communities and Local Government Committee, Phyllis Starkey MP.
- Minister for Social Justice and Regeneration in the National Assembly for Wales, Edwina Hart MBE, AM.
- Economic Secretary to the Treasury, Ed Balls MP.
- Minister of State (Trade), the Rt Hon Ian McCartney MP.
- Parliamentary Secretary (Cabinet Office), Pat McFadden MP.
- Shadow Secretary of State for Constitutional Affairs, Oliver Heald MP.
- Shadow Attorney General, Dominic Grieve QC, MP.
- Shadow Secretary of State for Communities and Local Government, Andrew Stunell MP.
- Dan Rogerson MP (Liberal Democrat Housing spokesman).
- Rt Hon Nick Raynsford MP.
- Michael Gove MP.
- Gary Streeter MP.

9.6 We also met with various officials, including:

- First Parliamentary Counsel, Stephen Laws CB.
- Chief Executive of the Better Regulation Executive, Jitinder Kohli.

CONSULTEES AND STAKEHOLDERS

9.7 We receive help from a broad range of people who are thanked in the respective consultations and reports issued by the Law Commission. During the course of this year, we were particularly grateful to the academics and the judiciary who provided input. Many practitioners and legal associations working in specialist and general fields have given time and support to further our awareness of various areas of work.

9.8 We are also grateful to all those who have worked with us as members of advisory groups on our various projects.

9.9 We met various representatives of our stakeholder groups, including:

- The President of the Law Society, Fiona Woolf.
- Annual meetings with the Society of Legal Scholars (SLS), the Association of Legal Teachers (ALT) and the Socio-Legal Scholars Association (SLSA).

SOCIO-LEGAL RESEARCH

Review of murder

- 9.10 In connection with the Commission's review of the law of murder, we had the great benefit of two pieces of socio-legal research. Professor Barry Mitchell of Coventry University and Dr Sally Cunningham of University of Leicester conducted an analysis of 93 homicide cases dealt with by the courts in 1995 and 1996 with a view to identifying the defences that were being pleaded and to how individual defences were pleaded in combination with other defences. The results of their research can be found in Appendix C of the Commission's report "Murder, Manslaughter and Infanticide".
- 9.11 We commissioned Professor Ronnie Mackay of De Montfort University to undertake an empirical study of convictions for infanticide and manslaughter convictions (by reason of diminished responsibility) of biological mothers who had killed their children aged three years and under in the period 1989-2002. We published the results of Professor Mackay's research as an appendix to our final report.

Cohabitation

- 9.12 We also maintained close contact with empirical researchers working on various aspects of cohabitation. We held a joint meeting with two teams of researchers, whose key projects came to fruition during the last year:

Rosalind Tennant, Jean Taylor and Jane Lewis, who published a report "separating from Cohabitation" as part of DCA's research report series; and

Professor Gillian Douglas, Julia Pearce and Hilary Woodward, who completed the fieldwork for their project on "Dealing with Property Issues on Cohabitation Breakdown".

- 9.13 We made a contribution to the design of two surveys and we benefited from receiving advance notice of the results. The surveys are:

An evaluation of the Living Together Campaign, conducted by Professor Anne Barlow, Dr Carole Burgoyne and Janet Smithson of the University of Exeter, which is sponsored by DCA.

The 2006 round of the British Social Attitudes Survey, which sought views from a nationally representative sample about cohabitation law reform.

- 9.14 We received the results of a survey led by Professor Gillian Douglas and Cathy Williams and conducted by students at the universities of Cardiff and Sheffield, about financial provision following the death of a cohabitant, and an analysis by Lynda Clarke and her team of data from the Longitudinal Study of the Census, examining the characteristics of cohabiting and married couples in 1991 and 2001.

- 9.15 We are grateful to all these researchers for their work, which has made a valuable contribution to the Commission's cohabitation project.

SEMINARS, LECTURES AND CONFERENCES

- 9.16 Members of the Law Commission are frequently invited to attend and speak at seminars and conferences. While we cannot fulfil every request, we try to be as involved as possible in expanding general knowledge about law reform, and engaging people in the processes by which the law is improved.
- 9.17 The Chairman has taken part in a variety of events. These include:
- A lecture at the University of Kent.
 - An interview with the legal editor of the Daily Telegraph, Joshua Rozenberg, on post-legislative scrutiny.
 - Interviews with the legal correspondents of the broadsheets.
 - Two interviews with ePolitix.
- 9.18 Hugh Beale continued his work as a member of the Joint Network of Excellence that is funded under the European Commission's Sixth Framework Programme to produce a draft Common Frame of Reference (CFR), as envisaged by the Commission's Action Plan on Contract Law. The CFR may be adopted by the Commission and other European Union institutions to provide agreed terminology and concepts for revising the existing European Directives on consumer contracts and possibly other Directives, and for drafting any future European legislation on contracts or other fields of private law. It might also form the basis of an "Optional Instrument" that parties could adopt in place of a national law.
- 9.19 In that context, Hugh took part in meetings of the network and presented draft texts for discussion at a number of stakeholder meetings organised by the European Commission in Brussels. He attended the conferences on the project organised by the Austrian Presidency in Vienna in May 2006, and by the German Presidency in Stuttgart in March 2007. He presented evidence about the project to the Legal Affairs Committee of the European Parliament and spoke on it at conferences at the University of Münster and Rome III, at a meeting of Swiss lawyers and academics in Zurich and at a meeting of the Council of Bars and Law Societies of Europe also in Rome.
- 9.20 He also took part in meetings on reform of the Hungarian Civil Code and on reform of the Hungarian law of security over property (organised by the Hungarian Ministry of Justice).
- 9.21 He delivered a paper on the control of exclusion and limitation clauses in business contracts at the University of Oxford Norton Rose Colloquium, and spoke at an Anglo-French conference organised by the University's Institute of European and Comparative Law to discuss the proposed reforms to the French Civil Code.
- 9.22 Jeremy Horder was appointed Professor of Criminal Law at the University of Oxford with effect from 1 October 2006.

