

THE LAW COMMISSION

(LAW COM No 316)

ANNUAL REPORT 2008–09

The Forty-Third 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*

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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 Rt Hon Lord Justice Etherton, *Chairman*
 Professor Elizabeth Cooke¹
 David Hertzell
 Professor Jeremy Horder
 Kenneth Parker QC

Chief Executive: Mark Ormerod CB²

The Commission is located at Steel House, 11 Tothill Street, London, SW1H 9LJ.



Chairman, Commissioners and Chief Executive

(Standing) Elizabeth Cooke David Hertzell Jeremy Horder Kenneth Parker
(Seated) Mark Ormerod Sir Terence Etherton

This Annual Report covers the period 1 April 2008 to 31 March 2009, although we have also included recent and relevant references beyond the reporting period.

The terms of this report were agreed on 5 June 2009.

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

¹ Professor Cooke succeeded Stuart Bridge on 3 July 2008.

² Mark Ormerod succeeded William Arnold as Chief Executive on 2 March 2009.

THE LAW COMMISSION ANNUAL REPORT 2008–09

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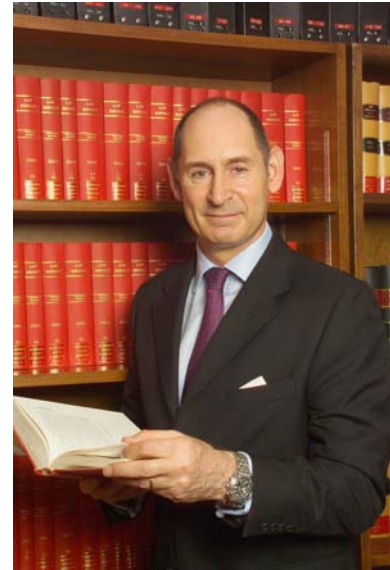
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LAW COMMISSION ANNUAL REPORT 2008-09

To the Right Honourable Jack Straw MP, Lord Chancellor and Secretary of State for Justice

I am proud to introduce the Law Commission's 43rd Annual Report. This has been a significant year in the history of the Commission, with some potentially far-reaching reforms to enhance its status and effectiveness. It also marks the final reporting year of my Chairmanship.



The establishment of the Law Commission was an inspired act of Government, born of the belief that accessible, intelligible, fair and modern law is the constitutional right of every citizen. To date, the Commission has produced 180 final reports, recommending reforms that affect citizens every day: such as buying and selling a home, purchasing goods as a consumer, going through divorce. The Government has accepted and implemented either wholly or in part 135 of those reports. A further 12 await a decision from the Government. While this is an impressive track record, the speed of implementation has been a cause of concern.

When I took up my Chairmanship in 2006 my top priority was to improve this situation. I have always considered it a great privilege to be appointed Chairman of a body which stands among the most pre-eminent of the 60 or more independent law reform bodies in the world. The Commission is an extraordinarily vibrant and highly productive reforming body – regularly consulted by both established and emerging democracies about independent law reform. It remains, however, a challenge to find legislative time to implement our law reform recommendations, which by their nature are not generally high on the political agenda. During my time as Chairman, I have sought to encourage Government to adopt measures to enhance the standing and effectiveness of the Commission.

The first step was the amendment of the Law Commissions Act 1965 to provide that the Chair of the Commission must be a judge of the High Court or of the Court of Appeal. This both enhances the standing of the Commission, and is powerfully symbolic of its independence and political neutrality.

The next significant development was the Lord Chancellor's statement to Parliament, introducing the Constitutional Renewal White Paper on 25 March 2008. In this statement he announced his intention to bring forward proposals to place a statutory duty on the Lord Chancellor to report annually to Parliament on the Government's intentions regarding outstanding Law Commission recommendations. He also announced the provision of statutory backing to a protocol to underpin the way the Government works with the Law Commission.

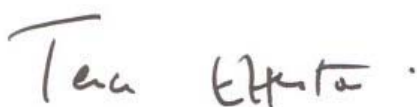
At the time of writing, the Constitutional Renewal Bill, which was intended to contain these provisions, has yet to be introduced. The Commission is very grateful to Lord Lloyd of Berwick, who in the meantime has introduced a private peer's Bill to give effect to the Lord Chancellor's statement. This Bill was introduced on 23 January 2009 and passed to the House of Commons on 1 June. These changes will allow Parliament to hold the Government to account for its response to the work of the Commission; and they will provide a stronger working relationship with the Executive, so increasing the likelihood that more reports of the Commission are passed into law.

Another major change was the introduction of a new procedure in the House of Lords for the consideration of technical and politically non-controversial Law Commission Bills. Under this procedure, the House of Lords can resolve to take the Second Reading of such Bills off the floor of the House. The first Bill to be scrutinised in this way is the Perpetuities and Accumulations Bill, based on the Commission's 1998 Report, which was introduced in the House of Lords on 1 April 2009. This new procedure should enable more technical Law Commission Bills to be taken forward, while leaving the floor of the House free for other business. The Commission is particularly grateful to Baroness Ashton, the former Leader of the House of Lords, for her initiative and persistence in taking forward this procedural change.

Other measures include the transfer to the Cabinet Committee on the Constitution (CN Committee) of the role of advising the Lord Chancellor on the proposed contents of the Commission's three-yearly programmes of law reform projects, the re-evaluation of the post of Chief Executive to a higher grade, and taking steps to ensure so far as possible that the posts of Commissioner and Chair are attractive to as wide, diverse and able a range of candidates as possible.

The influence of the Law Commission stretches across all areas of law, and the diversity of its programmes of reform reflect the breadth of issues facing society today. The recent reforms outlined above provide the Commission with the finest opportunity it has had for many years to fulfil the hopes of those upon whose dreams it was founded. They have been possible only because of the high regard in which the Commission is held by ministers, officials, parliamentarians, the judiciary and academia. That esteem is due to the high standards of all those who have worked at the Commission, and the leadership of Commissioners and former Chairs, since its inception. We owe them all a huge debt of gratitude.

My final word is of sincere thanks to those with whom I have had the great pleasure and honour of working as Chairman of the Commission for the past three years, not only my colleagues at the Commission, but also senior members of the judiciary, a succession of highly supportive ministers and officials at the Ministry of Justice and its predecessor the Department for Constitutional Affairs, leading parliamentarians of the major parties, officials of the Welsh Assembly Government, and my fellow Chairs of the Scottish Law Commission, the Northern Ireland Law Commission, and the Law Reform Commission of Ireland.



Sir Terence Etherton
Chairman

PART 1

ABOUT THE COMMISSION

Who we are

- 1.1 The Law Commission was created in 1965¹ 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 Rt Hon Lord Justice Etherton, Chairman
 - Professor Elizabeth Cooke,² Property, Family and Trust Law
 - David Hertzell, Commercial and Common Law
 - Professor Jeremy Horder, Criminal Law, Evidence and Procedure
 - Kenneth Parker QC, Public Law
- 1.3 The Commissioners are supported by the Chief Executive, members of the Government Legal Service, Parliamentary Counsel (who draft the Bills to reform and consolidate the law), and some 18 research assistants (mostly recently qualified law graduates), as well as economic advisers, librarians 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

- 1.4 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:
 - simplification and modernisation of the law
 - codification
 - removal of anomalies
 - repeal of obsolete and unnecessary enactments
 - consolidation

¹ Law Commissions Act 1965.

² Professor Cooke succeeded Stuart Bridge on 3 July 2008.

Departing Commissioner

- 1.5 We were sorry to bid farewell to Stuart Bridge at the expiry of his term as a Commissioner in July 2008. Stuart has made an outstanding contribution to law reform over the past 8 years as the Law Commissioner for England and Wales leading on Property, Family and Trust Law. During that period the Commission has conducted a range of important projects in these areas, considering reform of the law governing the property and finances of cohabitants, the termination of tenancies, easements and covenants, compulsory purchase and a number of trust law rules. We extend our sincere gratitude and best wishes to him for the future.

New Commissioner

- 1.6 We were delighted to welcome Professor Elizabeth Cooke on her appointment as a Commissioner, covering Property, Family and Trust Law, on 3 July 2008. Professor Cooke began her legal career as a trainee solicitor at Withers, and was admitted as a solicitor in 1988. Subsequently, she practised at Barrett and Thomson, Slough. Professor Cooke became a lecturer at the University of Reading in 1992, and was awarded a personal chair in 2003.

New Chief Executive

- 1.7 During the year we said goodbye to William Arnold, who had been acting Chief Executive, following Steve Humphreys' departure the previous year. We would like to record our sincere gratitude to William for his contribution to the Commission and wish him well in his new post as Corporate Services Director at the Supreme Court. In his place we welcome Mark Ormerod CB,³ formerly Director, Access to Justice Policy at the Ministry of Justice.

³ Mark Ormerod succeeded William Arnold as Chief Executive on 2 March 2009.

PART 2

KEY DEVELOPMENTS

Introduction

- 2.1 Between 1 April 2008 and 31 March 2009, the Law Commission published four law reform reports. During this period, Parliament enacted recommendations from two of our previous reports.¹ We are awaiting implementation of recommendations from eight previous reports.² In addition, five reports are in the process of being implemented.³ Legislation on two of these has recently been introduced.⁴ We are awaiting a response from the Government on twelve previous reports.⁵

Reports published

HOUSING: PROPORTIONATE DISPUTE RESOLUTION

- 2.2 Unlike most other Law Commission reports, this report⁶ did not focus on reform of substantive law, but rather dealt with the broader social issues of how housing problems arise and how they might be dealt with better. At the heart of the recommendations was the suggestion that all those providing housing advice and

¹ The Criminal Justice and Immigration Act 2008 (s79) implemented part of our recommendations in *Criminal Law: Offences against Religion and Public Worship* (1985) Law Com No 145. Part 2 of the *Serious Crime Act 2007*, which came into force in October 2008, carried forward the recommendations in *Inchoate Liability for Assisting and Encouraging Crime* (2006) Law Com No 300.

² *Aggravated, Exemplary and Restitutionary Damages* (1997) Law Com No 247 (see paras A.25 to A.26 below); *Limitation of Actions* (2001) Law Com No 270 (see paras A.27 to A.28 below); *Pre-Judgment Interest on Debts and Damages* (2004) Law Com No 287 (see paras A.29 to A.33 below); *The Forfeiture Rule and the Law of Succession* (2005) Law Com No 295 (see paras A.34 to A.35 below); *Unfair Contract Terms* (2005) Law Com No 292 (see paras A.36 to A.38 below); *Partnership Law* (2003) Law Com No 283, *Scot Law Com No 192* (see paras A.22 to A.24 below); *Renting Homes: The Final Report* (2006) Law Com No 297 (see paras 2.8 to 2.14 below); *Housing: Encouraging Responsible Letting* (2008) Law Com No 312 (see paras 2.8 to 2.14 below).

³ *Murder, Manslaughter and Infanticide* (2006) Law Com No 304 (see para A.11 below); *Reforming Bribery* (2008) Law Com No 313 (see paras 2.6 to 2.7 below); *Distress for Rent* (1991) Law Com No 194 (see paras A.13 to A.15 below); *The Rules against Perpetuities and Excessive Accumulations* (1998) Law Com No 251 (see paras A.16 to A.17 below); *Third Parties' Rights against Insurers* (2001) Law Com No 272, *Scot Law Com No 184* (see paras A.18 to A.20 below).

⁴ The *Perpetuities and Accumulations Bill* was introduced in the House of Lords on 1 April 2009. The *Coroners and Justice Bill* will implement some of the recommendations in our report on *Murder, Manslaughter and Infanticide*. It was introduced in the House of Commons on 14 January 2009.

⁵ *Intoxication and Criminal Liability* (2009) Law Com No 314; *Housing: Proportionate Dispute Resolution* (2008) Law Com No 309; *Cohabitation: The Financial Consequences of Relationship Breakdown* (2007) Law Com No 307; *Participating in Crime* (2007) Law Com No 305; *Termination of Tenancies for Tenant Default* (2006) Law Com No 303; *Trustee Exemption Clauses* (2006) Law Com No 301; *Company Security Interests* (2005) Law Com No 296; *In the Public Interest: Publication of Local Authority Inquiry Reports* (2004) Law Com No 289; *Claims for Wrongful Death* (1999) Law Com No 263; *Damages for Personal Injury: Medical and Nursing Expenses* (1999) Law Com No 262; *Liability for Psychiatric Illness* (1998) Law Com No 249; *Responsibility for State and Condition of Property* (1986) Law Com No 238.

⁶ Law Com No 309, published 13 May 2008.

assistance should develop services based on a “triage plus” system. This had three elements:

- (1) Signposting: providing initial diagnosis of the problem and referral to the best route for resolution.
- (2) Intelligence gathering and oversight: increasing understanding of how problems arise.
- (3) Feedback: to improve decision-taking and prevent disputes arising.

HOUSING: ENCOURAGING RESPONSIBLE LETTING⁷

2.3 This report⁸ recommended a programme of staged reforms designed to promote self-regulation and enhance voluntary initiatives already in place in England and Wales in order to improve the overall coherence and stability of the current private rented sector. In relation to the jurisdiction of the county court, the report recommended the transfer of certain disrepair cases to the Residential Property Tribunal Service; and improving the court’s ability to provide interim relief on homelessness appeals. The proposals included:

- (1) Creating a housing standards monitor for the private rented sector.
- (2) Establishing an associated stakeholder board to which representatives of all sides of the private residential rented property sector would be appointed.
- (3) Developing a single code of housing management practice for landlords.
- (4) Making landlord accreditation schemes available in every local authority area.
- (5) Launching a pilot programme for home condition certificates.

BRIBERY⁹

2.4 At the heart of these proposals¹⁰ was the replacement of the patchwork of offences with two general offences of bribery – one concerned with giving bribes and one concerned with taking them. Two new offences were also recommended – bribing a foreign public official; and, applicable to corporate bodies, negligently failing to prevent bribery by an employee or agent.

INTOXICATION AND CRIMINAL LIABILITY

2.5 This report¹¹ set out recommendations for making the current law more comprehensible, logical and consistent by amending the rules that govern the extent to which the offender’s intoxicated state may be relied on to avoid liability.

⁷ See also paras 2.8 to 2.14 below.

⁸ Law Com No 312, published 14 August 2008.

⁹ See also para 2.6 below.

¹⁰ Law Com No 313, published 20 November 2008.

¹¹ Law Com No 314, published 15 January 2009.

