

# **THE LAW COMMISSION**

(LAW COM No 310)

## **ANNUAL REPORT 2007–08**

### **The Forty-Second 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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*Ordered by The House of Commons to be printed  
10 June 2008*

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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 Honourable Mr Justice Etherton, *Chairman*  
Stuart Bridge  
David Hertzell  
Professor Jeremy Horder  
Kenneth Parker QC

Special Consultant:           Professor Martin Partington CBE, QC

Chief Executive:               William Arnold<sup>1</sup>

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



The Law Commission (from left to right)  
Standing: Kenneth Parker           Stuart Bridge           David Hertzell  
Seated: William Arnold           Sir Terence Etherton   Jeremy Horder

The terms of this report were agreed on 21 May 2008.

The text of this report is available on the Internet at: [http://www.lawcom.gov.uk/ann\\_reports.htm](http://www.lawcom.gov.uk/ann_reports.htm).

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<sup>1</sup> William Arnold succeeded Steve Humphreys as Interim Chief Executive in January 2008.

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# LAW COMMISSION ANNUAL REPORT 2007-08

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

## **A Note from the Chairman**

We are proud to present the Law Commission's 42nd Annual Report. The period since the last annual report has been eventful and important. It has seen the most significant development in the relationship between the Commission, Parliament and Government since the Commission's inception in 1965.

In March 2008, in a statement to Parliament on the Constitutional Renewal White Paper, the Lord Chancellor praised the Law Commission for the vital role that it has played for 40 years in promoting good law. He also announced his intention to strengthen the role of the Commission by placing a statutory duty on the Lord Chancellor to report annually to Parliament on the Government's

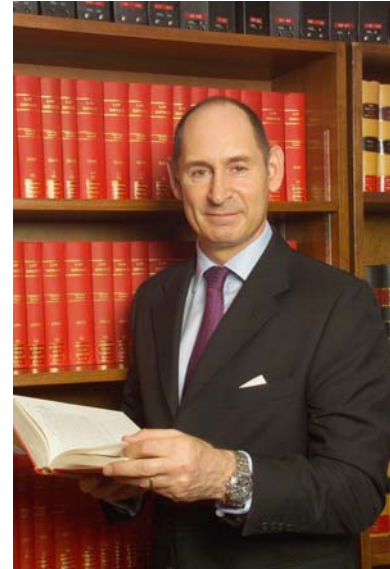
intentions regarding outstanding Law Commission recommendations, and providing statutory backing to the arrangements underpinning the way Government works with the Law Commission.

On 3 April 2008 the House of Lords approved a new procedure for uncontroversial Law Commission Bills, under which a significant part of the legislative process in the Lords would be taken in Committee off the floor of the House.

In April 2008 a new management structure was introduced in the Ministry of Justice, under which one of five new groups is the Democracy, Constitution and Law Group. The sponsorship functions of the Department will now be located in that Group. The new Group has explicit responsibility for the role of law, law reform, and government legal policy. This marks a potentially exciting new period for law reform, with the possibility of an innovative use of the joint resources of the Department and the Commission to achieve better and more accessible law.

The importance attributed by Government to the role of the Commission and its independence was also reflected in the provision in the Tribunals, Courts and Enforcement Act 2007 that the chairman of the Commission must be a judge of the High Court or of the Court of Appeal.

Since the last annual report the Government has reacted favourably to a number of our past reports. After a delay of 16 years since their first publication, our 1990 recommendations on landlord's distress for rent were substantially carried into the Tribunals, Courts and Enforcement Act 2007. The recommendations in our 2006 report "Inchoate Liability for Assisting and Encouraging Crime" were substantially incorporated in the Serious Crime Act 2007. Further, our report on Post Legislative



**Sir Terence Etherton**



Scrutiny, supervised by our former Chairman, Sir Roger Toulson, was acknowledged by the Leader of the House of Commons as significantly informing the Government's proposal for a new process of post-legislative scrutiny in its Command Paper presented to Parliament in March 2008.

This year we have published 7 consultation papers and 1 issues paper and have presented 4 reports to Government. Our report "Cohabitation: the financial consequences of relationship breakdown" received a great deal of media attention on publication in July 2007. We recommended legal remedies for cohabitants which would provide proportionate protection, but which are quite distinct from divorce. The Government informed us in February that it wishes to consider the costs and benefits of the scheme for cohabitants which exists under Scottish law before making a decision on our proposals.

Another major project for us in the last year was our review of insurance law. We launched a consultation on misrepresentation, non-disclosure, and breach of warranty in July 2007, and received an impressive 105 responses. During the consultation process we were involved in an innovative "mock trial" initiative which allowed us to examine the impact of our proposals for law reform in a courtroom setting. This was jointly hosted by the Law Commission and the British Insurance Law Association and involved a number of key stakeholders. In view of the great success of this event, we will consider repeating this type of event in the future.

We were sorry to say goodbye to Professor Hugh Beale in July 2007. Hugh was the lead Commissioner on Commercial and Common Law. He led a number of major projects for the Commission in his time with us, including the Insurance Law project. Work on this is being taken forward by David Hertzell, our latest Commissioner, who joined us from Davies Arnold Cooper in July 2007. His considerable expertise, both generally as an experienced solicitor and in particular as one who has long practised in the insurance field, is of great value to the Commission.

We were also sad to see the departure of our Chief Executive Steve Humphreys who left us to become interim Director of the Judicial Office in the Royal Courts of Justice in the Ministry of Justice. William Arnold has been ably holding the reins as interim Chief Executive since January 2008.

We were delighted that one of our former Commissioners, Professor Martin Partington, who is currently assisting the Commission in completing its major review of housing law, was made an Honorary Queen's Counsel in 2008 for, among other things, his outstanding work for the Commission over many years.

One of the highlights of the year was the second "Scarman Lecture", which we hosted in Lincoln's Inn on 13 February. This tradition was established two years ago in memory of the first Law Commission Chairman, Sir Leslie (later Lord) Scarman.



**Professor Aharon Barak with the Chairman**

This year, our guest speaker was Professor Aharon Barak, the former President of the Supreme Court of Israel and internationally acclaimed legal commentator, who spoke on “Human Rights and the Battle on Terror – a Judicial Point of View”. The event attracted a near capacity audience in excess of 300, and many more requests for tickets. The lecture is available on our website, and a DVD recording is available on request.

In May 2008 the Lord Chancellor approved our Tenth Programme of Law Reform. This programme is the result of over a year of wide consultation and thorough analysis and will deliver a package of proposals which could have profound effects on society, including subjects such as adult social care, marital property contracts and simplification of the criminal law. The full list of projects can be found on our website at <http://www.lawcom.gov.uk/programmes.htm>.

I began this introduction by declaring my pride in presenting this report. The matters I have described, and the contents of the rest of this Report, bear witness to the commitment of the Commissioners and all our staff to the vision of our founders: the promotion of the right of the citizen to law which is accessible, intelligible and in accordance with modern needs by a permanent independent body tasked to keep the law under review. I feel privileged to be leading the Commission into the Tenth Programme with staff of outstanding ability, a strong commitment from Government to enhance our constitutional role, and structural changes in our relationship with Parliament, the Ministry of Justice, and the Executive which provide the most encouraging environment for successful law reform for many years.

*Terence Etherton*

**Sir Terence Etherton  
Chairman**

# **PART 1**

## **THE COMMISSION**

### **Who we are**

- 1.1 The Law Commission was created in 1965 for the purpose of reforming the law. The Commission is headed by five Commissioners who are appointed by the Lord Chancellor.
- 1.2 The current Commissioners are:
  - The Honourable Mr Justice Etherton, Chairman
  - Stuart Bridge, 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 Professor Martin Partington CBE, QC, who was a Commissioner from January 2001 to December 2005, was Special Consultant to the Law Commission until March 2008. In that capacity, he has undertaken the role of Commissioner in relation to housing law reform projects.
- 1.4 The Commissioners and Special Consultant are supported by the Chief Executive, William Arnold,<sup>1</sup> members of the Government Legal Service, Parliamentary Counsel (who draft the Bills to reform and consolidate the law), and some 14 research assistants (mostly recently qualified law graduates), as well as a librarian and a corporate services team. Details of the members of each legal team and the work they do is covered in Parts 4 to 8.

### **What we do**

- 1.5 The Law Commission's main task is to review areas of the law and to make recommendations for change. The Commission seeks to ensure that the law is as simple, accessible, fair, modern and cost-effective as possible. A number of specific types of reform are covered by the Law Commissions Act 1965:
  - codification
  - removal of anomalies
  - repeal of obsolete and unnecessary enactments
  - consolidation
  - simplification and modernisation of the law.

<sup>1</sup> William Arnold succeeded Steve Humphreys as Interim Chief Executive in January 2008.

## **Developing the programme of work**

- 1.6 In January 2005, we submitted our Ninth Programme of Law Reform<sup>2</sup> to the Lord Chancellor. It came into effect on 1 April 2005 to run for three years. Parts 4 to 8 provide updates on the progress of the programme. In 2007 we began consultation on the contents of the Tenth Programme of Law Reform. The Tenth Programme was presented to the Lord Chancellor in December 2007 and takes effect from 1 April 2008.



- 1.7 Decisions about whether to include a particular subject in a programme of reform are based on the importance of the issues it will cover, the availability of resources in terms of both expertise and funding, and whether the project is suitable to be dealt with by the Commission.
- 1.8 We have a duty to “take and keep under review *all* the law”.<sup>3</sup> It is important that our efforts are directed towards areas of the law that most need reform, where change will deliver real benefits to the people, businesses, organisations and institutions to which that law applies. We have met senior officials in every Government department to identify areas where the Commission might usefully undertake work. The outcome of these discussions has informed decisions about projects we have included in our Tenth Programme of Law Reform.

## **The Law Commission’s role and methods**

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

<sup>2</sup> Law Com No 293.

<sup>3</sup> Law Commissions Act 1965, s 3(1).

- 1.12 The work of the Commission is based on thorough research and analysis of case law, legislation, academic and other writing, law reports and other relevant sources of information both in the United Kingdom and overseas. It takes full account of the European Convention on Human Rights and of relevant European law. We act, where appropriate, in consultation with the Scottish Law Commission, and work jointly with our Scottish colleagues on a number of projects.
- 1.13 The Commission also has the task of consolidating statute law, substituting one Act, or a small group of Acts, for statutory provisions found in many different Acts. In addition, the Commission proposes the repeal of statutes which are obsolete or unnecessary.<sup>4</sup>

### **Impact assessment**

- 1.14 Impact assessment represents explicit acknowledgement by the Law Commission of the need to quantify law reform recommendations as they affect different stakeholder groups. The Commission often considers a number of possible options as part of its primary remit to review the law and to make recommendations for change. Different options carry commensurate costs and benefits for the various stakeholder groups. Impact assessment enables careful and thorough consideration of the consequences of reform as it impacts on the public, private and third sectors.
- 1.15 Consultation is an integral part of the Commission's process towards ensuring that law reform recommendations are consistent with the principles of fairness, simplicity, and accessibility. Impact assessment provides a further opportunity to demonstrate an appreciation of the cost of law reform that is in keeping with the Government's overall objective of delivering value for money and reducing burdens. A consultation process that clearly seeks information on the costs and benefits of law proposals helps in the analysis of legal intervention.
- 1.16 The Law Commission may be considered to be groundbreaking in respect of expressly incorporating rigorous impact assessment as part of its evaluative process. The impetus for this initiative is indicative of the wider appreciation of resource constraints.

### **Equality and diversity**

- 1.17 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 adverse effect on particular groups within society wherever possible. The Commission's full Equality and Diversity Action Statement may be seen on our website at [www.lawcom.gov.uk/docs/Equality\\_Statement.pdf](http://www.lawcom.gov.uk/docs/Equality_Statement.pdf).

<sup>4</sup> See Part 8 for more details on statute law reform and consolidation.

- 1.18 In seeking to make our work accessible to a wider range of people, we have carried out a pilot exercise to make two of our publications – the brochure “The Law Commission: who we are and what we do” and our report on Murder, Manslaughter and Infanticide – available on our website in EasyRead versions.<sup>5</sup> Adapting our publications in this way is resource intensive. We are currently assessing what options may be available for presenting more of our work in EasyRead format in the future. We would welcome views.

#### **Code of best practice for Law Commissioners**

- 1.19 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. Copies are available from the Law Commission.

#### **What is in this Annual Report?**

- 1.20 Part 2 reviews 2007-08, and looks at the targets for publication of reports and consultation papers the Law Commission has set for the period 2008-09. Part 3 looks at the progress that has been made in persuading the Government to accept and implement the recommendations made in our reports. Parts 4 to 8 cover the work of each law team in the Law Commission over the course of the year. Part 9 looks at our relations with external agencies, and Part 10 relates to the Commission’s staffing and resources.

<sup>5</sup> [http://www.lawcom.gov.uk/docs/brochure\\_easyread\\_web.pdf](http://www.lawcom.gov.uk/docs/brochure_easyread_web.pdf) and [http://www.lawcom.gov.uk/docs/lc304\\_easyread\\_web.pdf](http://www.lawcom.gov.uk/docs/lc304_easyread_web.pdf)

# **PART 2**

## **A REVIEW OF 2007-08**

### **WORK OF THE COMMISSION**

#### **Publications in 2007-08**

##### 2.1 Reports:

- Participating in Crime, 10 May 2007 (LC305)
- Cohabitation: The Financial Consequences of Relationship Breakdown, 31 July 2007 (LC307)

##### 2.2 Consultation Papers:

- Housing: Proportionate Dispute Resolution – The Role of Tribunals, 29 June 2007 (LCCP180)
- Encouraging Responsible Letting, 13 July 2007 (LCCP181)
- Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured, 17 July 2007 (LCCP182/SLCDP134)
- Conspiracy and Attempts, 10 October 2007 (LCCP183)
- The High Court's Jurisdiction in Relation to Criminal Proceedings, 30 October 2007 (LCCP184)
- Reforming Bribery, 29 November 2007 (LCCP185)
- Easements, Covenants and Profits à Prendre, 28 March 2008 (LCCP186)

##### 2.3 Discussion/ Issues/ Scoping Papers:

- Insurance Contract Law: Insurable Interest – An Issues Paper, 14 January 2008

##### 2.4 Electronic versions of the publications listed above can be accessed from the Law Commission website.<sup>1</sup>

### **Implementation**

#### ***Mental incapacity***

##### 2.5 The recommendations in our 1995 report were implemented in the Mental Capacity Act 2005, which came into force in April 2007.<sup>2</sup>

<sup>1</sup> <http://www.lawcom.gov.uk/publications>.