9.23 Jeremy gave or participated in the following lectures, conferences and seminars:

- Chairman of the Archbold Conference on Reform of Criminal Law and Procedure.
- A lecture to the City University law faculty on English and French law of homicide.
- Lectures on the Law Commission's review of the law of homicide to the law faculties of Oxford University and Birmingham University.
- A lecture at the Royal Courts of Justice to the resident judges of the central Criminal Court on the Law Commission's review of the law of homicide.
- A lecture at the McKay Conference on the Law Commission's review of the law of homicide.
- A talk to officials of the Department for Constitutional Affairs on the Law Commission's review of the law of homicide.
- A lecture on the law of criminal complicity at Rutgers Law School, Camden, New Jersey, United States of America.
- A lecture on murder and criminal complicity to the law faculty of Cambridge University.
- A lecture at the University of Siena on the work of the Law Commission.
- A lecture to the law faculty of the London School of Economics and Political Science on the work of the Law Commission.

9.24 Jeremy also participated in two radio programmes following the publication of the Commission's report on the law of homicide, namely Woman's Hour on BBC Radio 4 in December 2006 and a phone-in discussion programme on BBC Radio 5 Live, also in December 2006.

9.25 Jeremy is a continuing member of the Criminal Justice Council and the Codification Group of the Criminal Procedure Rule Committee.

9.26 Following the publication of the consultation paper on Cohabitation: the Financial Consequences of Relationship Breakdown, Stuart Bridge:

- appeared on PM (BBC Radio 4), BBC Radio 5 Live, and Channel 4 News;
- was interviewed by Joshua Rozenberg, legal editor of the Daily Telegraph;
- appeared on Channel 4 documentary "30 Minutes";
- gave a presentation on the consultation paper to a day-long seminar organised by the Nuffield Foundation to discuss its contents;
- spoke at the National Conference of the Family Mediators' Association;

- spoke at the National Conference of Citizens' Advice;
- gave a presentation on the consultation paper at a public discussion evening held by the Institute of Advanced Legal Studies.

9.27 Stuart also:

- gave a lecture to the Property Bar Association following the publication of the report on Termination of Tenancies for Tenant Default;
- spoke at the launch of the report on Trustee Exemption Clauses in a Committee Room of the House of Lords;
- gave seminars on easements, covenants and analogous rights at Addleshaw Goddard and Slaughter & May;
- gave a lecture on the work of the Law Commission in general at the University of Cambridge summer school on English Legal Methods.

9.28 In his capacity as a Recorder, Stuart has been granted dispensation to sit in the Crown Court in addition to the County Court. He continues to serve as a member of the Civil Committee of the Judicial Studies Board.

9.29 Kenneth Parker addressed the Annual Administrative Law Conference of the Government Legal Service. He also spoke at a seminar organised by the London School of Economics on the scoping paper on Remedies against Public Bodies.

9.30 Martin Partington was elected a Bencher of Middle Temple in June 2006.

9.31 Martin also chaired the Nuffield Inquiry into capacity to undertake empirical research in law. The findings, which the Law Commission welcomes, are contained in the report *Law in the Real World* (2006), which he co-authored with Professor Dame Hazel Genn and Professor Sally Wheeler.

LAW COMMISSIONS IN THE BRITISH ISLES

9.32 We work closely with the Scottish Law Commission (SLC) on various projects. Over the course of the year, we have collaborated on insurance contract law. We have been greatly assisted in our work on cohabitation by discussions with the SLC. We remain in regular contact with the SLC concerning the two Commissions' trust law work.

9.33 Much of the Law Commission's work on statute law revision is conducted jointly with the Scottish Law Commission and many of the repeal candidates contained in Statute Law Revision Reports extend to Scotland. Indeed because Statute Law (Repeals) Acts extend throughout the United Kingdom and the Isle of Man, the Law Commission liaises regularly on its repeal proposals not only with the Scottish Law Commission but also with the authorities in Wales (the Office of the Secretary of State for Wales and the Counsel General to the National Assembly for Wales) and with the authorities in Northern Ireland and in the Isle of Man. Their help and support in considering and responding to the repeal proposals is much appreciated.

