

THE LAW COMMISSION EIGHTH PROGRAMME OF LAW REFORM

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

*Ordered by The House of Commons to be printed
22 October 2001*

LAW COM No 274

HC 227

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are:

The Honourable Mr Justice Carnwath CVO, *Chairman*
Professor Hugh Beale
Mr Stuart Bridge
Professor Martin Partington
Judge Alan Wilkie QC

The Secretary of the Law Commission is Mr Michael Sayers and its offices are at Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ.

The terms of this report were agreed on 13 July 2001.

The text of this report is available on the Internet at:

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

THE LAW COMMISSION

EIGHTH PROGRAMME OF LAW REFORM

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
FOREWORD BY THE CHAIRMAN		v
PART I: WORK DURING THE EIGHTH PROGRAMME OF LAW REFORM		1
<i>Summary</i>		1
Introduction	1.1	3
The Law Commission's project selection criteria	1.2	3
Scottish Law Commission	1.4	4
Consultation	1.5	4
Transition from the Seventh Programme	1.6	4
Timing of projects	1.7	4
Further projects	1.10	6
(1) THE EIGHTH PROGRAMME OF LAW REFORM	1.12	6
Item 1: Property law		7
Item 2: Electronic commerce		9
Item 3: Illegal transactions		9
Item 4: Compound interest		10
Item 5: Criminal law		11
(2) REFERENCES TO THE COMMISSION BY MINISTERS		14
Compulsory purchase		14
Housing		16
Publication of local authority reports		17
Unfair contract terms		18
Trust law		19
Fraud		21
Partnership law		22
Evidence in criminal cases		23
(3) CONSOLIDATION OF LEGISLATION	1.13	23
(4) STATUTE LAW REVISION	1.24	25
(5) ADVISORY AND OTHER WORK	1.27	26

	<i>Paragraph</i>	<i>Page</i>
PART II: IMPLEMENTATION OF THE LAW COMMISSION'S REPORTS		27
Introduction	2.1	27
(1) Implementation by Act of Parliament	2.3	27
(2) Implementation by Statutory Instrument	2.9	32
(1) The courts' implementation and use of Law Commission proposals	2.11	32
PART III: WORK COMPLETED DURING THE SIXTH PROGRAMME		36
Summary		36
Introduction	3.1	36
(1) THE SEVENTH PROGRAMME OF LAW REFORM		38
Item 1: Damages		38
Item 2: Limitation of actions		38
Item 3: Illegal transactions		39
Item 4: Compound interest		39
Item 5: Property law		39
Item 6: The law of trusts		40
Item 7: The law of business associations		41
Item 8: Electronic commerce		42
Item 9: Third parties' rights against insurers		42
Item 10: Criminal law		42
(2) REFERENCES TO THE COMMISSION BY MINISTERS	3.7	44
(3) CONSOLIDATION OF LEGISLATION	3.9	45
(4) STATUTE LAW REVISION	3.17	47
(5) ADVISORY AND OTHER WORK	3.19	47
APPENDIX A: THE WORK OF THE LAW COMMISSION		49
APPENDIX B: PUBLICATIONS ISSUED FROM 1 APRIL 1999 TO 31 JULY 2001		56

THE LAW COMMISSION

EIGHTH PROGRAMME OF LAW REFORM

Working for Better Law

To the Right Honourable the Lord Irvine of Lairg, Lord High Chancellor of Great Britain

I have the honour to present to you for approval the Law Commission's Eighth Programme of Law Reform to commence from 1 August 2001. As you will be aware, the Seventh Programme was designed as a rolling programme, and it was anticipated that a number of the projects would be carried on beyond the initial two-year period. They are included in the present programme.

An important innovation since the last programme was presented has been the setting up of the inter-Departmental Committee, chaired for most of the last Parliament by David Lock MP, Parliamentary Secretary in your Department. This committee provided an important forum for the consideration of new projects. The new items included in this programme have emerged from detailed discussions with the relevant Departments. As far as possible, we have ensured that they are ones to which the Departments are fully committed, and for which, where appropriate, we can in principle expect their support for legislation in due course. I understand that it is your intention to continue the Committee during the period of the Eighth Programme, and this is welcomed by the Commission.

The other main innovation since the last programme is the re-aligning of the teams within the Commission. The Company and Commercial Law team, led by Diana Faber, has been replaced, following her departure, by a Housing and Administrative Justice team, led by the new Commissioner, Professor Martin Partington. The programme includes completion of certain projects begun by Diana Faber's team, notably the review of Partnership Law, which will be continued under my leadership as Chairman. Other projects, including Electronic Commerce, have been transferred to the Common Law team under Professor Hugh Beale.

In selecting the new items for the Programme, we have had regard to the well-established criteria for the selection of Law Commission projects, as explained later in this document. Furthermore, since all the Commissioners, apart from myself, have been replaced since the last Programme was presented, we have also had regard in selecting the items to the particular experience and expertise of the new Commissioners.

More generally, we have been very encouraged by your own continuing support, as evidenced by the prominence given to Law Commission work in the legislative plans of the present Government. Our own Eighth Programme is designed to tackle defects in the law in a number of important areas, and will help to underpin the Government's commitment to law reform over the coming years.