<sup>2</sup> Mental Incapacity (1995) Law Com No 231. Further information about this subject is available in para 3.8 below.

***Involuntary manslaughter***

- 2.6 Our recommendations<sup>3</sup> relating to an offence of corporate killing have been incorporated in the Corporate Manslaughter and Corporate Homicide Act 2007.

***Post-legislative scrutiny***

- 2.7 On 20 March 2008, the Government announced it had accepted the recommendations in our report.<sup>4</sup>

***Assisting and encouraging crime***

- 2.8 Our recommendations on Inchoate Liability for Assisting and Encouraging Crime were carried forward in the Serious Crime Act 2007.<sup>5</sup>

***Distress for rent***

- 2.9 The recommendations in our 1990 report were carried forward in the Tribunals, Courts and Enforcement Act 2007.<sup>6</sup>

<sup>3</sup> Legislating the Criminal Code: Involuntary Manslaughter (1996) Law Com No 237. Most of the provisions of the Act are due to come into force on 6 April 2008. Further information about this subject is available in paras 3.9 to 3.13 below.

<sup>4</sup> (2006) Law Com No 302. Post-legislative Scrutiny – The Government’s Approach (2008) Cm 7320.

<sup>5</sup> (2006) Law Com No 300. Further information about this subject is available in paras 3.14 to 3.16 below.

<sup>6</sup> (2006) Law Com No 194. Further information about this subject is available in paras 3.17 to 3.19 below.



## Targets

2.10 Table 2.1 summarises our main targets for the year 2007-08 and how we met those targets.

**Table 2.1: 2007-08**

<b>TARGET</b>	<b>OUTCOME</b>
<b>To complete Reports on:</b>	
Participating in Crime	Published 10 May 2007 (LC305)
Cohabitation	Published 31 July 2007 (LC307)
Statute Law Repeals	Published 29 January 2008 (LC308/SLC210)
Illegal Transactions	Report deferred to 2008. See paras 4.15 to 4.17
Intoxication and Criminal Liability	Report and draft Bill deferred to mid-2008 – see para 5.23
<b>To complete Consultation Papers on:</b>	
Housing: Proportionate Dispute Resolution – The Role of Tribunals	Published 29 June 2007 (LCCP180)
Conspiracy and Attempts	Published 10 October 2007 (LCCP183)
Encouraging Responsible Letting	Published 13 July 2007 (LCCP181)
Insurance Contract Law	1st Consultation Paper published 17 July 2007 (LCCP182/SLCDP134)
The High Court's Jurisdiction in Relation to Criminal Proceedings	Published 30 October 2007 (LCCP184)
Reforming Bribery	Published 29 November 2007 (LCCP185)
Easements, Covenants and Profits à Prendre	Published 28 March 2008 (LCCP186)
Remedies against Public Bodies	Deferred – see paras 7.1 to 7.8
<b>To publish the following scoping or issues papers</b>	
Insurance Contract Law	4th Issues Paper (Insurable Interest) published 14 January 2008
<b>To begin the following projects:</b>	
Consumer Remedies for Faulty Goods	Began 3 December 2007

2.11 Table 2.2 summarises our major targets for 2008-09.

**Table 2.2: 2008-09**

<b>We expect to publish the following reports:</b>
Housing Disputes
Encouraging Responsible Letting
Intoxication
Illegal Transactions
Bribery
Conspiracy and Attempts
Capital and Income in Trusts: Classification and Apportionment
<b>We expect to publish the following consultation papers:</b>
Remedies against Public Bodies
Admissibility of Expert Evidence
Consumer Remedies against Faulty Goods
<b>We expect to publish the following scoping paper:</b>
Adult Social Care
<b>We expect to publish the following issues paper:</b>
Insurance Contract Law: Post-Contractual Duties of Good Faith and Damages for Late Payment of Claims
<b>We expect to publish the following consolidation:</b>
Health Service Commissioner for England

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

# **PART 3**

## **IMPLEMENTATION OF LAW COMMISSION REPORTS**

### **INTRODUCTION**

- 3.1 This part of our Report looks at the outcome of our work in terms of whether the Government has yet expressed a view about accepting our recommendations or, where they have accepted our recommendations, when we can expect the necessary legislation to be enacted.
- 3.2 Below is an update of the status of current projects. In Appendix A we show a complete list of reports issued to 31 March 2008. Alongside each report we have shown whether the report was accepted fully or in part, rejected, accepted but not implemented, or pending. Where there is enacting legislation, that is also shown.
- 3.3 In March 2008, the Lord Chancellor announced his intention to strengthen the role of the Commission by placing a statutory duty on the Lord Chancellor to report annually to Parliament on the Government's intentions regarding outstanding Law Commission recommendations.<sup>1</sup>
- 3.4 On 3 April 2008, the House of Lords approved a new procedure for uncontroversial Law Commission Bills, under which a significant part of the legislative process in the Lords would be taken in Committee off the floor of the House.<sup>2</sup>



<sup>1</sup> Hansard (HC), 25 March 2008, col 21.

<sup>2</sup> Hansard (HL), 3 April 2008, col 1146, Procedure Committee: First Report.

- 3.5 On 3 April 2008 we were visited by Sir Suma Chakrabarti, Permanent Secretary at the Ministry of Justice, and Rowena Collins-Rice, Director of the Democracy, Constitution and Law Group. We look forward to ever closer relations with the new organisation of MOJ in seeking to secure implementation of more of our reports.



Sir Terence Etherton with Sir Suma Chakrabarti and Rowena Collins-Rice (front row) together with Commissioners and the Chief Executive (right)

## **ACTION DURING THIS PERIOD**

### **In summary**

- 3.6 Between 1 April 2007 and 31 March 2008, the Law Commission published two law reform reports. During this period, Parliament enacted recommendations from two of our previous reports.<sup>3</sup> The Government accepted the proposals in one previous report.<sup>4</sup> We are awaiting implementation of three recommendations from previous reports.<sup>5</sup>

In March 2008:

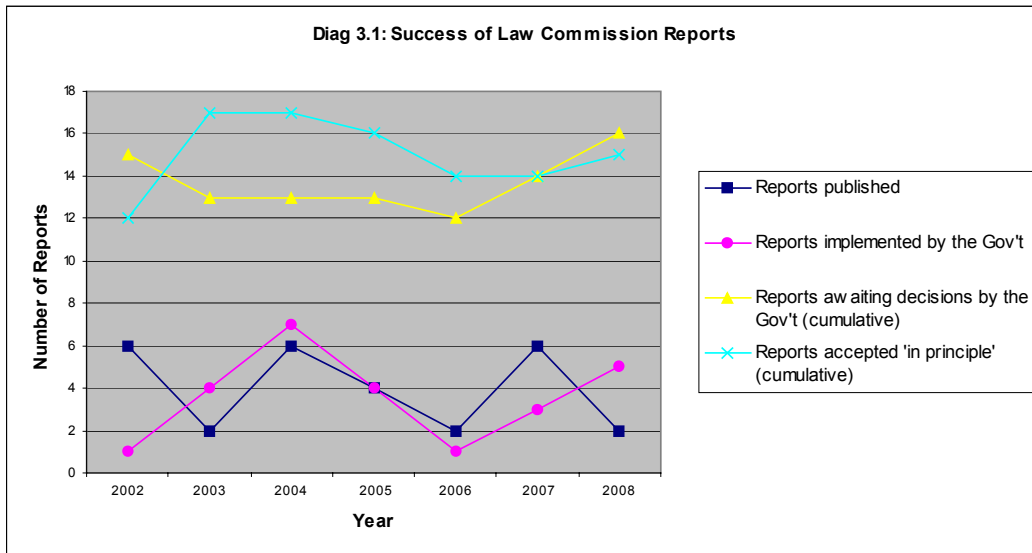
- (1) 14 law reform reports that have been accepted by the Government still await implementation;
- (2) 16 other reports still await decisions by the Government.<sup>6</sup>

<sup>3</sup> The Mental Capacity Act 2005 came into force on April 2007. See para 3.8 below. Our recommendations relating to an offence of corporate killing have been incorporated in the Corporate Manslaughter and Corporate Homicide Act 2007, recently enacted. See paras 3.9 to 3.13 below.

<sup>4</sup> On 28 March 2008, the Government announced that it accepted our proposals for post-legislative scrutiny. See para 3.23 below.

<sup>5</sup> Our recommendations on inchoate liability for assisting and encouraging crime have been carried forward in Part 2 of the Serious Crime Act 2007. See paras 3.14 to 3.16 below. Our recommendations on distress for rent are anticipated to come into force in 2008. See paras 3.17 to 3.19 below. Our recommendations on Limited Partnerships are due to be brought into force by means of a Regulatory Reform Order. See paras 3.20 to 3.22 below.

<sup>6</sup> For details of all reports that have not received a decision from the Government, or where a decision has been made but the report has not been implemented, see Appendix A.



- 3.7 Diagram 3.1 gives a seven-year overview of the number of Law Commission reports submitted to the Government; the number agreed by the Government, but where legislation has not been introduced; the number awaiting a decision by the Government; and the number implemented by legislation or through court decisions.

### Implemented reports

#### MENTAL INCAPACITY

- 3.8 The Mental Capacity Act 2005 was enacted in April 2005. The Act implements the majority of the recommendations in the Commission's 1995 report and draft Bill on this topic.<sup>7</sup> The Commission assisted with the passage of the Bill through Parliament. The Act came into force in April 2007.

#### INVOLUNTARY MANSLAUGHTER

- 3.9 In 1996 the Law Commission published a report<sup>8</sup> and draft Bill which recommended the replacement of the common law offence with statutory offences of "reckless killing" and "killing by gross recklessness", together with a new offence of corporate killing. The recommendations that we made in relation to offences of "reckless killing" and "killing by gross negligence" have been superseded by the recommendations we have made in our report Murder, Manslaughter and Infanticide.<sup>9</sup>

<sup>7</sup> Mental Incapacity (1995) Law Com No 231.

<sup>8</sup> Legislating the Criminal Code: Involuntary Manslaughter (1996) Law Com No 237.

<sup>9</sup> (2006) Law Com No 304. See further paras 3.62 to 3.64 below.

- 3.10 With regard to corporate killing, the Corporate Manslaughter and Corporate Homicide Act 2007 establishes a new offence for prosecuting organisations where very serious failings in the management of activities have resulted in death.<sup>10</sup> An organisation is guilty of the offence if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a relevant duty of care to the deceased. A substantial element of the breach must have been in the way activities were managed by *senior* management. The offence is punishable by fine.
- 3.11 Amongst others, the offence applies to incorporated companies, local authorities, government departments and police forces. It also applies to partnerships and trade unions that are employers. The new offence does not apply to individuals, whether as a principal offender or as a secondary party.
- 3.12 The offence has no application to activities carried out by a police force, which relate to terrorism, civil unrest and serious disorder.
- 3.13 Most of the provisions of the Act are due to come into force on 6 April 2008.

### **Reports in the process of being implemented**

#### ASSISTING AND ENCOURAGING CRIME<sup>11</sup>

- 3.14 In July 2006 the Commission published a report and draft Bill on inchoate liability for assisting and encouraging crime.<sup>12</sup> We recommended that there should be two inchoate offences of assisting and encouraging crime: intentionally encouraging or assisting crime and encouraging or assisting crime believing that an offence, or one or more offences, will be committed. The offences would replace the common law inchoate offence of incitement and fill the gap at common law whereby D incurs no criminal liability for assisting the commission of an offence which P does not subsequently commit.
- 3.15 We recommended that it should be a defence to each offence that D acted in order to prevent crime or to prevent or limit the occurrence of harm. In addition, we recommended that it should be a defence to the offence of encouraging or assisting believing that an offence, or one or more offences, will be committed that D acted reasonably in the circumstances.
- 3.16 The recommendations have been carried forward in Part 2 of the Serious Crime Act 2007. The provisions of Part 2 in substance reflect those in our draft Bill. The major difference is that under Part 2 the fault elements of the offences are less stringent than under our recommendations. No date has yet been set for the implementation of Part 2.

<sup>10</sup> The offence is called 'corporate manslaughter' in England and Wales and Northern Ireland and 'corporate homicide' in Scotland.

<sup>11</sup> Further information on this subject is available in paras 5.8 to 5.13 of this report.

<sup>12</sup> Inchoate Liability for Assisting and Encouraging Crime (2006) Law Com No 300.

#### DISTRESS FOR RENT

- 3.17 The Commission's report on this subject was published in 1991.<sup>13</sup> It recommended the complete abolition of the remedy of distress for non-payment of rent for both commercial and residential tenancies.
- 3.18 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.
- 3.19 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 is expected that the relevant provisions will come into force in 2008.

#### PARTNERSHIP LAW

- 3.20 Our joint report with the Scottish Law Commission on Partnership Law was published in November 2003.<sup>14</sup> It was in two parts. Most of the recommendations concerned general partnerships. We drafted a new Partnerships Act, under which general partnerships in England and Wales would become legal entities. This would reflect the reality of their role in the commercial life of Britain, and bring together the law of partnership across England, Wales and Scotland.
- 3.21 We also made recommendations about limited partnerships, which are widely used. Limited partnerships (as distinct from limited liability partnerships) allow general partners and limited partners to join together. A general partner manages the business and has unlimited liability for its obligations, while limited partners take no part in the management and assume only limited liability. Our recommendations were designed to clarify the relationship between limited partnerships and general partnership law, and provide guidance on the activities a limited partner can undertake without losing limited liability status.
- 3.22 In April 2004 the Department of Trade and Industry consulted on the costs and benefits of these proposals. In July 2006 it announced that it would implement the recommendations on limited partnerships by means of a Regulatory Reform Order. However the rest of the report would not be taken forward.<sup>15</sup> We understand that the Department for Business, Enterprise and Regulatory Reform (BERR) intends to publish a formal consultation and draft order on the limited partnership proposals in summer 2008.