INTERNATIONAL RELATIONS

9.34 We have continued to receive international guests at the Law Commission, and to visit colleagues around the world. Among the guests we have received or met are:

- The Hon Mark Burton, Minister of Justice in New Zealand.
- The Hon Mr Kimiposa (Minister of Justice, Papua New Guinea) and a delegation.
- Dr Lakshman Marasinghe (Chairman, Law Commission of Sri Lanka).
- The Hon Keith Mason, President of the Court of Appeal, Supreme Court of New South Wales.
- The Lord Chief Justice of Nigeria.
- The Attorney General of Ghana, the Hon Joe Ghartey, and a delegation.
- Judge Tambet Tampuu, an Estonian Supreme Court judge.
- Judge Narin Ferdi Sefik (North Cyprus).
- Eight Study Fellows taking part in the Chevening Fellowship Programme at Bradford and Birmingham Universities: Aleksic Adnrija (Serbia), Ahmet Cemaleddin Celik (Turkey), Ferdinand Collantes (Philippines), Susana Gabriela Camacho Maciel (Mexico), Sajid Mehmood Qazi (Pakistan), David B Rapando (Kenya), Maleka B Shamsy (Bangladesh) and Juma Maalim (Tanzania).
- Also during March, we hosted a Lawyers and Government study programme (part of Public Administration International), on the theme "Managing Change".
- Ivy Gentry, a second year student at the University of Maryland School of Law, worked at the Commission as an intern for six weeks during July and August 2006. Ivy was attached to the Criminal Law team. We are very grateful for her valuable contribution to the work of the team.

PART 10

STAFF AND RESOURCES

RECRUITMENT AND WORKING PATTERNS

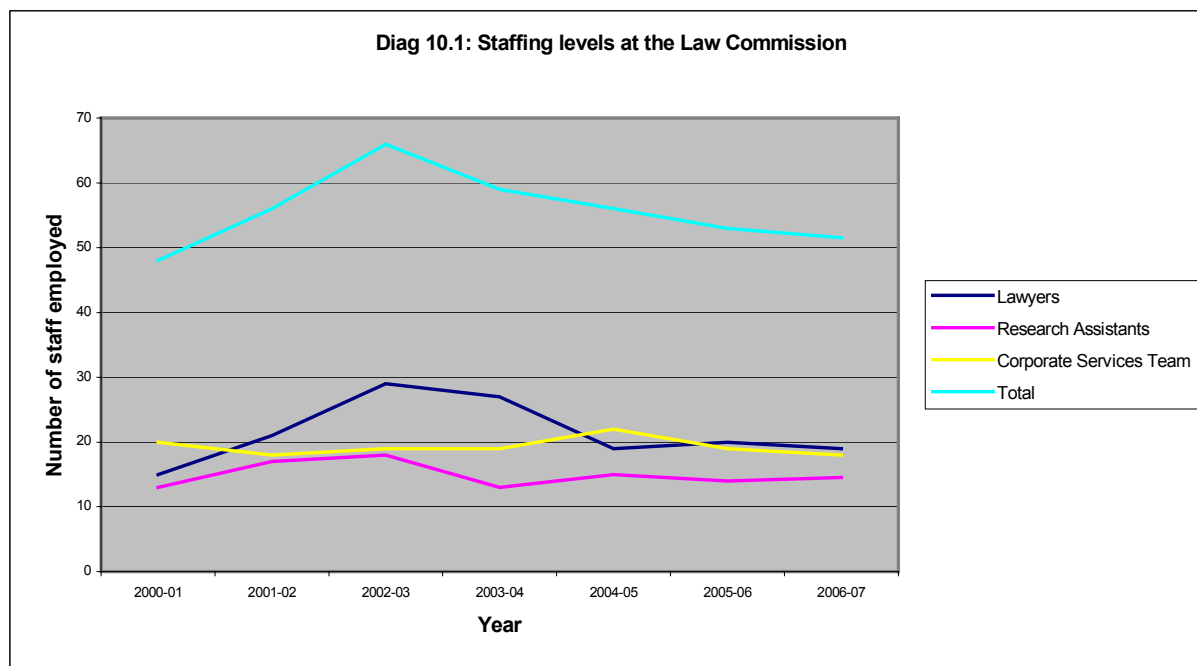
- 10.1 The Commission prides itself on recruiting and retaining the highest calibre of staff to work on its varied and challenging projects. The low level of staff turnover is one indication that staff enjoy their work and the atmosphere at the Commission. We fill lawyer vacancies through a variety of methods according to the nature and specialist skills required for individual posts. For example, we may trawl posts through the Department for Constitutional Affairs' (DCA) internal recruitment system, advertise across the Government Legal Service or run external campaigns supported by press advertising and a recruitment agency. The annual research assistant recruitment vacancies are advertised on the Commission's website with brochures, recruitment criteria, guidance and application forms available for downloading and returning on-line.
- 10.2 There are a wide variety of work/life balance arrangements in place, such as home-working and working part time or compressed hours. In addition, staff loans, secondments and short-term appointments are also welcomed.

HEALTH AND SAFETY

- 10.3 The Commission attaches great importance to the health and safety of its staff and others who visit its premises. In July 2006 the Commission's Health and Safety Policy was launched. Regular meetings of the Health and Safety Committee take place, chaired by the Chief Executive. Staff across the Commission are represented at the committee meetings and progress against a detailed Health and Safety Plan is monitored.