Robert Carnwath
CHAIRMAN

PART I

WORK DURING THE EIGHTH PROGRAMME OF LAW REFORM

Summary

The main law reform work which the Law Commission plans to undertake until the end of 2003 is listed below -- also showing which Department has the leading responsibility within Government for the area of law.

Criminal Law and Evidence

<i>Codification of the Criminal Law</i>	<i>Home Office</i>
<i>Fraud</i>	<i>Home Office</i>
<i>Misuse of Trade Secrets</i>	<i>Home Office</i>
<i>Evidence of Previous Misconduct in Criminal Proceedings</i>	<i>Home Office</i>
<i>Assisting and Encouraging Crime</i>	<i>Home Office</i>

Commercial Law

<i>*Unfair Contract Terms</i>	<i>Department of Trade and Industry</i>
<i>Electronic Commerce</i>	<i>Department of Trade and Industry</i>
<i>Partnership Law</i> – <i>*General Partnerships</i> – <i>*Limited Partnerships</i>	<i>Department of Trade and Industry</i>
<i>Compound Interest</i>	<i>Lord Chancellor's Department</i>
<i>Illegal Transactions</i>	<i>Lord Chancellor's Department</i>

Property and Trusts

<i>Trust Law</i>	<i>Lord Chancellor's Department</i>
<i>Termination of Tenancies</i>	<i>Lord Chancellor's Department</i>
<i>Property Rights of Those Who Share Homes</i>	<i>Lord Chancellor's Department</i>
<i>Easements and Analogous Rights</i>	<i>Lord Chancellor's Department</i>

Housing and Administrative Justice

<i>Housing in the rented sector</i>	<i>Department of Transport, Local Government and the Regions</i>
<i>Compulsory Purchase and Compensation</i>	<i>Department of Transport, Local Government and the Regions</i>
<i>Publication of Local Authority Reports</i>	<i>Department of Transport, Local Government and the Regions</i>

Much of the work listed above will be completed by the end of 2003. The Programme of Law Reform is drawn up on the understanding that it is a rolling programme and that some of the work will be completed after that period.

** Joint with the Scottish Law Commission*

Introduction

- 1.1 The Law Commission is required to prepare and submit to the Lord Chancellor from time to time programmes for the examination of different branches of the law with a view to reform.¹ This document,² which includes the Eighth Programme, consists of three Parts. Part I describes: the Programme's detailed items for the period from August 2001 until at least December 2003;³ the other law reform work we are doing,⁴ following specific requests we have received from Ministers; and a summary of what we shall be doing in consolidating legislation, in statute law revision, and in advisory and other work. Part II sets out the position on the implementation of our reports. Part III gives an account of the law reform and other work which the Commission has done since April 1999, the start of the Seventh Programme. Appendix A provides a general description of the work of the Law Commission.

The Law Commission's project selection criteria

- 1.2 In the light of experience, we have developed project selection criteria to assist us make consistent and principled decisions as to the projects we accept or initiate. We have summarised these criteria in our Seventh Programme and in our Annual Reports since 1995. As part of the selection process, we assess all relevant considerations, but the most important of these factors are
- (1) the *importance* of the issues;
 - (2) the availability of *resources* in terms of both expertise and funding; and
 - (3) the *suitability* of the issues to be dealt with by the Commission.
- 1.3 There are several aspects to each of these factors and they are not applied mechanistically. In considering the *importance* factor, we take account of the extent to which the law is, for example, unfair, unduly complex or outdated, and the need for reform. On the *resources* factor, we consider the qualifications and experience of our Commissioners and legal staff and the funding likely to be available to us, and in addition make judgements as to the priority between different possible projects. In considering the *suitability* factor, we have to take into account such factors as whether the issues are predominantly legal. For

¹ Law Commissions Act 1965, s 3(1)(b). In the first 30 years of the Commission's life there were five programmes, two of them major. The First, published in 1965, consisted of 17 Items and the Fourth, published in 1989, consisted of 9 Items. The other three programmes in that period contained 6 Items between them. The Sixth Programme, published in 1996, had 11 Items. The Seventh Programme was approved in 1999; it contained 10 Items; the Commission was also working on 4 references by Ministers.

² Under s 3(2) the Lord Chancellor is to lay before Parliament any programmes which the Commission has prepared and which the Lord Chancellor has approved.

³ This is set out for approval by the Lord Chancellor: s 3(1)(b). It is submitted for approval to the Lord Chancellor following the General Election of June 2001.

⁴ There may be additional law reform projects: see paras 1.9 - 1.10 below.

example, we do not undertake projects where reform is likely to be shaped primarily by political judgments.

Scottish Law Commission

- 1.4 Several of our projects are conducted jointly with the Scottish Law Commission. In addition, we often consult them informally. We are most grateful for their assistance and cooperation.

Consultation

- 1.5 Our future programme of work has resulted from a long process of consultation with a number of interested bodies. Those we consulted included the Government Departments most closely concerned with our work, and representative professional bodies such as the Bar, the Law Society and the Society of Public Teachers of Law. We are most grateful to those whom we consulted for the discussions they have had with us.