#### POST-LEGISLATIVE SCRUTINY

- 3.23 On 20 March 2008, the Government announced it had accepted the recommendations in our report.<sup>16</sup>

<sup>13</sup> Landlord and Tenant: Distress for Rent (1991) Law Com No 194.

<sup>14</sup> (2003) Law Com No 283, Scot Law Com No 192.

<sup>15</sup> Written Ministerial Statement, Ian McCartney, *Hansard (HC)*, 20 July 2006, col 53WS.

<sup>16</sup> (2006) Law Com No 302. Post-legislative Scrutiny – The Government's Approach (2008) Cm 7320.

## Reports awaiting implementation

### AGGRAVATED, EXEMPLARY AND RESTITUTIONARY DAMAGES

- 3.24 We published this report in 1997.<sup>17</sup> In November 1999 the then Lord Chancellor's Department (LCD) 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.
- 3.25 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 have removed the cause of action rule in relation to exemplary damages. The DCA thought that legislation was therefore unnecessary. We await a final decision.

### LIMITATION OF ACTIONS

- 3.26 In 2001 we published a report<sup>18</sup> 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.
- 3.27 In July 2002 the then Lord Chancellor's Department (LCD) 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".<sup>19</sup> This work is still ongoing. In October 2007 the Ministry of Justice (MOJ) announced that it intended to consult further on the text of a Bill to implement the Commission's recommendations, and hoped to publish a consultation paper in early 2008. At the time of going to press, the consultation paper is still awaited.
- 3.28 In personal injury cases, we recommended that the court should have a broad discretion to allow late claims at any stage. We thought this was particularly important in sex abuse cases, where it appeared that adults were required to bring claims within six years and those abused as children before their 24th birthday. The issue came to public attention when a man convicted of an attempted rape won the lottery. His victim attempted to sue him 17 years after the offence was committed. She lost in the High Court and Court of Appeal.<sup>20</sup> However, the House of Lords have now departed from previous authority and held that a six year time limit will not apply rigidly in such cases. Instead the courts may exercise discretion in allowing late claims.<sup>21</sup>
- 3.29 We are pleased that this immediate problem has been solved. However, there is still a clear need to bring limitation periods within a coherent regime.

<sup>17</sup> (1997) Law Com No 247.

<sup>18</sup> Limitation of Actions (2001) Law Com No 270.

<sup>19</sup> *Hansard* (HL), 16 July 2002, col 127.

<sup>20</sup> *A v Hoare* [2006] EWCA Civ 395.

<sup>21</sup> *A v Hoare* [2008] UKHL 6.



#### OFFENCES AGAINST THE PERSON

- 3.30 Fifteen years ago the Law Commission published a report and draft Bill recommending an overhaul of the current legislation, which dates back to Offences Against the Person Act 1861.<sup>22</sup> In 1997 the Home Office partially accepted these recommendations in principle. In 1998 the Home Office published a consultation paper<sup>23</sup> 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.<sup>24</sup>
- 3.31 One of the report's recommendations, namely that common assault should be an arrestable offence, has been implemented by the Domestic Violence, Crime and Victims Act 2004. The Government has said that it plans to legislate on the other recommendations that it has accepted in principle when Parliamentary time allows. We continue to press for implementation of this report.

#### PERPETUITIES AND ACCUMULATIONS

- 3.32 The rule against perpetuities limits the extent to which a property owner can control the devolution of that property into the future. The rule is extremely complicated and applies to the tying up of property by various means, including trusts, options, rights of pre-emption and easements. It is capable of causing significant difficulties in practice, particularly in the context of commercial transactions. The Commission's report<sup>25</sup> recommends that the rule should continue to apply, but in a simplified form and only in circumstances where it performs an essential role. The report also recommends the repeal of the connected rule restricting accumulations of income (except in relation to charitable trusts).
- 3.33 The Government indicated its acceptance of the Commission's report on this topic in an answer to a Parliamentary Question in March 2001. The Ministry of Justice has, since then, been unable to find Parliamentary time to introduce legislation. The draft Bill which accompanied the Law Commission's report may be a suitable candidate for the special Parliamentary procedure that was agreed in the House of Lords on 3 April 2008.<sup>26</sup>

<sup>22</sup> Legislating the Criminal Code: Offences Against the Person and General Principles (1993) Law Com No 218.

<sup>23</sup> Violence: Reforming the Offences against the Person Act 1861.

<sup>24</sup> *Cort* [2003] EWCA Crim 2149, [2004] QB 388.

<sup>25</sup> The Rules against Perpetuities and Excessive Accumulations (1998) Law Com No 251.

<sup>26</sup> This procedure is referred to in the Chairman's note at the beginning of this report.

### THIRD PARTIES' RIGHTS AGAINST INSURERS

- 3.34 In 2002, we published a report jointly with the Scottish Law Commission to strengthen the rights of claimants to seek a remedy against their defendant's insurer where the defendant was in financial difficulties.<sup>27</sup> In July 2002, the Department for Constitutional Affairs (DCA) accepted our recommendations in principle. Then in September 2002 it issued a consultation paper proposing to implement our report by way of Regulatory Reform Order (RRO).<sup>28</sup> In February 2004 DCA published an analysis of responses, which reported that the Law Officers had advised that only certain recommendations could be carried out by way of an RRO. The others would require primary legislation.<sup>29</sup>
- 3.35 Last year we reported that the Government was still considering whether the report can be implemented through primary legislation or by other means. There have been no further developments in implementing this report.

### THE FORFEITURE RULE AND THE LAW OF SUCCESSION

- 3.36 In July 2005 we published a final report<sup>30</sup> and draft Bill to solve problems with both intestacy and wills. We recommended that where a person forfeits the inheritance of property because they kill the person from whom they would inherit, the property should be distributed as if the killer had died. The effect is that property will normally pass to the next in line, such as the grandchildren. Our recommendations would also apply where the heir voluntarily disclaims the property.
- 3.37 In December 2006, the Government announced that it accepted all our recommendations, subject to minor modifications.<sup>31</sup> Legislation would be introduced when parliamentary time allows. We look forward to seeing these recommendations implemented.

### UNFAIR CONTRACT TERMS

- 3.38 The present law on unfair contract terms is unacceptably confusing. It is covered by two pieces of legislation, containing inconsistent and overlapping provisions. In February 2005 we published a report and draft Bill jointly with the Scottish Law Commission.<sup>32</sup> The draft Bill rewrites both laws as a single regime, in a way that is much more accessible to consumer and business advisers. The report also recommended improving protection for the smallest and most vulnerable businesses, employing nine or fewer staff.

<sup>27</sup> (2002) Law Com No 272, Scot Law Com No 184.

<sup>28</sup> Lord Chancellor's Department, *Third Parties – Rights against Insurers: A Consultation Paper on the implementation of the joint Law Commission and Scottish Law Commission Report by way of a Regulatory Reform Order*, September 2002.

<sup>29</sup> Department for Constitutional Affairs, *Analysis of Responses to the Consultation Paper, Third Parties – Rights against Insurers* February 2004. For a short summary of which proposals could be implemented by RRO, see last year's Annual Report, pp 12 to 13.

<sup>30</sup> (2005) Law Com No 295.

<sup>31</sup> Written Ministerial Statement, Baroness Ashton, *Hansard (HL)*, 18 December 2006, col WS223.

<sup>32</sup> (2005) Law Com No 292, Scot Law Com No 199.

- 3.39 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.<sup>33</sup> We understand that the Department for Business, Enterprise and Regulatory Reform will be considering implementing the reforms as part of its broader review of consumer law.

#### **Reports awaiting Government decisions**

- 3.40 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 14 of our reports.
- 3.41 We also welcome a recent development<sup>34</sup> 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.

#### RENTING HOMES

- 3.42 Our major review of housing tenure law, this report was published in May 2006. We proposed wholesale reform of the law, replacing a multitude of statutory and common law tenancy-types and licences with two simple "occupation contracts". The report adopted a consumer-protection approach to housing law under which clear, plain language standard-form contracts would be developed by the Secretary of State and the Welsh Assembly Government. Supported housing, a setting with particular and acute problems within the current law, would be provided with a tailor-made legal structure. We received an interim reply in November 2006 from the Department for Communities and Local Government. This said that they would look further at the proposals following a review of social housing by Professor John Hills, whilst assuring us that "ministers are keen to stress that we are generally supportive of the thrust of the ... proposals". Professor Hills reported in February 2007.
- 3.43 The time period allowed for final responses in our agreement with Government on the handling of Law Commission reports does not elapse until November 2008. We are, however, concerned at the apparent lack of enthusiasm within the Department to legislate to implement the report. We will continue to seek to persuade the Government that these clearly necessary and well-supported proposals deserve Departmental attention and Parliamentary time.

<sup>33</sup> See [www.dti.gov.uk/consumers/buying-selling/sale-supply/unfair-contracts/index.html](http://www.dti.gov.uk/consumers/buying-selling/sale-supply/unfair-contracts/index.html).

<sup>34</sup> See para 3.3 above.

- 3.44 In contrast, we have been impressed with the imaginative and positive policy reaction to our proposals in Wales. In the report (which was published during the passage of the Government of Wales Act 2006 through Parliament), we recommended that, if in England the Department either rejected our proposals, or accorded them a low priority, the Welsh Assembly Government should seek legislative competence to implement them in Wales, on a Wales-only or Wales-first basis, respectively. In November 2007, the Minister for Housing in the Welsh Assembly Government, Jocelyn Davies AM, wrote to us saying that she “would be keen to put forward legislation based on Renting Homes on a Wales only basis”, if there was no progress on England and Wales legislation. She went on to explain that the problem was the need to find a vehicle to secure legislative competence. In Wales, then, the problem is not political will, but the limitations on the powers of the Assembly. We hope that, pending a positive reception for Renting Homes in England, an appropriate legislative vehicle can be found to extend the Assembly’s competence, and that doing so will receive whatever support is necessary from the Department for Communities and Local Government and the Wales Office.

#### TRUSTEE EXEMPTION CLAUSES

- 3.45 A trustee exemption clause is a provision in a trust instrument which excludes or restricts a trustee’s liability for breach of trust. Such clauses are capable of protecting trustees from the consequences of any actions or omissions, however negligent, provided they have not acted dishonestly.
- 3.46 The Commission published a consultation paper<sup>35</sup> 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.
- 3.47 The Commission’s report,<sup>36</sup> 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.<sup>37</sup> 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.

<sup>35</sup> Trustee Exemption Clauses (2003), Law Com No 171.

<sup>36</sup> Trustee Exemption Clauses (2006) Law Com No 301.

<sup>37</sup> 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.

#### TERMINATION OF TENANCIES FOR TENANT DEFAULT

- 3.48 This project examined the means whereby a landlord can terminate a tenancy<sup>38</sup> because the tenant has not complied with his or her obligations. This is an issue of great practical importance for many landlords and tenants of residential and commercial properties. The current law is difficult to use and littered with pitfalls for both the lay person and the unwary practitioner.
- 3.49 The Law Commission outlined provisional proposals for reform in a consultation paper published in January 2004.<sup>39</sup> The consultation paper attracted interest and comment from practitioners, academics and groups representing both landlords and tenants.
- 3.50 The Commission's report,<sup>40</sup> 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

- 3.51 In August 2005 we published a final report and draft legislation on Company Security Interests recommending major reforms.<sup>41</sup> These would replace the present paper-based system with a new on-line process to register charges cheaply and instantaneously. They would also provide simpler and clearer rules to determine "priority" disputes between competing interests over the same property.
- 3.52 We were disappointed that the Department of Trade and Industry was not able to include our recommendations within the Companies Act 2006. We await a formal decision on whether the Government accepts our recommendations and, if so, how it intends to implement them.

<sup>38</sup> 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.

<sup>39</sup> Termination of Tenancies for Tenant Default (2004) Consultation Paper No 174.

<sup>40</sup> Termination of Tenancies for Tenant Default (2006) Law Com No 303.

<sup>41</sup> Company Security Interests (2005) Law Com No 296.

## DAMAGES FOR PERSONAL INJURY

- 3.53 During the late 1990s we carried out a major review of damages, which resulted in reports on Liability for Psychiatric Illness,<sup>42</sup> Damages for Non-Pecuniary Loss,<sup>43</sup> Damages for Medical, Nursing and Other Expenses<sup>44</sup> and Claims for Wrongful Death.<sup>45</sup>
- 3.54 A few of our recommendations have been implemented.<sup>46</sup> 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.
- 3.55 The Department for Constitutional Affairs (DCA) eventually published a consultation paper on our reports in May 2007.<sup>47</sup> The paper accepted most of our recommendations on damages for wrongful death.<sup>48</sup> However, it proposed a more limited extension of those who are able to claim under the Fatal Accidents Act. On bereavement damages, the paper agrees to extend entitlement to the fathers of illegitimate children, to cohabitees and to the parents of children over 18. However, it rejected the idea of extending bereavement damages to brothers and sisters and to fiance(e)s.
- 3.56 In our report on Medical, Nursing and Other Expenses, we recommended reversing the decision in *Hunt v Severs*, 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.<sup>49</sup> The DCA agreed that no change was needed on collateral benefits. However, it consulted on some options that we had rejected, including the possible repeal of section 2(4) of the Law Reform (Personal Injuries) Act 1948.
- 3.57 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.
- 3.58 The responses to that consultation are currently being analysed and we await a final decision in relation to these reports.

<sup>42</sup> (1998) Law Com No 249.

<sup>43</sup> (1999) Law Com No 257.

<sup>44</sup> (1999) Law Com No 262.

<sup>45</sup> (1999) Law Com No 263.

<sup>46</sup> 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] 3 WLR 117. In April 2002, the 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.

<sup>47</sup> *The Law on Damages* DCA Consultation Paper 9/07.

<sup>48</sup> Above at [2] to [68].

<sup>49</sup> Above at [115] and [116].