Government responses to recent reports

BRIBERY¹²

- 2.6 The background to this year's report on Bribery¹³ goes back to 1998, when the Law Commission published a report¹⁴ and draft Bill on the subject that recommended the creation of new offences to replace those in the Prevention of Corruption Acts 1889 to 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. The Joint Committee which scrutinised the Bill 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.
- 2.7 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 asked the Law Commission to undertake a thorough review of the bribery law of England and Wales. The Commission's new report¹⁵ is to be substantially implemented in the Government's Bribery Bill, published on 25 March 2009.

RENTING HOMES AND ENCOURAGING RESPONSIBLE LETTING

- 2.8 On 13 May 2009, the Government published its response to a report it had commissioned into the private rented sector led by Dr Julie Rugg. That response also stood as the Government's response to two of our reports on housing law – Renting Homes¹⁶ and Encouraging Responsible Letting.¹⁷
- 2.9 Renting Homes was a major project on the law relating to housing tenure. It recommended sweeping away the vast majority of existing tenancy types, and replacing them with two "occupation contracts", which were formulated in a "landlord-neutral" way – the legal status of the landlord would become irrelevant to the legal basis of occupation. The agreements would be based on model agreements prescribed by the Secretary of State/National Assembly for Wales, facilitating a "consumer protection" approach to housing law. The report also made detailed proposals on the form of agreements, variation, sub-letting and transfers, variation, joint-occupation, the expression of various existing statutory requirements, termination and succession. It set out a tailor-made scheme for supported housing.
- 2.10 In their response to the Rugg Review, the Government fulsomely acknowledged the contribution made by our two reports to the development of housing policy. We were particularly pleased to see an express acknowledgement of the personal contribution made by Professor Martin Partington CBE QC, who, as Commissioner, and latterly Special Consultant, was responsible for our housing law work.

¹² See also paras 5.23 to 5.27 below.

¹³ See para 2.4 above.

¹⁴ Legislating the Criminal Code: Corruption (1998) Law Com No 248.

¹⁵ Reforming Bribery (2008) Law Com No 313.

¹⁶ Law Com No 297, published 5 May 2006.

- 2.11 The response announced that the Government took the firm view that the time was not right to implement the fundamental reforms proposed in Renting Homes, in the light of what they saw as the upheaval it would entail for tenants and landlords. It is encouraging to note that the Government's reasoning is based on an assessment of the housing market in the current financial climate, rather than a fundamental disagreement on the merits of our proposals. We therefore hope that Government will return to the proposals at an appropriate time in the future.
- 2.12 The Welsh Assembly Government has already accepted in principle the desirability of implementing Renting Homes in Wales, if possible.¹⁸
- 2.13 At the same time as rejecting our fundamental reform package, the Government have, however, accepted the principle that, in the private sector, there should be mandatory written agreements. They are consulting on two options, one being that recommended by Renting Homes. If this is accepted, it would constitute acceptance of an important and valuable part of the Renting Homes proposals.
- 2.14 In relation to the regulation of the private sector, the Response recognises the need for regulatory change to improve housing conditions in the private sector. This was our fundamental case in Encouraging Responsible Letting. On the substance of the regulatory approach, the Government have adopted an alternative mechanism to that we proposed. However, they have accepted in principle one of our important recommendations, that letting agents be subject to a formal and mandatory regulatory structure.

Consultation Papers

ADMINISTRATIVE REDRESS: PUBLIC BODIES AND THE CITIZEN

- 2.15 This consultation paper¹⁹ asked how a clear, simple and just system of redress for individuals who have suffered loss as a result of seriously substandard administrative action could be created.

CONSUMER REMEDIES FOR FAULTY GOODS

- 2.16 This is a joint project with the Scottish Law Commission. The consultation paper²⁰ asked about the legal remedies available to consumers when they buy goods which do not conform to contract. The key question asked was when a consumer should be entitled to choose to reject faulty goods and receive a refund, and when should the retailer be entitled to choose to repair or replace the goods.

THE ILLEGALITY DEFENCE

- 2.17 The consultative report²¹ set out provisional recommendations for change on how the law should respond if a claimant has been involved in some form of illegal conduct; and whether this should prevent the claimant winning his or her claim.

¹⁷ Law Com No 312, published 14 August 2008.

¹⁸ See Annual Report 2007-2008, Law Com No 310, para 3.44.

¹⁹ Consultation Paper No 187, published 3 July 2008.

²⁰ Consultation Paper No 188, published 10 November 2008.

²¹ Consultation Paper No 189, published 30 January 2009.

THE ADMISSIBILITY OF EXPERT EVIDENCE IN CRIMINAL PROCEEDINGS IN ENGLAND AND WALES

- 2.18 This paper²² made provisional proposals for reform of the law governing the admissibility of expert evidence in criminal trials. We proposed a new test for determining whether expert evidence should be admitted in a criminal trial; and new guidelines for Crown Court judges and magistrates' courts to help them determine whether expert evidence is sufficiently reliable to be admitted.

Discussion / Issues / Scoping Papers

ADULT SOCIAL CARE: A SCOPING REPORT

- 2.19 The scoping report²³ set out the key areas that we believe should form part of the review of Adult Social Care. The current law is a confusing jumble of conflicting statutes enacted over the past 60 years, containing outdated language and discriminatory concepts.

INSURANCE CONTRACT LAW

- 2.20 We also published two papers from our insurance project:
- (1) The Status of Intermediaries²⁴; and
 - (2) Should Section 83 of the Fires Prevention (Metropolis) Act 1774 be Reformed?²⁵
- 2.21 Electronic versions of all the publications listed above can be accessed from the Law Commission website.²⁶

Reforms affecting the Commission

- 2.22 Important reforms affecting the Commission's relations with Parliament and the Executive are described in the Chairman's introduction.²⁷

Change of premises

- 2.23 In October 2008, we left our offices in Conquest House, John Street WC1 after more than 35 years and moved to new premises in Steel House, Tothill Street SW1. We are now just along the road from the Ministry of Justice in one direction, and Parliament and the new Supreme Court in the other. We share the building with the Judicial Appointments Commission and the Judicial Studies Board. We look forward to developing new links with our Parliamentary, judicial and Governmental colleagues.

Staff conference

- 2.24 In December 2008, we held, at the Science Museum, our first staff conference: "Facing the Future Together". We found it a very worthwhile experience and

²² Consultation Paper No 190, published 7 April 2009.

²³ Published 26 November 2008.

²⁴ Published 17 March 2009.

²⁵ Published 17 March 2009.

²⁶ <http://www.lawcom.gov.uk/publications>.

²⁷ See p 1 above

came away with many new ideas about the role and future of the Law Commission.

Performance

- 2.25 Table 2.1 summarises our main targets for the year 2008-09 and how we met those targets.

Table 2.1: 2008-09

TARGET	OUTCOME
To complete Reports on:	
Housing Disputes	Published 13 May 2008 (LC309)
Encouraging Responsible Letting	Published 14 August 2008 (LC312)
Intoxication	Published 15 January 2009 (LC314)
Illegal Transactions	Consultative report published 30 January 2009 – awaiting House of Lords judgment before finalising report
Bribery	Published 20 November 2008 (LC313)
Conspiracy and Attempts	To be published in the second half of 2009
Capital and Income in Trusts: Classification and Apportionment	Published 7 May 2009
To complete Consultation Papers on:	
Remedies against Public Bodies	Published 3 July 2008 (LCCP187)
Admissibility of Expert Evidence	Published 7 April 2009 (LCCP190)
Consumer Remedies for Faulty Goods	Published 10 November 2008 (LCCP188)
To publish the following scoping or issues papers	
Adult Social Care	Published 26 November 2008

2.26 Table 2.2 summarises our major targets for 2009-10.

Table 2.2: 2009-10

To publish the following reports:
Administrative Redress: Public Bodies and the Citizen
Conspiracy and Attempts
Insurance Contract Law: Misrepresentation in Consumer Insurance
The High Court's Jurisdiction in Relation to Criminal Proceedings
Consumer Remedies for Faulty Goods
To publish the following consultation papers:
Level Crossings
Regulation, Public Interest and the Liability of Businesses
Intestacy
Fitness to Plead and Insanity
To publish the following issues paper:
Insurance Contract Law: Small Businesses ²⁸
Insurance Contract Law: Damages for Late Payment

The most up to date projected publication dates for all projects are available from the Law Commission website: <http://www.lawcom.gov.uk>

Measuring success

- 2.27 There are a number of ways of gauging the success of the Commission's work. The implementation of our reports is obviously key and is covered in detail in Appendix A to this Report.
- 2.28 However, this does not fully demonstrate the breadth of the Commission's impact. To address this we have collected data on citations and intend to provide these in this Annual Report and in future reports. We recognise that this quantitative data only tells part of the story but feel that it is still a useful indicator of the Commission's impact.

²⁸ Published in April 2009.

2.29 The table below shows the number of citations for the 2008 calendar year.

Table: Citations

2008 calendar year	
Citations in UK judgments	59
Citations in judgments from other common law jurisdictions	13
Citations by other law reform bodies	9
Citations in Hansard	28

2.30 In addition, the Commission's work is widely quoted in academic journals and the media. Our media monitoring service shows that there were 404 references to the Law Commission in the media in 2008-09. A relatively simple search on the internet has thrown up 96 references in academic journals. Some of these will be complimentary, some may not be. But at the very least it shows that the Law Commission is stimulating attention and debate on the issues with which it is tasked to deal.

PART 3

HOW WE WORK

Developing our programme of work

- 3.1 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.
- 3.2 Although we have a duty to “take and keep under review *all* the law”,¹ it is important that our efforts are directed towards areas of the law that most need reform and reforms that are most likely to be implemented. There should be a focus on change that will deliver real benefits to the people, businesses, organisations and institutions to which that law applies.
- 3.3 We met senior officials in the Government departments with which we deal in order to identify areas in which the Commission might usefully undertake work, as well as considering law reform suggestions from a variety of groups, professionals and individuals. The outcome of these discussions informed decisions about the projects we included in our Tenth Programme,² which was approved by the Lord Chancellor.
- 3.4 The Tenth Programme runs from 1 April 2008 for three years. Parts 4 to 8 of this report provide updates on the progress of the programme. In 2010 we will begin consultation on the contents of the Eleventh Programme.

The Law Commission’s role and methods

- 3.5 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. A consultation paper is then produced to describe the present law and its shortcomings and to set out provisional proposals for reform. During the consultation period, we try actively to seek out interested parties and engage them, including holding meetings and debates. Responses are analysed and considered very carefully and we now publish responses to consultation online.
- 3.6 The Commission’s final recommendations are set out in a report, which usually contains a Bill drafted by Parliamentary Counsel, when 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 Parliamentary Counsel who worked on the draft Bill often give further assistance to Government Ministers and departments.

¹ Law Commissions Act 1965, s 3(1).

² Tenth Programme of Law Reform (2007) Law Com No 311.

- 3.7 The Commission also publishes the responses to consultations, either separately or in the final report. In addition, the Commission has signed up to the Government Code on Consultation.

Impact assessment

- 3.8 The Commission has had the support of its own economist since late 2007. This represents a very considerable development for the Commission and allows us to consider more fully the wider consequences of our proposals and to include formal impact assessments in our consultation papers and reports.
- 3.9 Central Government sees impact assessment as a continuous process designed to assist policy-makers and also a tool that enables the evaluation and concise presentation of all relevant evidence concerning the positive and negative effects of intervention. An impact assessment adds a further dimension to the questions asked of consultees.
- 3.10 The Commission has for the first time published a consultation paper that includes a full impact assessment.³ Other projects will follow suit. The economics team has also contributed to the impact assessment for the Perpetuities and Accumulations Bill, which is the first bill presented under the new Law Commission Bill procedure.
- 3.11 The appointment of two assistant economists in September 2008 has allowed the economics team to provide more support and advice to the legal teams, and to play a greater role in raising the Commission's profile with Government.
- 3.12 There are opportunities for the Law Commission further to develop its competence in impact assessment through the study of literature on the application of economics to legal principles, in countries such as the United States of America.
- 3.13 At our suggestion, the Ministry of Justice has now formed an impact assessment group. The function of the group is to harmonise the assessment process and improve the efficiency of evidence gathering across the Ministry of Justice.

Equality and diversity

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

³ The Admissibility of Expert Evidence in Criminal Proceedings in England and Wales (2009) Law Com No 190.

- 3.16 We continue to try to make our work accessible to a wider range of people. Two of our publications are now available on our website in EasyRead versions.⁴ These are: (a) The Law Commission: Who We Are and What We Do and (b) our Report on Murder, Manslaughter and Infanticide.
- 3.17 We are currently assessing what options may be available for presenting more of our work in EasyRead format in the future.

Code of best practice for Law Commissioners

- 3.18 In accordance with Government policy for all non-departmental public bodies, there is a written code for Law Commissioners, agreed with the Ministry of Justice. It incorporates the Seven Principles of Public Life and covers matters such as the role and responsibilities of Commissioners. The code is available on our website.⁵
- 3.19 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, where appropriate, in consultation with the Scottish Law Commission, and work jointly with our Scottish colleagues on a number of projects.

⁴ http://www.lawcom.gov.uk/docs/brochure_easyread_web.pdf and http://www.lawcom.gov.uk/docs/lc304_easyread_web.pdf.

⁵ <http://www.lawcom.gov.uk/about.htm#code>.

PART 4

COMMERCIAL AND COMMON LAW

TEAM MEMBERS¹

Tamara Goriely (*Team Manager*)
Donna Birthwright, Helen Hall,
Michael Harakis, Elizabeth Waller

Research Assistants

Hazra Hussain, Adam Temple,
Edmund Townsend, Stephen Walton.
Christopher Carr, Thomas de Vecchi,
Tania Dosoruth, Teniola Onabanjo



David Hertzell
Commissioner

Insurance contract law

- 4.1 This is a joint project with the Scottish Law Commission. Much of insurance contract law was codified in 1906. It is now out-of-date and has been criticised for being unduly harsh to policyholders. Some of the problems have been addressed by codes of practice, regulation and the Financial Ombudsman Service. However, these measures do not address all the inadequacies in the underlying law, while the need to consider such a wide range of sources makes the law even more inaccessible. Our aim is to bring the law into line with accepted market practice.
- 4.2 In July 2007 we published a consultation paper.² This generated considerable interest, with 105 written responses. We published a summary of the responses we received on consumer issues in May 2008, and a summary of responses on business issues in October 2008.
- 4.3 The responses to our consultation revealed a strong consensus to reform the law of pre-contract information as it applies to consumer insurance. We have therefore given priority to drafting a Bill in this area. For the most part, the Bill will implement the proposals set out in our consultation paper. However, we are no longer proceeding with the suggestion in the paper that an insurer should be prevented from relying on a negligent misrepresentation after the policy has been in force for five years.