Transition from the Seventh Programme

- 1.6 Many projects were completed during the Seventh Programme, as described in Part III. We are also discontinuing three projects.⁵ Several new references have been added,⁶ and one new project within an Item.⁷ The Eighth Programme consolidates and supersedes previous programmes.

Timing of projects

- 1.7 It is important that we estimate the progress of our work, and of when we consider that we should be able to deliver our final reports. In reaching our estimates, we have taken into account factors such as: the amount of work we have done on the project so far; the intrinsic value and urgency of the project; the need for systematic law reform in the field;⁸ the likelihood of our recommendations having effect;⁹ and the Commission's resources involved in the project. Many of these factors reflect our project selection criteria.¹⁰ We have also borne in mind our resolve to keep the length of our projects to a minimum.¹¹

⁵ See pp 39 and 42 - 43 below.

⁶ See pp 14 - 22.

⁷ See Item 1 (iii).

⁸ Section 3(1) of the Law Commissions Act 1965.

⁹ For example, some of our reports result in short, non-controversial and technically simple legislation and some do not even require primary legislation to realise their benefits; to take another example, it may be clear from our consultations or other sources that there is an especially high degree of support or interest in the subject matter - perhaps shown by the public, the courts, Parliament or the Government.

¹⁰ See paras 1.2 - 1.3 above at (1) and (2).

¹¹ See our Annual Report for 2000, Law Com No 268, at paras 1.56 - 1.58.

- 1.8 Taking such factors into account, we are planning to complete the projects in the following years (*: joint with the Scottish Law Commission):-

2001

Evidence of previous misconduct in criminal proceedings¹²

Electronic commerce

besides the five other projects we have already completed this year¹³

2002

Fraud¹⁴

Partnership - general* and limited*

Termination of tenancies

Compulsory purchase

2003

Housing

Unfair contract terms*

Illegal transactions¹⁵

Property rights of home-sharers¹⁶

Publication of local authority reports

Assisting and encouraging crime¹⁷

Trusts (part)

Compound interest¹⁸

2004

Codification of criminal law (General Principles)

Trusts (part)

- 1.9 However, we fully recognise that priorities can change, sometimes quickly. It is therefore extremely difficult to estimate how quickly we can proceed with each of the projects and to specify when we shall be able to publish consultation papers and reports for them. Examples of new factors are: an urgent or other new project may arise, which we should address quickly if possible, such as the work on double jeopardy and prosecution appeals, and the scoping studies of the law of housing and of compulsory purchase; an important relevant case may come before the Court of Appeal or House of Lords making it advisable for us to await the outcome and perhaps any ensuing developments; special difficulties can arise

¹² See p 23 below.

¹³ See Appendix B.

¹⁴ See Item 5 below and p 21 below. This project may be dealt with in more than one consultation paper and report, not all of which may be completed by this time. In addition, there is the linked topic of misuse of trade secrets: see p 13 below.

¹⁵ See Item 3 below.

¹⁶ See Item 1(i) below.

¹⁷ See Item 5 below.

¹⁸ See Item 4 below.

in a project, requiring more detailed consideration and further consultation; we may need to contribute more than usual to the work done following publication of a report, possibly including assisting the Government during the passage of the Bill through Parliament - so temporarily reducing our capacity to continue work on current projects; or a shortage of resources may arise, including a staff shortage.

Further projects

1.10 Some of the projects which we are taking forward during the period of the Eighth Programme will be completed well before the end of the period. As they progress, we may well have the capacity to undertake further law reform work. New projects are expected to come to the Commission by way of reference by a Minister or under one of this Programme's Items, following consultation with the relevant Government department.

1.11 Examples of areas of possible work¹⁹ are:

work arising from the Auld Review of the Criminal Courts;

work arising as a result of the Leggatt Review of Tribunals; and

work in the field of commercial law.

With regard to the last, in our Seventh Programme²⁰ we outlined discussions we had had about work towards a possible commercial code and how we intended to consider whether, if such a project proceeded, we could and should be involved. The main piece of work to have arisen from these discussions is a possible project on company charges and security over property other than land, which is currently under discussion with the Government.

(1) THE EIGHTH PROGRAMME OF LAW REFORM

1.12 The Programme is described under the following headings for the Items:²¹

1. Property Law
2. Electronic Commerce
3. Illegal Transactions
4. Compound Interest
5. Criminal Law

¹⁹ Apart from any new work arising because of the Human Rights Act 1998 or because of European or international issues.

²⁰ Paras 1.14 - 1.15.

²¹ Although we refer to "recommendations", most of the Items represent continuation of work under recommendations already approved.

ITEM 1: PROPERTY LAW

Recommended: **that an examination be made of:**

- (i) the property rights of those who share homes;**
- (ii) easements and analogous rights, together with a possible system of land obligations;**
- (iii) landlord and tenant – the law relating to the termination of tenancies, to facilitate the implementation of the report previously published with a view to modernisation and simplification of the law in this area; and**
- (iv) such other aspects of the creation, transfer and extinction of rights in or over registered and unregistered land as may from time to time appear to the Law Commission and to your Department to be required.**

Property rights of those who share homes

We are reviewing the law as it relates to the property rights of those who share a home, in relation to that shared home, except - for example - where a person's occupancy is attributable to a tenancy, contractual licence or his or her employment. Our review therefore covers a broad range of people, including friends and relatives who share a home as well as unmarried couples and married couples (other than on the breakdown of the marriage).²²

At present, a person who is not a legal owner of a shared home will only be able to claim an interest in the home in certain, limited circumstances. Principally, these are when they can establish—

- (1) an equity arising by proprietary estoppel;
- (2) that a resulting or constructive trust has arisen in their favour; or
- (3) that they are a beneficiary under an express declaration of trust.