STAFF

- 10.4 The Commissioners very much appreciate the dedication and expertise of all the staff at the Law Commission. During the period of this Report several members of staff moved on for the sake of career development in the usual way. The Commissioners are grateful for their contribution to the work of the Commission. See Diag 10.1 for further information on changing staffing levels.



Legal staff

- 10.5 The Commission's lawyers are barristers or solicitors from a wide range of professional backgrounds, including academia, private practice and public service.
- 10.6 This year the Commission welcomed Chantal Bostock and said goodbye to Janet Cowdrey, Geoff Davies, Cheryl Morris and Peter Tyldesley. The names of all current legal staff are set out at the beginning of Parts 4 to 8 above.
- 10.7 Parliamentary Draftsmen who prepare the draft Bills attached to the law reform reports, and who also undertake the consolidation of existing legislation, are seconded to the Law Commission from the Parliamentary Counsel Office. The team of Parliamentary Draftsmen changed over the summer with the departures of Sir Edward Caldwell, Francis Coleman, Louise Davies, Jessica De Mounteney and Chris Packer. They were replaced by Robin Dormer, Helen Caldwell and Tanya Killip. The Commission is very grateful to them all for their expertise and hard work.

Research assistants

- 10.8 Each year a dozen or so well qualified graduates are recruited 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 career. The selection process is extremely thorough and the Commission aims to attract a diverse range of candidates through contact with faculty careers advisers, as well as through advertisements both on-line and in the press. For many research assistants, working at the Commission has been a rung on the ladder to an extremely successful career. The Commission recognises the contribution they make, not least through their enthusiastic commitment to the work of law reform and their lively participation in debate.

Corporate services team

- 10.9 The Commission has continued to benefit from the experience, expertise and commitment of its small Corporate Services Team (CST) of administrative staff. The CST is responsible for accommodation, communications, health and safety, human resources, information technology, programme management, publishing, records management, resource accounting, secretarial assistance and security. These support services help the Commission to function effectively and smoothly.
- 10.10 Two members of the team left the Law Commission this year: Anthea Peries and Kumarpal Soni. Kumarpal was replaced by Richard Saunders.
- 10.11 The CST values the help available to them from colleagues in the DCA, in particular from the Civil Law and Justice Division and the Human Resources Directorate. The CST is also grateful to the Facilities and Departmental Security Division, the Health and Safety Branch and the Press Office.



Members of the Corporate Services Team

Library staff

- 10.12 The Library service continues to provide a vital information service in support of the legal work of the Commission. The Law Commission makes use, reciprocally, of a number of other libraries and particular thanks are due to the libraries of the Supreme Court, DCA and the Institute of Advanced Legal Studies. In addition, a large collection of printed sources is available for research. Library staff also provide training and advice in all areas of legal information research. In co-operation with DCA, the Library also provides a one-year library trainee programme for graduates intending to pursue a professional library and information studies course.

- 10.13 The Library makes full use of the Internet and other electronic services and databases. Where possible, these are also made available via each individual desktop PC. The internet is also being used to make available old Law Commission Reports and Consultation Papers via the British and Irish Legal Information Institute (www.bailii.org). Our older publications which are not available on our website can be supplied in electronic format (pdf) on request.
- 10.14 The Law Commission library staff are employed by the Library Information Service (LIS), which provides the judiciary and staff in the DCA, HMCS, and associated offices with the information resources and publications needed to carry out their work.

(Signed) SIR TERENCE ETHERTON, *Chairman*
HUGH BEALE
STUART BRIDGE
JEREMY HORDER
KENNETH PARKER

STEVE HUMPHREYS, *Chief Executive*

1 May 2007

APPENDIX A

IMPLEMENTATION OF LAW COMMISSION REPORTS

LC No	Title	Status	Related Legislation
1966			
3	Proposals to Abolish Certain Ancient Criminal Offences	Implemented	Criminal Law Act 1967 (c58)
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)
7	Proposals for Reform of the Law Relating to Maintenance and Champerty	Implemented	Criminal Law Act 1967 (c80)
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)
1967			
9	Transfer of Land: Interim Report on Root of Title to Freehold Land	Implemented	Law of Property Act 1969 (c59)
10	Imputed Criminal Intent (<i>Director of Public Prosecutions v Smith</i>)	Implemented in part	s 8 of the Criminal Justice Act 1967 (c80)
11	Transfer of Land: Report on Restrictive Covenants	Implemented in part	Law of Property Act 1969 (c59)
13	Civil Liability for Animals	Implemented	Animals Act 1971 (c22)
1968			
16	Blood Tests and the Proof of Paternity in Civil Proceedings (HC 2)	Implemented	Family Law Reform Act 1969 (c46)
1969			
17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (HC 38)	Implemented	Law of Property Act 1969 (c59)
18	Transfer of Land: Report on Land Charges affecting Unregistered Land (HC 125)	Implemented	Law of Property Act 1969 (c59)
19	Proceedings against Estates (Cmnd 4010)	Implemented	Proceedings against Estates Act 1970 (c17)
20	Administrative Law (Cmnd 4059)	Implemented	See Law Com No 73
23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (H C 369)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45)
24	Exemption Clauses in Contracts – First Report: Amendments to the Sale of Goods Act 1893: Report by the Two Commissions (Scot Law Com No 12) (HC 403)	Implemented	Supply of Goods (Implied Terms) Act 1973 (c13)
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)

