



# THE LAW COMMISSION

**FIRST ANNUAL REPORT  
1965-1966**

*Laid before Parliament by the Lord High Chancellor  
pursuant to Section 3 (2) of the Law Commissions Act 1965*

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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. The Commissioners are—

The Honourable Mr. Justice Scarman, O.B.E., *Chairman*.

Mr. L. C. B. Gower, M.B.E.

Mr. Neil Lawson, Q.C.

Mr. N. S. Marsh.

Mr. Andrew Martin, Q.C.

Mr. Arthur Stapleton Cotton is a special consultant to the Commission. The Secretary of the Commission is Mr. H. Boggis-Rolfe, C.B.E., and its offices are at Lacon House, Theobald's Road, London, W.C.1.

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# LAW COMMISSION

## FIRST ANNUAL REPORT: 1965-66

*To the Right Honourable The Lord Gardiner,  
the Lord High Chancellor of Great Britain*

My Lord,

We have the honour to present to your Lordship our first Annual Report pursuant to section 3 (3) of the Law Commissions Act 1965.

### INTRODUCTORY

1. The Royal Assent was given to the Law Commissions Act on 15th June 1965. Your Lordship appointed the members of the Commission on 16th June. The First Programme of the Commission, which was for the examination of 17 subjects with a view to reform, was submitted on 19th July. After some amendment it received your Lordship's approval on 20th September, and was laid before Parliament on 27th October. Work pursuant to this, the "law reform programme", is from day to day the major task of the Commission: we describe it in Part II of this Report.
2. On 7th July your Lordship requested the Commission to prepare a comprehensive programme of consolidation and statute law revision. A Programme was submitted on 17th November, received your Lordship's approval on 14th January 1966 and was laid before Parliament on 26th January. Work done in the course of the year pursuant to this, the "statute law programme", is briefly described in Part II of the Report.
3. This being our first Report, we think it may be helpful to give a short description of our organisation and methods—which will be found in Part I of the Report—and also to express some thoughts about the future, which will be found in Part III. We must, however, emphasise that these are early days; we can proceed only by trial and error. We are subjecting our working methods to a continuous critical study assisted by the experience of law reform agencies in other countries.

## PART I

### ORGANISATION AND WORKING METHODS

#### Accommodation

4. Office accommodation at Lacon House, Theobald's Road (conveniently close to the legal centre of London) had been prepared some time ahead of our appointment. Our Secretary and some other professional and non-professional members of our staff had already been installed by the time we ourselves were called upon to assume our duties. As a result, we were able to begin our work without delay.

#### Library

5. One of our first decisions was to establish a library geared to our current work but designed ultimately to house an important collection of law reform material obtained from other legal systems as well as our own. The library already comprises a useful collection of English law reports, reference books, textbooks, journals, and a section on foreign law; it is growing daily. By courtesy of a number of other libraries in London, we and our legal staff have access to such materials as we do not possess ourselves.

6. We have received generous gifts of books, reports and other documents from individuals and organisations in many parts of the world. These are most valuable additions to our library and will be of great help to us in our work. Among such donations are those that we have received from:—

The American Law Institute  
The German Federal Ministry of Justice  
The Indian Law Commission  
Centre of Criminal Law, University of Toronto  
California Law Revision Commission  
Columbia University School of Law  
Louisiana State Law Institute  
New York Law Revision Commission  
Ontario Law Reform Commission  
Oregon Law Improvement Committee  
State of Tennessee Law Revision Commission

#### Personnel

7. The Chairman and three of the Commissioners took up their duties on 21st June 1965; Mr. L. C. B. Gower, by reason of his previous appointment in Nigeria, was able to join the Commission only on 27th September.

8. On 25th June 1965 your Lordship appointed Mr. Arthur Stapleton Cotton as our Special Consultant. The submission of our first Annual Report gives us a welcome opportunity to say how warmly we appreciate

the assistance we have received from him. As a member of long standing of the Law Society's Council, and as a member of various departmental and other committees concerned with the administration and improvement of the law, he has brought to his present appointment a vast amount of experience which is directly relevant to our own tasks. Mr. Cotton now devotes the greater part of his time to the work of the Commission and takes part in all our deliberations. He also continues in practice as a solicitor; and his knowledge of the everyday problems of that branch of the legal profession which stands nearest to the public at large has been invaluable to us.

9. We have a small staff of lawyers. Some have been transferred to the Law Commission from Government departments; others have been freshly recruited in a permanent or temporary capacity, bringing with them a variety of professional and academic experience.

10. In the course of the year four members of the Parliamentary Counsel Office have been seconded to us for the purpose of assisting the Commission in the drafting of legislative proposals. In due course it will clearly be necessary to increase their number.

11. At present our total staff numbers 35. The figure includes the Secretary, four draftsmen, nine other lawyers and 21 non-legal members of the staff. Considering the amount of work which is involved in carrying out our Programmes, the legal staff is small. It is better that it should remain small, but there is room for expansion, and we are anxious that this should be widely known among practitioners and academic lawyers. We need able and enthusiastic lawyers, especially young ones, and we can offer work, in a temporary or permanent capacity, which is important, interesting, and to men and women of ability a stimulating challenge.

12. We think that a large legal staff would be undesirable at this stage. It might encourage the Commission to look inwards upon itself for inspiration and ideas, whereas in our view it must look outwards—to the legal profession and to the public. There is also the risk that a large permanent legal staff might at times be under-employed. The reason is that the rhythm of work on any given law reform project is necessarily uneven: periods of intensive research are followed by periods of extensive consultation with Government departments, professional and other organisations and individual experts. Such experience as we have gained so far suggests that the most economical use of manpower is a combination of work continuously performed by a relatively small staff with the work of experts in the practising and academic branches of the profession who are invited to assist the Commission on particular projects.

13. During the year under review we have taken many opportunities to call for such expert assistance, and the response has been prompt, generous and invaluable. We are greatly indebted to all those who have assisted us in this way.

### **Consultations**

14. We are under a statutory duty to undertake the examination of particular branches of the law and the formulation, by means of draft Bills

or otherwise, of proposals for reform therein.\* From the outset we have taken the view that it would be inexpedient to lay down hard and fast rules of procedure; we must adjust our working methods to the particular requirements of each individual project.

15. In our study of particular topics it has not been our normal practice to begin by issuing a general invitation to submit memoranda of evidence. We have thought it better to prepare papers setting out the existing state of the law with tentative proposals of our own on which we invite comment. We think this has proved to be the right course and that it has saved time and work for those whom we consult. It has certainly enabled us to proceed more rapidly.

16. Clearly, each project involves a certain amount of research and a certain amount of consultation. But while in the majority of cases research must come before consultation, in some instances it is useful to reverse the order and work out lines of research in the light of preliminary consultations. Again, there are projects which do not require consultations with organisations other than those of the legal profession; but wherever any proposed reform of the law originates from social or economic considerations or is likely to have social or economic consequences, it is imperative to consult with those qualified to speak for the social and economic interests concerned.

17. How we have tried to do justice to these considerations will emerge from Part II of this Report. We should, however, here mention certain contacts and arrangements we made at an early stage for consultations with other agencies operating in the field of law reform and with the representative organisations of the legal profession.

### **The Scottish Law Commission**

18. The guidelines for co-operation with the Scottish Law Commission were marked out by the following passage in the White Paper† which preceded the introduction of the Law Commissions Bill:

“The English and Scottish Commissions will maintain close contact with each other and it seems likely that in certain fields projects for reform will be sponsored by both bodies acting jointly . . .”

19. Both we and our Scottish colleagues are determined to work towards a closer harmony between English and Scots law, and this mutual desire is clearly reflected in our respective First Programmes of Law Reform. During the first year co-operation has been particularly active in the field of the law of contract, as will be seen in Part II; but we have had informal consultations on many other subjects. On 25th and 26th January 1966 the two Commissions held a series of joint meetings in Edinburgh, at which the opportunity was taken to review the progress already made with our respective Programmes and to discuss working methods and many other subjects of common interest. We are greatly indebted to our Scottish colleagues and to the University of Edinburgh for the generous welcome we received. We hope that meetings of this kind will become a regular feature of our joint work.

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\* Law Commissions Act 1965, section 3 (1) (c).

† 1965 Cmnd. 2573.

### **The Director of Law Reform in Northern Ireland**

20. The Commission's responsibility\* extends to such part of the law of Northern Ireland as the Parliament of Northern Ireland has no power to enact. We have been glad to co-operate closely with the Director of Law Reform for Northern Ireland on matters of common interest. Previous to the Director's appointment one of the Commissioners visited Northern Ireland and held extensive discussions on such matters in that country within the Commission's competence as were there regarded as in need of modernisation and reform. As a result, Item XVI was included in our first programme of law reform.