It is widely accepted²³ that the present law is unduly complex, arbitrary and uncertain in application. It is ill-suited to determining the property rights of those who, because of the informal nature of their relationship, may not have considered their respective entitlements.

²² The adjustment of married couples' property rights on the inter vivos termination of their relationship is governed by the Matrimonial Causes Act 1973 and is outside the scope of this project.

²³ See e.g., *Burns v Burns* [1984] Ch 317; *Midland Bank Plc v Cooke* [1995] 4 All ER 562; Simon Gardner, "Rethinking Family Property" (1993) 109 LQR 263; N Lowe and G Douglas, *Bromley's Family Law* (9th ed 1998) pp 152-3.

We wish to encourage people to make their own arrangements,²⁴ and ensure that where such arrangements have been made they should be enforceable and only disturbed in accordance with normal principles of law (such as, for example, when induced by fraud or undue influence). In addition we have considered various options for reform of the existing law for when no such arrangements have been made. The policy of our consultation paper has been settled and we anticipate that publication will be in the first half of 2002. We would hope to be able to follow that with our report during the course of 2003.

Landlord and Tenant

In 1994 the Law Commission published a draft Termination of Tenancies Bill.²⁵ The proposed Bill would abolish the right of landlords to terminate a tenancy by physical re-entry. As a result of responses received it was decided that a limited form of physical re-entry should be retained. Therefore, in 1998 we published a consultative document concerning the landlord's right of physical re-entry.²⁶ The results of that consultation exercise were announced in 1999.²⁷ An overwhelming majority of respondents favoured the retention of some form of termination by physical re-entry.

Since then, the project has been suspended for a period pending a review of options for leasehold reform by what was then the Department of the Environment, Transport and the Regions (DETR).²⁸ We anticipated that their work might overlap with our project. Following the publication of a joint consultation paper and draft Bill by the DETR and Lord Chancellor's Department²⁹ it became clear that the effect of their proposals on our project would be slight. With the full support of the DETR (and now the Department of Transport, Local Government and the Regions), we have therefore resumed work on a revised version of the draft Bill³⁰ and it is anticipated that this should be completed during 2002.

Easements and analogous rights and land obligations

This project was, in part, a new one in the Seventh Programme. This is an area of law of great practical importance to large numbers of landowners and others, and where there is pressure for reform. The law is outdated and causes problems but there has never been a comprehensive review. We shall be examining

²⁴ E.g. by making declarations of trust or entering into cohabitation contracts.

²⁵ Termination of Tenancies Bill (1994) Law Com No 221.

²⁶ Termination of Tenancies By Physical Re-entry: A Consultative Document (Law Commission, January 1998).

²⁷ See our press release: Termination of Tenancies by Physical Re-Entry (30 June 1999).

²⁸ See the Department's press release Leasehold Reform: the way forward (20 December 1999).

²⁹ Commonhold and Leasehold Reform (2000) Cm 4843.

³⁰ Annual Report for 2000, Law Com No 268, at para 5.5.

easements³¹ and analogous private law rights (particularly profits à prendre³²) with a view to their reform and rationalisation. Although it affects many landowners, this aspect of property law has never been subject to a comprehensive review, and aspects of the law are now outdated and a cause of some difficulty. It is, for example, very difficult to terminate or vary an easement, and this can impede the rational use of land. The ways in which easements and profits can be acquired by long user ("prescription") are also unsatisfactory and irrational. The scope of what can be an easement is considered by some to be too restrictive.

We intend to tie this work in with a reconsideration of the Law Commission's earlier work on land obligations.³³ Although the Government rejected our earlier recommendations, this was on the basis that we might look at them again to consider how future developments in property law might affect them.³⁴ Our objective would be to produce a coherent scheme of land obligations and easements that would be compatible with any scheme of commonhold that might be introduced. Because of the need to await developments on commonhold and because of our other priorities, we shall not be able to publish a consultation paper before 2003.

ITEM 2: ELECTRONIC COMMERCE

Recommended: that an examination be made of the current law and of proposals for domestic and international law reform with a view to assisting the development of domestic proposals and to making recommendations of additional reforms necessary to facilitate electronic commerce.

A review of certain aspects of electronic commerce was a new item in the Seventh Programme. Our work, assisted by the Scottish Law Commission, is focusing on the international sale and carriage of goods and the associated banking and insurance transactions. We hope to finalise our work in late 2001.

ITEM 3: ILLEGAL TRANSACTIONS

Recommended: that an examination be made of the law on illegal transactions, including contracts and torts.

A review of the law on illegal transactions was a new item in the Sixth Programme and was also included in the Seventh Programme. The law relating to illegal contracts, for example, is neither clear nor fair - so it is uncertain

³¹ An easement is the right enjoyed by one landowner over the land of another. Common examples are rights of way and rights of light.