#### PRE-JUDGMENT INTEREST ON DEBTS AND DAMAGES

- 3.59 Our report was published in February 2004.<sup>50</sup> It recommended giving the courts more guidance on interest rates, by specifying a rate each year, set at 1 per cent above base rate. We also thought that the courts should have the power to award compound interest in appropriate circumstances.
- 3.60 We received an interim response from the DCA in August 2004. Four years after publication, we have not heard whether our recommendations are accepted. The Ministry of Justice have told us that they expect to reach a conclusion on the subject by September 2008.
- 3.61 The House of Lords have since held that the courts have jurisdiction at common law to grant compound interest in appropriate circumstances as a restitutionary remedy.<sup>51</sup> This gives the courts a welcome flexibility. However, given the practical difficulties raised by interest calculations, there is still a need for a clear statutory framework.

#### REVIEW OF HOMICIDE

- 3.62 In November 2006 the Law Commission published a report setting out recommendations for reform of the law of homicide.<sup>52</sup> The Commission recommended that, instead of the current two-tier structure of general homicide offences, namely murder and manslaughter, there should be a three-tier structure, namely first degree murder, second degree murder and manslaughter. In addition, the Commission made recommendations in relation to the partial defences to murder, the offence/defence of infanticide and the liability of those who assist or encourage murder (secondary liability for an offence of homicide).
- 3.63 The Law Commission's review was the first stage of a two stage process. The second stage was to consist of a Home Office consultation which would focus on broader issues of public policy. On 12 December 2007 the Government announced that it was seeking views on the recommendations put forward by the Law Commission,. The Government said that initially it would be looking at those recommendations which related to the two partial defences, the offence/defence of infanticide and secondary liability for an offence of homicide.
- 3.64 The Government said that specialists and key stakeholders from within and outside the criminal justice system would discuss the recommendations. Where changes to the law were considered necessary, draft clauses would be published for consultation in summer 2008.

#### PARTICIPATING IN CRIME

- 3.65 In May 2007, the Commission published a report and draft Bill<sup>53</sup> setting out recommendations for reform of the law of secondary liability for assisting and encouraging crime.

<sup>50</sup> Pre-Judgment Interest on Debts and Damages (2004) Law Com 287.

<sup>51</sup> *Sempre Metals Limited (formerly Metallgesellschaft Limited) v Her Majesty's Commissioners of Inland Revenue and another* [2007] UKHL 34. Lord Hope of Craighead referring to Law Commission Consultation Paper No 167 at [41].

<sup>52</sup> Murder, Manslaughter and Infanticide (2006) Law Com No 304.

<sup>53</sup> See paras 5.3 to 5.7 below for a summary of the recommendations.

- 3.66 The Government has indicated<sup>54</sup> that it will consider the recommendations when it receives the Commission's report on Conspiracy and Attempt.

#### COHABITATION

- 3.67 The Law Commission published its report on cohabitation on 31 July 2007.<sup>55</sup>
- 3.68 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 indicates that the Government is postponing its decision on the Law Commission's "very thorough and high quality" report because it is concerned to establish estimates of the financial costs and financial benefits of bringing into effect the Law Commission's recommended scheme. The Government hopes to do so by examining the operation of the Family Law (Scotland) Act 2006. We look forward to receiving the Government's final response.

#### Other reports

##### BRIBERY

- 3.69 In 1998 the Law Commission published a report<sup>56</sup> and draft Bill which recommended the creation of four 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 (PLS). The Joint Committee which gave the Bill its PLS recommended abandoning the Commission's scheme of reform. It proposed an alternative scheme which the Government rejected. The Government issued a consultation paper in December 2005 in an effort to build a new consensus.
- 3.70 In March 2007 the Government announced<sup>57</sup> 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.

<sup>54</sup> See paras 5.15 to 5.22 below.

<sup>55</sup> Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307. An electronic copy of the report, and an executive summary, are available at <http://www.lawcom.gov.uk/cohabitation.htm>. See paras 6.3 to 6.10 below for details of our recommendations.

<sup>56</sup> Legislating the Criminal Code: Corruption (1998) Law Com No 248.

<sup>57</sup> See paras 5.24 to 5.30 below for further information on that review.



#### PARTIAL DEFENCES TO MURDER

- 3.71 In August 2004 the Commission published its report on Partial Defences to Murder,<sup>58</sup> which, among other things, recommended that the law on provocation should be retained, but in a narrowed form. We proposed that provocation could be pleaded by those who either had a justified sense of being seriously wronged, or feared serious violence towards them or another, provided that a person of ordinary tolerance and self restraint in the circumstances might have reacted in the same or a similar way. Consequently, we did not recommend that there should be a specific partial defence to murder based on the excessive use of force in self-defence.
- 3.72 In July 2005 the then Home Secretary announced a comprehensive review of the law of murder. The Law Commission undertook the first stage of that review in 2005–2006. In November 2006 the Commission published a report setting out its recommendations for reform of the law of homicide. Those recommendations have superseded the recommendations in Partial Defences to Murder.

<sup>58</sup> (2004) Law Com No 290.

## PART 4

# COMMERCIAL LAW AND COMMON LAW

### TEAM MEMBERS<sup>1</sup>

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### 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 our first consultation paper on misrepresentation, non-disclosure and breach of warranty by the Insured.<sup>2</sup> This generated considerable interest. We were invited to over 50 meetings to discuss the issues, and received 105 written responses. We are extremely grateful to the many people who took so much time and effort in answering our detailed questions.<sup>3</sup> We will place a summary of the responses on our website, as a contribution to the debate.

<sup>1</sup> Including those who were at the Commission for part of the period.

<sup>2</sup> Joint Consultation Paper LCCP 182/SLCDP 134. This followed informal issues papers on non-disclosure and misrepresentation (September 2006); warranties (November 06) and intermediaries and pre-contract information (March 2007).

<sup>3</sup> Particular thanks are extended to the members of our advisory panel: Professor John Birds; Warren Copp; Ken Davidson; Professor Angelo Forte; Teresa Fritz; Alison Green; Chris Hannant; Martin Hill; Peter Hinchliffe; Christopher Jones; Gerard L'Aimable; Professor Robert Merkin; Robert Purves; Sarah Wolfe; and Geraldine Wright.

- 4.3 In January 2008 we published a team issues paper on the law of insurable interest. For life insurance we tentatively proposed extending the categories of people able to insure others' lives. For indemnity insurance we highlighted the confused state of the current law and asked whether the concept of insurable interest was needed at all. This also provoked strong interest. We held meetings to discuss the paper in London and Edinburgh, and received 25 written responses.
- 4.4 Our consultation responses revealed a strong consensus to reform the law of pre-contract information as it applies to consumer insurance. We intend to draft legislation on this subject in 2008/9. We will also be publishing issues papers on policyholders' and insurers' post-contractual duties of good faith. These will look at the effect of fraudulent claims and at whether insurers should be liable to pay damages if they unreasonably delay paying claims.

#### **Consumer remedies for faulty goods**

- 4.5 We have started a new project to simplify the remedies available to consumers when they buy goods that turn out to be faulty. This is a joint project with the Scottish Law Commission, which was referred to us by the Department for Business, Enterprise and Regulatory Reform in December 2007.
- 4.6 The present law is particularly complex. In 2002, the traditional UK remedies of rejection and damages were overlain by four new European remedies: repair, replacement, rescission and reduction in price. Even trained advisers complained that they find it difficult to understand how these six remedies relate to each other.
- 4.7 In 2006 the Davidson Review on implementing EU Directives described consumer remedies as an example of "double banking", where EU regulations are superimposed on domestic legislation, causing unacceptable levels of complexity and confusion. The Review recommended that the English and Scottish Law Commission should consider whether the law could be simplified.
- 4.8 We published an introductory paper in February and held 14 preliminary meetings with stakeholders to discuss the issues. We also commissioned research to probe consumers' perceptions of their legal rights. In February and March 2008 the market research firm FDS conducted nine focus groups among consumers in England, Wales and Scotland. It found that [consumers' understanding of their rights was influenced mainly by shop policies and guarantees. The phrase "this does not affect your statutory rights" meant little to them. Although people valued the ability to return faulty goods and receive a full refund, they were generally unaware of how long this lasted.
- 4.9 We are planning a consultation paper for autumn 2008.

### **Property interests in investment securities**

- 4.10 In December 2005 we launched a review of the law on 'intermediated securities', that is, securities such as shares and bonds that are held by the investor through an intermediary such as a bank or broker rather than directly from the issuer. This is now a very common way of holding securities, but the law has lagged behind market developments in its treatment of investors' property rights in these securities.
- 4.11 In an international market it is not possible to look at UK law in isolation. In September 2006, we produced an interim advice to HM Treasury, in which we argued that reform should take place at an international level, through UNIDROIT.<sup>4</sup> We provided detailed advice on the position the UK Government should take in negotiating the UNIDROIT Convention on Intermediated Securities at the third drafting session in November 2006.
- 4.12 In April 2007 we updated that advice, to inform the negotiations at the fourth plenary session in May 2007. Law Commission staff also attended both UNIDROIT meetings on behalf of the UK Government.
- 4.13 Following the May 2007 meeting, UNIDROIT has set up three working groups to resolve outstanding issues on the interaction with insolvency law; the test to protect innocent purchasers; and the status of Central Securities Depository rules. In April 2008 we published a further updated advice on these developments.
- 4.14 It is intended that a final draft of the UNIDROIT convention will be put to a diplomatic conference in September 2008. The Law Commission hopes that at that stage it will be able to recommend that the UK ratifies the Convention.

### **The illegality defence**

- 4.15 We have been reviewing how the illegality defence operates in the law of contract, unjust enrichment, tort and trusts. The defence has been criticised for being complex, uncertain, arbitrary and, on occasion, unjust. However, it is a controversial area, where there are no easy solutions. It has proved to be extremely difficult to make recommendations for reform.
- 4.16 Our current view is that statutory reform is needed where one party has used a trust to conceal the true ownership of property for a criminal purpose. The law in this area is so confused and arbitrary that we think the best solution is to replace it with a structured discretion, allowing the courts to reach a just outcome. We are currently drafting a short Bill along these lines.
- 4.17 In other areas of law we think the courts by and large reach just results. The problem is one of clarity and we think this could be achieved if the courts did more to articulate their reasoning. We intend to publish a final report in 2008.

<sup>4</sup> UNIDROIT is an international organisation whose members comprises 60 states, including all of the G10 states and every Member State of the European Union except Lithuania.



Members of the Commercial Law and Common Law Team

# PART 5

## CRIMINAL LAW, EVIDENCE AND PROCEDURE

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### Assisting and encouraging crime

- 5.1 The Commission had considered in the past<sup>2</sup> the scope and structure of the law relating to the liability of those (D) who assist and encourage others (P) to commit offences. That law was and remains complicated, uncertain and anomalous. It also raises important and difficult policy issues.
- 5.2 In July 2006 the Commission published a report and draft Bill on inchoate liability for assisting and encouraging crime.<sup>3</sup> In this report the Commission recommended the creation of inchoate offences of assisting or encouraging crime. In doing so, we stated that we would be publishing a second report on secondary liability for assisting or encouraging crime. We published that report and a draft Bill in May 2007.<sup>4</sup>
- 5.3 The report recommended that in cases where D and P are not parties to a joint criminal venture the current scope of secondary liability should be narrowed. Under the current law, D can be secondarily liable for an offence committed by P if he believed that P would commit the offence even if it was not D's intention that P should do so. We recommended that in such cases D should no longer be secondarily liable for an offence committed by P but instead should be guilty of an inchoate offence of assisting or encouraging P to commit the offence. The report recommended that in order to be secondarily liable for an offence committed by P, D would have to have intended that P commit the offence.
- 5.4 In relation to cases where D and P are parties to a joint criminal venture, the report concluded that in substance the principles currently governing D's liability were sound.

<sup>1</sup> Including those who were at the Commission for part of the period.

<sup>2</sup> Assisting and Encouraging Crime (1993) Consultation Paper No 131.

<sup>3</sup> Inchoate Liability for Assisting and Encouraging Crime (2006) Law Com No 300.

<sup>4</sup> Participating in Crime (2007) Law Com No 305.

- 5.5 We recommended that D should have a defence if she is able to demonstrate that she had negated the effects of her assistance or encouragement before P committed the offence. We also recommended that D should have a defence if she proved that she acted in order to prevent P committing the offence or to prevent or limit the occurrence of harm.
- 5.6 The report recommended that the common law doctrine of innocent agency should be replaced by a statutory version of the doctrine. This would retain the essence of the common law doctrine but would refine and improve it.
- 5.7 The report also made recommendations concerning D's liability in cases where the offence that P commits with D's assistance or encouragement is committed outside England and Wales or, conversely, the offence is committed in England and Wales but D's assistance or encouragement took place outside England and Wales.

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

- 5.8 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".<sup>5</sup> 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.
- 5.9 In October 2007, the Commission published a consultation paper.<sup>6</sup> 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.
- 5.10 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.
- 5.11 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 she could challenge the decision immediately.

<sup>5</sup> Supreme Court Act 1981, s 29(3).

<sup>6</sup> The High Court's Jurisdiction in Relation to Criminal Proceedings (2007) Consultation Paper No 184.

- 5.12 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.
- 5.13 We intend to publish a final report and draft Bill in 2009.

#### **Codification of the criminal law**

- 5.14 This project consists of reviewing and revising Part 1 of the Criminal Code of 1989.<sup>7</sup> In the past year, we have focused on the inchoate offences of conspiracy and attempt and on the relevance of intoxication on criminal liability.
- 5.15 In October 2007, we published a consultation paper on conspiracy and attempt.<sup>8</sup> The main proposal would reverse the decision of the House of Lords in *Saik*,<sup>9</sup> 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 she intended or knew that the provenance of the proceeds in question was criminal conduct. It was not enough that she suspected that to be the case.
- 5.16 We proposed that the fault requirement of conspiracy should be less stringent than under the current law. It should be enough if the prosecution are 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 satisfy that fault element.
- 5.17 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.
- 5.18 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.
- 5.19 A criminal attempt is where 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.<sup>10</sup>

<sup>7</sup> Criminal Law: A Criminal Code for England and Wales (1989) Law Com No 177.

<sup>8</sup> Conspiracy and Attempts (2007) Law Commission Consultation Paper No 183.

<sup>9</sup> [2006] UKHL 18 [2007] 1 AC 18.

<sup>10</sup> Eg, *Geddes* (1996) 160 JP 697.



- 5.20 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.
- 5.21 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, unlike under 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.
- 5.22 It is our intention to publish a final report and draft Bill on Conspiracy and Attempt in the first half of 2009.
- 5.23 In relation to intoxication and criminal liability, it is our intention to publish a final report and draft Bill in September 2008.