### **The Law Reform Committee and the Criminal Law Revision Committee**

21. We had the advantage, soon after the constitution of our Commission, of consultations with the Chairmen of these two Committees. As a result we are mutually conversant with each other's programmes and priorities, and throughout the period under review we have closely followed their work and publications.

### **Representative Organisations of the Legal Profession**

22. In November and December 1965 we had a series of meetings with the respective Officers of the General Council of the Bar, the Law Society and the Society of Public Teachers of Law. These meetings provided an opportunity for a full discussion of the principles and procedures of our co-operation, and throughout the period under review the procedures which were then agreed have operated smoothly and, from our point of view, to the greatest possible advantage.

23. The Bar Council and the Law Society each have a Law Reform Committee as well as specialist committees; in its turn, the Society of Public Teachers of Law has set up a Law Reform Co-ordinating Committee and a number of specialist committees. As a result we are in a position to obtain, at short notice if necessary, specialist advice at any stage of our work on any given project. Arrangements have also been made enabling us to obtain, whenever so required, the representative opinion of these professional bodies.

24. The way in which these arrangements have worked out in practice will emerge from the progress reports contained in Part II.

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\* Law Commissions Act 1965, section 1 (5).

## PART II

### THE FIRST PROGRAMMES : REPORT ON PROGRESS

#### The First Programme of Law Reform

25. Under section (3) (1) (b) of our Act we are called upon to prepare from time to time

“programmes for the examination of different branches of the law with a view to reform, including recommendations as to the agency . . . by which any such examination should be carried out”.

26. We explained in a note with our First Programme the considerations that influenced us in choosing its subjects and there is no need to repeat them here.

27. Of the 17 items in the Programme the Commission itself is the examining agency for 13 items and part of one other. Some of the projects are very substantial and require prolonged study, while others, which are of relatively narrow compass, can be undertaken in the short term. There is advantage in this. The size and composition of the Programme allows us to proceed with research on some subjects, while we are consulting outside organisations and individual experts on others. On the other hand experience has shown that in some cases it is not possible to dispose of minor topics in isolation.

#### Internal Working Procedures

28. Something has already been said of general principles and of certain permanent arrangements for consultation. Here we would add a few words about internal procedures. Our basic method has been to allocate each item in the Programme for which we are the examining agency to a team headed by one or more of the Commissioners. Each team is the master of its own procedure, subject to a few general considerations.

29. The first task of the team is to prepare a Working Plan, i.e. a phased programme of research and consultations. The Working Plan is then submitted to the Commissioners (who hold meetings weekly or more frequently as need arises) for comment and approval with or without modification. Once approved, the Working Plan is immediately put into operation and the team concerned will make periodic progress reports to the Commissioners.

30. Discussion of a team's work is not restricted to the Commissioners and their staff. It is our policy to make the lines on which we are thinking widely known outside the Commission. The extent to which it is useful to publicise any matter depends, of course, on its nature ; but in addition to consulting with the professional organisations, we send our papers to the press (and especially the legal press) whenever we consider that they are of sufficient interest and that public discussion or criticism would be useful.

## **Item I. Codification of the Law of Contract**

31. As in other cases where we are considering the codification of a branch of the law, the code of contract we have in mind is not one which would merely reproduce our existing case law and statutes with all their uncertainties and imperfections. The intention is to reform as well as to codify. To begin with, this operation will be restricted to what may be termed the General Part of the Law of Contract, leaving the rules which are special to particular types of contract (sale, hire-purchase, agency and the like) until later. We hope that all these rules will later take their place in a Commercial Code or, ultimately, in a Code of Obligations.

32. We are very conscious of the desirability of producing a code which will, so far as possible, be common to both England and Scotland and which, in due course, will facilitate a closer association between the United Kingdom and the Continent of Europe. Accordingly, there has from the start been consultation with the Scottish Law Commission which fully shares our views on these points. The two Commissions have exchanged ideas regarding the nature and arrangement of the proposed code and the major points on which at present there are divergencies between the laws of the two countries. Discussions are now taking place to see how far uniformity is attainable.

33. We aim to produce, as a first stage in the work, an annotated draft; this will be made widely available for professional and lay criticism. This project would take too long to accomplish if we relied exclusively upon our own resources. We have had the good fortune to be able to enlist the services, as a consultant, of a member of the Bar, Mr. Harvey McGregor; his wide practical, academic and commercial experience in this country and abroad make him eminently qualified to join with our own contract team in laying the groundwork of a code. Informal consultations with outside experts have already taken place and comparative material is being studied. As the work proceeds, there will be wider consultations not only to sound legal and other professional opinion, but also to obtain the views of the public and the world of commerce.

34. Work on the contract code is proceeding in close contact with that on Programme Items II\* and III†. It will also be materially affected by the form in which the Misrepresentation Bill‡ emerges from Parliament.

## **Item II. Exemption by Contract from Common Law Liabilities**

35. The Programme envisaged that in its general aspects this topic would be dealt with by an interdepartmental committee, while the more specialised study of the doctrine of fundamental breach would be carried out by the Commission itself.

36. It has since been decided that the general study should be carried out by a joint Working Party of the Law Commission and the Scottish Law

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\* Exemption by Contract from Common Law Liabilities.

† Consideration, Third Party Rights in Contract and Contracts under Seal.

‡ This Bill does not originate from the Law Commission; it is based on the Tenth Report of the Law Reform Committee (Cmnd. 1782).

Commission which would include representatives of Government departments, persons experienced in industry, commerce and consumer problems, and a certain number of English and Scottish lawyers. This decision was approved by your Lordship, the Secretary of State for Scotland and the Lord Advocate. The composition of the Working Party is shown in Appendix I.

37. The terms of reference for the Working Party are as follows:

“To consider what restraints, if any, should be imposed on the freedom to rely upon contractual provisions exempting from or restricting liability for negligence or any other liability that would otherwise be incurred, having regard to the protection of consumers of goods and users of services.”

38. The terms of reference combine the particular subject-matter of Item II with other aspects of exemption clauses which are of importance to our wider study of the law of contract under Item I. The form of the inquiry will, we hope, enable our recommendations to be co-ordinated with the policies of all the Government departments concerned with consumer protection and the other aspects of exemption clauses.

39. We have made a detailed study of the doctrine of fundamental breach as it has developed in our courts, and we have considered the approach of other systems of law to the same problem. In our own law the status of the doctrine has been considerably modified recently by the decision of the House of Lords in *Suisse-Atlantique Société d'Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale* [1966] 2 W.L.R. 944. In his speech Lord Reid said (at p. 965 of the Report):

“This is a complex problem which intimately affects millions of people and it appears to me that its solution should be left to Parliament.”

We respectfully agree. We take the view, however, that as the matter now stands the question of legislative action must be considered as part of a comprehensive study of exemption clauses such as the Working Party is expected to carry out.

### **Item III. Consideration, Third Party Rights in Contract and Contracts under Seal**

40. As mentioned in paragraph 34, this item is being studied within the framework of the proposed codification of the general principles of contract.

41. Taking as our starting point the Sixth Interim Report of the Law Revision Committee\*, we have pursued a number of lines of investigation. We have made a comprehensive survey of the views, some of them highly critical, which have been expressed since the publication of that Report. Similarly, we have considered all the relevant changes in our law since 1937 and notably the development of the rule of equitable estoppel. Finally, we have embarked upon a number of comparative studies. This is a topic upon which these studies are of particular importance. A number of highly developed systems of law—including those of Scotland and, generally speaking, of continental Europe—provide an effective body

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\* 1937 Cmd. 5449.

of contract law in which consideration is not an essential ingredient of a binding contract. Moreover, in the Commonwealth and the United States, whose laws stem from our common law tradition, there have been significant modifications of the rules relating to consideration, third party rights and contracts under seal. Our study of these developments is now well advanced. We are greatly indebted for the help we have received from a number of experts, including Professor A. Chloros, Dr. F. Honig and Mrs. J. Reid.

42. At the next following stage of our inquiry we hope to engage in more widely based consultations to elicit the present state of lay and professional opinion in this country.