³² A profit à prendre is a right to take something from the land of another, such as a right to graze sheep or cattle, or sporting or shooting rights.

³³ See *Transfer of Land: The Law of Positive and Restrictive Covenants* (1984) Law Com No 127.

³⁴ Written Answer, *Hansard* (HL) 19 March 1998, vol 587, col WA 213. It is understood that the Lord Chancellor had in mind the possible introduction of a system of commonhold.

whether money may be recovered if it has been transferred under a contract which contravenes the law. A Consultation Paper on illegality in contracts and trusts was published in January 1999.³⁵ A further consultation paper on illegality in tort was published in June 2001.³⁶ Our main provisional proposal was that the complex rules in these areas should be replaced by a structured statutory discretion. We intend to publish our report and draft Bill in 2003.

ITEM 4: COMPOUND INTEREST

Recommended: that an examination be made of the courts' power to award compound interest.

This was a new item in the Seventh Programme. The courts have a limited non-statutory jurisdiction to award interest: first, where the parties have agreed, expressly or impliedly, that interest shall be payable; secondly, where the interest is claimed by way of special damages as a consequence of a breach of contract; and thirdly, in equity, in cases of breach of fiduciary duty or profiting from fraud. In each of these three cases the interest may be awarded at simple or compound rates. In addition, the courts have a statutory discretion to award interest on a debt or damages. However, the statutory power is specifically limited to simple interest; as is a creditor's automatic right to interest after thirty days on unpaid commercial debt under the Late Payment of Commercial Debts (Interest) Act 1998.

Concern has been expressed that the courts' limited ability to award compound interest results in injustice to claimants, who will not be properly compensated because they may have to borrow at compound rates or lose the opportunity to invest at compound rates while waiting for their award. In addition, it has been suggested that the courts' inability to award interest at compound rates causes delay because it provides very little incentive for defendants to conclude litigation. A defendant can effectively "borrow" from the claimant at simple interest rates rather than the compound rates which a lending institution would charge. It is also regarded as anomalous that arbitrators have been given the power to award compound interest under section 49 of the Arbitration Act 1996. This means that, if cases on identical facts came before an arbitrator and a judge, the arbitrator would be able to award a larger sum than the judge.

Moreover, in the 1996 case of *Westdeutsche Landesbank Girozentrale v Islington LBC*,³⁷ concerning a claim for compound interest in a restitutionary action for money paid under a void swap transaction, a majority of the House of Lords rejected the possibility of reform through the courts. Statutory reform therefore appears to be the only way forward.

³⁵ *Illegal Transactions: The Effect of Illegality on Contracts and Trusts* (1999) Consultation Paper No 154.

³⁶ *The Illegality Defence in Tort* (2001) Consultation Paper No 160.

³⁷ [1996] AC 669.

We have started to review the courts' power to award compound interest, with a view to rationalising and updating the law. We intend to complete this project in 2003.

ITEM 5: CRIMINAL LAW

Recommended: that an examination be made of the criminal law, with a view to codification of the main areas, including:

- (a) all offences of dishonesty, including those arising under the Theft Acts 1968 and 1978 and the Forgery and Counterfeiting Act 1981; and**
- (b) the law relating to the liability of those who assist and encourage others to commit crime.**

Codification of the criminal law

The Law Commission first expressed its support for the codification of the criminal law in 1968. Following the work of a team led by Professor Sir John Smith CBE, QC, LL.D, FBA the draft Code³⁸ was published in 1985 in the form of a draft Bill with commentary and an introduction by the Commission. This Code was a major piece of work, and illustrated graphically how criminal law could be made more intelligible if it was properly organised and expressed in clear and up to date language. The Code covered large areas of criminal law, but save in limited respects it did not in general seek to change the existing law. It contained comprehensive provisions on the general principles of liability, and a number of substantive offences including offences against the person, sexual offences, theft, fraud and related offences.

Unfortunately, it became apparent that there was no prospect of Parliamentary time being found to implement such a large measure, and the Commission did not therefore take the Code any further, but instead reviewed discrete topics of the criminal law. The overarching intention of this piecemeal review was that, if the Commission's recommendations in individual reports were implemented,³⁹ the resulting legislation could be brought together into a Code by the streamlined legislative procedure for consolidation Bills.

It seems that the repeated calls for a Code⁴⁰ are now being heard. The Government has now made a commitment to codification, which is warmly welcomed by the Commission. In its White Paper, *Criminal Justice: The Way Ahead*, published earlier this year, the Government sets out its goal of "a core criminal code comprising, for example, substantive criminal law, rules of evidence, procedure, and sentencing" which would "help to achieve transparency and

³⁸ (1985) Law Com No 143.

³⁹ See, e.g., para 3.58 of *Criminal Justice: The Way Ahead* (2001) Cm 5074.

⁴⁰ See, e.g., Lord Bingham LCJ, "A Criminal Code: Must We Wait for Ever?" [1998] Crim L R 694.

accessibility... and certainty, speed and efficiency...”⁴¹ It states that this process could begin with the enactment of some of the recommendations already made by the Commission, and that it would “*need to proceed in addition to, not instead of, substantive changes to the law...*”. The Labour Party manifesto before the June 2001 General Election said “We will modernise and consolidate the whole criminal law system to promote public confidence and to speed up criminal proceedings”.