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

² Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured (2007) Law Commission Consultation Paper No 182 / Scottish Law Commission Discussion Paper No 134.

- 4.4 In our consultation paper we proposed reforms to the law stating whom an intermediary acts for when transmitting pre-contract information from a consumer to an insurer. These proposals proved to be controversial, and we have revised them. In March 2009, we issued a policy statement on intermediaries: the basic rule would be that an intermediary acts for the consumer unless there is a close relationship between the intermediary and the insurer. In deciding whether there is a close relationship, the court would need to weigh a list of factors.
- 4.5 As far as business insurance is concerned, we think there is a strong case for giving additional protection to the smallest businesses, who often buy insurance online, in the same way as consumers. In April 2009 we consulted on how such “micro-businesses” should be defined, and how far they should be treated as consumers.
- 4.6 Later in 2009 we will consult on post-contractual duties of good faith and on whether insurers should be liable to pay damages for the consequences of late payment.
- 4.7 One of the surprising features of insurance law is that it continues to be governed by some extremely dated statutes. Last year we consulted on the issues raised by the Life Assurance Act 1774. Another provision still in force is section 83 of the Fires Prevention (Metropolis) Act 1774. Although this was originally intended to prevent arson, it has been used for a different purpose. It enables tenants and other interested persons who are not policyholders to obtain insurance monies following a fire. In March 2009 we issued a short paper asking whether this provision should be repealed, amended or left alone.

Consumer remedies for faulty goods

- 4.8 In November 2008, we published a consultation paper³ on consumer remedies for goods which do not conform to contract. This is a joint project with the Scottish Law Commission, which was referred to us by the Department for Business, Enterprise and Regulatory Reform (BERR) in December 2007.
- 4.9 BERR referred this project to us because the current law is considered to be too complex. Goods may not conform to contract because, for example, they are faulty or do not match their description. Where this happens, consumers have at least six possible remedies: rejection, repair, replacement, rescission, reduction in price, or damages. Both consumers and shop staff are often confused about which remedy is available in what circumstances.
- 4.10 In our consultation paper we provisionally proposed that the right to “reject” goods and receive a full refund should be retained, but the law should provide greater clarity about how long the right to reject lasts. The legislation should also clarify that consumers may receive a full refund after a repair or replacement has failed.

³ Consumer Remedies for Faulty Goods (2008) Law Commission Consultation Paper No 188 / Scottish Law Commission Discussion Paper No 139.

- 4.11 The consultation paper also considers the European Commission's proposal for a draft directive on consumer rights to harmonise the law in this area.⁴ We argued that this should not remove consumers' right to receive a refund where a fault appears shortly after purchase.
- 4.12 The consultation period closed in February 2009. We have received 53 written responses. In addition, we have met with a range of consumer representatives, retailers, manufacturers, academics and practising lawyers to discuss the consultation paper since its publication. We have placed a summary of responses on our website.
- 4.13 In February 2008, we commissioned qualitative market research into consumers' perceptions of their legal rights. This found that consumers valued the ability to return faulty goods and receive a full refund, but they were not confident about how long this right lasts. In February 2009, we followed this up with an opinion poll. It found that 94% of consumers considered the right to return faulty goods and receive a full refund was important to them; and 89% of consumers thought that this right should be retained even though consumers can get replacements and repairs.
- 4.14 We aim to publish a final report with recommendations by the end of 2009.

Unfair commercial practices: should there be a private right of redress?

- 4.15 In May 2008, the Unfair Commercial Practices Directive was implemented into UK law by the Consumer Protection from Unfair Trading Regulations. The new law allows for enforcement by the Office of Fair Trading and trading standards officers, but does not allow individuals to bring claims for damages. In July 2008, BERR asked the Law Commission to give them preliminary advice on the issues that would be raised by providing consumers with a private right of redress for unfair commercial practices.
- 4.16 In November 2008 we published our preliminary advice to BERR. The advice summarises the arguments for and against introducing private rights in this area, without coming to a final conclusion. The intention is that BERR will use our paper as a basis for its own consultation.

The illegality defence

- 4.17 We have been reviewing how the law should respond when a claimant has been involved in some form of illegal conduct connected to the claim. This issue can arise in many different areas of the law. For example, the claimant may be an employee seeking to enforce an employment contract under which he or she has been paid cash-in-hand without any income tax deducted; or the claimant may assert that he or she is the beneficial owner of property held under a trust arrangement which the claimant originally set up in order to hide the property from creditors. In some cases the defendant is able to rely on the illegality defence and the claim fails. However, it is a controversial area, where there are no easy solutions.

⁴ Com (2008) 624/3, published on 8 October 2008.

- 4.18 In January 2009, we published our consultative report on the illegality defence. In it we provisionally recommend that any improvement that is needed to the illegality defence as it applies in claims in contract, unjust enrichment or tort can best be left to develop through the case law. We looked closely at the past decisions and showed how the courts are already taking into account the policy factors that justify the application of the illegality defence. We argued that the law could be improved if the judges were to base their decisions directly on those policies and explain their reasoning accordingly.
- 4.19 However, in one particular area – the law of trusts – we did not think that judicial clarification is possible. In this area we recommended that statutory reform was needed in order to provide the court with a structured discretion to deprive a beneficial owner of his or her interest in the trust in limited circumstances.
- 4.20 We are currently reviewing the responses that we have received to the consultative report and preparing a draft Bill. We intend to publish a final report in the autumn of 2009.

Property interests in intermediated investment securities

- 4.21 Increasingly, investors hold stocks, shares and other securities indirectly, through a chain of one or more intermediaries. Meanwhile, computerised records have largely replaced paper share and stock certificates. In England, as in many countries around the world, the law has sometimes lagged behind these developments.
- 4.22 The legal issues raised by intermediated securities have international ramifications. Change is being led by the International Institute for the Unification of Private Law (UNIDROIT), which is drafting a Convention on Intermediated Securities to harmonise the law in this area.
- 4.23 From 2006 to 2008, the Law Commission analysed successive drafts of the UNIDROIT Convention, and provided advice to the UK Government on the issues raised. In May 2008 we published a Further Updated Advice. This reported on developments at the fourth plenary session and considered issues to be resolved at or before the Diplomatic Conference in September 2008.
- 4.24 Despite initial hopes, the Convention was not agreed at the September Conference. Instead, a further session will be held in Geneva in October 2009. The Treasury is now leading the UK negotiations in this area and our involvement in this project has been completed.



Members of the Commercial and Common Law Team

PART 5

CRIMINAL LAW, EVIDENCE AND PROCEDURE

TEAM MEMBERS¹

Claire Brown² (*Team Manager*)
David Hughes,³ Christina Hughes,⁴ Clare Wade,
Raymond Emson, Simon Tabbush

Research Assistants

Robert Dickason, Marie-Aimee Brajeux,
Joanna Dawson, Sophie McWilliam,
Peter Melleney



Professor Jeremy Horder
Commissioner

Conspiracy and attempts

- 5.1 In October 2007, we published a consultation paper on conspiracy and attempts.⁵ The main proposal on conspiracy would reverse the decision of the House of Lords in *Saik*.⁶ In that case the House of Lords felt obliged to hold that for a person to be convicted of conspiracy to convert the proceeds of crime, the prosecution had to prove that he or she intended or knew that the provenance of the proceeds in question was criminal conduct. It was not enough that he or she suspected that to be the case.
- 5.2 We proposed that the fault requirement of conspiracy should be less stringent than under the current law. It should be enough if the prosecution is able to prove that the defendant was subjectively reckless, that is, that he or she was aware that there was a real, as opposed to a remote, possibility that the proceeds were the result of criminal conduct. However, as a qualification, we also proposed that if the fault element of the substantive offence that the defendant was charged with conspiring to commit was one that was more stringent than subjective recklessness, an alleged conspirator would have to be shown to have had that fault element.
- 5.3 We also proposed that the spousal immunity rule should be abolished. By virtue of this rule, spouses and civil partners who agree to commit an offence cannot be convicted of conspiracy if they are the only parties to the agreement.

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

² From December 2008.

³ Served as team manager for part of the period.

⁴ Served as team manager for part of the period.

⁵ Conspiracy and Attempts (2007) Law Commission Consultation Paper No 183.

⁶ [2006] UKHL 18, [2007] 1 AC 18.

- 5.4 In addition, we made proposals in relation to cases where the conspiracy relates to an offence which is to be committed wholly or partly outside England and Wales or, conversely, where the agreement is formed outside England and Wales but the offence is to be committed wholly or partly within England and Wales.
- 5.5 A criminal attempt is where a defendant (“D”) unsuccessfully tries to commit an offence. This is not as simple as it sounds. Under the current law, D can only be convicted if he or she does an act which is “more than merely preparatory”. In some cases, the courts have quashed convictions where D’s conduct might be thought to have gone well beyond the preparatory stage.⁷
- 5.6 We concluded that the problem had arisen because sometimes the courts had placed too much emphasis on the offence’s label (“attempt”) and too little on the offence’s underlying rationale. We proposed that instead of one offence of attempt there should be two offences. One would continue to be called “attempt” but would be limited to cases where D had perpetrated the last acts necessary to commit the offence. The other would be “criminal preparation” covering those acts which could properly be regarded as part of the execution of the plan to commit the offence. Both offences would carry the same maximum penalty.
- 5.7 We also proposed that the law should be clarified so as to make it clear that either offence could be committed by an omission to act in cases where the offence intended was itself capable of being committed by an omission. We further proposed that, by way of contrast with the current law, the question whether D’s conduct, if proved, amounted to criminal attempt or criminal preparation should be one of law for the judge to decide. The jury’s role should be confined to determining whether D had in fact committed the alleged conduct with the required fault.
- 5.8 Our consultation on these proposals closed in 2008. It is our intention to publish a final report and draft Bill on Conspiracy and Attempts in the second half of 2009.

Intoxication and criminal liability

- 5.9 In relation to intoxication and criminal liability, we published a final report⁸ and draft Bill in January 2009. This report addresses the law governing the extent to which, in order to avoid liability, a defendant (“D”) may rely on his or her drunken or otherwise intoxicated state at the time he or she allegedly committed a criminal offence.
- 5.10 Our report focuses principally on the situation where D was *voluntarily* intoxicated, that is, where D’s state of intoxication was self-induced by voluntarily taking alcohol or some other drug. However, the report also addresses the more unusual situation where D’s state of intoxication was not self-induced (that is, *involuntary*). An example of involuntary intoxication would be where D has his or her glass of orange juice laced with a hallucinogenic drug.

⁷ An example is *Geddes* (1996) 160 JP 697.

⁸ Intoxication and Criminal Liability (2009) Law Com No 314.

- 5.11 The present rules governing the extent to which D's intoxicated state may be relied on to avoid liability are unsatisfactory for a number of reasons.
- 5.12 In our report we make recommendations for reform which would render the law internally consistent, logically sound as a matter of policy, more comprehensible and therefore more accessible.
- 5.13 Our report includes draft legislation (as Appendix A) which could be introduced before Parliament to implement our recommendations. Appendix A also includes notes which explain how our draft provisions would operate.
- 5.14 The provisions in our draft Bill, if given legal effect, would, amongst other things:
- (1) discard the unsatisfactory distinction between "offences of specific intent" and "offences of basic intent";
 - (2) provide a definitive list of states of mind to which self-induced intoxication is relevant, predicated on the principle that the culpability associated with these states of mind does not equate to the culpability associated with being voluntarily intoxicated;
 - (3) provide a general rule for other states of mind (states of mind to which self-induced intoxication is not relevant), predicated on the principle that the culpability associated with these states of mind is similar to the culpability associated with being voluntarily intoxicated – this rule would provide that D is presumed to have been aware of what D *would* have been aware of if D had not been voluntarily intoxicated;
 - (4) provide a complete scheme, with rules for those who allegedly perpetrate offences and for those who allegedly encourage or assist perpetrators (accessories).
- 5.15 In large measure our recommendations would not change the substance of the present criminal law but merely codify it. So, in practical terms, the changes we recommend would make the law consistent, coherent and much easier to apply in cases where at present the law is uncertain.
- 5.16 Our scheme does not affect the current common law rule which provides that if D committed a criminal offence with the required fault, but did so only because D's inhibitions were reduced or D's moral vision was clouded by the effects of intoxication, whether voluntary or involuntary, D is nevertheless to be held liable for the offence.

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

- 5.17 The High Court has jurisdiction to entertain challenges to decisions made in the course of criminal proceedings in the Crown Court but only if the decision is not a "matter relating to trial on indictment".⁹ 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 or interrupting trials. However, 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.
- 5.18 In October 2007, the Commission published a consultation paper.¹⁰ We proposed that challenges to decisions made in the course of criminal proceedings in the Crown Court should no longer lie to the High Court but instead should lie to the Court of Appeal.
- 5.19 Under our proposals, whether a challenge was permissible would no longer depend on whether the decision was on a matter "relating to trial on indictment". Instead, in principle, a challenge would lie against a decision that was alleged to involve an error of law, a serious procedural irregularity or was one that no competent and reasonable tribunal could have made.
- 5.20 However, for there to be a challenge, the Crown Court would have to grant leave. In order to ensure that trials are not unduly interrupted, we proposed that leave to challenge a decision made after the jury had been sworn and before it had reached its verdict could only be given if the decision affected liberty or engaged a right under the European Convention on Human Rights and the aggrieved party would have no adequate remedy unless he or she could challenge the decision immediately.
- 5.21 With regard to decisions made before the jury is sworn, we proposed a slightly more relaxed regime. In particular, the Crown Court would be able to grant leave to challenge a decision if it was of the opinion that the advantages of permitting an immediate appeal were such as to make it the right course.
- 5.22 The consultation period closed in 2008. We expect to publish a final report and draft Bill in 2010.

Bribery

- 5.23 The Law Commission has been working on bribery since early 2007, publishing a consultation paper¹¹ on 29 November 2007. This followed previous work on corruption offences undertaken in the course of the Commission's codification project. The new work was also designed to take into account the United Kingdom's international obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions.

⁹ Supreme Court Act 1981, s 29(3).