#### **Item IV. Civil Liability for Dangerous Things and Activities**

43. The law of torts makes a fundamental distinction between liability based on negligence and liability which is to a greater or lesser extent based on a stricter standard. The main examples of strict liability concern the use of things or the pursuit of activities involving a special risk, and have evolved partly by judicial decision, partly by statutory intervention and partly by a combination of both. As the law stands, the categories of strict liability are uncertainly defined, overlapping and, owing to their piecemeal development, have been little considered from the point of view of obtaining a proper balance between strict liability and negligence in this branch of the law as a whole. Insufficient attention has been given to the social purposes which are, or should be, served and to the availability of liability or accident insurance.

44. In examining this subject we have therefore taken the view that we could not put forward specific proposals until a preliminary survey had been made of the role of negligence and strict liability in the light of the needs of modern society, and of the experience of other countries. This survey was duly completed with assistance from the relevant literature of, and by direct inquiry from, Commonwealth countries, the United States and the Continent of Europe. In view of the common concern of England and Scotland with the problems dealt with in the survey, it was discussed at the joint session of the English and Scottish Law Commissions held in January 1966. We also submitted the survey to, and received most helpful comments from, Professor R. F. V. Heuston, Editor of *Salmond on Torts*, and Mr. J. A. Jolowicz, Editor of *Winfield on Tort*.

45. The next stage of our inquiry involves the preparation of proposals for dealing with specific dangerous things and activities. This will require lengthy and detailed studies and extensive consultations. The results will of course be submitted for comment to the wide range of legal and other interests concerned.

#### **Item V. Civil Liability for Animals**

46. The law concerning civil liability for damage done by animals has over a number of years been widely criticised both in the courts and by the general public. The general trend of criticism is that the law is too dependent on distinctions which belong to a past age, and that it fails

to deal with contemporary needs. The Report of the Committee on the Law of Civil Liability for Damage by Animals\* which attempted to meet these criticisms has not yet been implemented, and various attempts in Parliament to reform the law, or particular aspects of it, have so far met with no success.

47. We have made what has been in many ways a fresh start and by this time have completed the following stages of our work: (1) we have made a thorough examination of the present law and of the legal and other implications of various possible reforms (including the proposals contained in the Twelfth Report of the Law Reform Committee for Scotland)†; we have given special attention to the impact which any changes might have on other aspects of our First Programme, in particular on the reform of the law of civil liability for dangerous things and activities; (2) we have ascertained the views of the Government departments affected; (3) the Bar Council and the Law Society have nominated a number of practitioners with special experience of this branch of the law; we have ascertained their views on the basis of a questionnaire prepared by us; (4) on the insurance aspects of the subject we put out a separate questionnaire, and this has been fully answered by the British Insurance Association and the National Farmers' Union Mutual Insurance Society.

48. We greatly appreciate the care and time given by individuals and bodies to whom our inquiries have been directed. Mr. P. M. North, Fellow of Keble College, Oxford, has, on his own initiative, made available to us the results of his independent researches; we are much indebted to him.

49. We are now in touch with the National Farmers' Union in order to ascertain their views. We are likewise consulting other organisations representing the owners and keepers of animals: we are also approaching road users and others who are especially liable to suffer damage from animals.

## **Item VI. Personal Injury Litigation**

### *(a) Jurisdiction and procedure*

50. Following our recommendation that an examination be made by an *ad hoc* committee of the jurisdiction and procedure in personal injuries actions, your Lordship on 12th January 1966 appointed a committee under the chairmanship of Lord Justice Winn, with terms of reference as follows:

“To consider the jurisdiction and procedure of the courts in actions for personal injuries, and in particular to consider whether such actions as are at present required to be brought in the High Court should be capable of being brought in courts having a simpler and more speedy procedure; whether the liability of the defendant and the assessment of damages should be dealt with independently; and what measures are practicable to avoid duplication of proceedings where both civil and criminal liability is involved.”

51. The Secretary of this Committee is one of our own staff; this arrangement enables us to keep in close touch with the Committee's work. This

\* 1953 Cmd. 8746.

† 1963 Cmnd. 2185.

is necessary in view of our responsibility for the examination of the next topic.

(b) *Assessment of damages*

52. This subject affects much of our civil litigation and in recent years has attracted a great deal of comment. The public debate has drawn attention to widespread dissatisfaction with the present state of the law, but it has produced little consensus with regard to the precise nature of its defects or to the remedies that might be usefully adopted. The subject calls for study in depth, involving inquiries not only into matters of law but also into the social background.

53. In this situation we have thought it desirable to depart from our usual procedure and defer the drawing up of a Working Plan until we have, by means of informal discussions with a number of experts, crystallised our own thoughts about the way our inquiries should be conducted. We have produced a series of papers analysing the principles which have been evolved in the case law; and our informal discussions with experts have yielded much useful material concerning the way in which comparable problems are approached in foreign legal systems. We are much indebted for the help we have received at this preliminary stage from Dr. A. Flexner of the Max Planck Institute in Hamburg, Dr. R. Graupner, Professor O. Kahn-Freund and Dr. E. J. Wells.

54. In February 1966 we were able to carry this preliminary examination a stage further when we were invited by the Warden and Fellows to take part in a seminar at All Souls College, Oxford. This seminar was attended by a Lord of Appeal and a Lord Justice, by representatives of the practising and academic branches of the legal profession, as well as of trade union and insurance interests. Our Chairman, one other member of the Commission and a member of our staff also took an active part in the proceedings.

55. Next, we turned our attention to ways and means of exploring the social background of the problem and of finding a more exact and scientific basis for the assessment of damages. We have received much valuable guidance from the Government Actuary and his staff, and likewise from the Department of Law of Keele University acting in co-operation with that University's Research Unit in Statistical Sociology. At present we are studying, in co-operation with the Social Survey Division of the Central Office of Information, the possibility of a survey directed to the economic and social impact of serious injury upon the victim and his family.

56. Reference has been made before to the papers already produced. These are now being re-cast in a form which can be usefully submitted, for comments, to the representative organisations of the legal profession and of the industrial, trade union and insurance interests concerned. We also propose to supply this material to the legal press.

57. This is a branch of the law in which it will be particularly useful to have consultations with the Scottish Law Commission. Also, we shall be further exploring developments in the Commonwealth, in the United States and in continental Europe.

## **Item VII. Civil Liability of Vendors and Lessors for Defective Premises**

58. The inclusion of this subject in our First Programme has aroused considerable professional and general interest, particularly in view of its importance to those who buy new houses.

59. This is another of those fields where several Private Members' Bills were introduced in recent years, all of them without success. Then, in 1965, the National House-Builders Registration Council introduced a voluntary scheme whereby purchasers would be able to get satisfaction, in the event of defective building, against the registered builder or, if he defaulted, against the Council. We are indebted to the Council for the information they have made available on this interesting scheme; the very fact that resort has had to be made to voluntary action of this kind underlines the unsatisfactory state of the law as between purchaser and vendor or builder.

60. The rights of a third party injured on defective premises are also very difficult to establish, since they depend on a contractual obligation (as between landlord and the tenant) to repair and on the question whether, in a case where the landlord is responsible for repairs, the tenant has given due notice of the defects.

61. The subject is closely related to Items II, IV and VIII of the First Programme\*. In fact, after a preliminary study of the law as it stands, we decided that the contractual liability of lessors could be more conveniently dealt with under our project for the codification of the law of landlord and tenant, and that the contractual liability of vendors should be considered separately from their liability in tort. Our work on the contractual liability of vendors of new dwellings has now reached an advanced stage. In the course of our consultations, we have obtained the views of the Ministry of Housing and Local Government.

## **Item VIII. Landlord and Tenant**

### *(a) Waste and distress*

62. At an early stage we decided that it was essential to find out from those having the widest practical experience of the law as it stands how far it meets present-day requirements. Accordingly, in September 1965 a questionnaire on "Waste as between Landlord and Tenant" was sent to 11 Government departments and 39 other bodies. This was designed to elicit views as to:

- (a) what is the present utility of a cause of action for waste; and
- (b) whether it would be an improvement to replace the present law by a simple statutory statement of the basic duties of a tenant (such duties to apply in the absence of contrary terms in the lease).

63. This questionnaire produced sufficient information to enable us to formulate proposals of general application on this last point. Further studies are now in progress concerning certain special categories of lease.

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\* Exemption by Contract from Common Law Liabilities; Civil Liability for Dangerous Things and Activities; Codification of the Law of Landlord and Tenant.

64. It seems desirable that our recommendations on reforming the law of waste should cover not only landlord-tenant relationships, but the whole field in which waste can arise, e.g. settled land and mortgaged land. The practical implications of such an extension are being examined.