It would take some time to bring about a complete Code, but significant progress is finally within sight. The Commission is keen to do what it can to help achieve this goal, and now plans to develop a draft General Part of the Code, covering both those general principles which might be tackled within the definition of specific offences (such as the meaning of “intention”) and those which are genuinely free-standing (such as the defence of self-defence).

Offences of dishonesty

The main reasons for embarking on a comprehensive review of the offences of dishonesty, including those created by the Theft Acts 1968 and 1978, were the following. The first was that there was cogent judicial criticism that the law of theft was in urgent need of simplification and modernisation. Secondly, in the period since the enactment of the Theft Acts and the Forgery and Counterfeiting Act 1981, there have been technological advances. It is doubted whether the law has kept up with these advances and whether all acts of dishonesty are effectively covered by the present legislation, because Parliament could not have envisaged all the technical advances which have been made. Thirdly, there has been much criticism of the length and complexity of fraud trials and we are concerned to discover whether it might be possible to shorten and simplify trials by simplifying the law, while always ensuring that the defendant is fully protected against the danger of unfair conviction.

To date we have produced reports on Conspiracy to Defraud⁴² and on Money Transfers.⁴³ The recommendations in both those reports were implemented by the Theft (Amendment) Act 1996. We have reported on the law of corruption,⁴⁴ and this is one of the matters the Government has in its sights as part of the codification process.⁴⁵

The offence of theft has long been codified and the law is “settled” in the sense that certain “problematic” elements of the offence (such as the proper approach to the concept of “dishonesty” and the meaning of “appropriation,” particularly

⁴¹ Para 3.57.

⁴² (1994) Law Com No 228.

⁴³ (1996) Law Com No 243.

⁴⁴ (1998) Law Com No 248.

⁴⁵ *Criminal Justice: The Way Ahead* (2001) Cm 5074, para 3.58; the Queen’s Speech at the Opening of Parliament on 20 June 2001.

where the victim consents to what has happened) are now the subject of a series of consistent decisions of the courts (culminating respectively in the cases of *Ghosh*⁴⁶ and *Hinks*).⁴⁷ The law of theft remains “problematic” in the sense that the preponderance of academic commentary has been, and continues to be, highly critical of what has emerged as the settled law on these two matters. It is a matter of doubt, however, whether the courts have difficulties, day to day, in applying the law as it has emerged from the cases, or whether the conceptual problems, which many think still exist, particularly on the matter of appropriation, are in urgent need of being addressed.

While the law of theft is not therefore unproblematic, we do not consider that it is the prime aspect of the law of dishonesty requiring reform. We are therefore concentrating on completing our work on fraud, in response to the reference we received from the Home Secretary. This is described below.⁴⁸

Misuse of trade secrets

We have published a consultation paper on the possibility of creating an offence of misusing a trade secret.⁴⁹ We have analysed the responses, and there is a significant degree of support for our proposals. We are planning to take this work forward, but not until we have formed a view on the desirability of a general fraud offence.⁵⁰ Such an offence might render a specific offence of misusing trade secrets unnecessary. Progress on this will depend on factors like the outcome of our report on fraud, as explained, and the priority of this work as compared with other work such as that on codification.

Assisting and encouraging crime

This project is concerned with the extent to which persons who do not themselves commit a substantive offence should be subject to sanctions for assisting and encouraging others to commit offences. The present law on these topics is complicated and uncertain; the policy decisions that they raise are both important and difficult.

The Commission has produced a consultation paper⁵¹ and the responses have been analysed. It was thought wise to await the decision of the House of Lords in *Powell and English*,⁵² and priority was given to other projects.

⁴⁶ [1982] 75 Cr App R 154.

⁴⁷ [1998] Crim L R 904.

⁴⁸ See p 21 below.

⁴⁹ Legislating the Criminal Code: Misuse of Trade Secrets (1997) Consultation Paper No 150.

⁵⁰ See p 21 below.

⁵¹ Assisting and Encouraging Crime (1993) Consultation Paper No 131.

⁵² [1997] 3 WLR 959.

We opened our consultation paper by saying that the law in this area “is almost entirely a matter of common law. It displays to a marked degree what is often the characteristic of an area of criminal law governed by the common law, that clear rules, and agreed statements of principle, are conspicuously lacking from it.” Eight years on, this remains true.

There is confusion as to what offence a person might be guilty of where he assists the main offender, thinking she will commit one offence (an assault, say), but she actually does something unforeseen and more serious. An example might be where the plan is to commit a robbery, and D provides a weapon, believing no serious physical harm will be caused, but the ring-leader kills the victim, intending to kill or cause serious physical harm.

Even where the law is clear, it is problematic. Serious anomalies persist. For example, a bus conductor, relying on the signals of his conductor, reversed and knocked down two pedestrians. The driver was charged with driving without due care and attention and the conductor with aiding and abetting him. The driver was acquitted, and the conductor had to be acquitted too, as a matter of law.⁵³

We think this is a project which ought to be pursued and have begun to do so. Subject to any work which may arise out of the Auld Criminal Courts’ Review, we anticipate publishing our report in 2003.