LC No	Title	Status	Related Legislation
26	Breach of Promise of Marriage (HC 453)	Implemented	Law Reform (Miscellaneous Provisions) Act 1970 (c33)
	1970		
29	Criminal Law: Report on Offences of Damage to Property (HC 91)	Implemented	Criminal Damage Act 1971 (c48)
30	Powers of Attorney (Cmnd 4473)	Implemented	Powers of Attorney Act 1971 (c27)
31	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd 4497)	Implemented	Administration of Estates Act 1971 (c25)
33	Family Law: Report on Nullity of Marriage (HC 164) Causes Act 1973 (c18).	Implemented	Nullity of Marriage Act 1971 (c44), now Matrimonial Causes Act 1973 (c18)
34	Hague Convention on Recognition of Divorces and Legal Separations: Report by the two Commissions (Scot Law Com No 16) (Cmnd 4542)	Implemented	Recognition of Divorces and Legal Separations Act 1971 (c53), now Part II of Family Law Act 1986 (c55)
35	Limitation Act 1963 (Cmnd 4532).	Implemented	Law Reform (Miscellaneous Provisions) Act 1971 (c43)
40	Civil Liability of Vendors and Lessors for Defective Premises (HC 184)	Implemented	Defective Premises Act 1972 (c35)
	1971		
42	Family Law: Report on Polygamous Marriages (HC 227)	Implemented	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c38), now Matrimonial Causes Act 1973 (c18)
43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (Scot Law Com No 21) (Cmnd 4654) (c41)	Implemented in part	s 82 of Finance Act 1972 (c41)
	1972		
48	Family Law: Report on Jurisdiction in Matrimonial Proceedings (HC 464)	Implemented	Domicile and Proceedings Act 1973 (c45)
51	Matrimonial Causes Bill: Report on the Consolidation of Certain Enactments Relating to Matrimonial Proceedings, Maintenance Agreements and Declarations of Legitimacy, Validity of Marriage and British Nationality (Cmnd 5167)	Implemented	Matrimonial Causes Act 1973 (c18)
	1973		
53	Family Law: Report on Solemnisation of Marriage in England and Wales (HC 250)	Rejected	
55	Criminal Law: Report on Forgery and Counterfeit Currency (HC 320)	Implemented	Forgery and Counterfeiting Act 1981 (c45)
56	Report on Personal Injury Litigation – Assessment of Administration of Damages (HC 373)	Implemented	Administration of Justice Act 1982 (c53)

LC No	Title	Status	Related Legislation
1974			
60	Report on Injuries to Unborn Children (Cmnd 5709)	Implemented	Congenital Disabilities (Civil Liability) Act 1976 (c28)
61	Family Law: Second Report on Family Property. Family Provision on Death (HC 324)	Implemented	Inheritance (Provision for Family and Dependants) Act 1975 (c63)
62	Transfer of Land: Report on Local Land Charges (HC 71)	Implemented	Local Land Charges Act 1975 (c76)
1975			
67	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (HC 377)	Rejected	
68	Transfer of Land: Report on Rentcharges (HC 602)	Implemented	Rentcharges Act 1977 (c30)
69	Exemption Clauses: Second Report by the two Law Commissions (Scot Law Com No 39) (HC 605)	Implemented	Unfair Contract Terms Act 1977 (c50)
1976			
73	Report on Remedies in Administrative Law (Cmnd 6407)	Implemented	Rules of Supreme Court (Amendment No 3) 1977; Supreme Court Act 1981 (c 54)
74	Charging Orders (Cmnd 6412)	Implemented	Charging Orders Act 1979 (c53)
75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd 6428)	Implemented	Occupiers' Liability Act 1984 (c3)
76	Criminal Law: Report on Conspiracy and Criminal Law Reform (HC 176)	Implemented in part	Criminal Law Act 1977 (c45)
77	Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (HC 637)	Implemented	Domestic Proceedings and Magistrates' Courts Act 1978 (c22)
1977			
79	Law of Contract: Report on Contribution (HC 181)	Implemented	Civil Liability (Contribution) Act 1978 (c47)
82	Liability for Defective Products: Report by the two Commissions (Scot Law Com No 45) (Cmnd 6831)	Implemented	Consumer Protection Act 1987 (c43)
83	Criminal Law: Report on Defences of General Application (HC 566)	Rejected	
1978			
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)
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
89	Criminal Law: Report on the Mental Element in Crime (HC 499)	Rejected	