65. With regard to distress for rent our first object was to collect information to show whether there was a case for abolishing this remedy; or if it should be retained with modifications, and, if retained, codified. To assess the practical importance of the remedy today (no official statistics being available) required extensive consultation, and this was achieved by means of a further questionnaire; this went to 12 Government departments and 45 professional associations and other bodies. In many cases these circulated the questionnaire widely among their members. The picture emerging from the replies has shown that few landlords distrain, and that the number of distresses levied, if compared with the total number of lettings, is very small indeed.

66. Our interim report on this subject will shortly be submitted. It is our view that, pending the report of the Committee on the Enforcement of Judgment Debts, distress should be retained; but, in the case of dwelling-houses, it should not be used without leave of the court. If, on further consideration, distress were to retain a permanent place in our legal system, this part of the law will have to be modernised and consolidated.

*(b) Codification of the law of landlord and tenant*

67. Our first concern was to delineate the scope of the proposed code and to consider what changes should be made to the existing law before codification. By August 1965 a preliminary draft of an outline code was ready for discussion with representatives of the interested Government departments. Following these discussions and the preparation of provisional proposals for alterations of the law and for codification, a Law Commission Working Party was set up, the membership of which includes representatives of the Law Society, the Bar Council and the Institute of Conveyancers. Monthly meetings have been held since January 1966 for the purposes of which we prepare detailed papers. The list of members is shown in Appendix I. We would like to thank all the members for giving us so much of their valuable time and experience. We would also wish to express our appreciation of the considerable number of reform proposals we have received in response to notices in the legal press. We hope that, before long, the first proposals of the Working Party will be available as a basis for consultation with a wider range of professional and lay opinion.

**Item IX. Transfer of Land**

68. Our examination of the system of conveying unregistered land began with a study of the Title Certificate Scheme which had recently been proposed in a Report to the Council of the Law Society by its Non-Contentious Business Committee. Initially we were much attracted by this scheme, designed as it was to simplify unregistered conveyancing and to facilitate the transfer of titles to the Land Register. Eventually, however, we came to the conclusion that the Government's accelerated programme for the

extension of compulsory registration of title made it inappropriate to introduce a third system of conveyancing with a limited life ; especially as such a system would require legislation and could not therefore be brought into force for some time. Accordingly, in an Interim Report submitted in November 1965 we recommended that the scheme should not be adopted, and your Lordship accepted this recommendation.

69. In response to a request for our advice, we had previously advised your Lordship that certain amendments to the Land Registration Act 1925 might be desirable to facilitate the planned extension of compulsory registration of title. Under the present law, an extension might be held up either by the failure of a local authority to pass the necessary resolution or by such an increase in applications for voluntary registration as would make it impracticable for the Land Registry to carry out the programme. We took the view that the Government would be justified in seeking wider powers to extend the compulsory system and to limit the right to apply for voluntary registration. Our proposals have been adopted in the Government's recently published Land Registration Bill.

70. While acknowledging the benefits to be derived from the land registration system, we had reached the further conclusion that the simplification and modernisation of land transfer necessarily requires improvements in the substantive law. Accordingly in January of this year we recommended that the subject-matter of our inquiry should be widened to cover the whole law relating to transfer of both registered and unregistered land. This recommendation was approved by your Lordship in February.

71. We then embarked on a process of consultation and circulated schedules setting out certain points relevant to the consideration of the following subjects :

- Root of Title
- Restrictive Covenants
- Local Land Charges
- Purchasers' Inquiries
- Land Charges
- Vendors' Duty of Disclosure Affecting Title
- Standard Forms and Implied Covenants.

72. On root of title professional opinion appeared to be in general agreement. Our consultations on this subject have reached an advanced stage and we hope to make a recommendation in the near future.

73. Next, we gave priority to restrictive covenants in view of the publication in July 1965 of the Report of the Committee on Positive Covenants\*. It is obviously desirable that a uniform code of rules should, if possible, apply to positive and restrictive covenants. We invited the Government departments concerned, the Bar Council, the Law Society, the Institute of Conveyancers and the Society of Public Teachers of Law to nominate representatives to join us in discussions. Our invitations were accepted and two meetings were held at which a substantial measure of agreement

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\* 1965 Cmnd. 2719.

on the principles to be applied to restrictive covenants was reached. The names of those taking part in these meetings are given in Appendix I. We expect that our Report will be ready by the end of July 1966.

74. It seems to us that, having regard to the land registration programme, it is desirable to decide as soon as possible what should be the future of the Yorkshire Deeds Registries. We have sounded professional opinion and have concluded discussions with interested parties and our Report is ready for submission to your Lordship. We hope it will be possible so to plan the extension of compulsory land registration to Yorkshire as to allow the Deeds Registries to be run economically until the time comes when their usefulness is exhausted.

75. The Law Society's Working Party on Conveyancing has recently published its Second Interim Report. It covers a large number of subjects and after discussion with representatives of the Working Party we have agreed to undertake further studies on some of the matters (e.g. the provision of a statutory code of standard clauses for introduction into a conveyance by short words of reference) discussed in its Report. In its turn, the Working Party has, at our request, undertaken further to examine certain specific points, e.g. the proposal that the vendor should supply additional information with the draft contract. We are once again indebted to the Law Society and its members for their generous help.

76. Parallel to those studies, we are engaged, with outside assistance, on the examination of some other subjects which are relevant to the general topic; rent charges are a noteworthy case in point. We have had invaluable help from Mr. Humphrey Easton, Sir Philip Dingle and Mr. N. C. O'Brien.

#### **Item X. Family Law**

77. This project envisaged a preliminary examination of matrimonial law, family inheritance and property law, and jurisdiction in family matters. The purpose was to clarify the issues and make proposals as to the agencies which should undertake more detailed inquiries, leading to the eventual enactment of an up-to-date and co-ordinated Code of Family Law.

##### *(a) Matrimonial Law*

78. We have decided to make no attempt to formulate views on such topics as the grounds for divorce and the bars to relief until after the publication of the report of the commission set up by the Archbishop of Canterbury which is examining these questions under the chairmanship of the Bishop of Exeter. This report will be of great value as an indication of the present state of an important and responsible section of public opinion. In the meantime we are collecting and studying the available legal, sociological, and comparative material. In this connection we have received invaluable assistance from many quarters and must express our particular gratitude to the Ontario Law Commission, which sent us copies of the working papers prepared for its Family Law Project, and to the Law Officers and others in Australia and New Zealand who have supplied us with information about the working of the reforms recently carried out in those countries.

79. As regards financial rights and obligations arising out of marriage and its termination, we have made a detailed and critical study of the present law, as found not only in the provisions of the Matrimonial Causes Act 1965 and the Magistrates' Courts (Matrimonial Proceedings) Act 1960, but also in a number of other statutes. Wider consultations will take place before we formulate our proposals.

80. The rules governing the territorial aspect of the jurisdiction of the English courts are being considered together with Item XII.

(b) *Family inheritance and property law*

81. The first work undertaken was in relation to the spouses' rights in the matrimonial home and its contents. This was an urgent matter in view of the decision of the House of Lords in *National Provincial Bank v. Ainsworth* [1965] A.C. 1175. While this study was proceeding, your Lordship expressed a wish for our advice on the questions which arose on a Bill that Baroness Summerskill wished to introduce in the 1965-66 Session. It soon became apparent that we could not in so short a time complete full consultations with the many interests concerned and formulate comprehensive proposals. We agreed, however, to assist with the drafting of a Bill which would give immediate protection to the spouse while avoiding the practical conveyancing difficulties adverted to in the *Ainsworth* case. This we did and a Bill based on our draft was introduced. Having regard to the many other matters requiring attention, we have postponed further consideration of this particular topic for the time being. The debates on Lady Summerskill's Bill should afford us valuable guidance on public opinion.

82. In the light of three recent decisions (*Re Kay* [1965] 1 W.L.R. 1463, *Re Gale* [1966] 2 W.L.R. 571, C.A. and *Re Clayton, deceased* [1966] 1 W.L.R. 969) we made certain proposals to your Lordship (after consulting a number of Her Majesty's Judges and the three representative organisations of the legal profession) for the amendment of the Inheritance (Family Provision) Act 1938 and the comparable provisions (sections 24-26) of the Matrimonial Causes Act 1965. The effect of these proposals has been incorporated into the Family Provision Bill now before Parliament. It is clear, however, that the Inheritance (Family Provision) Act and sections 24-26 of the 1965 Act are in need of drastic overhaul, and a detailed study of them is being initiated.