(2) REFERENCES TO THE COMMISSION BY MINISTERS

In addition to our work on Programme items, we are currently working on eight references from Ministers pursuant to section 3(1)(e) of the Law Commissions Act 1965.

We set out these references below in the order we received them, starting with the most recent. Two of them are being conducted jointly with the Scottish Law Commission.

COMPULSORY PURCHASE

Referred by: The Minister for Housing and Planning

Date: June 2001

Topic: **To review the law (legislation and common law rules) relating to compulsory purchase of land and compensation, with particular regard to**

- (i) the implementation of compulsory purchase orders,**
- (ii) the principles for the assessment of compensation on the acquisition of land,**

⁵³ *Thornton v Mitchell* [1940] 1 All ER 339.

(iii) compensation where compulsory purchase orders are not proceeded with, and

(iv) compensation for injurious affection,

and to make proposals for simplifying, consolidating and codifying the law.

As part of the review, the Commission will give priority to consideration of the rules relating to the disregard of changes in value caused by the scheme of acquisition.

The Compulsory Purchase Policy Review Advisory Group, which advised what was then the Department of the Environment, Transport and the Regions, recommended to DETR in its final report, published in July 2000, that new legislation “consolidating, codifying and simplifying the law” should be prepared in consultation with the Law Commission. The Law Commission and DETR subsequently undertook a preliminary study to identify the main features of such a project. That study, which was formally requested by the Government in December 2000 and was completed in February 2001, drew up a detailed programme of the work required to prepare the new legislation. This project has the potential to provide greater fairness, speed and effectiveness in the law affecting large numbers of ordinary people in what are often times of considerable stress.

The first stage of the project will be to prepare and publish a consultative report on the form and contents of a Code, or Codes, covering the issues in the terms of reference. It will take account of any decisions arising from the fundamental review of laws and procedures relating to compulsory purchase and compensation. It may be necessary to take account of any procedural changes arising as a result of the Human Rights Act 1998. The work at this stage will include a detailed review of the existing legislation and common law rules, and will identify:-

provisions suitable for inclusion in the new Code;

provisions requiring substantial recasting;

common law rules suitable for codification; and

proposed repeals.

This stage will take a maximum of 12 months.

Following the publication of the consultative report, the Government will decide with the Law Commission whether the Commission should undertake the other stage of the project. This would be to prepare an explanatory report of the actions required to give effect to the Code, to be published in a final report and accompanied by draft legislation.

HOUSING

Referred by: The Minister for Housing and Planning

Date: March 2001

Topic: **To consider the law relating to the existing forms of housing tenancies in the rented sector and their creation, terms and termination, with a view to its simplification and reform; and in particular to review the law on:**

the forms of housing tenancy let by:

- (a) local authorities and other social landlords, and**
- (b) private landlords,**

with a view to providing a simple and flexible statutory regime for both the social and the private housing sectors.

Housing law affects large numbers of people every day of the year. Far greater clarity in the law is needed, to ensure its fairness, speed and effectiveness, and to improve people's understanding of their rights and responsibilities.

Lord Woolf made it clear in *Access to Justice* that substantive law reform, rather than improved procedures, was necessary to eliminate excessive cost and delay from housing cases. He accordingly recommended that we should carry out a review of housing law.⁵⁴ In March 2001 we published our scoping paper on housing law,⁵⁵ which identified the need for this, the first of a phased series of law reform projects on housing law. In that paper we concluded that the key failing of housing law was its unnecessary and illogical complexity. For example, local authority tenants have different types of tenancy from housing association tenants, private landlords' tenants have different tenancies depending on the date of the tenancy, the bases on which courts can order possession vary, and the rules about who has the right to succeed to a tenancy differ greatly. The result is not only costly and unnecessary litigation. Landlords cannot be certain what they are letting themselves in for, tenants cannot be expected to understand fully their legal rights and obligations, and those funding new investments may hesitate if the assumptions on which any investment is made are likely to be overturned.

⁵⁴ *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (1996) p 220. We referred to this in our *Seventh Programme of Law Reform*, (1999) Law Com No 259, paras 1.4 - 1.5.

⁵⁵ Following a reference from the Department of the Environment, Transport and the Regions. The terms of reference were "To undertake a preliminary study and to formulate proposals for a Law Commission project, or series of projects, related to the simplification and modernisation of housing law; and in particular to identify subjects suitable for separate consideration in the short term".

The scoping paper proposed addressing these problems with a major law reform exercise in two phases. The first phase, represented by this project, is to deal with housing status.⁵⁶ It is a single project with two distinct limbs, undertaken simultaneously. Each limb is, in terms of workload, similar to a standard Law Commission project. They are, however, very closely integrated with each other, both in terms of working methods and outcomes. One limb aims to establish a single long-term tenancy, primarily but not exclusively for use in the social housing sector. The subject matter of the second limb is a standard short-term tenancy, broadly based on the existing assured shorthold, primarily but not exclusively for use in the private sector. It is expected that there will be a single consultation paper, to be published early in 2002, followed by a report and draft Bill in the summer of 2003.