### **Bribery**

- 5.24 In 1998 the Law Commission published a report and draft Bill on Corruption.<sup>11</sup> This resulted in a draft Government Bill which received its pre-legislative scrutiny by a Joint Committee in 2003. The Joint Committee heavily criticised the Bill and recommended an entirely different scheme of offences.
- 5.25 In an attempt to seek a new consensus on the way forward, the Government published a consultation paper in December 2005. The consultation revealed that there is broad support for reform of the existing law but no consensus as to how it can best be achieved. As a result, in March 2007 the Government asked the Law Commission to take forward the findings of the Government's consultation and to consider the options for reform further.
- 5.26 In November 2007, the Commission published a consultation paper.<sup>12</sup> Unlike the previous report, the proposed offences are constructed without any reference to the relationship of principal and agent. We provisionally proposed that the conduct element of bribery should consist of an advantage being conferred, promised, received or solicited in connection with an 'improper act' performed or promised by the recipient of the advantage. An 'improper act' would consist of a breach of a legal or equitable duty and would have to involve a betrayal of a relation of trust or a breach of a duty to act impartially or in the best interest of another.

<sup>11</sup> Legislating the Criminal Code: Corruption (1998) Law Com No 248.

<sup>12</sup> Reforming Bribery (2007) Law Commission Consultation Paper No 185.

- 5.27 The paper contains detailed proposals in relation to the fault element that would have to be satisfied in relation to both the recipient of the advantage and the payer.
- 5.28 It would be a defence if an advantage was conferred in the reasonable belief that it was legally required or it was reasonable in the circumstances to confer an advantage in order to avert what was reasonably believed to be an imminent danger of physical harm.
- 5.29 In addition, we proposed that there should be a discrete offence of bribery of a foreign public official which would be committed if an advantage was conferred in order to obtain or retain business and with the intention of influencing the foreign official in his capacity as a foreign public official or realising that there was a serious risk that it would influence the official.
- 5.30 We intend to publish a final report and draft Bill in 2008.

#### **The admissibility of expert evidence in criminal proceedings**

- 5.31 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. In this project,
- 5.32 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.
- 5.33 We intend to publish a consultation paper in 2008.



Members of the Criminal Law Team

# PART 6

## PROPERTY, FAMILY AND TRUST LAW

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### Cohabitation

- 6.1 The Law Commission published its report on cohabitation on 31 July 2007.<sup>2</sup> The project focused on the financial hardship suffered by cohabitants or their children on the termination of their relationship by separation or death. Its scope was restricted to opposite-sex and same-sex couples in clearly defined relationships.<sup>3</sup>
- 6.2 The Law Commission concluded in the light of consultation<sup>4</sup> that reform is necessary. The existing law is uncertain and expensive to apply and, because it was not designed to deal with the consequences of relationship breakdown, often gives rise to results which are unjust. This causes serious hardship not only to cohabitants themselves, but also their children.

<sup>1</sup> Including those who were at the Commission for part of the period.

<sup>2</sup> Cohabitation: The Financial Consequences of Relationship Breakdown (2007) Law Com No 307. An electronic copy of the report, and an executive summary, are available at <http://www.lawcom.gov.uk/cohabitation.htm>.

<sup>3</sup> See our Ninth Programme of Law Reform (2005) Law Com No 293 for an outline of the types of relationship that were and were not considered, and also for a list of issues that were specifically excluded from the review.

<sup>4</sup> The Commission published a consultation paper (Cohabitation: The Financial Consequences of Relationship Breakdown (2006) Consultation Paper No 179 and Overview) on 31 May 2006 and received over 250 responses. The project team also met with many of the groups particularly interested in this area and participated in a number of public discussions.

### **Recommendations**

6.3 The report recommends the introduction of a new scheme of financial remedies which would lead to fairer outcomes on separation for cohabitants and their families. This scheme is distinct from that which applies between spouses on divorce. It would not apply to all cohabitants and, where it did apply, would only respond to the economic impact of the parties' contributions to the relationship. Remedies would be available where:

- (1) the couple satisfied certain eligibility requirements;
- (2) the couple had not agreed to disapply the scheme; and
- (3) the applicant had made qualifying contributions to the relationship giving rise to certain financial consequences at the point of separation.

#### ELIGIBILITY REQUIREMENTS

6.4 The recommended scheme would apply only to cohabitants who had had a child together or who had lived together for a specified number of years (a "minimum duration requirement"). The report does not make a specific recommendation as to what the minimum duration requirement should be, but suggests that a period set between two and five years would be appropriate.

#### DISAPPLYING THE SCHEME

6.5 The report rejects an "opt-in" scheme, whereby couples would be required to register their relationship in order to be able to claim financial remedies on separation. Consultation confirmed the view that an opt-in scheme would not deal effectively with the problems of hardship created by the current law. Vulnerable individuals would be no more likely to protect themselves by registering than they are to marry.

6.6 Instead, the report recommends that, as a default position, the scheme should be available to all eligible cohabitants. However, couples should, subject to necessary protections, be able to disapply the statute by means of an opt-out agreement, leaving them free to make their own financial arrangements.

#### QUALIFYING CONTRIBUTIONS AND THEIR CONSEQUENCES: THE BASIS FOR REMEDIES

6.7 It would not be sufficient for applicants simply to demonstrate that they were eligible for financial relief and that the couple had not made a valid opt-out agreement disapplying the scheme. In order to obtain a remedy, applicants would have to prove that they had made qualifying contributions to the parties' relationship which had given rise to certain lasting consequences at the point of separation.

- 6.8 In broad terms, the scheme would seek to ensure that the pluses and minuses of the relationship were fairly shared between the couple. The applicant would have to show that the respondent retained a financial benefit, or that the applicant had a continuing economic disadvantage, as a result of contributions made to the relationship. The value of any award would depend on the extent of the retained benefit or continuing economic disadvantage. The court would have discretion to grant such relief as might be appropriate to deal with these matters, and in doing so would be required to give first consideration to the welfare of any dependent children of the couple.
- 6.9 The report argues that a scheme based on these principles would respond, more comprehensively than the current law can, to the hardship and other economic unfairness that can arise when a cohabiting relationship ends. Where there are dependent children, the scheme would enable a remedy to be provided for the benefit of the primary carer, and so better protect those children who share their primary carer's standard of living. By making adequate provision for the adult parties, the scheme would give more leeway to the court than it currently has to apply Schedule 1 to the Children Act 1989 for the benefit of the parties' children.
- 6.10 The report also makes consequential recommendations for reform of the Inheritance (Provision for Family and Dependents) Act 1975, which applies where a qualifying cohabiting relationship ends on death.

#### ***Government response***

- 6.11 Details of the Government's interim response to our recommendations are given in Part 3.<sup>5</sup>

#### ***Easements, covenants and profits à prendre***

- 6.12 The Law Commission published a consultation paper on easements, covenants and profits à prendre on 28 March 2008.<sup>6</sup>

#### ***Definition of the rights***

- 6.13 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. The types of covenant considered by the project are promises, usually contained in a deed, made in relation to land. Covenants may be positive or restrictive, and, where restrictive, can have some characteristics which are normally associated with property rights. The third sort of right – 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.

<sup>5</sup> Para 3.68 above.

<sup>6</sup> Easements, Covenants and Profits à Prendre (2008) Consultation Paper No 186. A copy of the consultation paper and an executive summary are available at <http://www.lawcom.gov.uk/easements.htm>.

### ***Background***

- 6.14 The inclusion of this project in the Law Commission's Ninth Programme of Law Reform followed closely upon the joint work of the Law Commission and Land Registry on registration of title to land. In broad terms, the Land Registration Act 2002 (the culmination of the Law Commission and Land Registry's work in the field) 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, particularly in relation to the law affecting interests in land, was acknowledged throughout the project and it was expected that the Commission would carry forward land reform initiatives in the following years.

### ***Scope of the project***

- 6.15 The consultation paper makes provisional proposals for the reform of 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. Nor does the project include covenants entered into between landlord and tenant (in their capacity as such) which are subject to special rules.

### ***Importance of the rights***

- 6.16 The technical terminology that permeates this area should not obscure the fact that easements, covenants and profits à prendre remain vitally important in the twenty-first century. They are of practical importance to a large number of landowners. Recent Land Registry figures suggest that at least 65% of freehold titles are subject to one or more easements<sup>7</sup> and 79% are subject to one or more restrictive covenants. These rights can be fundamental to the enjoyment of one's property. For example, many landowners depend on easements in order to obtain access to their property, for support or for drainage rights.
- 6.17 Easements and covenants also play a vital part in enabling the successful development of land for housing. As such, they may have a significant impact on the Government's plans to provide new affordable housing.<sup>8</sup>

<sup>7</sup> The actual number of freehold titles subject to one or more easements is likely to be much higher than 65%, because this figure relates only to expressly granted easements and does not take into account easements not recorded on the register, such as those arising by prescription or implication.

<sup>8</sup> Department for Communities and Local Government, *Homes for the future: more affordable, more sustainable* (2007) Cm 7191.

### ***Aims of reform and main provisional proposals***

- 6.18 The aim of the project is to modernise and simplify the law, removing anomalies, inconsistencies and unnecessary complication where they exist. In making the law more accessible and easier to operate (and so more efficient), we believe that reform would benefit those who are affected by the law, such as private homeowners, businesses and organisations that own property, those who deal with and develop land and professional advisers. We consider that reform would offer net benefits to all those involved in the conveyancing process, be they laypersons, solicitors, licensed conveyancers or Land Registry.
- 6.19 The overarching aim of the project is to have a law of easements, covenants and profits à prendre that is as coherent and clear as possible. The consultation paper takes the provisional view that the current law's distinction between easements, covenants and profits à prendre is valuable and should be retained. It contains a number of detailed provisional proposals. The most important of these are as follows:
- (1) the abolition of the existing methods of prescriptive acquisition of easements and the creation of a single new method of prescriptive acquisition;
  - (2) the rationalisation of the current law of extinguishment of easements;
  - (3) the creation of a new interest in land – the Land Obligation – to take the place of positive and restrictive covenants; and
  - (4) the modernisation of the statutory means by which restrictive covenants can be discharged and modified and the application of those rules to easements, profits and Land Obligations.

### **Capital and income in trusts: classification and apportionment**

- 6.20 The current law on the classification of trust receipts and outgoings as income or capital is complex and can give rise to surprising results.<sup>9</sup> 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.<sup>10</sup>

<sup>9</sup> For example, where shares in a new company are issued to the shareholders of an existing company on what is known as an “indirect” demerger, those shares will be treated for trust purposes as capital. Where the demerger is “direct” the shares received will be treated as income in the trustee’s hands.

<sup>10</sup> In cases where the rules still apply (generally older trusts and home-made will trusts) the rules are either ignored or require the trustee to undertake complex calculations which are unlikely to have been envisaged by the settlor when setting up the trust.



- 6.21 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.
- 6.22 The Commission published a consultation paper on this subject in July 2004.<sup>11</sup> It provisionally proposed new, simpler rules for the classification of corporate receipts by trustee-shareholders, a new power to allocate investment returns and trust expenses as income or capital (in place of the existing rules of apportionment) and the clarification of the mechanism by which trustees of permanently endowed charities may invest on a "total return" basis.
- 6.23 Work on this project was suspended pending completion of other Property, Family and Trust Law team work and recommenced in early 2008. We have held a number of meetings with an expert advisory group and will continue discussions with other stakeholders, notably Her Majesty's Revenue and Customs (HMRC), with a view to finalising policy and instructing Parliamentary Counsel.

#### **The rights of creditors against trustees and trust funds**

- 6.24 Details of the Commission's third trust law project can be found in the Annual Report for 2004/2005. Work on this project will commence during the Tenth Programme of Law Reform.

#### **Feudal land law**

- 6.25 Details of a proposed feudal land law project can be found in the Annual Report for 2004/2005.<sup>12</sup>
- 6.26 The feudal land law project formed part of the Commission's Ninth Programme of Law Reform.<sup>13</sup> The project was to consider the several residual but significant feudal elements that remain part of the law of England and Wales. The Commission has not been able to carry out work in this area during the Ninth Programme because of the demands of other projects. The feudal land law project was automatically considered for inclusion in the Tenth Programme, alongside proposals for new projects suggested by consultees. Commissioners remain of the view that this is an important area of the law suitable for consideration by the Law Commission. However, they have concluded that the extent and nature of the problems presented by competing law reform work suggest that greater public benefit would flow from undertaking those projects before a review of feudal land law. Consequently, this project is deferred and will be put forward for consideration for the Eleventh Programme.

<sup>11</sup> Capital and Income in Trusts: Classification and Apportionment (2004) Consultation Paper No 175.

<sup>12</sup> (2005) Law Com No 294, paras 6.23 to 6.25.

<sup>13</sup> (2005) Law Com No 293, paras 1.9 and 3.10 to 3.13.



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# PART 7

## PUBLIC LAW

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### Remedies against public bodies

- 7.1 In last year's annual report we outlined the evolution of this project and our thinking in the scoping paper published in October 2006. We explained that we intended to have meetings with, amongst others, Government officials in advance of publishing a consultation paper in the autumn of 2007.
- 7.2 This project is notably unusual for Law Commission law reform projects, in that its principal subject matter is the liability of government (and the wider public sector). In the light of this, we sought to engage with officials from an early stage, in advance of the formal consultation process.
- 7.3 The reasons were two-fold. First, we needed assistance from Government in preparing our proposals. In part, this was a matter of hard statistical information – we wanted, particularly, figures for the total compensation bill that Government now faces. In this respect, the Treasury have been most helpful throughout. But we were also interested in understanding how our developing provisional proposals would affect public bodies, including any impact they might have on the behaviour of public bodies (in respect of which we were also undertaking other research – see below).
- 7.4 Secondly, it would be natural for a project that could result in widening its liability to compensation claims to occasion some concern within Government. We therefore thought it appropriate to seek to explain our developing ideas to Government officials, so that, when the time came for departments to respond to consultation, their responses would be based on a more mature understanding.

<sup>1</sup> Including those who were at the Commission for part of the period.