(c) *Jurisdiction in family matters*

83. On jurisdiction in family matters a working paper has been prepared as a basis for consultation. At this preliminary stage the Commission is favourably inclined to the concentration of High Court jurisdiction in family matters in a single Division. The working paper also sets out a number of considerations to be borne in mind when deciding how family proceedings should be tried in the lower courts. It is not possible, however, for the Commission to complete its preliminary examination of this subject until Government policy concerning related problems in the administration of justice has been clarified.

84. Some preliminary work has also been undertaken on adoption and affiliation proceedings, both of which are in need of reform.

(d) *Powers of the courts to sit in private in family matters*

85. In addition to work on the three branches of Item X listed in the Programme, the Commission was prompted by the decision in *B. (otherwise P.) v. A.-G.* [1966] 2 W.L.R. 58 to institute a study of the powers of the courts to sit in private when hearing legitimacy petitions. Consultation on this matter with Her Majesty's Judges showed that it was also widely felt that there was a pressing need to empower the Court of Appeal to sit in private when hearing an appeal from a judge in chambers, e.g. in a guardianship or wardship case. Your Lordship instructed us to widen the scope of our inquiry to embrace this point. Early in May we circulated our provisional proposals to the three representative organisations of the legal profession and to other interested bodies and individuals. Their comments are being received, and we expect to be able to submit a final report this summer.

**Item XI. Financial Limits on Magistrates' Orders in Domestic and Affiliation Proceedings**

86. We understand that the Home Secretary is about to appoint a committee to consider this matter, as proposed in our First Programme of Law Reform.

**Item XII. Recognition of Foreign Divorce Decrees, Nullity Decrees and Adoptions**

87. We decided to give priority to the recognition of foreign decrees of divorce and nullity. The study of foreign adoptions could, we thought, stand over until a decision is reached by H.M. Government whether to ratify the Hague Convention of 1964 on the recognition of foreign adoptions.

88. By the New Year our team completed its studies, and at that stage we received expert assistance of a kind for which we must express our special gratitude. Dr. J. H. C. Morris of Magdalen College, Oxford, supplied us with an exhaustive memorandum, specially prepared for our use and covering the whole field of Item XII. We have found this work invaluable, and we are deeply indebted to Dr. Morris for his guidance.

89. We had by then reached the conclusion that it was undesirable to deal with the problems concerning the recognition of foreign decrees in isolation from the analogous problems concerning the jurisdiction of the English courts. Accordingly we decided that we should make a combined study of the conflict rules relating to recognition and of the rules governing original jurisdiction.

90. In April 1966 we were invited by your Lordship to take an active part in the preparation of draft instructions for the United Kingdom delegation which will attend the next session of the Special Committee of the Hague Conference, when a revised Draft Convention on the Recognition of Foreign Decrees of Divorce and Legal Separation is to be considered. For the purpose of considering and drafting these instructions your Lordship

set up a special Working Party under the chairmanship of the Chairman of our Commission. The composition of this Working Party is shown in Appendix I.

91. The Working Party hopes to report by the end of June 1966. Its report may well serve as the basis of our own interim report on Item XII.

### **Item XIII. Imputed Criminal Intent (*D.P.P. v. Smith*)**

92. The decision of the House of Lords in *Director of Public Prosecutions v. Smith* [1961] A.C. 290 raised important questions, first as to the method of proof of intent, not only in murder but throughout the criminal law and, secondly, as to the nature of the intent required in murder.

93. There are in the speech delivered by Lord Kilmuir in the House of Lords observations to the effect that the test of intent in murder should be objective, namely that once "an ordinary man capable of reasoning" would, in the position of the accused, have foreseen the result of the accused's actions, then such foresight should be imputed to the accused, irrespective of his actual intent at the time.

94. Since *D.P.P. v. Smith*, cases concerned with offences other than murder suggest that the objective approach to intent is confined to the charge of murder. Nevertheless at an early stage in our investigations we decided, after preliminary consultation with the Law Officers, the Director of Public Prosecutions and the Home Office, that it would be desirable for us to consider the proof of intent not only in murder but in the criminal law generally. This decision was welcomed by all those who were subsequently consulted.

95. In *D.P.P. v. Smith* the House of Lords also confirmed the decision of the Court of Criminal Appeal in *Regina v. Vickers* [1957] 2 Q.B. 664 that a killing amounts to murder if there is an intent to kill or to inflict grievous bodily harm.

96. Following an examination of our own law and of comparative material, we formulated provisional proposals on these two aspects of *D.P.P. v. Smith* and obtained the comments of the Lord Chief Justice (who had consulted other Judges), the Law Officers and the Director of Public Prosecutions, the Home Office, members of the Bar practising in the criminal courts (whose views were made available through the Bar Council), the Law Society and the Society of Public Teachers of Law. We have now prepared a report, taking into account the results of all these consultations, which we are about to submit to your Lordship with a draft Bill.

### **Item XIV. Common Law Misdemeanours ; Crime of Conspiracy**

97. As recommended in our First Programme, the Home Secretary has referred the matters comprised in this item to the Criminal Law Revision Committee.

### **Item XV. Miscellaneous Matters involving Anomalies, Obsolescent Principles or Archaic Procedures**

98. The individual topics mentioned below were included in our First Programme as possible examples of parts of English law, resting on social

assumptions no longer valid or involving archaic procedures, which call for critical attention.

(a) *Actions for loss of services, loss of consortium, seduction and enticement*

99. We have almost concluded our consultations on this subject and we hope soon to be able to submit proposals.

(b) *Breach of promise of marriage and damages for adultery*

100. We decided to defer recommending any change in the law relating to claims for damages for adultery until this could be considered with the main questions of family law (Item X). The subject forms part of the study referred to in paragraph 79.

101. We have consulted with both legal and lay organisations on the question of abolishing the cause of action for breach of promise of marriage, and we expect to submit proposals on this subject and allied matters very shortly.

(c) *Actions for pound-breach, rescous and replevin*

102. After making a preliminary study, we decided to defer consideration of replevin pending decisions on the law of distress and to exclude from the proposals on pound-breach and rescous the impounding of cattle straying on the highway and distress as a form of judicial execution. We reached these decisions after consultation with the Government departments concerned.

103. We have since consulted with the Bar Council, the Law Society and the Society of Public Teachers of Law to ascertain their views on our provisional proposals. Before long we hope to submit a report.

(d) *The tort and crime of maintenance*

104. This is another subject on which we have concluded consultations with the organisations of the legal profession. We have a draft Bill and report in preparation.

(e) *Obsolete crimes*

105. The Criminal Law Revision Committee recommended in their Seventh Report\* the repeal in whole or part of certain obsolete or unnecessary enactments. In paragraph 70 of their Report the Committee suggested that the abolition of all save one of the praemunire offences should be considered. The Commission has considered these and also various other ancient and obsolete statutory and common law crimes which could conveniently be abolished prior to a general examination of the criminal law. We have recently submitted proposals and a draft Bill to your Lordship.

**Item XVI. Judicature Act (Northern Ireland)**

106. We recommended the setting up of a committee with the following terms of reference :—

“Pursuant to Item XVI of the Law Commission’s First Programme, to examine the law applicable to the Supreme Court of Judicature

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\* 1965, Cmnd. 2659; Part I of Schedule 3 of the draft Bill appended to the Report.

of Northern Ireland and, taking into consideration *inter alia* the Report of the Shiel Committee (Cmd. 227) and the extent to which its recommendations have been implemented, to make recommendations.”

In March of this year your Lordship appointed a committee under the chairmanship of Lord MacDermott, the Lord Chief Justice of Northern Ireland.

#### **Item XVII. Interpretation of Statutes**

107. In proposing this as a subject for examination we had in mind the problems which have arisen in the communication of the intentions of the law-makers and in the interpretation of those intentions by the courts. These problems have been intensified in recent years by the volume and complexity of modern statute law and have given rise to questions about the proper role of the courts: how far and in what circumstances they should look beyond the precise letter to the spirit of the statute law; and to what extent they should be required to give to the language of a statute a meaning which the legislature refrained, either by design or oversight, from expressing. These in their turn have opened up other questions concerning the application to statutory language of modern studies in the communication of meaning and the extent to which legislative history and other material extraneous to the text of a statute should be invoked as aids to its interpretation.

108. Our primary material has been the experience of courts in the United Kingdom, but we have found it necessary to study also the experience of Commonwealth and other countries. In particular, we have sought to discover how far the attempt made in some Commonwealth countries to require a “liberal” interpretation of statutes has met with success. In this we have received very ready and valuable co-operation from Commonwealth Law Officers and draftsmen as well as from the Commonwealth Legal Advisory Service of the British Institute of International and Comparative Law. A study has also been made of the interpretation of statutes in a number of non-Commonwealth countries, with particular reference to the extensive use of legislative history and other extraneous materials in the United States and to the role of *travaux préparatoires* in continental Europe. We are much indebted for the generous help received from distinguished foreign judges and practising and academic lawyers.