¹⁰ The High Court's Jurisdiction in Relation to Criminal Proceedings (2007) Consultation Paper No 184.

¹¹ Reforming Bribery (2007) Consultation Paper No 185.

- 5.24 On 20 November 2008 we published our report.¹² In it, we propose replacing the common law offence of bribery and various statutory offences of corruption by two new offences.
- 5.25 Both offences revolve round the notion of “improper performance”. This means the performance of some public or contractual function in such a way as to breach a position of trust or an expectation that one should act impartially or in good faith.
- 5.26 In addition, the report recommends the creation of two specialised offences. One is the bribery of foreign public officials for the sake of obtaining business or a business advantage; the other, relevant only to corporations, is failing to prevent bribery on the part of employees or agents. A further provision states that, where a director or similar officer connives in bribery by a company, the director as well as the company is guilty of a bribery offence.
- 5.27 Our recommendations are now the foundation for the Government's Bribery Bill.¹³

The admissibility of expert evidence in criminal proceedings

- 5.28 It has long been accepted that specialised areas of knowledge, where relevant to the determination of a disputed factual issue, should be explained to the jury by experts in the field because the jury can be presumed to be unfamiliar with such areas. However, the possibility or likelihood of jury deference in relation to complex areas of knowledge gives rise to problems if there are legitimate questions about the validity of an expert's opinion. Some recent cases suggest that unreliable expert evidence may be being admitted too readily and that sometimes this can lead to wrongful convictions.
- 5.29 Accordingly, this project is considering the admissibility of expert evidence in criminal trials in England and Wales and, in particular, whether there should be a new approach to the determination of evidentiary reliability in relation to expert evidence.
- 5.30 We published a consultation paper¹⁴ on 7 April 2009.

Fitness to plead and insanity

- 5.31 This project addresses the treatment of mentally ill defendants prior to trial in the criminal courts.
- 5.32 Many of the problems surrounding the current rules for determining fitness to plead and insanity relate to the fact that they were devised when psychiatry was in its infancy. The project will draw on relevant empirical evidence and comparative jurisdictions in an attempt to identify more appropriate contemporary legal tests and rules for determining fitness to plead and legal insanity.

¹² Reforming Bribery (2008) Law Com No 313.

¹³ Published 25 March 2009.

¹⁴ The Admissibility of Expert Evidence in Criminal Proceedings in England and Wales (2009) Consultation Paper No 190.

5.33 We hope to publish a consultation paper at the beginning of 2010.



Members of the Criminal Law Team

PART 6

PROPERTY, FAMILY AND TRUST LAW

TEAM MEMBERS¹

Matthew Jolley (*Team Manager*)
Elizabeth Drummond, Stephanie Hack,
Julia Jarzabkowski, Colin Oakley, Joel Wolchover

Research Assistants

Jack Connah, Marianne Crowder, Paul Davies
Phillip Gale, Nicholas Piska, Aruna Nair,
Daniel Robinson



Professor Elizabeth Cooke
Commissioner

Capital and income in trusts: classification and apportionment

- 6.1 The current law on the classification of trust receipts from companies as income or capital is complex and can give rise to surprising results. 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.
- 6.2 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. This may inhibit the performance of the charity's objects and encourage investment practices which concentrate on the form of receipts rather than on maximising overall return.
- 6.3 The Commission published a consultation paper² on this subject in July 2004. Work on the project was suspended pending completion of other work and recommenced in early 2008. Following a number of meetings with an expert advisory group, the project team held detailed policy discussions with a number of key stakeholders, notably Her Majesty's Revenue and Customs and Her Majesty's Treasury, the Charity Commission and the Trust Law Committee.

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

² Capital and Income in Trusts: Classification and Apportionment (2004) Consultation Paper No 175.

- 6.4 The Commission published a report³ and draft Bill in May 2009 recommending the abolition of the rules of apportionment for new trusts, the reclassification of shares distributed on exempt demergers as capital, and a new power for charitable trusts with permanent endowments to invest on a total return basis within a scheme regulated by the Charity Commission.

Easements, covenants and profits à prendre

- 6.5 This project builds upon the joint work of the Law Commission and Land Registry on registration of title to land. That work culminated in the Land Registration Act 2002, which sought to rationalise the principles of title registration in order to ensure that the register of title should contain as complete and accurate a picture as possible of the nature and extent of rights relating to a particular piece of land. The need for further substantive reform of the general law relating to interests in land was acknowledged throughout the project and it was expected that the Commission would carry forward land law reform initiatives, including the current project, in the following years.
- 6.6 The project considers the general law governing easements, covenants and profits à prendre: their characteristics, how they are created, how they come to an end and how they can be modified. Although the scope of the project is wide, it is concerned only with private law rights and does not consider public rights such as public rights of way. The project does not cover covenants entered into between landlord and tenant, which are subject to different rules.
- 6.7 The interests examined in the current project are as follows:
- (1) An easement is a right enjoyed by one landowner over the land of another. A positive easement involves a landowner going onto or making use of something in or on a neighbour's land. A negative easement is a right to receive something (such as light or support) from the land of another without obstruction or interference.
 - (2) A covenant (insofar as the project is concerned) is a promise, usually contained in a deed, made in relation to land. Covenants may be positive or restrictive. A restrictive covenant, in contrast to those of a positive nature, can have some characteristics which are associated with property rights: it is possible for successors in title to the original covenanting parties to benefit from, and be bound by, the provisions of the original covenant.
 - (3) A profit à prendre gives the holder the right to remove products of natural growth from another's land. Many profits concern ancient, but not necessarily obsolete, practices; some, such as the right to fish or shoot on the land of another, can be of great commercial value.

³ Capital and Income in Trusts: Classification and Apportionment (2009) Law Com No 315.

- 6.8 Easements, covenants and profits à prendre can be fundamental to the enjoyment of property. For example, many landowners depend on easements in order to obtain access to their property, for support or for drainage rights. Easements and covenants also play a vital part in enabling the successful development of land for housing. Examples of profits à prendre include grazing rights, which are of considerable importance to farm businesses.
- 6.9 The Law Commission published a consultation paper⁴ on easements, covenants and profits à prendre on 28 March 2008. The consultation period ended on 30 June 2008.
- 6.10 The Law Commission's proposals in the consultation paper were guided by the need to have a law of easements, covenants and profits à prendre that is as coherent and clear as possible. Making the law more accessible and easier to operate would benefit private homeowners, businesses and organisations that own property, those who deal with and develop land, professional advisers and HM Land Registry. Consultation responses confirmed that easements, covenants and profits à prendre are vitally important in the twenty-first century and that they are of practical significance to a large number of landowners.
- 6.11 The Law Commission is in the process of finalising policy decisions in the light of consultation responses and further discussions with stakeholders. The final stage of the project will be to prepare a final report setting out our recommendations and to instruct Parliamentary Counsel to draft a Bill. We expect to publish the report and draft Bill in late 2010. We anticipate that further work on specific types of interest (in particular, rights to light) will follow publication of our recommendations on the general law in this area.

Intestate succession and the Inheritance (Provision for Family and Dependents) Act 1975

- 6.12 This project involves a wide-ranging review of the current rules governing the inheritance of assets where a person dies intestate (that is, without leaving a will which disposes of all of his or her property).
- 6.13 Many tens of thousands of people die intestate each year, and it appears that this figure is rising. Research suggests that more than 27 million adults in England and Wales do not have a will and that those who may need one most are the least likely to have one, such as cohabitants and parents with dependent children.⁵

⁴ Easements, Covenants and Profits à Prendre (2008) Consultation Paper No 186.

⁵ National Consumer Council, Finding the Will: a Report on Will-Writing Behaviour in England and Wales (September 2007).

- 6.14 Aspects of the current law under review include: the entitlements of different members of the deceased's family, in particular any surviving spouse and children and cohabitants who were not married to or in a civil partnership with the deceased; the role of the "statutory legacy" paid to the surviving spouse or civil partner of an intestate; whether to take into account lifetime gifts or assets passing outside the estate of the deceased (for example, assets which pass by operation of the doctrine of survivorship); and what happens to the deceased's property where there are no living relations entitled under the intestacy rules (so called *bona vacantia* or "ownerless property").
- 6.15 The Commission carried out work on intestacy in the late 1980s.⁶ Commissioners are of the view that subsequent changes in family structures and individual property holding are sufficiently great to justify a re-examination.
- 6.16 The project also involves a review of the operation of the Inheritance (Provision for Family and Dependents) Act 1975, under which family members and dependants may apply to court for financial provision from a deceased person's estate (whether or not a will was made). The 1975 Act implemented Law Commission recommendations⁷ but has not been subject to a fundamental review since its introduction. Among other things, the project is considering the classes of person eligible to apply for family provision, the remedies available and the procedure governing the making of applications.
- 6.17 The project was included in the Law Commission's Tenth Programme of Law Reform at the request of the Ministry of Justice.⁸ The Ministry found widespread support for reform during its own consultation on the level of the statutory legacy.⁹
- 6.18 Work on this project began on 1 October 2008. A consultation paper will be published in October 2009.

Marital property agreements

- 6.19 This project will examine the status and enforceability of agreements made between spouses and civil partners (or those contemplating marriage or civil partnership) concerning their property and finances. Such agreements might regulate the couple's financial affairs during the course of their relationship. Equally they might seek to determine how the parties would divide their property in the event of divorce, dissolution or separation. They might be made before marriage (when they are often called "pre-nups") or during the course of marriage or civil partnership. They need not be made in anticipation of impending separation; but they might constitute separation agreements reached at the point of relationship breakdown.

⁶ Family Law: Distribution on Intestacy (1988) Law Com Working Paper No 108; Family Law: Distribution on Intestacy (1989) Law Com No 187.

⁷ Second Report on Family Property: Family Provision on Death (1974) Law Com No 61.

⁸ Tenth Programme of Law Reform (2007) Law Com No 311, paras 2.9 to 2.13.

⁹ Ministry of Justice, *Administration of Estates – Review of the Statutory Legacy: Response to Consultation* (2008).

- 6.20 In contrast to the position in many other jurisdictions, marital property agreements are not currently enforceable in the event of the spouses' divorce or the dissolution of the civil partnership. The court may, however, have regard to them in determining what ancillary relief is appropriate.
- 6.21 The legal status of marital property agreements may be of particular significance to those who are contemplating re-marriage after widowhood or divorce and wish to protect their assets from a future claim for ancillary relief. It may also be crucial for couples who have entered into marital property agreements in jurisdictions in which such agreements are enforceable.
- 6.22 The Commission has recently considered some of the issues relevant to this project in the context of its work on cohabitation. The Commission's report¹⁰ made recommendations about cohabitation agreements. The Marital Property Agreements project will not consider the treatment of cohabitation agreements; its scope is limited to financial and property agreements between spouses and civil partners. This project is due to start in October 2009.

The rights of creditors against trustees and trust funds

- 6.23 Details of the Commission's third trust law project can be found in the Annual Report for 2004/2005.¹¹ Work on this project will commence on the completion of current law reform projects and in the light of other priorities.



Members of the Property, Family and Trust Law Team

¹⁰ Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307.

¹¹ (2005) Law Com No 294.

PART 7

PUBLIC LAW

TEAM MEMBERS¹

Richard Percival (*Team Manager*)
Lauren Jamieson, Tim Spencer-Lane,
Elizabeth Saunders, Keith Vincent

Visiting Academic Consultant

Professor Alex Marsh

Research Assistants

Anton Dudnikov, Rowan Pennington-Benton,
Veronika Fikfak, Paul Clark, Joseph Farmer
Frances McClenaghan, Felicity McMahan,
Katherine O'Byrne



Kenneth Parker QC
Commissioner

Remedies against public bodies

- 7.1 In last year's annual report we explained the circumstances in which we delayed publication of our consultation paper in this project from November 2007. The revised paper was published in July 2008. It included, as an appendix, research conducted by Professor Marsh, our visiting academic consultant, on the effects of liability on the behaviour of public bodies. However, the paucity of statistical information available from Government (or, indeed, any other) sources was such that we were unable to include a quantified impact assessment in the paper. We devoted a Part of the consultation paper to the effects that the changes in liability envisaged would make, in overall terms. This Part included a plea to respondents to provide us with further information, particularly hard statistical data. Unfortunately, little if any new statistical information came to light as a result of the consultation process.
- 7.2 The project is an unusual one for the Law Commission, in that its principal subject matter is the liability of Government (and the wider public sector). Given this, we concluded that it was not possible to determine how to proceed with the project in the absence of a collective Government response. The Ministry of Justice helpfully organised the production of this response and this was received just as this Annual Report was going to press.
- 7.3 The Government response aside, we received 79 responses to the consultation paper. We were greatly assisted by attendance at a number of meetings, seminars and conferences at which the provisional proposals were discussed. Commissioners will decide shortly how to proceed with the project.

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

Adult social care

- 7.4 The Tenth Programme of Law Reform included provision for a project on the law relating to adult social care, following representations from organisations and service-users/carers. The proposal had received strong support from the Department of Health and the Welsh Assembly Government.
- 7.5 The legislative framework for adult residential care, community care and support for carers is inadequate, often incomprehensible and outdated. It remains a confusing patchwork of conflicting statutes enacted over a period of 50 years. There is no single, modern statute to which service providers and service users can look to understand whether (and, if so, what kind of) services can or should be provided. For example, there are currently four different statutes covering carers' assessments, all of which differ in a number of respects. In addition to a number of different statutes, there is also a great deal of "soft law" in the form of guidance, departmental circulars and the like. For example, the community care assessment process is covered by two sets of general guidance (the Fair Access to Care Services Guidance (2002) and Care Management and Assessment: Practitioners' Guide (1991)), plus various client group-specific documents, such as the Single Assessment Process (2002), which applies to older people.
- 7.6 The current state of the law leads to inefficiency in the system – negotiating complex and outdated law takes longer and is less certain. Too much time and money are spent on understanding the law and on litigation. Difficult law may stifle innovation. It is also likely to lead to arbitrary differences in legal rights and status between different service users and different kinds of service. All of these detriments are felt by the various professional actors in adult social care, from social workers to judges in the Administrative Court. Most importantly, however, they impact on the lives of service users and their carers. By removing unnecessary uncertainty and conflict, law reform can improve the lives of the 1.7 million-plus service users and their carers.
- 7.7 The project involves a wide range of law affecting a large number of people and the expenditure of large sums of money – over £15 billion a year. In accepting the project, the Commission recognised, as did the Department of Health as the sponsoring Department, that it was of the first importance that the project enjoyed strong and continuing support from Ministers. The Tenth Programme therefore provided that the project should be split into three phases. The first phase was a scoping review to settle the agenda for the second stage, a substantive law reform project. The outcome of the second stage will be a report of our law reform conclusions. The third stage, if it is embarked upon, will be a draft bill. At each of these three stages, both the Commission and the Department of Health would review the project and decide whether or not to continue to the next stage.