- 7.5 Assisted by advice from the Treasury, we set up a Government Contact Group, composed of a mixture of senior lawyers and administrators from Government departments and the Welsh Assembly Government. The Group formally met three times in 2007, and in addition we had a number of bi-lateral discussions with officials.
- 7.6 In the autumn of 2007, as we prepared to publish our consultation paper, during the course of a discussion at the final Government Contact Group meeting, we were asked to delay publication for a short period to enable officials to provide us with further information. We agreed. In the event, the delay did not result in the production of any significant new information. In particular, it appears that it is not possible for the Government to provide a definitive figure for the current costs to it of compensation under the current law. However, at this point we took the view that the way in which we were then presenting our provisional proposals was leading to misunderstandings about their structure and effect. So we have taken the opportunity to restructure our proposals, and now aim to publish the consultation paper in the summer of 2008.
- 7.7 A key question in the development of proposals in this area is what effect changes to liability have on the behaviour of public bodies. Not uncommonly, commentators and indeed the courts assert that extending, particularly, liability in negligence to government activity would result in “defensive administration”, or, alternatively, would encourage good administrative practice. However, there generally seems to be little empirical evidence for either of these assertions. In order to develop a better understanding of the impact of liability on the behaviour of public bodies, therefore, we asked Professor Alex Marsh to undertake a literature survey of relevant empirical and theoretical learning on the subject. Professor Marsh has been seconded to the team as one of our visiting academic consultants by the University of Bristol. An academic paper based on this research was given at the conference of the Socio-Legal Studies Association in March 2008, with responses from two prominent academics and researchers in this area. We are very grateful to Professors Maurice Sunkin (Essex University) and Colin Scott (University College Dublin) for these contributions. The research will underpin our provisional proposals when the consultation paper is published.
- 7.8 The Commissioner, also in March, chaired a very successful seminar, organised by the London School of Economics, which was addressed by Justice Ipp. Justice Ipp was responsible for the important report preceding legislation on negligence liability in New South Wales and other Australian jurisdictions.

### **Housing projects**

- 7.9 These projects follow on from Renting Homes, our proposed reform of housing tenure law, and are led by Martin Partington.

### ***Housing disputes***

- 7.10 As described in last year’s annual report, our work on housing disputes has developed on two tracks: a consultation paper on the question of housing jurisdictions, and continuing work with stakeholders on “triage plus”.

- 7.11 We published our consultation paper *Housing: proportionate dispute resolution – the role of tribunals* in June 2007. It provisionally proposed that the existing Residential Property Tribunal Service (RPTS) should become part of the new, unified First-tier Tribunal under the *Tribunals, Courts and Enforcement Act 2007* (then still passing through Parliament), and that there should be a readjustment of jurisdictions between the RPTS and the County Court. Specifically, we proposed that claims for possession and disrepair in relation to rented dwellings, park homes and caravans should be transferred to the tribunal. Appeals would go to the new Upper Tribunal. That Tribunal would also be given homelessness statutory appeals (from the county court) and other housing related judicial review applications (from the Administrative Court). In respect of Wales, where the equivalent of the RPTS is devolved, we (with some hesitation) proposed that the RPT Wales should be unified with the RPTS to create a unified England and Wales system. We received 47 responses to the paper.
- 7.12 We published the final report on 13 May 2008, just outside this reporting period. We recommended that “triage plus” should be adopted as the basic organising principle for those providing advice and assistance with housing problems and disputes. “Triage plus” means an approach to dispute resolution comprising three 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.
- 7.13 Our provisional proposals in relation to formal adjudication turned out to be very controversial. While some respondents were in favour of the further specialisation we saw as implicit in the move to a tribunal, others were strongly opposed to significant changes in the jurisdiction of the county court. We therefore concluded that, while the creation of a more specialist jurisdiction might remain a long-term goal, any progress towards it should be measured and tested.
- 7.14 The report therefore recommended that only stand-alone disrepair cases (that is, cases brought by tenants in respect of breaches of the repairing covenant implied by *Landlord and Tenant Act 1985*, section 11) should be transferred from the court to the tribunal on a trial basis. We also recommended that the jurisdiction of the county court over park homes matters should be transferred. There should be no change in the availability of legal aid in respect of transferred jurisdictions. As to the transfer of homelessness statutory appeals and housing-related judicial review applications, we did not feel able to make a final recommendation, but saw considerable merit in the Government taking powers to establish pilot schemes to test both possibilities. We firmly recommended that whichever forum did hear statutory homelessness appeals should have full interim relief powers.
- 7.15 In respect of Wales, we abandoned our provisional proposal to reverse devolution of RPT Wales, and recommended no change in the governance of the tribunal. The same jurisdictions we recommend for transfer to the RPTS/First-tier Tribunal in England should also be transferred to the tribunal in Wales.

- 7.16 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.

***Ensuring responsible letting***

- 7.17 This project, which originated in the Ninth Programme of Law Reform, is concerned with the proper regulation of the private rented sector. It is about how the law works (or doesn't), not about the content of the substantive law. We published a consultation paper in July 2007. The paper considered the available data on, particularly, the physical condition of properties in the private rented sector, and provisionally concluded that the relevant law was not working properly – conditions in the private rented sector were significantly worse than other rented housing. In an appreciable minority of properties, standards were below the minima set by Parliament. Following a discussion of the costs of remedying the state of property in the private rented sector, the paper set out our provisional proposals for a reformed regulatory structure.
- 7.18 Having considered as alternative options enhancing existing forms of voluntary self-regulation on the one hand, and a universal licensing system on the other, we provisionally proposed a system of “enforced self-regulation”. Under this approach all landlords would be required by law to join a self-regulatory organisation, but would have a choice as to which to join. We envisage that the self-regulatory organisations would, at least initially, be national or regional landlords’ associations and local authority accreditation schemes. Alternatively, landlords could let through a managing agent, who would have to be a member of an agents’ self-regulatory body. A central regulatory agency would certify the self-regulatory organisations and ensure that they maintained standards.
- 7.19 Under this scheme, maintaining proper standards of housing management (including the physical condition of property) would be through codes of practice (which would reflect statutory standards) promulgated by the self-regulatory organisations rather than use of the county court or local authority enforcement systems.
- 7.20 We also floated the idea of a system of property certification, a housing “MOT test”, under which properties could only be let if the landlord had a certificate that the property met the relevant standards.
- 7.21 Consultation closed in October 2007. We received 111 responses. We expect to publish our report in the summer of 2008.



Members of the Public Law Team

# **PART 8**

## **STATUTE LAW**

### **TEAM MEMBERS**

#### **Consolidation**

The Chairman; Robin Dormer, Helen Caldwell, Douglas Hall (from January 2008) and Tanya Killip (until April 2007)

#### **Statute Law Repeals**

The Chairman; John Saunders, Jonathan Teasdale and Jessica Wickham

### **CONSOLIDATION**

- 8.1 The consolidation of statute law has been an important function of the Law Commission since its creation. Consolidation consists in drawing together different enactments on the same subject matter to form a rational structure and to make more intelligible the cumulative effect of different layers of amendment. Usually this is done by preparing a single new statute. However, in the case of a large consolidation, it may be done by means of several new statutes.<sup>1</sup> 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.

<sup>1</sup> 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 4,911 A4-sized pages 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.



Robin Dormer, Senior Parliamentary Draftsman (right) and Douglas Hall

- 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 Even before the Charities Act 2006 (c 50) was passed it became apparent that the passing of the Act would create a need for the law on charities to be consolidated.<sup>2</sup> Work was started on the consolidation, but was then suspended for a period at the request of the Cabinet Office, because of the work being done on the implementation of the Charities Act 2006. Work on the consolidation is to be resumed in the near future.
- 8.9 We are updating work previously undertaken on a consolidation of the legislation on representation of the people. That consolidation was suspended some time ago, at the request of the Department for Constitutional Affairs, pending the passage of the Electoral Administration Bill.<sup>3</sup> But there has also been another development, in the form of the decision of the European Court of Human Rights in the case of *Hirst v United Kingdom (No 2)*.<sup>4</sup> It was held in that case that our law on prisoners' voting rights was not compatible with Article 3 of Protocol 1 to the European Convention on Human Rights. The Department for Constitutional Affairs has published a consultation paper on this subject.<sup>5</sup> No decision has yet been taken about when the consolidation can be safely revived.
- 8.10 Work continues on a consolidation of the legislation about private pensions. The Department for Work and Pensions has made funds available to enable the Law Commission to engage a freelance drafter (formerly a member of the Office of the Parliamentary Counsel) to undertake the consolidation. This is a very large exercise which will take several years to complete.

## **STATUTE LAW REPEALS**

- 8.11 The principal purpose of our statute law repeals work is the repeal of statutes that are obsolete or which otherwise no longer serve any useful purpose. By modernising the statute book and leaving it clearer and shorter, the work helps to save the time of lawyers and others who need to use it. The work is carried out by means of Statute Law (Repeals) Bills, which the Law Commissions publish periodically in draft in their Statute Law Repeals reports. There have been eighteen such Bills since 1965. All thus far have been enacted (the eighteenth is currently being considered by Parliament), thereby repealing well over 2000 Acts in their entirety and achieving the partial repeal of thousands of other Acts.

<sup>2</sup> *Report of the Joint Committee on the Draft Charities Bill*, pub. 30 September 2004, HL Paper 167-I, HC 660-I (session 2003-04), p.103; House of Lords Select Committee on the Constitution, 9th Report of Session 2005-06: *Third Progress Report*, pub. 28 March 2006, HL Paper 151 (session 2005-06), paras. 3-5 and Appendix 1.

<sup>3</sup> Now enacted as the Electoral Administration Act 2006 (c 22).

<sup>4</sup> (2006) 42 E.H.R.R. 41.

<sup>5</sup> *Voting Rights of Convicted Prisoners Detained within the United Kingdom*, CP29/06, 14 December 2006. The Ministry of Justice now has responsibility for this area of law.



Members of the Statute Law Repeals Team

8.12 Our Eighteenth Report on Statute Law Repeals was published on 29 January 2008.<sup>6</sup> Annexed to it was the draft Statute Law (Repeals) Bill that was introduced into the House of Lords on 27 February 2008 and which is expected to receive Royal Assent later this year. This will result in the repeal of a further 260 Acts in their entirety and the removal of redundant provisions from nearly 70 other Acts. The repeals include enactments relating to workhouses in London, the former East India Company and the building of local prisons across nineteen counties in England and Wales. Other topics covered include the police and armed forces, the criminal law, rating, taxes, planning and turnpikes.

<sup>6</sup> Joint Report with the Scottish Law Commission: Law Com No 308, Cm 7303; Scot Law Com No 210, SG/2008/4.

- 8.13 Work on our next Statute Law Repeals report has already started. This will, as always, contain proposals for the repeal of statutes which are no longer of practical utility. The topics under consideration at present are Dublin and the railways. The Dublin project will focus on the many Westminster Acts that were passed at a time when Dublin formed part of the United Kingdom. They remain on the statute book without ever having been formally repealed. The railways project is concerned with a range of mainly nineteenth century enactments that were enacted in connection with the development of the railway system across England and Wales at that time. Many of these Acts have long been unnecessary, often because the railways that they authorised either were never constructed or were subsequently abandoned.
- 8.14 In each area of statute law repeals work the team produces a consultation document inviting comments on a selection of repeal proposals. These documents are then circulated for comments to Departments and other interested bodies and individuals (and now also appear on our website). Subject to the response of consultees, repeal proposals relating to all our statute law repeals work, including both the projects mentioned above, will be included in our next Statute Law Repeals report which is planned for 2012.

## **PART 9**

# **EXTERNAL RELATIONS**

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

### **PARLIAMENT AND MINISTERS**

- 9.4 The Chairman and Commissioners have met a number of Ministers during the reporting year to further the development of projects. These include:
- The Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice
  - The Rt Hon Michael Wills MP, Minister of State, Ministry of Justice
  - The Rt Hon Baroness Ashton, Leader of the House of Lords
  - The Rt Hon the Baroness Scotland of Asthal QC, Attorney General
  - Vera Baird QC MP, Solicitor General
  - Jocelyn Davies, Deputy Minister for Housing, Welsh Assembly
  - The Rt Hon Alan Beith MP
  - The Rt Hon Alan Williams MP
  - Dr Tony Wright MP, Chair, Public Administration Select Committee
  - David Heath MP
  - Lord Lester of Herne Hill QC
  - Lord Hole of Cheltenham
- 9.5 We also met with various officials, including:
- Sir Suma Chakrabarti, Permanent Secretary, Ministry of Justice
  - Paul Jenkins, Treasury Solicitor

- Rowena Collins-Rice, Director, Democracy, Constitution and Law Group, Ministry of Justice
- Mark Ormerod, Director of Civil, Family and Customer Services, Ministry of Justice
- Ann Abrahams, Parliamentary Commissioner for Administration (Ombudsman)
- Tony Redmond, Local Government Ombudsman
- Adam Peat, Public Service Ombudsman for Wales
- HM Treasury officials at a seminar on the impact of liability on public bodies
- Policy officials at HM Treasury
- Policy officials at the Department for Business, Enterprise and Regulatory Reform
- Sir Brian Carsberg, who is undertaking for RICS a review of the regulation of the private rented sector
- Baroness Usha Prashar, Chair, Judicial Appointments Commission

## **CONSULTEES AND STAKEHOLDERS**

- 9.6 We receive help from a broad range of people who are thanked in the respective consultations and reports issued by the Law Commission. During the course of this year, we were particularly grateful to the academics and the judiciary who provided input. Many practitioners and legal associations working in specialist and general fields have given time and support to further our awareness of various areas of work.
- 9.7 We are also grateful to all those who have worked with us as members of advisory groups on our various projects.
- 9.8 We met various representatives of our stakeholder groups, including:
- The Rose Committee
  - The Criminal Sub-Committee of Her Majesty's Council of Circuit Judges
  - The judges at the Central Criminal Court
  - The judges at Snaresbrook Crown Court
  - The judges at Wood Green Crown Court
  - The Government contact group on the remedies project
  - Welsh Assembly Government Supported Housing Group
  - The President and staff at the Lands Tribunal

- Representatives of the Land Registry
- Expert advisory groups on:
  - Cohabitation
  - Easements
  - Capital and Income in Trusts, Classification and Apportionment
- A group of circuit and district judges (in connection with cohabitation)
- Representatives of the Church of England
- Lawyers and policy officials at HMRC
- Commercial Court judges
- Lloyds of London
- Financial Ombudsman Service
- Group Risk Development
- Society of Motor Manufacturers and Traders
- Association of British Insurers
- British Insurers Brokers Association
- Association of Risk Managers in Industry and Commerce
- British Insurance Law Association
- Confederation of British Industry
- Citizens Advice Bureau
- Which?
- British Retail Consortium
- National Consumer Council
- Consumer Direct

### **SEMINARS, LECTURES AND CONFERENCES**

- 9.9 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.