109. Considerable assistance was obtained from a seminar held at All Souls College, Oxford, on 20th and 21st May 1966, the second occasion upon which the Commission benefited in this way from the hospitality of the Warden and Fellows of the College. In addition to representatives of the Commission the seminar was attended by a Lord of Appeal and a High Court Judge, a former President of the Paris Court of Appeal, two American professors of law (one of whom had extensive practical experience of drafting statutes in the United States), a university lecturer in politics, the Second Parliamentary Counsel, and a number of practising and academic lawyers. We had prepared a detailed working paper for the purpose of focusing discussion.

110. Reference was made in our First Programme to the special problems which arise in the interpretation of legislation implementing international conventions. We have carried out a preliminary survey of this matter in

consultation with the legal advisers to the Foreign Office. It was considered, however, that some of the questions which arise in this field should await the outcome of the work now being carried out by the International Law Commission on the interpretation of treaties.

111. We are aware that the problems to which the interpretation of statutes gives rise are closely connected with those of legislative drafting and the form of the Statute Book. We have therefore set up an informal study group representing the Office of Parliamentary Counsel and the Law Commission to consider these matters. We are greatly indebted to Mr. F. A. R. Bennion for a detailed and thought-provoking memorandum on the Form and Publication of Statute Law.

112. The interpretation of statutes as a subject for law reform cannot of its nature be a short-term study. The field of research must be wide, and in considering possible changes much practical experience needs to be drawn upon. When therefore the present phase of preliminary studies is completed, it will be necessary for us to engage in far-reaching consultations before we can formulate our final conclusions.

### THE FIRST PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

113. We are under a statutory duty to frame our reform proposals in legislative form wherever this is appropriate and to take responsibility for the consolidation and revision of the Statute Book; and to this end we have a specialist wing in the draftsmen transferred from the Office of Parliamentary Counsel. At this point, we would like to make certain general observations on the nature of their work.

#### **The Role of Parliamentary Draftsmen**

114. Our draftsmen represent in effect a redeployment of the separate branch set up some 20 years ago inside the Parliamentary Counsel Office to handle consolidation. The past practice has been for individual draftsmen to move at regular intervals from programme work to consolidation and back again; equally, the draftsmen now with the Commission will in due course return to programme work in the Parliamentary Counsel Office and be replaced by others.

115. The draftsmen with the Commission must continue to carry the main burden of consolidation—essentially a task for the specialist. But they are also engaged, and will be increasingly engaged, with law reform. Here there is a departure from the ordinary practice of the past, under which the draftsmen have been separated from the bodies responsible for formulating policy and presenting it to the draftsmen in the form of instructions. The presence of draftsmen makes possible, if not a fusion of policy-making and drafting, at least an earlier and closer commerce between them and a less rigid division of functions. Draftsmen have, for instance, been taking a regular share in the work of the teams engaged on Items VIII\* and X† in our First Programme of Law Reform.

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\* Landlord and Tenant.

† Family Law.

116. How this will develop, it is as yet too soon to say, but it is clear that, for the legislation giving effect to our proposals for law reform as well as a continued and expanded programme of consolidation and statute law revision, the Commission's present staff of four draftsmen will not suffice.

117. In fact there are in all the equivalent of five, rather than four, draftsmen engaged on work for which the Commission is responsible: a substantial amount of consolidation has always been done by Parliamentary Counsel not actually assigned to the Consolidation Branch, and this is continuing at a higher rate than before. That, however, is no answer to the manpower problem; nor would it be a complete answer for the Commission to recruit its own draftsmen, since part of the contribution the draftsmen make to the Commission's work depends on their previous training as specialists in legislation. If, as suggested above, they may specialise less during their tours with the Commission, this will be because that proves the best way to apply their expertise.

118. There must therefore be an addition to our demands on the Parliamentary Counsel Office, and an increase has in fact been authorised in our complement of draftsmen.

#### **Consolidation : antecedents of the Programme**

119. The transfer to us of responsibility for consolidation happened to come at a moment when the output of consolidation Bills in the Parliamentary Counsel Office had just passed the crest of a wave. Moreover, several items on which work had been finished or all but finished had to be put aside in view of the impending introduction of amending legislation. This has resulted in some temporary slowing down of consolidation.

120. In the result the Mines (Working Facilities and Support) Act 1966 was the only consolidation Act passed before the General Election of March 1966. Since then four Bills have been introduced\* and it is hoped that an additional four Bills† will be ready for introduction before Christmas 1966. These Bills have been undertaken pursuant to decisions which preceded the setting up of the Law Commission.

#### **Consolidation : contents of the Programme**

121. We have put in hand the drafting of two Bills which were not included in the Programme, an Air Corporations Bill and a Teachers' Superannuation Bill, as it was convenient to consolidate the law following recent amending legislation. We hope to have these two Bills ready for introduction by the end of the year. On the items which we selected for the Programme as in urgent need of consolidation we are glad to report that we have made considerable progress with the consolidation of the Rent Acts and the Acts relating to moneylenders and pawnbrokers. We have begun work on the Road Traffic Acts.

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\* A Sea Fisheries Regulation Bill (one of two Bills dealing with inshore fishing), a Hire Purchase Advertisements Bill, a Forestry Bill and a Plant Health Bill (covering the Destructive Insects and Pests Acts 1877 to 1927).

† A Sea Fisheries (Shellfish) Bill (the other of the two Bills dealing with inshore fishing), a Sea Fish Industry (Conservation) Bill, a Firearms Bill and an Industrial Injuries and Diseases (Old Cases) Bill.

122. Progress with the taxing statutes has been disappointing. The ever present difficulties, namely the chronic congestion of work in the Inland Revenue department and the shortage of Parliamentary draftsmen, have been aggravated since January by the dislocations arising from the General Election, a new Session, and a late Finance Bill. We decided to adopt a course which, though it involved the acceptance of a measure of initial delay, offered the best chance of ultimate progress. We have given priority, as the Programme requires, to the Income Tax Acts. We decided, in agreement with the First Parliamentary Counsel and the Inland Revenue, to adopt the procedure used for the last consolidation in 1952, namely to have the work done in the Parliamentary Counsel Office by the draftsmen currently handling income tax in the Finance Bills. A start has not yet been made with estate duty or the Stamp Acts, but we intend as soon as we can to resume on estate duty the work which was begun but put aside some years ago. It is with regret that we have to report in these terms. In present circumstances and with existing resources it is the best we can do. It may be that in order to achieve results we shall have to recommend an expansion of resources and fundamental changes in method. If the necessity for such changes arises, we shall say so: meanwhile we shall watch closely the rate of progress that is in fact made during the coming year.

### **Statute Law Revision**

123. A good deal of work has also been done and it is hoped that, by combining revision with a modicum of re-enactment and by the sweeping away of some archaic rules of the common law, it will be possible to get rid of a great many early statutes that could not be repealed using the past techniques of statute law revision.

124. As indicated in the Programme, our basic approach has been chronological and the survey and preliminary proposals for repeal have been brought up to 1531. However, the consideration of an early Act on any subject cannot be separated from consideration of later Acts on the same or related subjects, and the chronological approach is thus necessarily combined with some consideration of the Statute Book by subjects. The repeals we have under consideration in fact include considerable bodies of statute law of much later date than that mentioned above. This is, however, a task that involves a good deal of research and consultation.

## PART III

### LESSONS OF THE FIRST YEAR

125. Under this heading we will touch upon two subjects. One is the growing interest in the reform of English law ; this is demonstrated by an increasing flow of suggestions for the improvement of the law, the encouraging attention of the press, the number of distinguished lawyers who have established personal contact with us, and the constant demand, by no means confined to this country, for information about our work.

126. The second subject of this final Part of our Report concerns some conclusions we feel able to draw from our initial experience.

#### **Law Reform Proposals**

127. We have issued no formal invitation to either the legal profession or the public at large to submit proposals for our consideration. It gives us all the greater satisfaction to be able to report that members of the public, as well as members of the profession, have nevertheless come to us with their suggestions.

128. During our first year we have received a total of 632 law reform proposals. Some details of these are given in Appendix II. Of all proposals received, 38 per cent are under consideration within the scope of the law reform programme ; a further 40 per cent have been examined and deferred for later consideration ; 17 per cent have been referred to Government departments or other agencies as coming within their terms of reference rather than our own. On no more than 5 per cent of the proposals have we found that no action could appropriately be taken.