- 7.8 We completed the first stage in 2008, with the publication of our scoping report in November. That report set out an agenda for reform encompassing the law relating to community care and carers' assessments, eligibility for services, service provision, including the definition of client groups, charging for services, direct payments, discharge from hospital, ordinary residence, the health/social care divide and protection for vulnerable adults. The scoping report also proposed consideration of the desirability of statutory principles. Both the Commission and the Department of Health agreed that the Commission should continue onto the substantive law reform stage in relation to all of these. The one area of disagreement was that the Commission proposed that the project should consider redress issues, including whether a community care tribunal should be established. The Department's view was that, in the light of recent reforms to the complaints system in relation to both health and social care, further consideration of redress mechanisms would not be fruitful. Accordingly, the second stage does not include consideration of these issues.
- 7.9 Adult social care is an area which is necessarily of continuing concern to Government. Policy development will not stand still while we undertake our law reform work. We have therefore sought to develop close working links with officials at the Department of Health and the Welsh Assembly Government to ensure that parallel processes of law reform and policy development can inform each other, without compromising the independence of the Commission or the policy imperatives of the Department and Welsh Assembly Government.
- 7.10 During the scoping phase, we invited the Welsh Assembly Government to consider whether the project should be one identified as jointly sponsored by the Welsh Assembly Government alongside the Department of Health. The Welsh Assembly Government took the view that it was not necessary for the project to be jointly sponsored at this stage, but the question will be kept under review as the project develops.

The law relating to level crossings

- 7.11 A second project included in the Tenth Programme relates to level crossings law. It was proposed by the Department for Transport and the Office for Rail Regulation.
- 7.12 The law relating to the 9,000 or so level crossings in Great Britain is extremely complicated and inaccessible. The legal regime at each level crossing was initially determined by the private or local legislation authorising the particular railway line upon which it is located. Nineteenth century Railway Clauses Acts provided model clauses for this private legislation, but on differing bases. There is modern legislation which allows for changes to the safety regime at level crossings – the Level Crossings Act 1983 – but it is limited in its application, and does not allow for the closure of crossings. It also has to operate on the basis of the confused pre-existing law.

- 7.13 Besides railways law, other areas of law, both public and private, impact fundamentally on level crossings. For those level crossings at which a vehicular highway, bridlepath or footpath crosses the railway, highways law becomes relevant. Different provisions relating to level crossings apply depending on the nature of the public highway (although, to add a further level of complexity, differing notions of “public” apply in different situations). Safety is a key consideration at level crossings, but the application of general health and safety law to the pre-existing statutory regime at any particular level crossing can raise difficulties. The Office for Rail Regulation (ORR), rather than the Health and Safety Executive (HSE), is the health and safety enforcement authority for level crossings, but the ORR does not enjoy all of the powers available to the HSE. Planning law impacts in a very practical way on level crossings – if a planning authority allows a development which substantially increases the flow of traffic over a level crossing, it can have serious implications for safety and for the efficiency of both networks. It is an open question whether the apparatus for cooperation between planning authorities and the “infrastructure manager” (Network Rail for the mainline railway) and ORR is adequate. Finally, the large majority of level crossings involve a private right of way crossing the railway. These were either existing rights of way which the line crossed when it was constructed, or new rights of way necessary to allow landowners access to land bisected by the line. One hundred and sixty plus years after the introduction of railways as a mass transport system, the law as to the nature of these private rights of way remains obscure.
- 7.14 At root, the project is a regulatory one – how should the law provide for the proper regulation of this key interface between the two great infrastructure networks, road and rail? There remains, however, a significant land law element in relation to private rights of way. The project has therefore maintained close relations with the Property, Family and Trust Law Team, particularly in relation to the easements project.
- 7.15 The mainline railway system runs across the border between the two jurisdictions of England and Wales and Scotland. Railways are reserved to the UK Government, as is general health and safety law. The other legal regimes involved, including land law, are devolved to the Scottish Government. There are substantial differences between the law of the two jurisdictions. The Scottish Law Commission therefore agreed that the project should be a joint one between the two Commissions (albeit that the Law Commission is identified as being in the lead). The project has benefited greatly from a continuing and substantial input from the Scottish Law Commission, on the broader issues as well as specifically Scottish matters. It has been a particular benefit that the lead Commissioner in Scotland is George Gretton, whose primary responsibility is land law.
- 7.16 The next stage in the project will be the publication of a consultation paper late in 2009.

Encouraging responsible letting

- 7.17 This, the final project in the Commission's series of housing law projects, was concerned with the appropriate regulatory structure for the private rented sector. We published our report² in August 2008. The housing law work had been led throughout by Martin Partington CBE QC, as Commissioner and then Special Consultant. Although the report was published after his term as a Commissioner, the project was directed by him throughout.
- 7.18 We had in our consultation paper (July 2007) proposed the adoption of a system of "enforced self-regulation", in which it would be compulsory for landlords to belong to a self-regulatory body (or let through an agent which was a member of one), but the enforcement of standards would be a matter for the self-regulatory organisation.
- 7.19 We received 111 responses to the consultation paper, and various members of the team spoke at a number of conferences, seminars, workshops and other events.
- 7.20 The response we received was significantly split, giving no clear consensus for any path. While some landlords and their representative bodies saw our proposals as unnecessary and disproportionate, others welcomed them. Many of those representing tenants (or lawyers working with tenants) accepted some elements of the proposals, but thought we were not going far enough in terms of the compulsory imposition of higher standards (although a majority of respondents overall were against a licensing regime). Many respondents doubted the practicality of expecting existing organisations (such as landlords' associations) to become self-regulatory organisations, as our proposals required. Some respondents offered their own schemes as alternatives to ours.
- 7.21 In the light of the responses, the Commission concluded that enforced self-regulation might yet ultimately prove to be the only way to achieve the necessary improvements in the management of the private rented sector. However, an immediate resort to such a system would entail a rapid and unwelcome sea change to the way that the sector works, which would be detrimental to the contribution it can make to the delivery of housing policy. Accordingly, before a decision was taken to introduce enforced self-regulation, there should be a staged programme of reforms to enhance voluntary self-regulation.

² Housing: Encouraging Responsible Letting (2008) Law Com No 312.

- 7.22 The final report therefore recommended the creation of a housing standards monitor (for each of England and Wales). The functions of the monitor would include keeping the regulatory framework under review, considering the incentives necessary to enhance self regulation, promoting new ways of dealing with complaints and disputes, and overseeing an evaluation programme for the reforms we recommend. Each monitor would also establish a stakeholder board, bringing together all sides of the private rented sector, which would develop a comprehensive single code of management practice for landlords. We suggested that, in England, the new Tenants Services Authority might be the monitor. All local authorities would be required to provide an accreditation scheme for landlords (if appropriate, on a regional or national basis). As an exception to the voluntary principle, the Commission endorsed proposals made by others for the compulsory regulation of letting agents. Finally, our suggestion for “home condition certificates” (a kind of housing MOT test) should be piloted.
- 7.23 The Government’s response to our report is covered in Part 2.³



Members of the Public Law Team

³ See paras 2.8 to 2.14 above.

PART 8

STATUTE LAW

TEAM MEMBERS¹

Consolidation

The Chairman, Robin Dormer and Douglas Hall

Statute Law Repeals

The Chairman, John Saunders, Jonathan Teasdale, Jessica Wickham and Karen James

CONSOLIDATION

Introduction

- 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.² 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 printed 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 is an addition 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.

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

² An example of this is the recent consolidation of the law on the National Health Service in England and Wales, which comprised three Acts: the National Health Service Act 2006 (c 41), the National Health Service (Wales) Act 2006 (c 42) and the National Health Service (Consequential Provisions) Act 2006 (c 43).

- 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.
- 8.5 The increasing volume of legislation also poses a problem. The Public General Acts enacted by Parliament ran to 3,186 A4-sized pages in 2007 (4,911 in 2006). By contrast, in 1965, the year in which the Law Commission was created, the figure was 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.



Members of the Parliamentary Drafting Team

The past year

- 8.6 During the past year, work has continued on a number of consolidation measures.
- 8.7 We continue to work on a consolidation of the legislation relating to the Health Service Commissioner for England.
- 8.8 Work continues on a consolidation of the legislation on charities. The need for this became apparent during the passage of the Bill leading to the Charities Act 2006 (c 50). The relevant Department (the Cabinet Office) 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.
- 8.9 Work also continues on a consolidation of the legislation about private pensions, funded on the same basis as that on charities, except that the relevant Department in this case is the Department for Work and Pensions. This is a very large exercise which will take several years to complete.
- 8.10 Our work on a consolidation of the legislation on representation of the people has again been suspended at the request of the relevant Department (the Ministry of Justice). We cannot forecast when it might be possible to resume this work. We are planning to undertake another consolidation in lieu.

STATUTE LAW REPEALS

- 8.11 Our statute law repeals work involves removing legislation from the statute book if it is obsolete or if it otherwise has no further practical use. 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 used for repealing such obsolete legislation is the Statute Law (Repeals) Bill. The Law Commission has drafted eighteen such Bills since 1965. All have been enacted. They have repealed some 2500 Acts in their entirety and have achieved the partial repeal of thousands of other Acts.
- 8.12 Our most recent Bill, annexed to the Eighteenth Report on Statute Law Repeals,³ received Royal Assent on 21 July 2008.⁴ This resulted in the repeal of 260 Acts in their entirety and the removal of redundant provisions from nearly 70 other Acts.
- 8.13 Too late for inclusion in the Bill were our proposals for the repeal of enactments relating to Indian railways. We identified some 38 Westminster Acts concerning the various railway companies operating in the former British India (prior to independence in 1947) and in the wider East Indies. All these Acts have long been obsolete and our proposals for their repeal, published in 2007, received no objections.

³ Statute Law Repeals: 18th Report (2008) Law Com No 308 / Scot Law Com No 210.

⁴ Statute Law (Repeals) Act 2008 (c 12).



Members of the Statute Law Repeals Team

- 8.14 The work of the statute law repeals team during 2008 and early 2009 has concentrated on three projects – Dublin, railways and poor relief.
- 8.15 The Dublin project examined some of the many Westminster Acts that were passed at a time when Dublin formed part of the United Kingdom. They remain on the United Kingdom statute book without ever having been formally repealed. Our consultation paper, published in August 2008, proposed the repeal of some forty Acts spanning the years 1807 to 1920. No objections have been received to any of these proposals.

- 8.16 The railways project has been concerned primarily with a large number of mainly Victorian enactments that were passed to authorise the development of the railway system across England and Wales at that time. Many of these Acts are now obsolete, often because the railway projects that they authorised were never constructed (or were subsequently abandoned) or else because they relate to systems of fares and charges that have long since ceased to be relevant. In all, some 250 Acts are proposed for repeal in the consultation papers that we published earlier in 2009.
- 8.17 The final project, poor relief, concerns a large number of Acts, spanning the period 1697 to the 1860s, passed to provide for the needs of the poor, sick and elderly in parishes throughout England and Wales. They authorised the building and maintenance of workhouses and the levying of rates to provide the necessary finance. More than 50 Acts are proposed for repeal in our forthcoming consultation exercise.
- 8.18 Other repeal projects in 2009 will include obsolete laws about courts and turnpikes.
- 8.19 In each area of statute law repeals work the team produces a consultation paper on a selection of repeal proposals. These papers are then circulated for comments to Departments and other interested bodies and individuals, as well as appearing on our website. Subject to the response of consultees, repeal proposals relating to all our statute law repeals work, including the projects mentioned above, will be included in our next Statute Law Repeals Report which is planned for 2012.

PART 9

EXTERNAL RELATIONS

Introduction

- 9.1 The Law Commission greatly values its strong links with a variety of organisations and individuals with an interest in law reform. We are indebted to those who send us feedback on our consultation papers, and those who provide input and expertise at all stages of the process of making recommendations to Government.
- 9.2 In addition to our published work, the Law Commission plays a wide role in the national and international business of law reform.
- 9.3 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 offers their views in this Annual Report.