LC No	Title	Status	Related Legislation
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)
	1979		
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)
96	Criminal Law: Offences Relating to Interference with the Course of Justice (HC 213)	Rejected	None
	1980		
99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (HC 369)	Implemented	Matrimonial Homes and Property Act 1981 (c24)
102	Criminal Law: Attempt and Impossibility in Relation to Attempt, Conspiracy and Incitement (HC 646)	Implemented	Criminal Attempts Act 1981 (c47)
103	Family Law – The Financial Consequences of Divorce (Cmnd 8041)	Implemented	See LC112
104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd 8064)	Rejected	None
	1981		
110	Breach of Confidence (Cmnd 8388)	Rejected	
111	Property Law: Rights of Reverter (Cmnd 8410)	Implemented	Reverter of Sites Act 1987 (c15)
112	Family Law – The Financial Consequences of Divorce (HC 68)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
	1982		
114	Classification of Limitation in Private International Law (Cmnd 8570)	Implemented	Foreign Limitation Periods Act 1984 (c16)
116	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (HC 513)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
117	Family Law: Financial Relief after Foreign Divorce (HC 514)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
118	Family Law: Illegitimacy (HC 98)	Implemented	Family Law Reform Act 1987 (c42)
	1983		
121	Law of Contract: Pecuniary Restitution on Breach of Contract (HC34)	Rejected	None
122	The Incapacitated Principal (Cmnd 8977)	Implemented	Enduring Powers of Attorney Act 1985 (c29)
123	Criminal Law: Offences relating to Public Order (HC85)	Implemented	Public Order Act 1986 (c64)
124	Private International Law: Foreign Money Liabilities (Cmnd 9064)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
125	Property Law: Land Registration (HC86)	Implemented	Land Registration Act 1986 (c26)

LC No	Title	Status	Related Legislation
1984			
127	Transfer of Land: The Law of Positive and Restrictive Covenants (HC201)	Rejected	
132	Family Law: Declarations in Family Matters (HC263)	Implemented	Family Law Act 1986 (c55), Part III
134	Law of Contract: Minors' Contracts (HC494)	Implemented	Minors' Contracts Act 1987 (c13)
137	Private International Law: Recognition of Foreign Nullity Decrees (SLC88) (Cmnd 9347)	Implemented	Family Law Act 1986 (c55), Part II
1985			
138	Family Law: Conflicts of Jurisdiction (SLC91) (Cmnd 9419)	Implemented	Family Law Act 1986 (c55), Part I
141	Covenants Restricting Dispositions, Alterations and Change of User (HC278)	Implemented in part	Landlord and Tenant Act 1988 (c26)
142	Forfeiture of Tenancies (HC279)	Rejected	
145	Criminal Law: Offences against Religion and Public Worship (HC442)	Rejected	None
146	Private International Law: Polygamous Marriages (SLC96) (Cmnd 9595)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
147	Criminal Law: Poison Pen Letters (HC519)	Implemented	Malicious Communications Act 1988 (c27)
148	Property Law –Second Report on Land Registration (Hc551)	Implemented	Land Registration Act 1988 (c3)
149	Criminal Law: Report on Criminal Libel (Cmnd 9618)	Rejected	None
150	Statute Law Revision: Twelfth Report (SLC99) (Cmnd 9648)	Implemented	Statute Law (Repeals) Act 1986 (c12); Patents, Designs and Marks Act 1986 (c39)
151	Rights of Access to Neighbouring Land (Cmnd 9692)	Implemented	Access to Neighbouring Land Act 1992 (c23)
152	Liability for Chancel Repairs (HC39)	Rejected	
1986			
157	Family Law: Illegitimacy (Second Report) (Cmnd 9913)	Implemented	Family Law Reform Act 1987 (c42)
1987			
160	Sale and Supply of Goods (SLC104) (Cm137)	Implemented	Sale and Supply of Goods Act 1994 (c35)
161	Leasehold Conveyancing (HC360)	Implemented	Landlord and Tenant Act 1988 (c26)
163	Deeds and Escrows (HC1)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
164	Formalities for Contracts for Sale of Land (HC2)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
165	Private International Law: Choice of Law Rules in Marriage (SLC105) (HC3)	Implemented	Foreign Marriage (Amendment) Act 1988
166	Transfer of Land: The Rule in <i>Bain v Fothergill</i> (Cm192)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)