129. Appendix II gives some little guidance (in view of the relative smallness of the sample we would not put it higher than that) as to the subjects in regard to which there is a definite demand for reform. We have received 108 proposals on land law and landlord and tenant. There were 83 proposals on family law, 65 on the jurisdiction and procedure of the courts generally, 59 on criminal law, 43 on road traffic law, and 22 on the law of contract. The remaining 252 proposals covered a wide range of other subjects.

130. Concerning the sources from which the proposals came: 58 per cent were supplied by the legal profession (including the Bar Council, the Law Society, local Law Societies, the Society of Public Teachers of Law, Justice, lawyers in private practice and lawyers in Government departments) ; 24 per cent came from individual members of the public ; 8 per cent from organisations outside the legal profession ; and 10 per cent were found in articles and correspondence in the legal and lay press.

#### **The Help of the Press**

131. We have been encouraged by the wide publicity given by the press generally to the discussion of law reform problems. We are particularly indebted to the editors of the legal journals for their lively interest.

## **Public Relations**

132. Much interest has been shown in our work by universities and other academic and professional institutions in this country and abroad ; during the period under review the Chairman and other members of the Commission have received, and tried to do justice to, many invitations to speak about our work and its different aspects.

133. We were represented by one Commissioner on the United Kingdom delegation to the Fourth Conference of European Ministers of Justice (Berlin, 25th-27th May 1966). We have been gratified to find a ready response to our submission that law reform must be considered as a permanent enterprise requiring continuous co-operation among States and to the practical ways we suggested for strengthening the machinery of co-operation. It will be our policy to keep in close contact with the work of law reform agencies in other countries, and to make full use of the facilities offered by the legal committees of the Council of Europe, the International Institute for the Unification of Private Law in Rome, and by various other international organisations. We have already acknowledged our indebtedness to others for their publications.

134. Among our overseas visitors were : Judges Ellenbogen, Friendly and Waterman from the United States ; the Hon. B. M. Snedden, Q.C., the Attorney-General of the Commonwealth of Australia, accompanied by Mr. E. J. Hook and Mr. R. M. Bannerman of the Law Officers' Department ; Mr. B. O. Kazeem, the Solicitor-General of the Republic of Nigeria ; Mr. J. Kokia, Director-General of the Israeli Ministry of Justice ; Dean Mulligan of Fordham University, New York ; Professors Alexeev of Leningrad University, Reed Dickerson of Indiana University, Delmar Karlen of the Institute of Judicial Administration, New York University, and Manfred Lachs of Warsaw University. We also received State Counsellor Mario Matteucci, Secretary-General of the International Institute for the Unification of Private Law, Rome ; a party of distinguished Brazilian lawyers led by Senhor Ministro Vitor Nunes Leal ; a delegation of distinguished Russian lawyers led by Mr. A. N. Mishutin, the President of the Judicial Committee of the U.S.S.R. Council of Ministers ; the Honourable James C. McRuer, Chairman of the Ontario Law Reform Commission ; Mr. D. Cumbrae-Stewart, Second Parliamentary Counsel, Tasmania ; and Mr. Ronald Walker of the New South Wales Law Reform Commission.

## **The Future of Law Reform**

135. The more important lessons for the future learned during the first year of the Commission's existence are two : that haste is the enemy of sound law reform and that law reform must concern itself as much with the form, arrangement and procedures of the law as with its substance.

136. All too often quick law reform can only be achieved at the sacrifice of research and consultation. Yet research and consultation are the indispensable techniques. Each requires the co-operation of busy people outside the Commission and must therefore take time. The necessity for legal research, to be undertaken by others as well as by the Commission, and of consultation with all branches of the profession is too obvious to call for comment ;

but the Commission is glad of the opportunity of its first Annual Report to acknowledge gratefully the debt that it owes to the Judges, the two branches of the practising profession, the academic profession, lawyers in Government departments and especially those in your Lordship's Office and the First Parliamentary Counsel. We have received abundant help unstintingly given. Some of those who have helped us have been mentioned, but so very many others have placed us in their debt that it is not possible to name them all. Yet it is precisely this invaluable co-operation that enables the Commission to act as a focus of professional opinion upon the problems of law reform and statute revision, thereby ensuring that measures of law reform will not go forward unseen or untested by the profession.

137. But research and consultation are not to be limited to contact with lawyers. If law reform is to be more than an academic exercise, if the Commission's proposals are to be relevant to the needs of the community, research has to range more widely than over the professional field alone and must probe deep. Consultation must develop not only with lawyers but with laymen; increasing use must be made of the processes of investigation being evolved by the social sciences and by commerce. For instance, it would have been unreal to seek a solution of the problem of exemption clauses merely by studying the career in the Court of Appeal and the House of Lords of the so-called doctrine of fundamental breach; or to consider the future of personal injury litigation without the help of the trade unions and the insurers. The grass roots of law reform are to be sought elsewhere than in the field of law. We have tried, and will continue, to develop our own techniques of research and consultation so as to ensure that in formulating our proposals we shall take into consideration lay as well as lawyers' criticisms of the law as it is, lay as well as professional suggestions for its reform, lay as well as professional habits of thought and action in the fields of our studies. Nor can we afford to overlook the help which modern technology can give to the reform of the law, and for this reason we have given initial thought to the possible uses of computers.

138. Throughout the year we have been greatly impressed by representations made to us formally and informally by solicitors and laymen. It is the solicitor, in his day-to-day practice, who is made constantly aware of cumbersome legal procedures and whose time is unnecessarily consumed by the archaic arrangement of the law: there is also the frustration he experiences by reason of the form in which so many laws are cast. The layman, for his part, sees the law in action but relies on others for advice as to its substance. He may have little knowledge of, for example, the problem of consideration in the law of contract and he wisely keeps his mouth shut, but he has first-hand knowledge of the expense and the delays of the legal process: he is the sufferer and would probably be more vocal if he resorted to the courts more often. We have particularly taken to heart the layman's call for a review of English legal procedure and his lament over its costs and delays. At our request Master I. H. Jacob, Professor Wheatcroft and Professor Lord Lloyd of Hampstead supplied us with a detailed memorandum on the Scope of Possible Review in Civil Procedure. This will be immensely valuable to us in considering possible topics for inclusion in a second programme, and we are greatly indebted to them.

139. The solicitor has perhaps the best opportunity of any in the community of forming a judgment as to the form, arrangement and comprehensibility of the law : he has to find it, understand it, and explain it quickly. He often has no opportunity for reflection. The Commission has been impressed with the powerful current of criticism evident at meetings of local law societies throughout the land as to the form of the Statute Book, its arrangement and the drafting of its provisions. The Statute Book represents one of the most intractable problems with which the Commission is faced. Parliament has imposed upon the Commission the duty of simplifying and modernising the law : the Commission is commanded to consider in particular codification, the repeal of obsolete and unnecessary enactments and the reduction of the number of separate enactments. The problem is neither new nor purely legal. Parliament, Government departments, Ministers, individual Members of Parliament, and Parliamentary draftsmen all play significant parts in the legislative process which places Acts of Parliament in the Statute Book. The Commission may be regarded as the latest recruit to the determined but indeterminate band of cooks stirring the legislative broth. It proposes to look at the Statute Book from the point of view of those whose lives and businesses it regulates. There is no doubt what they want—its drastic revision and re-arrangement. We have made our own start in the limited fields of statute law revision and consolidation. An intensive study of the long-term problems has been initiated, but it would be idle to pretend that any significant results are likely to be achieved without reforms of Parliamentary and Governmental procedures, and a major increase in the numbers of able lawyers prepared to dedicate their professional careers to the public service.

140. In the field of law reform the Commission is an advisory body possessing a right of initiative. Action in this field remains the responsibility of Parliament and the Government. Yet in the exercise of our statutory duty to take and keep the law under review with a view to its systematic development and reform and in the preparation of further programmes we have always to be planning ahead. We see our future as follows. We will press forward with our approved programmes of law reform and statute law consolidation and revision. We will watch out for anomalies and defects in the law revealed in the day-to-day deliberations of Parliament, the decisions of the courts and the comments of the press, as well as in the representations made to us directly, recommending reform where we think this course is appropriate. We will think ahead about topics which found no place in the First Programme, such as the machinery of justice and the whole field of public law, in preparation for the day when they can be brought under the close scrutiny they undoubtedly require.