Relations with Parliament, judiciary, ministers and officials

- 9.4 During the reporting year, the Chairman and Commissioners met a number of Ministers and their officials, other members of Parliament across the political spectrum who may be interested in the law reform projects we are currently undertaking, members of the judiciary, and other public officials. These included:

Ministers/Judiciary/MPs/Peers	Officials
Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice	Sir Suma Chakrabarti KCB, Permanent Secretary, Ministry of Justice (MoJ)
Lord Judge, Lord Chief Justice of England and Wales	Rowena Collins-Rice, Director-General, Democracy, Constitution and Law Group (MoJ)
Rt Hon Michael Wills MP, Minister of State, Ministry of Justice (MoJ)	Ann Abrahams, Parliamentary and Health Service Ombudsman
Maria Eagle MP, Parliamentary Under Secretary of State (MoJ)	Sir Brian Carsberg (undertaking for RICS a review of regulation of the private rented sector)
Bridget Prentice MP, Parliamentary Under Secretary of State (MoJ)	Deborah Grice, Head of Criminal Law Policy Unit, MoJ
Lord Bach, Parliamentary Under Secretary of State (MoJ)	Paul Jenkins QC, Treasury Solicitor
Rt Hon Margaret Beckett MP, Minister of State for Housing and Planning	Adam Peat, Public Service Ombudsman for Wales
Rt Hon Baroness Ashton	Tony Redmond, Local Government Ombudsman
Rt Hon Baroness Royall, Leader of the House of Lords	Andrew Rennison, Forensic Science Regulator

<p>Rt Hon Baroness Scotland of Asthal QC, Attorney General</p> <p>Vera Baird QC MP, Solicitor General</p> <p>Ian Pearson MP, Economic Secretary to the Treasury</p> <p>Gareth Thomas MP, Minister of State at BERR</p> <p>Phil Hope MP, Minister of State for Care Services</p> <p>Jocelyn Davies AM, Deputy Minister for Housing, Welsh Assembly</p> <p>Rt Hon Alan Beith MP, Chair, Justice Committee</p> <p>Rt Hon Lord Goodlad, Chair, Constitution Committee</p> <p>Dr Tony Wright MP, Chair, Public Administration Select Committee</p> <p>Henry Bellingham MP</p> <p>Dominic Grieve QC, MP</p> <p>David Heath MP</p> <p>Nick Herbert MP</p> <p>Douglas Hogg QC, MP</p> <p>David Howarth MP</p> <p>Chris Huhne MP</p> <p>Rt Hon Alan Williams MP</p> <p>Rt Hon Lord Kingsland QC</p> <p>Rt Hon Lord Lloyd of Berwick</p> <p>Lord Goodhart QC</p> <p>Lord Hole of Cheltenham</p> <p>Lord Lester of Herne Hill QC</p> <p>Lord Thomas of Gresford OBE, QC</p> <p>We have also been in correspondence with:</p> <p>Regulatory Reform Select Committee</p> <p>Public Administration Select Committee</p>	<p>On a visit to the Welsh Assembly in July 2008, the Chairman and Chief Executive met:</p> <p>Dame Gillian Morgan DCB, Permanent Secretary</p> <p>Jeff Godfrey, Director of Legal Services</p> <p>Hugh Rawlings, Director of Constitutional Affairs</p> <p>Carwyn Jones, Counsel-General</p> <p>Professor Thomas Watkin, Senior Parliamentary Draftsman</p> <p>Officials from:</p> <p>Ministry of Justice</p> <p>HM Treasury</p> <p>HM Revenue and Customs</p> <p>Department for Business, Enterprise and Regulatory Reform</p> <p>Bona Vacantia Division of the Treasury Solicitor</p> <p>Government Actuary's Department</p> <p>Probate Service</p> <p>Charity Commission</p> <p>HM Land Registry</p> <p>Lands Tribunal</p>
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Consultees and other interested groups

- 9.5 We receive help from a broad range of people who are thanked in the respective consultations and reports that we issue. 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.
- 9.6 We are also grateful to all those who have worked with us as members of advisory groups on our various projects.
- 9.7 The various groups and individuals we have met include:

The Criminal Sub-Committee of HM Council of Circuit Judges	Lloyds of London
The judges at the Central Criminal Court	Financial Ombudsman Service
The judges at Snaresbrook Crown Court	Group Risk Development
The judges at Wood Green Crown Court	Society of Motor Manufacturers and Traders
The Government contact group on the remedies project	Association of British Insurers
Welsh Assembly Government Supported Housing Group	British Insurers Brokers Association
Commercial Court judges	Association of Risk Managers in Industry and Commerce
The Rose Committee	British Insurance Law Association
Expert advisory groups on:	Property Division of the Society of Legal Scholars
Easements	Confederation of British Industry
Capital and Income in Trusts: Classification and Apportionment	Citizens Advice Bureau
Intestacy	Which?
Trust Law Committee	British Retail Consortium
Charity Law Association	National Consumer Council
Nuffield Foundation	Consumer Direct
Representatives of the Church of England	Agricultural Law Association
National Centre for Social Research	National Trust
British Association for Adoption and Fostering	Network Rail
Representatives of the Duchy of Cornwall and the Duchy of Lancaster	Andrew Berkeley (International Chamber of Commerce)
	Professor Ian Dennis
	Professor Alan Norrie

Seminars, lectures and conferences

9.8 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.

9.9 JEREMY HORDER gave or participated in the following lectures, conferences and seminars:

- Attended OECD Working Group on Bribery and met Mark Pieth, Chair of the Working Group (April 2008)
- Gave a seminar on Manslaughter at University of Oxford (June 2008)
- Lectured on Criminal Law and Law Reform at University of Sienna (June 2008)
- Gave a talk to the Expert Witness Institute (September 2008)
- Spoke at University of Göttingen (October 2008)
- Gave a talk on Bribery to the City of London Police (November 2008)
- Gave the Halsbury Lecture at Merton College, Oxford (February 2009)

9.10 Jeremy is a continuing member of the Criminal Justice Council. In addition, he is a member of the Steering Group of “Your Justice, Your World”. This is a project which aims to provide young people with a balanced overview of the criminal, civil, family and administrative justice system.

Making the criminal law more accessible

9.11 The criminal law team has been involved in preliminary work being done with the aim of making the criminal law more accessible. The work is being done together with the Ministry of Justice, the Home Office, Parliamentary Counsel and the Law Officers.

9.12 DAVID HERTZELL gave several presentations, including:

Following publication of the consumer remedies consultation paper

- BERR
- A seminar at the LSE
- A presentation at the MOTORLAW 2009 conference
- Led discussions at consultation meetings with the CBI, British Retail Consortium and the Electrical Goods Manufacturers' Association

As part of the insurance law project

- Two conferences and a seminar organised by the British Insurance Law Association
- Briefed the All Party Group on Insurance and Financial Services
- Seminars organised by a firm of city solicitors and by barristers' chambers for insurance industry representatives and other interested parties
- Presented a paper to a symposium at Lloyds of London and wrote the introduction to a book based on the symposium ("Reforming Marine and Insurance Law")
- Gave presentations at several industry conferences
- Spoke at training seminars organised by insurance industry suppliers

9.13 In addition, members of the commercial and common law team gave presentations to the Association of British Insurers, Association of Medical Underwriters and Health Claims Forum, and at Swansea University.

9.14 ELIZABETH COOKE has addressed the following organisations:

- Property Bar Association (easements project)
- Agricultural Law annual conference (easements project)
- Law Society's Wills and Equity Committee (intestacy project)
- Law Society's Probate Committee (intestacy project)
- Faculty of Law at the University of Sheffield (marital property agreements)
- Family Law Bar Association annual conference (marital property agreements)
- Association of Contentious Trusts and Probate Specialists

9.15 Elizabeth has been invited to join a Land Registry working party convened to discuss the impact of the decision in *Stack v Dowden* [2007] UKHL 17 on Land Registry transfer forms.

9.16 KENNETH PARKER gave or participated in the following seminars/lectures:

- ALBA Annual Conference, St John's College, Cambridge, 27 July 2008
- Australasian Law Reform Agencies Conference, Vanuatu, 10-12 September 2008
- BIICL Seminar on Administrative Redress, IALS, 10 October 2008
- European Centre of Tort and Insurance Law Seminar on Administrative Remedies, 14 November 2008
- "Effective Judicial Review: A Cornerstone of Good Government" Conference, Hong Kong, 10 to 12 December 2008

9.17 Members of the public law team attended or participated in the following seminars/lectures:

- AJTC Annual Conference, London, 11 November 2008
- 2008 Canadian Conference on Elder Law / International Guardianship Network Conference, Vancouver, Canada, 13 to 15 November 2008
- Administrative Redress Seminar, Strathclyde University, 28 November 2008
- ALARM Conference, 22 January 2009
- Action on Elder Abuse Conference, Safeguarding Adults and the Law, January 2009

9.18 The public law team has also met or corresponded with the following groups:

Age Concern	Parliamentary Commissioner for Administration
Mind	Local Government Ombudsmen
Local Government Association	Administrative Justice and Tribunals Council
Association for the Directors of Adult Social Services	British and Irish Ombudsmen Association
The Mental Health and Disability Committee of the Law Society	University of Liverpool
Sense	Strathclyde University
Scope	Socio-Legal Studies Association
Action on Elder Abuse	European Centre for Tort and Insurance Law
BUPA	Solicitors in Local Government
In-control	British Institute for International and Comparative Law
Commissioner for Older People (Wales)	ORR
UK Home Care Association	
Administrative Law Bar Association	

Bar Council	HMRI
HMRI	Risk and Regulation Advisory Council
HM Treasury	Social Market Foundation

9.19 In June 2008 we hosted the annual Sir William Dale Legislative Drafting Conference, organised by the Institute of Advanced Legal Studies. Our Senior Parliamentary Draftsman, Robin Dormer, attended, together with members of our statute law repeals team.

9.20 One of our Parliamentary Counsel, Douglas Hall, attended the Clarity conference "Legal Language: Transparent and Efficient" in Mexico City in November 2008. The conference was co-hosted by Clarity (an international association of lawyers and interested lay people which aims to promote the use of clear language by lawyers), Mexico's Ministry of Public Administration (which is responsible for Mexico's plain language programme) and ITAM (a private university in Mexico City).

9.21 Members of other teams attended or participated in the following seminars/lectures:

- Our public law team manager addressed the Regional Local Authority Private Landlords Association in Liverpool in April 2008 (encouraging responsible letting project)
- Our property, family and trust law team held a joint seminar with the Institute of Advanced Legal Studies in June 2008 (easements project)
- Our economic adviser hosted a workshop on impact assessment at the Government Economic Service Annual Conference at Nottingham University.

Law Commissions in the British Islands

9.22 We work closely with the Scottish Law Commission on various projects. Over the course of the year, we have collaborated on insurance contract law. We remain in regular contact with the Scottish Law Commission concerning the two Commissions' trust law projects, consumer remedies and the level crossings project.

9.23 Much of the Law Commission's work on statute law repeals is conducted jointly with the Scottish Law Commission and many of the repeal candidates contained in Statute Law Repeals 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.

- 9.24 We keep regularly in touch with the Law Commission of Northern Ireland. Members of our Property, Family and Trust Law team attended the Northern Ireland Law Commission's First Annual Conference and visited the Northern Ireland Law Commission to discuss land law reform. We also continue to liaise closely with the Law Reform Commission in the Republic of Ireland.
- 9.25 The four law reform bodies in the British Islands come together for an annual meeting and take it in turns to host this meeting. A meeting was held on 9 May 2008 in Edinburgh. The last meeting took place on 12 June 2009 in Belfast.

International relations

- 9.26 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:

Judge Keijiro Hayashi, Chief Justice, Nepal

The Hon Justice Michael Kirby AC

Sir Geoffrey Palmer, President, New Zealand Law Commission

A delegation of Commonwealth Law Commissions

A yearly delegation of overseas students from the Chevening Fellowship Programme

A delegation from the Supreme Court of Indonesia

Members of the Finnish Lawyers' Society

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. We fill lawyer vacancies through a variety of methods according to the nature and specialist skills required for individual posts. For example, we may advertise posts through the Ministry of Justice (MoJ) 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 and in the press with brochures, recruitment criteria, guidance and application forms available for downloading and returning online.
- 10.2 We have only recently formed an economics team. Our first economist appointment was filled through an open competition as part of an external campaign. Subsequent vacancies were filled from the pool of "provisional" economists held by the Government Economic Service (GES). This pool of economists has successfully passed the economic assessment centre but have not yet taken the fast stream examinations. It is anticipated that future recruitment will also make use of advertised posts as the Law Commission becomes more widely known outside the legal community.
- 10.3 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.

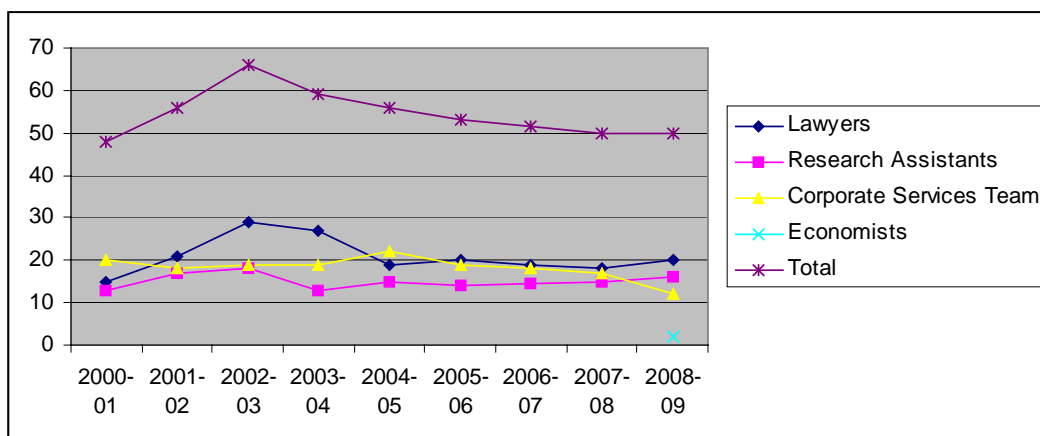
Health and safety

- 10.4 The Commission attaches great importance to the health and safety of its staff and others who visit its premises. Quarterly meetings of the Steel House Health and Safety Committee take place, chaired by MoJ's Central Health and Safety Branch. The Head of Corporate Services is the Competent Person for health and safety management at the Commission, representing staff at the Committee and monitoring progress against a detailed Health and Safety Plan.

Staff

- 10.5 The Commissioners very much appreciate the dedication and expertise of all the staff at the Law Commission. During the period of this Annual Report several members of staff moved on for the sake of career development. The Commissioners are grateful for their contribution to the work of the Commission. The following diagram contains further information on changing staffing levels.

Staffing levels at the Law Commission



Legal staff

- 10.6 The Commission's lawyers are barristers, solicitors or legal academics from a wide range of professional backgrounds, including private practice and public service.
- 10.7 This year the Commission welcomed Claire Brown, Elizabeth Drummond, Stephanie Hack, Colin Oakley and Joel Wolchover and said goodbye to David Hughes and Elizabeth Saunders. The names of all current legal staff are set out at the beginning of Parts 4 to 8 above.
- 10.8 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 Office of the Parliamentary Counsel. The Commission is very grateful to them all for their expertise and hard work.

Research assistants

- 10.9 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 online 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.

Economics team

- 10.10 The Commission was pleased to welcome two new members to the Economics team. Tom Bain and Philip Nash took up their posts as assistant economists in September. The team's role is to facilitate impact assessment of law reform proposals which will enable recommendations by the Law Commission to be implemented on the basis of full information. They also provide economic advice on issues as they arise on an ad hoc basis. This increase in the size of the team is a significant move on the part of the Commission in giving effect to the importance of adopting an evidence-based approach.¹



Members of the Economics Team

¹ Further information about impact assessment is given in paras 3.8 to 3.13 above.

Corporate services team

- 10.11 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 and secretarial assistance. These support services help the Commission to function effectively and smoothly.
- 10.12 The CST values the help available to them from colleagues in MoJ, in particular from Constitution, Democracy and Law's Legal Policy Team and the Human Resources Directorate. The CST is also grateful to the Corporate HQ Facilities Division, the Central Health and Safety Branch and the Press Office.



Members of the Corporate Services Team

Library staff

- 10.13 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 Judges' Library at the Royal Courts of Justice, MoJ 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.