- 9.10 The **Chairman** gave two lectures in November 2007:
- “The Law Commission in the 21st century: Fitness for Purpose in a Changed Environment” (Sir William Dale Annual Lecture, Institute of Advanced Legal Studies).
  - “Law Reform in England and Wales: A Shattered Dream or Triumph of Political Vision?” (Law Reform Committee Annual Lecture).
- 9.11 **Jeremy Horder** gave or participated in the following lectures, conferences and seminars:
- A lecture ‘Reforming the law of homicide’ as part of The Distinguished Visitor Programme at the University of Maryland School of Law.
  - The first Annual Criminal Justice Lecture of the Centre of Criminal Law and Criminal Justice, Durham University entitled ‘Reforming the law of homicide’
  - A lecture ‘Corporate Manslaughter’ to a conference on shipping law arranged by Hull University law faculty.
  - A lecture ‘Judicial review of criminal proceedings’ at Hart Publishing 2008 Judicial Review Conference.
  - A lecture ‘The Work of the Law Commission on Criminal Law’ at the University of Siena.
  - A seminar held at King’s College London to discuss the Law Commission’s consultation paper ‘Conspiracy and Attempts’.
  - A seminar held at the Ministry of Justice to discuss the Law Commission’s consultation paper ‘Reforming Bribery’.
- 9.12 Jeremy is a continuing member of the Criminal Justice Council and the Criminal Law Committee of the Judicial Studies Board.
- 9.13 In addition, Jeremy 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.
- 9.14 **Stuart Bridge**, following the publication of our Report on Cohabitation: The Financial Consequences of Relationship Breakdown in July 2007:
- was interviewed on the Today Programme (BBC Radio Four), BBC Radio Five Live, BBC News, BBC News 24, ITN News, Sky News, Channel Four News and numerous BBC local radio stations;
  - appeared on the BBC Television documentary “Heaven and Earth”;
  - gave presentations on the report to the Bar Conference, the Annual Conferences of the Family Law Bar Association and the Society of Legal Scholars, and two conferences held by Resolution in Manchester and London.



9.15 Stuart also gave the following seminars/lectures:

- a seminar on easements, covenants and profits à prendre at the Annual Conference of Land Registrars held in Edinburgh;
- a Blundell Lecture, together with Janet Bignell of Falcon Chambers, on termination of tenancies by tenant default;<sup>1</sup>
- a lecture on the work of the Law Commission in general at the University of Cambridge summer school on English Legal Methods.

9.16 In his capacity as a Recorder, Stuart has been granted dispensation to sit in private family law cases. He continues to serve as a member of the Civil Committee of the Judicial Studies Board.

9.17 **David Hertzell**, following publication of our first consultation paper on insurance contract law reform<sup>2</sup> in July 2007:

- was interviewed on BBC 2 (“Working Lunch”) and Channel 4 News;
- has given presentations on the Consultation Paper to insurers, insurance buyers, insurance brokers, insurance industry service providers, solicitors and judges;
- has spoken about the Consultation Paper proposals at several insurance industry conferences;
- helped to organise and introduced a mock trial based on the Consultation Paper proposals arranged by the British Insurance Law Association and held at the Royal Courts of Justice;
- participated in a discussion of the Consultation Paper with the Financial Markets Law Committee;
- presented a paper at the Academy of European Law on insurance law reform.

9.18 Also, in January 2008, following publication of our Issues Paper on Insurable Interest, David:

- introduced a presentation on the topic held at Lloyds and organised by the British Insurance Law Association;
- spoke to insurance industry representatives at an event organised by a firm of city solicitors.

<sup>1</sup> This lecture was subsequently published in an abridged form in the Landlord and Tenant Review.

<sup>2</sup> Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured, Joint Consultation Paper LCCP 182/SLCDP 134.

9.19 **Kenneth Parker:**

- gave an address on murder to the Commonwealth Association of Law Reform Agencies Conference, held in Nairobi on 9 to 13 September 2007;
- chaired a seminar, addressed by Justice Ipp of the New South Wales Court of Appeal on 12 March 2008, on the insurance crisis in Australia and its lessons for our project on remedies against public bodies.

9.20 **Martin Partington** was awarded an Honorary Queen's Counsel in March 2008.

9.21 Our Senior Parliamentary Draftsman, Robin Dormer, attended two seminars organised by the European Commission Legal Revisers' Group in their "Quality of Legislation" series. He also participated in a seminar, sponsored by the Quality of Legislation team in the European Commission Legal Service, and organised by the Academy for Legislation of the Netherlands, on "Codification, Consolidation: Best Practices".

9.22 Members of our public law team attended various conferences and workshops, including:

- National Association of Citizens Advice Bureaux;
- Chartered Institute of Housing Conference;
- Law Centres Federation;
- Residential Landlords Association;
- Metropolitan Police Authority;
- South East London Housing Conference;
- Cardiff Landlords Day;
- SLSA Conference;
- ASRA Conference;
- Devon Tenants Federation.

They also met various individuals, academics and officials, including:

- Dr Timothy Brain, Chief Constable of Gloucestershire and ACPO spokesman;
- Geoff McLay, a New Zealand academic;
- Jeff Montgomery, Manager of the Client Services Group of the New Zealand Department of Building and Housing.

9.23 Two of our team managers attended a Government lawyers familiarisation day run by the Ministry of Defence.

- 9.24 One of our team lawyers gave a presentation to the Guild of Letting and Management on termination of tenancies.

### **LAW COMMISSIONS IN THE BRITISH ISLES**

- 9.25 We work closely with the Scottish Law Commission (SLC) on various projects. Over the course of the year, we have collaborated on insurance contract law. We have been greatly assisted in our work on cohabitation by discussions with the SLC. We remain in regular contact with the SLC concerning the two Commissions' trust law work.
- 9.26 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.
- 9.27 We held our first meeting with the Chairman of the new Northern Ireland Law Commission, the Hon Mr Justice Declan Morgan, on 14 February 2008. David Hertzell and William Arnold attended the official launch of the new body on 1 April 2008. We look forward to working closely with them in future.
- 9.28 We continue to liaise closely with the Law Reform Commission in the Republic of Ireland. We were pleased to welcome the President, the Hon Mrs Justice Catherine McGuinness, to the Leslie Scarman lecture.
- 9.29 The four law reform bodies in the British Isles come together for an annual meeting and take it in turns to host this meeting. The previous meeting was held on 13 July 2007 in Dublin. The next meeting is scheduled to take place on 9 May 2008 in Edinburgh.

### **INTERNATIONAL RELATIONS**

- 9.30 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:
- Sir Geoffrey Palmer, currently President, New Zealand Law Commission and formerly Prime Minister (1989 to 1990).
  - Dr Warren Young, Deputy President, New Zealand Law Commission.
  - The Hon Andrew McGechan QC, retired judge of the New Zealand High Court.
  - Professor Rosalind Croucher, Commissioner in the Australian Law Reform Commission.
  - Professor He Zengke, Research Professor and Executive Director, China Centre for Comparative Politics and Economics.

- Professor Zhang Wendi, Vice Professor and editor, China Centre for Comparative Politics and Economics. Central Compilation and Translation Bureau.
- Ms Xu Huan, Research Assistant, China Centre for Comparative Politics and Economics. Central Compilation and Translation Bureau.
- Peter Hennessy, Executive Director, New South Wales Law Reform Commission.
- Dr Warren Young, Deputy President, New Zealand Law Commission.
- Eight visiting lawyers who came to us as part of study programme on “Lawyers and Government: Managing Change”: Shelley Scantlebury (Barbados), Cheryl Antoinette Corbin (Barbados), Amma Gaisie (Ghana), Cynthia Lamptey (Ghana), Estelle Matilda Appiah (Ghana), Malefetsane Masole (Lesotho), Sheree Jemmotte (Montserrat) and Advocate Lyndon Bouah (South Africa).
- Five Study Fellows taking part in the Chevening Fellowship Programme at Bradford and Birmingham Universities: Karim Ben Hamida (Tunisia), Hong Hai Nguyen (Vietnam), Polina Lor (Cambodia), Renata Arianingtyas (Indonesia) and Judge Safrizal Zakaria Ali (Indonesia).
- Three guests of the House of Commons Overseas Office: Romina Natalia Catera, Member of Advisor Commission of General Legislation, Chamber of Deputies, House of Representatives, Argentina; Alejandro Kiss, Office of the Attorney General, National Supreme Court of Justice, Argentina; Lizo Zola Ngcongcu, Parliamentary Counsel, Botswana.
- Inga Rubin, a student at the University of Maryland School of Law, worked at the Commission as an intern for six weeks during July and August 2006. Inga was attached to the Criminal Law team. We are very grateful for her valuable contribution to the work of the team.
- Dalrain Davaasambuu, Ambassador of the Embassy of Mongolia, and officials from the Ministry of Justice and International Affairs, Mongolia.
- The Hon Simon O'Brien, Chairman of the Western Australian Parliament's Standing Committee on Uniform Legislation and Statutes Review, and colleagues.
- Members of the Legal Harmonisation Task Force of Tanzania (as part of their fact-finding visit to the UK, under the auspices of the Sir William Dale Centre for Legislative Studies within the Institute of Advanced Legal Studies (London)).

## PART 10 STAFF AND RESOURCES

### RECRUITMENT AND WORKING PATTERNS

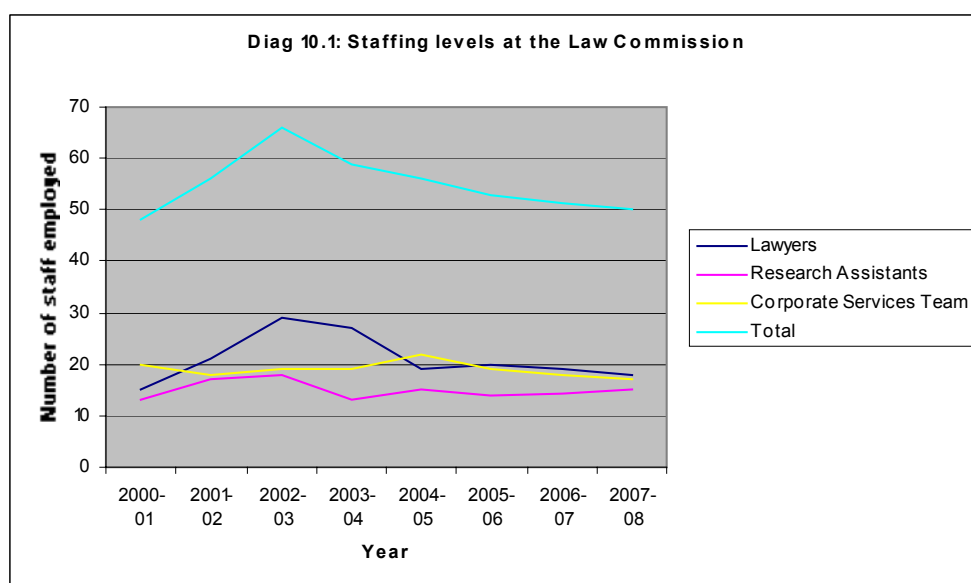
- 10.1 The Commission prides itself on recruiting and retaining the highest calibre of staff to work on its varied and challenging projects. We fill lawyer vacancies through a variety of methods according to the nature and specialist skills required for individual posts. For example, we may trawl posts through the Ministry of Justice's (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 with brochures, recruitment criteria, guidance and application forms available for downloading and returning on-line.
- 10.2 There are a wide variety of work/life balance arrangements in place, such as home-working and working part time or compressed hours. In addition, staff loans, secondments and short-term appointments are also welcomed.

### HEALTH AND SAFETY

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

### STAFF

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



### **Legal staff**

- 10.5 The Commission's lawyers are barristers, solicitors or legal academics from a wide range of professional backgrounds, including private practice and public service.
- 10.6 This year the Commission welcomed Donna Birthwright, Michael Harakis, Tim Spencer-Lane, Keith Vincent, Lauren Jamieson and Elizabeth Waller and said goodbye to Tola Amodu, Chantal Bostock, Judith Cairns, David Cowan, Eleanor Cawte, Lydia Clapinska and Joanna Miles. The names of all current legal staff are set out at the beginning of Parts 4 to 8 above.
- 10.7 Parliamentary Draftsmen who prepare the draft Bills attached to the law reform reports, and who also undertake the consolidation of existing legislation, are seconded to the Law Commission from the Parliamentary Counsel Office. The team of Parliamentary Draftsmen has changed with the departures of Helen Caldwell and Tanya Killip and the arrival of Douglas Hall. The Commission is very grateful to them all for their expertise and hard work.

### **Research assistants**

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

### **Impact assessment**

- 10.9 The Commission was pleased to welcome Vindelyn Smith-Hillman, who took up post as Economic Advisor in November. Her primary responsibility is to facilitate impact assessment of law reform proposals which will enable recommendations by the Law Commission to be more readily implemented. This is a significant move on the part of the Commission in giving effect to the importance of adopting an evidence-based approach.<sup>1</sup>

### **Corporate services team**

- 10.10 The Commission has continued to benefit from the experience, expertise and commitment of its small Corporate Services Team (CST) of administrative staff. The CST is responsible for accommodation, communications, health and safety, human resources, information technology, programme management, publishing, records management, resource accounting, secretarial assistance and security. These support services help the Commission to function effectively and smoothly.

<sup>1</sup> Further information about impact assessment is given in paras 1.14 to 1.16 above.

- 10.11 Two members of the team left the Law Commission this year: Simon Hughes and Richard Saunders. They were replaced by Rakib Hussain and Sherin Sasidharan.
- 10.12 The CST values the help available to them from colleagues in MOJ, in particular from the Civil Law and Justice Division and the Human Resources Directorate. The CST is also grateful to the Facilities and Departmental Security Division, the Health and Safety Branch and the Press Office.