LC No	Title	Status	Related Legislation
168	Private International Law: Law of Domicile (SLC107) (Cm200)	Rejected	
	1988		
170	Facing the Future: The Ground for Divorce (HC479)	Legislation enacted but never implemented. Then repealed	See LC192
172	Review of Child Law: Guardianship	Implemented	Children Act 1989 (c41)
173*	Property Law: Fourth Report on Land Registration (HC680)	Superseded	See Law Com 235
174	Landlord and Tenant: Privity of Contract and Estate (HC8)	Implemented	Landlord and Tenant (Covenants) Act 1995 (c30)
175	Matrimonial Property (HC9)	Rejected	
	1989		
177	Criminal Law: A Criminal Code (2 vols) (HC299)	Superseded	
178	Compensation for Tenants' Improvements (HC291)	Rejected	
180	Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC318)	Implemented	Criminal Justice Act 1993 (c36), Part 1
181	Trusts of Land (HC391)	Implemented	Trusts of Land and Appointment of Trustees Act 1996 (c47)
184	Title on Death (Cm777)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
186	Computer Misuse (Cm819)	Implemented	Computer Misuse Act 1990 (c18)
187	Distribution on Intestacy (HC60)	Implemented	Law Reform (Succession) Act 1995 (c41)
188	Overreaching: Beneficiaries in Occupation (HC61)	Implemented in part.	Trusts of Land and Appointment of Trustees Act 1996 (c47)
	1990		
192	Ground for Divorce (HC636)	Legislation enacted but never implemented. Then repealed.	Family law Act 1996 Part II (c27)
193	Private International Law: Choice of Law in Tort and Delict (SLC129) (HC65)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
	1991		
194	Distress for Rent (HC138)	Accepted	
196	Rights of Suit: Carriage of Goods by Sea (SLC130) (250)	Implemented	Carriage of Goods by Sea Act 1992 (c50)
199	Transfer of Land: Implied Covenants for Title (HC437)	Implemented	Law of Property (Misc Prov) Act 1994 (c36)
201	Obsolete Restrictive Covenants (HC546)	Rejected	
202	Corroboration of Evidence in Criminal Trials (Cm1620)	Implemented	CJ and Public Order Act 1994 (c33)
204	Land Mortgages (HC5)	Rejected	
	1992		
205	Rape within Marriage (HC167)	Implemented	CJ and Public Order Act 1994 (c33)
207	Domestic Violence and Occupation of the Family Home (HC1)	Implemented	Family Law Act 1996 (c27), Part IV

LC No	Title	Status	Related Legislation
208	Business Tenancies (HC224)	Implemented	Regulatory Reform (Business Tenancies) (England and Wales) Order 2003
	1993		
215	Sale of Goods Forming Part of a Bulk (SLC145) (HC807)	Implemented	Sale of Goods (Amendment) Act 1995 (c28)
216	The Hearsay Rule in Civil Proceedings (Cm2321)	Implemented	Civil Evidence Act 1995 (c38)
217	Effect of Divorce on Wills (Cm2322)	Implemented	Law Reform (Succession) Act 1995 (c41)
218	Legislating the Criminal Code: Offences against the Person and General Principles (Cm2370)	Part Accepted Part Implemented	Domestic Violence Crime and Victims Act 2004
219	Contributory Negligence as a Defence in Contract (HC9)	Rejected	
	1994		
220	Delegation by Individual Trustees (HC110)	Implemented	Trustee Delegation Act 1999 (c15)
221	Termination of Tenancies (HC135)	Superseded	
222	Binding Over (Cm2439)	Accepted	
224	Structured Settlements (Cm2646)	Implemented	Finance Act 1995 (c4) – in part; Civil Evidence Act 1995 (c38) – in part; Damages Act 1996 (c48)
226	Judicial Review (HC669)	Part Implemented Part Accepted Part Rejected	Housing Act 1996 (c52) – in part
227	Restitution: Mistakes of Law (Cm2731)	Part Implemented Part Rejected	
228	Conspiracy to Defraud (HC11)	Implemented	Theft (Amendment) Act 1996 (c62)
	1995		
229	Intoxication and Criminal Liability (HC153)	Superseded	
230	The Year and a Day Rule in Homicide (HC183)	Implemented	Law Reform (Year and a Day Rule) Act 1996 (c19)
231	Mental Incapacity (HC189)	Implemented	Mental Capacity Act 2005
235	Land Registration – First Joint Report with HM Land Registry (Cm2950)	Implemented	Land Registration Act 1997 (c2)
236	Fiduciary Duties and Regulatory Rules (Cm3049)	Rejected	
	1996		
237	Involuntary Manslaughter (HC171)	Part Accepted	
238	Responsibility for State and Condition of Property (HC236)	Pending	
242	Contracts for the Benefit of Third Parties (Cm3329)	Implemented	Contracts (Rights of Third Parties) Act 1999 (c31)
243	Money Transfers (HC690)	Implemented	Theft (Amendment) Act 1996 (c62)
	1997		
245	Evidence in Criminal Proceedings: Hearsay (Cm3670)	Implemented	Criminal Justice Act 2003 (c44)
246	Shareholder Remedies (Cm3759)	Implemented	Companies Act 2006 (c46)

LC No	Title	Status	Related Legislation
247	Aggravated, Exemplary and Restitutionary Damages (HC346)	Part Accepted Part Rejected	
1998			
248	Corruption (HC524)	Accepted	
249	Liability for Psychiatric Illness (HC525)	Pending	
251	The Rules against Perpetuities and Excessive Accumulations (HC579)	Accepted	
253	Execution of Deeds and Documents (Cm4026)	Implemented	Regulatory Reform (Execution of Deeds and Documents) Order 2005 came into force 8 September 2005
255	Consents to Prosecution (HC1085)	Accepted but will not be implemented	
1999			
257	Damages for Personal Injury: Non-Pecuniary Loss (HC344)	Part Accepted and Implemented Part Pending	
260	Trustees' Powers and Duties (SLC172) (HC538/SE2)	Implemented	Trustee Act 2000 (c29)
261	Company Directors: Regulating Conflicts of Interests (SLC173) (Cm4436; SE/1999/25)	Implemented	Companies Act 2006 (c46)
262	Damages for Personal Injury: Medical etc(HC806)	Pending	
263	Claims for Wrongful Death (HC807)	Pending	
2000			
2001			
267	Double Jeopardy and Prosecution Appeals (Cm5048)	Implemented	Criminal Justice Act 2003 (c44)
269	Bail and the Human Rights Act 1998 (HC7)	Implemented	Criminal Justice Act 2003 (c44)
270	Limitation of Actions (HC23)	Accepted	
271	Land Registration for the Twenty-First Century (jointly with HM Land Registry) (HC114)	Implemented	Land Registration Act 2002 (c9)
272	Third Parties – Rights against Insurers (SLC184) (Cm5217)	Accepted	
273	Evidence of Bad Character in Criminal Proceedings (Cm5257)	Implemented	Criminal Justice Act 2003 (c44)
2002			
276	Fraud (Cm 5560)	Part Implemented	Fraud Act 2006 (c35)
277	The Effective Prosecution of Multiple Offending (Cm 5609)	Implemented	Domestic Violence, Crime and Victims Act 2004
2003			
281	Land, Valuation and Housing Tribunals: The Future (Cm 5948)	Rejected	