- 10.14 The Library makes full use of the Internet and other electronic services and databases. Where possible, these are also made available through each individual desktop PC. The internet is also being used to make available old Law Commission Reports and Consultation Papers through the British and Irish Legal Information Institute.² Our older publications which are not available on our website can be supplied in electronic format (pdf) on request.
- 10.15 The Law Commission library staff are employed by the Library and Information Service (LIS), which provides the judiciary and staff in the MoJ, HMCS, and associated offices with the information resources and publications needed to carry out their work.

(Signed) SIR TERENCE ETHERTON, *Chairman*
ELIZABETH COOKE
DAVID HERTZELL
JEREMY HORDER
KENNETH PARKER

MARK ORMEROD, *Chief Executive*

5 June 2009

² <http://www.bailii.org>.

APPENDIX A

IMPLEMENTATION OF LAW COMMISSION REPORTS

Introduction

- A.1 This Appendix 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.
- A.2 A summary of the position in March 2008 follows:
- (1) Seven law reform reports accepted by the Government still awaited implementation;
 - (2) Four reports were in the process of being implemented;
 - (3) Nine other reports still awaited decisions by the Government.
- A.3 This Annual Report covers the period 1 April 2008 to 31 March 2009. On the next page we begin a comprehensive update of the status of our recent projects. We also include recent and relevant references beyond the reporting period.
- A.4 At the end of this Appendix, we show a complete list of reports issued to 31 March 2009. 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.

Action during this period

In summary¹

- A.5 Between 1 April 2008 and 31 March 2009, the Law Commission published four law reform reports. During this period, Parliament enacted recommendations from two of our previous reports. We are awaiting implementation of recommendations from 8 previous reports. In addition, five reports are in the process of being implemented. Legislation on two of these has recently been introduced. We are awaiting a response from the Government on twelve previous reports.

¹ This information is shown in greater detail in para 2.1 above, together with full supporting cross references for those who wish to keep track of the law reform reports we refer to.

Implemented reports

ASSISTING AND ENCOURAGING CRIME

- A.6 In July 2006 the Commission published a report and draft Bill on inchoate liability for assisting and encouraging crime.² 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.
- A.7 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.
- A.8 The recommendations were carried forward in Part 2 of the Serious Crime Act 2007, which came into force on 1 October 2008. The provisions of Part 2 in substance reflect those in our draft Bill. The major differences from our recommendations are that (a) the Part 2 offences have less stringent fault elements, and (b) defences to the crimes in Part 2 are wider in scope.

OFFENCES AGAINST RELIGION AND PUBLIC WORSHIP

- A.9 We published our report on Offences against Religion and Public Worship in 1985. It contained recommendations for abolishing or repealing certain common law and old statutory offences relating to religion and public worship.
- A.10 This report was implemented in part by s 79 of the Criminal Justice and Immigration Act 2008, which abolished the common law offences of blasphemy and blasphemous libel. Section 79 came into force on 8 July 2008.

Reports in the process of being implemented

MURDER, MANSLAUGHTER AND INFANTICIDE

- A.11 The Commission's report,³ published in 2006, is being partially implemented by the Coroners and Justice Bill 2009. The Bill contains clauses substantially implementing the Commission's recommendations for reform of the partial defences of provocation and diminished responsibility.

BRIBERY

- A.12 The latest position on this report is set out in Part 2⁴ of this Annual Report.

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

³ Murder, Manslaughter and Infanticide (2006) Law Com No 304.

⁴ Paras 2.6 to 2.7 above.

DISTRESS FOR RENT

- A.13 The Commission's report⁵ on this subject was published in 1991. It recommended the complete abolition of the remedy of distress for non-payment of rent for both commercial and residential tenancies.
- A.14 In March 2003, the Government indicated its acceptance of the recommendation in relation to residential tenancies only. For commercial tenancies, distress for non-payment of rent would be reformed rather than abolished.
- A.15 The Tribunals, Courts and Enforcement Act 2007 entirely abolishes the existing law of distress, but introduces a new statutory regime for commercial rent arrears recovery. The Act received Royal Assent on 19 September 2007 and it was expected that the relevant provisions would come into force in 2008. On 17 March 2009, Minister of Justice Bridget Prentice made an announcement in Parliament on bailiff and enforcement law. However, this made no reference to our recommendations. We await further developments.

PERPETUITIES AND ACCUMULATIONS

- A.16 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 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 report,⁶ published in 1998, made a number of recommendations for the reform of the rule. In particular, it recommended 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 recommended the repeal of the connected rule restricting accumulations of income (except in relation to charitable trusts). A draft Bill was prepared by the Commission giving effect to other provisions.
- A.17 The Commission's recommendations were accepted by Government in March 2001. In 2008 the Bill was proposed as the first in the trial of the new House of Lords procedure for Law Commission Bills.⁷ The Ministry of Justice carried out a targeted consultation process in summer 2008, and subsequently undertook updating work on the Bill. The Bill was introduced in the House of Lords on 1 April 2009.⁸

THIRD PARTIES' RIGHTS AGAINST INSURERS

- A.18 In 2001 the Law Commission and Scottish Law Commission published a final report⁹ and draft Bill on third parties' rights against insurers. The draft Bill is intended to replace the Third Parties (Rights against Insurers) Act 1930.

⁵ Landlord and Tenant: Distress for Rent (1991) Law Com No 194.

⁶ The Rules against Perpetuities and Excessive Accumulations (1998) Law Com No 251.

⁷ This procedure is referred to in the Chairman's introduction to this Annual Report.

⁸ *Hansard* (HL), 1 April 2009, col 1081.

⁹ (2001) Law Com No 272, Scot Law Com No 184.

- A.19 The 1930 Act allows a third party to claim from the insurer of an insolvent person by transferring to the third party the insured's right to make a claim against the insurer. However, the 1930 Act has several problems. It requires third parties to commence multiple proceedings, first against the insured then against the insurer. Furthermore, the third party is not entitled to information about the insurance policy until it has established that the insured owes it money. This means that the third party is unable to make an informed decision about whether it is worthwhile bringing legal proceedings against an insolvent party in the hope that there might be valid insurance to cover the debt. Our draft Bill aims to remedy these and other problems with the 1930 Act.
- A.20 The draft Bill has been accepted as a candidate for the new Law Commission procedure in the House of Lords. We are currently assisting the Ministry of Justice to prepare the Bill for introduction later in 2009.

Reports awaiting implementation

RENTING HOMES AND ENCOURAGING RESPONSIBLE LETTING

- A.21 The latest position on these reports is set out in Part 2¹⁰ of this Annual Report.

PARTNERSHIP LAW

- A.22 Our joint report¹¹ with the Scottish Law Commission was published in November 2003. It was in two parts. Most of the recommendations concerned general partnerships. In 2006, the Government rejected this part of the report.¹²
- A.23 We also made recommendations about limited partnerships. 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 to provide guidance on the activities a limited partner can undertake without losing limited liability status.
- A.24 In July 2006 the Government announced its intention to implement this part of our report.¹³ In August 2008, the Department for Business, Enterprise and Regulatory Reform (BERR) published a consultation paper and draft Legislative Reform Order. The consultation ended in November 2008. Because of opposition expressed in responses to the consultation, in March 2009 the Government announced that it would not be proceeding with a Legislative Reform Order.¹⁴ The Government now intends to discuss alternative options for taking forward the proposals in our report. We await the outcome of these discussions.

¹⁰ Paras 2.8 to 2.14 above.

¹¹ Partnership Law (2003) Law Com No 283, Scot Law Com No 192.

¹² Written Ministerial Statement, Ian McCartney, *Hansard* (HC), 20 July 2006, col 53WS.

¹³ Above.

¹⁴ <http://www.berr.gov.uk/files/file50705.pdf>.

AGGRAVATED, EXEMPLARY AND RESTITUTIONARY DAMAGES

- A.25 We published this report¹⁵ in 1997. In November 1999 the then Lord Chancellor's Department 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.
- A.26 However, no opportunity was forthcoming. Given the length of time that elapsed, the Department for Constitutional Affairs (DCA) reconsidered our recommendations in its consultation paper on *The Law on Damages* in May 2007. That paper pointed out that several cases have since confirmed that aggravated damages are compensatory rather than punitive and that the House of Lords extended the availability of exemplary damages. DCA thought that legislation was unnecessary. We await a final decision.

LIMITATION OF ACTIONS

- A.27 In 2001 we published a report¹⁶ and draft Bill in which we recommended replacing the many complex limitation 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.
- A.28 In July 2002 the then Lord Chancellor's Department 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".¹⁷ In December 2008, the Leader of the House of Commons announced that the Government intended to include provisions on this subject within a Civil Law Reform Bill. A Bill would be drafted in 2009, and circulated for further consultation.

PRE-JUDGMENT INTEREST ON DEBTS AND DAMAGES

- A.29 In February 2004 we published a report¹⁸ considering the way that courts award interest on debts and damages in the course of court proceedings. We found that courts routinely imposed an 8% interest rate. As a result, many individual debtors were over-compensating creditors for short-term delays in payment, often at a time when they faced financial hardship. In 2009, when interest rates are particular low, this unfairness to debtors is even more marked.
- A.30 Our report made two main recommendations:
- (1) there should be a specified rate set each year at 1% above the Bank of England base rate;
 - (2) the courts should have a power to award compound interest in appropriate cases.

¹⁵ (1997) Law Com No 247.

¹⁶ Limitation of Actions (2001) Law Com No 270.

¹⁷ *Hansard* (HL), 16 July 2002, col 127.

¹⁸ Pre-Judgment Interest on Debts and Damages (2004) Law Com No 287.

- A.31 In September 2008, the Ministry of Justice issued a response to these recommendations. On the first issue, the Government agreed that the Lord Chancellor should have power to prescribe a pre-judgment interest rate. However, the Government said it wished to consult further on whether the rate should be 1% above base, and how often the rate should be changed.
- A.32 As far as our recommendation on compound interest was concerned, the Government wished to legislate for a power to provide for this, but had not yet reached a conclusion on whether compound rates were appropriate.
- A.33 In December 2008, the Government announced that it intended to include the necessary statutory power within the forthcoming draft Civil Law Reform Bill. However, we have not been given a timetable for consultation on the policy issues involved.

THE FORFEITURE RULE AND THE LAW OF SUCCESSION

- A.34 In July 2005 we published a final report¹⁹ and draft Bill to solve a particular problem in succession law. 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.
- A.35 In 2006, the Government accepted our recommendations, subject to minor modifications.²⁰ In December 2008, the Leader of the House of Commons announced that the Government intended to include provisions on this subject within a Civil Law Reform Bill. A Bill would be drafted in 2009, and circulated for further consultation.

UNFAIR CONTRACT TERMS

- A.36 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 report²¹ and draft Bill jointly with the Scottish Law Commission. 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 recommends improving protection for the smallest and most vulnerable businesses, employing nine or fewer members of staff.
- A.37 In July 2006, Department of Trade and Industry 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.²²

¹⁹ The Forfeiture Rule and the Law of Succession (2005) Law Com No 295.

²⁰ Written Ministerial Statement, Baroness Ashton, *Hansard* (HL), 18 December 2006, col WS223.

²¹ Unfair Terms in Contracts (2005) Law Com No 292, Scot Law Com No 199.

²² See www.dti.gov.uk/consumers/buying-selling/sale-supply/unfair-contracts/index.html.

- A.38 However, in October 2008, the European Commission published a proposal²³ for a draft directive on consumer rights which would, among other things, harmonise the law on unfair contract terms. Any legislation in this area awaits the outcome of the European negotiations.

Reports awaiting Government decisions

- A.39 In February 2005, the Ministerial Committee on the Law Commission agreed a protocol that requires Government departments to give an interim response within six months of receiving recommendations from the Law Commission, and a final response within a further two years. As stated above, we are currently awaiting a response from the Government on 12 of our reports.
- A.40 We also welcome a recent development of the protocol which has placed a responsibility on the Lord Chancellor to make an annual statement to Parliament on the progress of Law Commission reports awaiting implementation.

HOUSING: PROPORTIONATE DISPUTE RESOLUTION

- A.41 This report²⁴ (published in May 2008) took a broad view of how housing disputes should be dealt with, from the initial creation of a dispute through the system for early advice and information to formal structures of adjudication. The centre-piece of the report was the proposal that what we termed “trriage plus” should be adopted as the basic organising principle for those providing housing advice and assistance. Triage plus brought together three key elements – signposting, whereby people with problems receive an initial diagnosis and are then referred to the right route for a solution; intelligence gathering and oversight of how problems arise to see whether they reveal systemic problems; and feedback designed to improve the quality of initial decisions. We also recommended that other ways of resolving disputes (aside from formal adjudication) should be encouraged.
- A.42 In relation to formal adjudication, we drew back from our provisional proposal on consultation that all housing possession cases should be moved from the county court to the Residential Property Tribunals Service. Rather, at this stage at least, the transfer of jurisdictions should be limited to stand-alone disrepair cases (that is, not those arising as a counter-claim to a possession action) and disputes relating to park homes. The other major recommendation in this area was that *full* powers in relation to interim relief should be given to (effectively) the county court in relation to statutory homelessness appeals. The substantive appeal already lies in the county court. We made a number of other recommendations in respect of such matters as the training of the judiciary, the provision of better information and the availability of duty-desks in county courts. The Government, having consulted separately on park homes disputes, have now concluded that most of the park homes jurisdiction should be transferred to the tribunal. A final Government view on the other recommendations is awaited.

²³ Com (2008) 624/3, published on 8 October 2008. The draft directive implements some of our recommendations, including the need for core terms to be not only in plain, intelligible language but also “transparent”: that is, legible and actually available to the consumer.

²⁴ Housing: Proportionate Dispute Resolution (2008) Law Com No 309.

TRUSTEE EXEMPTION CLAUSES

- A.43 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.
- A.44 The Commission published a consultation paper²⁵ 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.
- A.45 The Commission's report,²⁶ 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 already implemented the rule.²⁷ The report recommends that Government should promote the application of the rule of practice as widely as possible across the trust industry. We are still awaiting a decision by Government as to whether they accept our recommendation.

TERMINATION OF TENANCIES FOR TENANT DEFAULT

- A.46 This project examined the means whereby a landlord can terminate a tenancy²⁸ 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.
- A.47 The Commission outlined provisional proposals for reform in a consultation paper²⁹ published in January 2004. The consultation paper attracted interest and comment from practitioners, academics and groups representing both landlords and tenants.

²⁵ Trustee Exemption Clauses (2003) Consultation Paper No 171.