141. The Commission is into its stride and the time is approaching when we shall be submitting a substantial number of proposals for legislation. These will vary in scale and complexity from the remedial response, which might well deal only with a minor anomaly suitable for inclusion, if the Government should think fit, in a Miscellaneous Provisions Bill, to a measure of major codification, e.g. a contract code. We shall make every effort to have a flow of proposals ready in the hope that Parliamentary time will be found for such of them as are approved.

142. One final comment remains to be made. The Act requires the Commission to keep the law under review with a view to its systematic development and reform. We will endeavour to pursue our labours so that over the years there may emerge a law which in its form, procedures, and substance is relevant to the needs of our times, is in harmony with the law of Scotland and other systems, is adjusted to our international obligations, and yet retains the faculty of growth through application to particular cases which is the hallmark of the common law. Our ultimate goal is the development and reform of the English law as a whole. We must build brick by brick ; but each brick must fit into a coherent structure.

(Signed) LESLIE SCARMAN, *Chairman.*  
L. C. B. GOWER.  
NEIL LAWSON.  
NORMAN S. MARSH.  
ANDREW MARTIN.

HUME BOGGIS-ROLFE, *Secretary.*

16th June 1966.

## APPENDIX I

### MEMBERSHIP OF WORKING PARTIES

#### (1) Working Party on Exemption by Provisions in Contracts (see paragraph 36)

Joint Chairmen:	The Hon. Lord Kilbrandon Mr. Andrew Martin, Q.C.
Members, other than representatives of the Law Commission and the Scottish Law Commission:	Mrs. E. L. K. Sinclair (Board of Trade) Miss G. M. E. White (Board of Trade) Mr. J. A. Beaton (Scottish Office) Mr. J. B. Sweetman (Treasury Procurement Policy Committee) * Mr. Stephen Terrell, Q.C. (The Bar Council) * Mr. Peter Maxwell, Q.C. (The Faculty of Advocates) * Mr. W. M. H. Williams (The Law Society) * Mr. G. R. H. Reid (The Law Society of Scotland) * Mr. R. G. Scriven (Association of British Chambers of Commerce) * Mr. W. E. Bennett (The Confederation of British Industry) * Mr. Gordon Borrie (The Consumer Council) * Mrs Beryl Diamond (The Consumer Council) * Mr. R. G. Greene (The Law Commission)
Secretary:	

\* appointed after consultation with the organisations shown in brackets

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#### (2) Working Party on Codification of the Law of Landlord and Tenant (see paragraph 67)

Chairman:	Mr. Neil Lawson, Q.C.
Deputy Chairman:	Mr. A. Stapleton Cotton
Members, other than representatives of the Law Commission:	Mr. E. A. K. Ridley (Treasury Solicitor's Department) Mr. M. J. Albery, Q.C. (The Institute of Conveyancers)
Alternate	{ Mr. L. A. Blundell, Q.C. (The Bar Council) Mr. V. G. Wellings (The Bar Council)
Alternate	{ Mr. R. H. Bernstein (The Bar Council) Mr. J. T. Plume (The Bar Council) Mr. E. F. George (The Law Society) Mr. C. F. Wegg-Prosser (The Law Society)
Secretary:	Mr. D. Lloyd Evans (The Law Commission)

(3) Consultative Group on Restrictive Covenants (see paragraph 73)

Chairman: Mr. Neil Lawson, Q.C.

Deputy Chairman: Mr. A. Stapleton Cotton

Members, other than representatives of the Law Commission:

- Mr. E. A. K. Ridley (Treasury Solicitor's Department)
- Mr. K. M. Newman (Lord Chancellor's Office)
- Mr. T. I. Casswell (Land Registry)
- Mr. G. H. Newsom, Q.C. (The Institute of Conveyancers)
- Mr. V. G. H. Hallett (The Bar Council)
- Mr. E. G. Nugee (The Bar Council)
- Mr. L. D. Bonsall (The Law Society)
- Mr. A. L. Delin (The Law Society)
- Mr. R. A. Donell (The Law Society)
- Mr. C. M. R. Peacock (The Law Society)
- Mr. J. R. Bonham (The Law Society)
- Professor F. R. Crane (The Society of Public Teachers of Law)
- Professor H. W. R. Wade (The Society of Public Teachers of Law)

Secretary: Mr. R. H. Widdows (The Law Commission)

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(4) Working Party on the Hague Draft Convention on the Recognition of Foreign Decrees of Divorce and Legal Separation (see paragraph 90):

Chairman: The Hon. Mr. Justice Scarman

Deputy Chairman: Mr. Andrew Martin, Q.C.

Members, other than representatives of the Law Commission:

- Professor A. E. Anton
- Mr. J. W. Bourne (Lord Chancellor's Office)
- Professor R. H. Graveson, Q.C.
- Dr. F. A. Mann

Alternate {

- Mr. A. C. B. Reid (The Lord Advocate's Department)
- Mr. J. H. Gibson, Q.C. (The Lord Advocate's Department)
- Mr. H. V. Richardson (Foreign Office)

Consultant: Dr. J. H. C. Morris

Secretary: Mr. H. Knorpel (The Law Commission)

Assistant Secretary: Mr. I. D. Turner (The Law Commission)

APPENDIX II

LAW REFORM PROPOSALS

RECEIVED UP TO 15TH JUNE 1966

(A) Summary of action taken on proposals received (see paragraph 128)

Proposals under study within the First Programme . . . . .	243
Proposals examined and deferred for consideration later . . . . .	252
Proposals referred to other departments, committees, etc. . . . .	107
Proposals discussed by the Commission and agreed no further action should be taken . . . . .	30
	—
Total . . . . .	632
	—

(B) Breakdown of proposals by main subject heads (see paragraph 129)

Land Law . . . . .	91
Family Law . . . . .	83
Jurisdiction and procedure of the courts . . . . .	65
Criminal Law . . . . .	59
Road Traffic . . . . .	43
Contract . . . . .	22
Landlord and Tenant . . . . .	17
Ranging over 71 various subjects . . . . .	252
	—
Total . . . . .	632
	—

(C) Summary of sources of proposals received (see paragraph 130)

The legal profession . . . . .	360 (for details see Note (i) below)
The public . . . . .	151
Organisations outside the legal profession . . . . .	51 (for details see Note (ii) below)
The legal and general press . . . . .	65
Miscellaneous sources . . . . .	5
	—
Total . . . . .	632
	—

Note (i): The Legal profession

Solicitors . . . . .	85
The Law Society . . . . .	73
Barristers . . . . .	44
County Court Judges . . . . .	35
The Inns of Court Conservative and Unionist Society . . . . .	16
University teachers of law . . . . .	15
Government departments . . . . .	14
The Bar Council . . . . .	13
“ Justice ” . . . . .	13
The Bar Association for Commerce, Finance and Industry . . . . .	12
The Law Reform Committee . . . . .	11
High Court Judges . . . . .	6
The Society of Public Teachers of Law . . . . .	5
Holborn Law Society . . . . .	5
Masters of the Supreme Court . . . . .	2
Scottish Law Commission . . . . .	2
Chief Probate Registrar . . . . .	2
Clerks to Justices . . . . .	2
British Legal Association . . . . .	2
The Interdepartmental Committee on the Court of Criminal Appeal . . . . .	1
The Committee on Conflicts of Jurisdiction affecting Children . . . . .	1
Pennsylvania Bar Association . . . . .	1
<b>Total . . . . .</b>	<b>360</b>

Note (ii): Organisations outside the legal profession

Abortion Law Reform Association . . . . .	1
Amalgamated Slaters, Tilers and Roofing Operatives . . . . .	1
Amalgamated Union of Building Trade Workers . . . . .	1
Association of British Plywood and Veneer Manufacturers . . . . .	1
Association of Municipal Corporations . . . . .	1
British Academy of Forensic Science . . . . .	9
British Manufacturers' Agents Association . . . . .	1
Confederation of British Industry . . . . .	2
Married Women's Association . . . . .	6
National Council for Civil Liberties . . . . .	2
National Council for the Unmarried Mother and Her Child . . . . .	9
National Union of Townwomen's Guilds . . . . .	1
Rediffusion Television Limited . . . . .	1
Rural District Councils Association . . . . .	1
The Building Societies Association . . . . .	3
The Co-operative Party . . . . .	1
The Hop Merchants' Association . . . . .	1
The Josephine Butler Society . . . . .	3
The National Assembly of the Church of England, Board for Social Responsibility . . . . .	1
The National Secular Society . . . . .	2
The People's Committee for Legal Reform . . . . .	1
Women's Liberal Federation . . . . .	2
<b>Total . . . . .</b>	<b>51</b>

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