LC No	Title	Status	Related Legislation
282	Children: Their Non-accidental Death or Serious Injury (Criminal Trials) (HC 1054)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
283	Partnership Law (jointly with the Scottish Law Commission – SLC192) (Cm6015; SE/2003/299)	Part Accepted Part Rejected	
284	Renting Homes (Cm6018)	Pending	
286	Towards a Compulsory Purchase Code: (1) Compensation (Cm6071)	Not implemented	
2004			
287	Pre-judgment Interest on Debts and Damages (HC 295)	Pending	
289	In the Public Interest: Publication of Local Authority Inquiry Reports (Cm 6274)	Pending	
290	Partial Defences to Murder (Cm 6301)	Superseded	
291	Towards a Compulsory Purchase Code: (2) Procedure (Cm6406)	Not implemented	
2005			
292	Unfair Terms in Contracts (jointly with the Scottish Law Commission – SLC199) (Cm 6464; SE/2005/13)	Accepted in principle	
295	The Forfeiture Rule and the Law of Succession (Cm 6625)	Accepted	
296	Company Security Interests (Cm 6654)	Pending	
2006			
297	Renting Homes : The Final Report	Pending	
300	Inchoate Liability for Assisting and Encouraging Crime	Accepted	
301	Trustee Exemption Clauses	Pending	
302	Post Legislative Scrutiny	Pending	
303	Termination of Tenancies	Pending	
304	Murder, Manslaughter and Infanticide	Pending	

APPENDIX B

STAFF

The names of the Commission's legal staff are set out in Parts 4 to 8.

The Corporate Services Team comprises:

Chief Executive Steve Humphreys	Head of Corporate Services and Budget Manager Ann Achow	
Policy and Personnel Officer/ Training Co-ordinator Barbara Wallen	Programme Management and Resources Officer Jacqueline Griffiths	
Communications Manager Correna Callender	Editor and Web Manager Dan Leighton	
Facilities, Records and IT Manager Chris Porter	Facilities and Records Officer Terry Cronin	Facilities and Records Assistant Nicole Diaby
Facilities and Health and Safety Assistant Yasmin Rahman	Messenger Richard Saunders	Front Desk Security Edward Bailey Paul Prentice
Secretarial Support Carmen McFarlane Anne Piper	Alison Meager Jackie Samuel	
Librarian Keith Tree	Assistant Librarian Michael Hallissey	Library Trainee Eavan Smith
Chairman's Clerk Amanda Dennis		

Contact Numbers

- General enquiries 020 7453 1200
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- Library library@lawcommission.gsi.gov.uk
- Communications team communications@lawcommission.gsi.gov.uk

APPENDIX C

THE COST OF THE COMMISSION

- C.1 The Commission's resources are mainly made available through the Department for Constitutional Affairs (DCA) in accordance with section 5 of the Law Commissions Act 1965.
- C.2 Income including contributions from Whitehall Departments, which are on occasion received by the Commission to cover resources it requires in order to undertake a particular law reform project, is not included here.

	2004/2005		2005/2006		2006/2007	
	(April/March)		(April/March)		(April/March)	
	£000	£000	£000	£000	£000	£000
Commissioner salaries (including ERNIC)*	386.8		613.0		579.8	
Staff salaries**	2672.3		2664.5		2654.1	
		3058.3		3277.5		3233.9
Printing and publishing; supply of information technology; office equipment; books; publicity; utilities (inc. telecommunications) and postage	202.3		230.8		154.2	
Rent for accommodation	470.4		560.0		560.0	
Travel and Subsistence	14.2		27.4		20.0	
Other administrative costs (inc. recruitment; fees and services)	82.8		79.9		64.3	
Entertainment	6.0		4.8		3.0	
		775.7		902.9		801.5
TOTAL		3834.0		4180.4		4035.4

* The figure for 2005/2006 included the sum of £112,841 for pension payments to our ex-Commissioners, which we were asked to account for, and consequently this item rose. The figure for 2006/2007 excludes the sum of £96,781 for these payments as the cost was met centrally.

**Includes ERNIC, research, consultants, temporary staff (inc. provision of security) and secondees.