²⁶ Trustee Exemption Clauses (2006) Law Com No 301.

²⁷ 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 also published guidance on trustee exemption clauses in line with our recommendations which is binding on its members.

²⁸ 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.

²⁹ Termination of Tenancies for Tenant Default (2004) Consultation Paper No 174.

A.48 The Commission's report,³⁰ 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 promoting 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). We are still awaiting a decision by Government as to whether it accepts these recommendations.

COMPANY SECURITY INTERESTS

A.49 In August 2005 we published a final report³¹ and draft legislation on Company Security Interests recommending major reforms. 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.

A.50 We were disappointed that the then 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

A.51 During the late 1990s we carried out a major review of damages, which resulted in reports on Liability for Psychiatric Illness,³² Damages for Non-Pecuniary Loss,³³ Damages for Medical, Nursing and Other Expenses³⁴ and Claims for Wrongful Death.³⁵

³⁰ Termination of Tenancies for Tenant Default (2006) Law Com No 303.

³¹ Company Security Interests (2005) Law Com No 296.

³² (1998) Law Com No 249.

³³ (1999) Law Com No 257.

³⁴ (1999) Law Com No 262.

³⁵ (1999) Law Com No 263.

- A.52 A few of our recommendations have been implemented.³⁶ For most 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.
- A.53 The Department for Constitutional Affairs (DCA) eventually published a consultation paper on our reports in May 2007.³⁷ The paper accepted most of our recommendations on damages for wrongful death.³⁸ However, it proposed a more limited extension of those who are able to claim under the Fatal Accidents Act 1976. On bereavement damages, the paper agrees to extend entitlement to the fathers of illegitimate children, to cohabitants and to the parents of children over 18.
- A.54 In our report on Medical, Nursing and Other Expenses, we recommended reversing the decision in *Hunt v Severs*,³⁹ so that claimants are under a personal obligation to account to a provider of gratuitous care for past care costs. The DCA accepted this, but thought that the obligation should also extend to future care.⁴⁰ In relation to liability for psychiatric illness, DCA noted that the courts had adopted a more flexible approach. It proposed to leave this area for the courts to develop.
- A.55 The consultation period ended in July 2007 and we await a final decision on the policy issues involved. In December 2008, the Leader of the House of Commons announced that the Government intended to include proposals to reform the law of damages in the Civil Law Reform Bill. In particular, this would reform dependency claims and bereavement damages under the Fatal Accidents Act 1976. A Bill would be drafted in 2009, and circulated for further consultation.

PARTICIPATING IN CRIME

- A.56 In May 2007, the Commission published a report⁴¹ and draft Bill setting out recommendations for reform of the law of secondary liability for assisting and encouraging crime. We gave a summary of our recommendations in our previous annual report.⁴² The Government has indicated⁴³ that it will consider the recommendations when it receives the Commission's report on Conspiracy and Attempts.

³⁶ In relation to Law Com No 257, in February 2000, the Court of Appeal increased the level of awards for non-pecuniary loss in cases of severe injury: *Heil v Rankin* [2000] 2 WLR 1173. In April 2002, the then Lord Chancellor's Department increased the level of bereavement damages from £7,500 to £10,000. The Government also extended the recovery of National Health Service costs from road traffic accidents to all personal injury claims: Health and Social Care (Community Health and Standards) Act 2003, s 150.

³⁷ *The Law on Damages*, DCA Consultation Paper 9/07.

³⁸ Above at [2] to [68].

³⁹ [1994] 2 WLR 602.

⁴⁰ *The Law on Damages*, DCA Consultation Paper 9/07 at [115] and [116].

⁴¹ Participating in Crime (2007) Law Com No 305.

⁴² Annual Report 2007-08 (2008) Law Com No 310, paras 5.3 to 5.7.

⁴³ Annual Report 2007-08 (2008) Law Com No 310, paras 5.15 to 5.22.

COHABITATION

- A.57 The Law Commission published its report⁴⁴ on cohabitation on 31 July 2007.
- A.58 The publication of the report followed two years of work by the Law Commission conducted at the request of, and funded by, the Ministry of Justice. On 6 March 2008, the Ministry of Justice provided an interim response in a Statement to Parliament by the Parliamentary Under-Secretary of State, Bridget Prentice. The response indicated that the Government was postponing its decision on the Law Commission's "very thorough and high quality" report because it was concerned to establish estimates of the financial costs and financial benefits of bringing into effect the Law Commission's recommended scheme. The Government hoped to do so by examining the operation of the Family Law (Scotland) Act 2006. We look forward to receiving the Government's final response.

INTOXICATION AND CRIMINAL LIABILITY

- A.59 The Commission published its report⁴⁵ on 15 January 2009. We recommended that the distinction between offences of basic and specific intent be removed and the law made more comprehensible, logical and consistent by providing, instead, a definitive list of states of mind to which self-induced intoxication would be relevant.

Other reports

OFFENCES AGAINST THE PERSON

- A.60 Fifteen years ago the Law Commission published a report⁴⁶ and draft Bill recommending an overhaul of the current legislation, which dates back to the Offences Against the Person Act 1861. In 1997 the Home Office partially accepted these recommendations in principle. In 1998 the Home Office published a consultation paper⁴⁷ 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.⁴⁸
- A.61 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 now takes the view that neither the report, nor the Government's own proposals based on the report, can be enacted in their present form.

⁴⁴ Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307. See Annual Report 2007-08 (2008) Law Com No 310, paras 6.3 to 6.10 for details of our recommendations.

⁴⁵ Intoxication and Criminal Liability (2009) Law Com No 314.

⁴⁶ Legislating the Criminal Code: Offences Against the Person and General Principles (1993) Law Com No 218.

⁴⁷ Violence: Reforming the Offences against the Person Act 1861.

⁴⁸ *Cort* [2003] EWCA Crim 2149, [2004] QB 388.

PARTIAL DEFENCES TO MURDER

- A.62 In August 2004 the Commission published its report,⁴⁹ 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.
- A.63 In July 2005, the Home Secretary announced a comprehensive review of the law of murder. The Law Commission undertook the first stage of that review in 2005 to 2006. In November 2006 the Commission published a report⁵⁰ setting out its recommendations for reform of the law of homicide. Those recommendations have superseded the recommendations in Partial Defences to Murder.

⁴⁹ Partial Defences to Murder (2004) Law Com No 290.

⁵⁰ Murder, Manslaughter and Infanticide (2006) Law Com No 304.

TABLE OF LAW COMMISSION LAW REFORM REPORTS SHOWING IMPLEMENTATION

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
21	Interpretation of Statutes (HC 256)	Not accepted	
23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (HC 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)

LC No	Title	Status	Related Legislation
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)
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)
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)
1974			
60	Report on Injuries to Unborn Children (Cmnd 5709)	Implemented	Congenital Disabilities (Civil Liability) Act 1976 (c28)

LC No	Title	Status	Related Legislation
61	Family Law: Second Report on Family Property. Family Provision on Death (HC 324)	Implemented	Inheritance (Provision for Family and Dependents) 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	
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)

LC No	Title	Status	Related Legislation
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	
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)
104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd 8064)	Rejected	
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)
115	Property Law: The Implications of <i>Williams and Glyns Bank Ltd v Boland</i> (Cmnd 8636)	Superseded	See <i>City of London Building Society v Flegg</i> [1988] AC 54
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	
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)
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

LC No	Title	Status	Related Legislation
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	
143	Criminal Law: Codification of the Criminal Law – A Report to the Law Commission (HC270)	Superseded	See LC177
145	Criminal Law: Offences against Religion and Public Worship (HC442)	Implemented	Criminal Justice and Immigration Act 2008 (c4)
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	
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)
168	Private International Law: Law of Domicile (SLC107) (Cm200)	Rejected	
1988			
172	Review of Child Law: Guardianship	Implemented	Children Act 1989 (c41)
173	Property Law: Fourth Report on Land Registration (HC680)	Superseded	See LC235

LC No	Title	Status	Related Legislation
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 in part Rejected in part	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)	Implemented (enacted but legislation not brought into force)	Family Law Act 1996 (c27), Part II
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)	Implemented in part but not yet brought into force Rejected in part	Tribunals, Courts and Enforcement Act 2007 (c 15), Part III
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 (Miscellaneous Provisions) Act 1994 (c36)
201	Obsolete Restrictive Covenants (HC546)	Rejected	
202	Corroboration of Evidence in Criminal Trials (Cm1620)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
204	Land Mortgages (HC5)	Rejected	
1992			
205	Rape within Marriage (HC167)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
207	Domestic Violence and Occupation of the Family Home (HC1)	Implemented	Family Law Act 1996 (c27) Part IV
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)

LC No	Title	Status	Related Legislation
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 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	See LC303
222	Binding Over (Cm2439)	Part implemented	In March 2007, the President of the Queen's Bench Division issued a Practice Direction
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	Housing Act 1996 (c52) – in part: Access to Justice Act 1999 (c22); Tribunals, Courts and Enforcement Act 2007 (c15)
227	Restitution: Mistakes of Law (Cm2731)	Part Implemented Part Rejected	The House of Lords in the case of <i>Kleinwort Benson v Lincoln City Council</i> [1999] 2 AC 349
228	Conspiracy to Defraud (HC11)	Implemented	Theft (Amendment) Act 1996 (c62)
1995			
229	Intoxication and Criminal Liability (HC153)	Superseded	See LC314
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 Implemented Part superseded	Corporate Manslaughter and Corporate Homicide Act 2007 (c19)
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)
247	Aggravated, Exemplary and Restitutionary Damages (HC346)	Part Accepted Part Rejected	

LC No	Title	Status	Related Legislation
1998			
248	Corruption (HC524)	Superseded	See LC313
249	Liability for Psychiatric Illness (HC525)	Pending	
251	The Rules against Perpetuities and Excessive Accumulations (HC579)	Accepted	Perpetuities and Accumulations Bill introduced 1 April 2009
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)	Superseded	Constitutional Renewal Bill [HL] introduced 31 March 2009
1999			
257	Damages for Personal Injury: Non-Pecuniary Loss (HC344)	Part Accepted and Implemented Part Pending	See <i>Heil v Rankin</i> [2000] 3 WLR 117
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 and Nursing Expenses (HC806)	Pending	
263	Claims for Wrongful Death (HC807)	Pending	
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 (c28)
2003			
281	Land, Valuation and Housing Tribunals: The Future (Cm 5948)	Rejected	
282	Children: Their Non-accidental Death or Serious Injury (Criminal Trials) (HC 1054)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)

LC No	Title	Status	Related Legislation
283	Partnership Law (jointly with the Scottish Law Commission – SLC192) (Cm6015; SE/2003/299)	Part Accepted Part Rejected	
284	Renting Homes (Cm 6018)	Pending	
286	Towards a Compulsory Purchase Code: (1) Compensation (Cm 6071)	Accepted but will not be 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	See LC304
291	Towards a Compulsory Purchase Code: (2) Procedure (Cm 6406)	Accepted but will not be 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 (Cm 6781)	Part Accepted	
300	Inchoate Liability for Assisting and Encouraging Crime (Cm 6878)	Implemented	Serious Crime Act 2007 (c27)
301	Trustee Exemption Clauses (Cm 6874)	Pending	
302	Post Legislative Scrutiny (Cm 6945)	Implemented	Post-legislative Scrutiny – The Government's Approach (2008) Cm 7320
303	Termination of Tenancies (Cm 6946)	Pending	
304	Murder, Manslaughter and Infanticide (HC 30)	Part Accepted Part Pending	Coroners and Justice Bill
2007			
305	Participating in Crime (Cm 7084)	Pending	
307	Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182)	Pending	
2008			
309	Housing: Proportionate Dispute Resolution (Cm 7377)	Pending	
312	Housing: Encouraging Responsible Letting (Cm 7456)	Part Accepted	
313	Reforming Bribery (HC 928)	Accepted	Draft Bribery Bill published on 25 March 2009.

LC No	Title	Status	Related Legislation
	2009		
314	Intoxication and Criminal Liability (Cm 7526)	Pending	

APPENDIX B STAFF

B.1 The names of the Commission's legal staff are set out in Parts 4 to 8.

B.2 The Corporate Services Team comprises:

Chief Executive Mark Ormerod ¹	Head of Corporate Services / Budget Manager Ann Achow	
Policy / Personnel Officer/ Training Co-ordinator Barbara Wallen	Programme Management / Resources Officer Jacqueline Griffiths	
Head of Communications Correna Callender	Editor / Communications / Web Manager Dan Leighton Communications Officer Terry Cronin	
IT Manager ² Chris Porter	Facilities / Health & Safety Officer Yasmin Rahman	Facilities / Records Officer Nicole Latte
Secretarial Support Carmen McFarlane Anne Piper	Alison Meager Jackie Samuel	
Librarian Keith Tree	Assistant Librarian Michael Hallissey	Library Trainee Daniela Davey
Chairman's Clerk Amanda Collins		

Contact Numbers

General enquiries	020 3334 0200
General fax number	020 3334 0201
Website address	http://www.lawcom.gov.uk

Email addresses

General enquiries	chief.executive@lawcommission.gsi.gov.uk
Library	library@lawcommission.gsi.gov.uk
Communications team	communications@lawcommission.gsi.gov.uk

¹ Mark Ormerod succeeded William Arnold as Chief Executive on 2 March 2009.

² Until 30 April 2009.

APPENDIX C

THE COST OF THE COMMISSION

C.1 The Commission's resources are mainly made available through the Ministry of Justice in accordance with section 5 of the Law Commissions Act 1965.

	2006/2007		2007/2008		2008/2009	
	(April/March)		(April/March)		(April/March)	
	£000	£000	£000	£000	£000	£000
Commissioner salaries (including ERNIC)	579.8		583.1		541.3	
Staff salaries*	2654.1		2602.1		2899.5	
		3233.9		3185.2		3440.8
Printing and publishing; supply of information technology; office equipment; books; publicity; utilities (includes telecommunications) and postage	154.2		265.0		216.3**	
Rent for accommodation	560.0		560.0		544.1**	
Travel and Subsistence	20.0		19.2		35.2	
Other administrative costs (inc. recruitment; fees and services)	64.3		82.0		146.4	
Entertainment	3.0		9.6		4.5	
		801.5		935.8		946.5
TOTAL		4035.4		4121.0		4387.3

* Includes ERNIC, consultancy, secondees, contract staff and agency staff (includes provision of security).

** Cost reduced due to move of office in October 2008.