Members of the Corporate Services Team

### **Library staff**

- 10.13 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 libraries of the Supreme Court, 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. In co-operation with MOJ, the Library also provides a one-year library trainee programme for graduates intending to pursue a professional library and information studies course.
- 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.<sup>2</sup> Our older publications which are not available on our website can be supplied in electronic format (pdf) on request.

<sup>2</sup> <http://www.bailii.org>.

- 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*  
STUART BRIDGE  
DAVID HERTZELL  
JEREMY HORDER  
KENNETH PARKER

WILLIAM ARNOLD, *Chief Executive*

21 May 2008



# APPENDIX A

## IMPLEMENTATION OF LAW COMMISSION LAW REFORM REPORTS

LC No	Title	Status	Related Legislation
<b>1966</b>			
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)
<b>1967</b>			
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)
<b>1968</b>			
16	Blood Tests and the Proof of Paternity in Civil Proceedings (HC 2)	Implemented	Family Law Reform Act 1969 (c46)
<b>1969</b>			
17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (HC 38)	Implemented	Law of Property Act 1969 (c59)
18	Transfer of Land: Report on Land Charges affecting Unregistered Land (HC 125)	Implemented	Law of Property Act 1969 (c59)
19	Proceedings against Estates (Cmnd 4010)	Implemented	Proceedings against Estates Act 1970 (c17)
20	Administrative Law (Cmnd 4059)	Implemented	See Law Com No 73
23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (H C 369)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45)
24	Exemption Clauses in Contracts – First Report: Amendments to the Sale of Goods Act 1893: Report by the Two Commissions (Scot Law Com No 12) (HC 403)	Implemented	Supply of Goods (Implied Terms) Act 1973 (c13)
25	Family Law: Report on Financial Provision in Matrimonial Proceedings (HC 448)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45), now largely Matrimonial Causes Act 1973 (c18)

<b>LC No</b>	<b>Title</b>	<b>Status</b>	<b>Related Legislation</b>
26	Breach of Promise of Marriage (HC 453)	Implemented	Law Reform (Miscellaneous Provisions) Act 1970 (c33)
	<b>1970</b>		
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)
	<b>1971</b>		
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)
	<b>1972</b>		
48	Family Law: Report on Jurisdiction in Matrimonial Proceedings (HC 464)	Implemented	Domicile and Proceedings Act 1973 (c45)
51	Matrimonial Causes Bill: Report on the Consolidation of Certain Enactments Relating to Matrimonial Proceedings, Maintenance Agreements and Declarations of Legitimacy, Validity of Marriage and British Nationality (Cmnd 5167)	Implemented	Matrimonial Causes Act 1973 (c18)
	<b>1973</b>		
53	Family Law: Report on Solemnisation of Marriage in England and Wales (HC 250)	Rejected	
55	Criminal Law: Report on Forgery and Counterfeit Currency (HC 320)	Implemented	Forgery and Counterfeiting Act 1981 (c45)
56	Report on Personal Injury Litigation – Assessment of Administration of Damages (HC 373)	Implemented	Administration of Justice Act 1982 (c53)

LC No	Title	Status	Related Legislation
<b>1974</b>			
60	Report on Injuries to Unborn Children (Cmnd 5709)	Implemented	Congenital Disabilities (Civil Liability) Act 1976 (c28)
61	Family Law: Second Report on Family Property. Family Provision on Death (HC 324)	Implemented	Inheritance (Provision for Family and Dependants) Act 1975 (c63)
62	Transfer of Land: Report on Local Land Charges (HC 71)	Implemented	Local Land Charges Act 1975 (c76)
<b>1975</b>			
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)
<b>1976</b>			
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)
<b>1977</b>			
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	
<b>1978</b>			
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	

<b>LC No</b>	<b>Title</b>	<b>Status</b>	<b>Related Legislation</b>
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)
	<b>1979</b>		
95	Law of Contract: Implied Terms in Contracts for the Sale and Supply of Goods (HC 142)	Implemented	Supply of Goods and Services Act 1982 (c29)
96	Criminal Law: Offences Relating to Interference with the Course of Justice (HC 213)	Rejected	None
	<b>1980</b>		
99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (HC 369)	Implemented	Matrimonial Homes and Property Act 1981 (c24)
102	Criminal Law: Attempt and Impossibility in Relation to Attempt, Conspiracy and Incitement (HC 646)	Implemented	Criminal Attempts Act 1981 (c47)
103	Family Law – The Financial Consequences of Divorce (Cmnd 8041)	Implemented	See LC112
104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd 8064)	Rejected	None
	<b>1981</b>		
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)
	<b>1982</b>		
114	Classification of Limitation in Private International Law (Cmnd 8570)	Implemented	Foreign Limitation Periods Act 1984 (c16)
116	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (HC 513)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
117	Family Law: Financial Relief after Foreign Divorce (HC 514)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
118	Family Law: Illegitimacy (HC 98)	Implemented	Family Law Reform Act 1987 (c42)
	<b>1983</b>		
121	Law of Contract: Pecuniary Restitution on Breach of Contract (HC34)	Rejected	None
122	The Incapacitated Principal (Cmnd 8977)	Implemented	Enduring Powers of Attorney Act 1985 (c29)
123	Criminal Law: Offences relating to Public Order (HC85)	Implemented	Public Order Act 1986 (c64)
124	Private International Law: Foreign Money Liabilities (Cmnd 9064)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
125	Property Law: Land Registration (HC86)	Implemented	Land Registration Act 1986 (c26)

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

LC No	Title	Status	Related Legislation
168	Private International Law: Law of Domicile (SLC107) (Cm200)	Rejected	
	<b>1988</b>		
170	Facing the Future: The Ground for Divorce (HC479)	Legislation enacted but never implemented. Then repealed	See LC192
172	Review of Child Law: Guardianship	Implemented	Children Act 1989 (c41)
173*	Property Law: Fourth Report on Land Registration (HC680)	Superseded	See LC235
174	Landlord and Tenant: Privity of Contract and Estate (HC8)	Implemented	Landlord and Tenant (Covenants) Act 1995 (c30)
175	Matrimonial Property (HC9)	Rejected	
	<b>1989</b>		
177	Criminal Law: A Criminal Code (2 vols) (HC299)	Superseded	
178	Compensation for Tenants' Improvements (HC291)	Rejected	
180	Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC318)	Implemented	Criminal Justice Act 1993 (c36), Part 1
181	Trusts of Land (HC391)	Implemented	Trusts of Land and Appointment of Trustees Act 1996 (c47)
184	Title on Death (Cm777)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
186	Computer Misuse (Cm819)	Implemented	Computer Misuse Act 1990 (c18)
187	Distribution on Intestacy (HC60)	Implemented	Law Reform (Succession) Act 1995 (c41)
188	Overreaching: Beneficiaries in Occupation (HC61)	Part implemented	Trusts of Land and Appointment of Trustees Act 1996 (c47)
	<b>1990</b>		
192	Ground for Divorce (HC636)	Legislation enacted, never implemented, then repealed	Family Law Act 1996 Part II (c27)
193	Private International Law: Choice of Law in Tort and Delict (SLC129) (HC65)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
	<b>1991</b>		
194	Distress for Rent (HC138)	Accepted	
196	Rights of Suit: Carriage of Goods by Sea (SLC130) (250)	Implemented	Carriage of Goods by Sea Act 1992 (c50)
199	Transfer of Land: Implied Covenants for Title (HC437)	Implemented	Law of Property (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	
	<b>1992</b>		
205	Rape within Marriage (HC167)	Implemented	Criminal Justice and Public Order Act 1994 (c33)

LC No	Title	Status	Related Legislation
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
<b>1993</b>			
215	Sale of Goods Forming Part of a Bulk (SLC145) (HC807)	Implemented	Sale of Goods (Amendment) Act 1995 (c28)
216	The Hearsay Rule in Civil Proceedings (Cm2321)	Implemented	Civil Evidence Act 1995 (c38)
217	Effect of Divorce on Wills (Cm2322)	Implemented	Law Reform (Succession) Act 1995 (c41)
218	Legislating the Criminal Code: Offences against the Person and General Principles (Cm2370)	Part Implemented	Domestic Violence Crime and Victims Act 2004
219	Contributory Negligence as a Defence in Contract (HC9)	Rejected	
<b>1994</b>			
220	Delegation by Individual Trustees (HC110)	Implemented	Trustee Delegation Act 1999 (c15)
221	Termination of Tenancies (HC135)	Superseded	See Law Com No 303
222	Binding Over (Cm2439)	Part implemented	
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	
228	Conspiracy to Defraud (HC11)	Implemented	Theft (Amendment) Act 1996 (c62)
<b>1995</b>			
229	Intoxication and Criminal Liability (HC153)	Superseded	
230	The Year and a Day Rule in Homicide (HC183)	Implemented	Law Reform (Year and a Day Rule) Act 1996 (c19)
231	Mental Incapacity (HC189)	Implemented	Mental Capacity Act 2005
235	Land Registration – First Joint Report with HM Land Registry (Cm2950)	Implemented	Land Registration Act 1997 (c2)
236	Fiduciary Duties and Regulatory Rules (Cm3049)	Rejected	
<b>1996</b>			
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)

LC No	Title	Status	Related Legislation
<b>1997</b>			
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 Pending Part Rejected	
<b>1998</b>			
248	Corruption (HC524)	Accepted	
249	Liability for Psychiatric Illness (HC525)	Pending	
251	The Rules against Perpetuities and Excessive Accumulations (HC579)	Accepted	
253	Execution of Deeds and Documents (Cm4026)	Implemented	Regulatory Reform (Execution of Deeds and Documents) Order 2005 came into force 8 September 2005
255	Consents to Prosecution (HC1085)	Accepted but will not be implemented	
<b>1999</b>			
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 etc(HC806)	Pending	
263	Claims for Wrongful Death (HC807)	Pending	
<b>2000</b>			
<b>2001</b>			
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)
<b>2002</b>			
276	Fraud (Cm 5560)	Part Implemented	Fraud Act 2006 (c35)



LC No	Title	Status	Related Legislation
277	The Effective Prosecution of Multiple Offending (Cm 5609)	Implemented	Domestic Violence, Crime and Victims Act 2004
<b>2003</b>			
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)
283	Partnership Law (jointly with the Scottish Law Commission – SLC192) (Cm6015; SE/2003/299)	Part Accepted Part Rejected	Legislative Reform Order due to take effect on 01/10/09
284	Renting Homes (Cm6018)	Pending	
286	Towards a Compulsory Purchase Code: (1) Compensation (Cm6071)	Not implemented	
<b>2004</b>			
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 Law Com No 304
291	Towards a Compulsory Purchase Code: (2) Procedure (Cm6406)	Not implemented	
<b>2005</b>			
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	
<b>2006</b>			
297	Renting Homes : The Final Report	Pending	
300	Inchoate Liability for Assisting and Encouraging Crime	Implemented	Serious Crime Act 2007 (c27)
301	Trustee Exemption Clauses	Pending	
302	Post Legislative Scrutiny	Accepted	Post-legislative Scrutiny – The Government's Approach (2008) Cm 7320
303	Termination of Tenancies	Pending	
304	Murder, Manslaughter and Infanticide	Pending	
<b>2007</b>			
305	Participating in Crime	Pending	
307	Cohabitation: The Financial Consequences of Relationship Breakdown	Pending	

# APPENDIX B

## STAFF

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

The Corporate Services Team comprises:

<b>Chief Executive</b> William Arnold <sup>1</sup>	<b>Head of Corporate Services and Budget Manager</b> Ann Achow	
<b>Policy and Personnel Officer/ Training Co-ordinator</b> Barbara Wallen	<b>Programme Management and Resources Officer</b> Jacqueline Griffiths	
<b>Head of Communications</b> Correna Callender	<b>Editor / Internal Communications / Web Manager</b> Dan Leighton	
<b>Facilities, Records and IT Manager</b> Chris Porter	<b>Facilities and Records Officer</b> Terry Cronin	<b>Facilities and Records Assistant</b> Nicole Latte
<b>Facilities and Health and Safety Assistant</b> Rakib Hussain	<b>Messenger</b> Sherin Sasidharan	<b>Front Desk Security</b> Edward Bailey Paul Prentice
<b>Secretarial Support</b> Carmen McFarlane Anne Piper	Alison Meager Jackie Samuel	
<b>Librarian</b> Keith Tree	<b>Assistant Librarian</b> Michael Hallissey	<b>Library Trainee</b> Daniela Davey
<b>Chairman's Clerk</b> Amanda Collins		

### Contact Numbers

- General enquiries 020 7453 1200
- General fax number 020 7453 1297
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- Communications team [communications@lawcommission.gsi.gov.uk](mailto:communications@lawcommission.gsi.gov.uk)

<sup>1</sup> William Arnold succeeded Steve Humphreys as Interim Chief Executive in January 2008.

## 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.
- C.2 Income including contributions from Whitehall Departments, which are on occasion received by the Commission to cover resources it requires in order to undertake a particular law reform project, is not included here.

	<b>2005/2006</b>		<b>2006/2007</b>		<b>2007/2008</b>	
	(April/March)		(April/March)		(April/March)	
	£000	£000	£000	£000	£000	£000
Commissioner salaries (including ERNIC)*	613.0		579.8		583.1	
Staff salaries**	2664.5		2654.1		2602.1	
		<b>3277.5</b>		<b>3233.9</b>		<b>3185.2</b>
Printing and publishing; supply of information technology; office equipment; books; publicity; utilities (inc. telecommunications) and postage	230.8		154.2		265.0	
Rent for accommodation	560.0		560.0		560.0	
Travel and Subsistence	27.4		20.0		19.2	
Other administrative costs (inc. recruitment; fees and services)	79.9		64.3		82.0	
Entertainment	4.8		3.0		9.6	
		<b>902.9</b>		<b>801.5</b>		<b>935.8</b>
<b>TOTAL</b>		<b>4180.4</b>		<b>4035.4</b>		<b>4121.0</b>

\* The figure for 2005/2006 includes a sum for pension payments to our ex-Commissioners, which is not included in subsequent years.

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