PUBLICATION OF LOCAL AUTHORITY REPORTS

Referred by: The Minister for Local Government and the Regions

Date: February 2001

Topic: **1. To consider the concerns raised in paragraphs 32.44–62 of the Waterhouse Report that in some circumstances local authorities may be unduly constrained by threat of actions or loss of insurance cover from making public, acting upon, and identifying necessary reforms in the light of the results of inquiries conducted by them, or on their behalf.**

2. Having regard to the matters of tort and contract raised in those paragraphs, to review:

(a) the law of defamation as it applies, and the privilege that such authorities can claim, in such circumstances;

(b) the possible loss of public interest immunity or privilege against disclosure, and the making of admissions of liability, in such circumstances;

(c) the way in which existing practices for insuring local authorities against liabilities in relation to defamation, or other torts, may contribute to these problems.

3. To recommend courses of legislative and/or administrative action that would better enable local authorities to take effective action in response to matters of serious public concern contained in such inquiries, and to do so in as open a way as appropriate.

In 1996, a tribunal of inquiry was established under Sir Ronald Waterhouse to look into abuse of children in care in the former county areas of Clwyd and

⁵⁶ In the second phase, we proposed undertaking projects on succession and on harassment and unlawful eviction.

Gwynedd from 1974. The report of the inquiry was published in February 2000.⁵⁷ It found that there had been systematic and serious sexual and physical abuse of children, particularly in Clwyd. Recommendation 71 was that we “should be invited to consider the legal issues that arose in relation to the publication of the Jillings report and associated problems, as explained in Chapter 32 of this report.” In their response to the report,⁵⁸ published in June 2000, the Government agreed.

The Jillings report was the result of an inquiry chaired by a retired director of social services in another authority into abuse in Clwyd, delivered shortly before the abolition of the county council in 1996. The council’s insurers, relying on a fundamental term of the contract of insurance, required the council not to publish the report, or allow it any but a very restricted circulation within the council. Leading counsel’s advice was taken by the council, which confirmed the insurer’s understanding of the contract. These events led to accusations of a cover-up.

The insurers’ position raises issues of defamation, and of the effect of adoption and publication by local authorities of such reports on subsequent civil litigation, for instance by amounting to an admission of liability or waiver of legal professional privilege.

We plan to publish a consultation paper early in 2002, and a report and (if necessary) draft Bill in 2003. The outcome may improve the capacity of local authorities to respond effectively to major matters of public concern, such as incidents of child abuse.

UNFAIR CONTRACT TERMS

Referred by: The Parliamentary Under Secretary of State for Consumers and Corporate Affairs

Date: January 2001

Topic: **Jointly with the Scottish Law Commission, to consider the desirability and feasibility of:**

(1) replacing the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 with a unified regime which would be consistent with Council Directive 93/13 on Unfair Terms in Consumer Contracts;

⁵⁷ *Lost in Care: The Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974* (1999–2000) HC 201.

⁵⁸ *Learning the Lessons: The Government’s Response to Lost in Care: The Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974* (2000) Cm 4776.

(2) extending the scope of the Unfair Terms in Consumer Contracts Regulations (or the equivalent of any legislation recommended to replace those Regulations) in accordance with (1) above to protect businesses, in particular small enterprises; and

(3) making any replacement legislation clearer and more accessible to the reader, so far as is possible without making the law significantly less certain, by using language which is non-technical with simple sentences, by setting out the law in a simple structure following a clear logic and by using presentation which is easy to follow.

There is a real need to revise the law governing unfair contracts. The validity of terms in contracts confronts both customers and businesses on a daily basis. The present law is extremely confusing because there is an overlap between the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999, and yet the two use significantly different criteria and produce significantly different results. The law needs to be made clearer and yet to be kept consistent with European measures. We hope to finalise a consultation paper in late 2001 and a report and draft Bill in early 2003.

TRUST LAW

Referred by: The Lord Chancellor

Date: January 2001

Topics: **(1) Trustee exemption clauses – to examine the law governing clauses which restrict the liabilities of trustees either by excluding liability for breach of their duties or by limiting the duties to which the trustees are subject.**

It is common in most modern trust deeds for there to be a clause which in some way excludes or restricts a trustee's liability for breach of trust. The clause may expressly exclude liability, or it may modify or restrict the trustees' duties. A trustee may rely upon such a clause to relieve him or her of liability for anything except dishonest conduct.

It has been judicially acknowledged⁵⁹ that many consider trustee exemption clauses to have gone too far, and that trustees who charge for their services and who, as professional men, would not dream of excluding liability for ordinary professional negligence, should not be able to rely on a trustee exemption excluding liability for gross negligence. During the Second Reading of the Trustee Bill in the House of Lords in 2000, Lord Goodhart expressed the view that "a paid professional trustee, or a corporation providing trustee services as part of its business should be entitled to rely on an exemption clause only where

⁵⁹ See *Armitage v Nurse* [1998]Ch 241, 256, *per* Millet LJ.

it satisfies the test of reasonableness under sections 4 and 11 of the Unfair Contract Terms Act 1977.” The independent Trust Law Committee issued a consultation paper on the subject in 1999 in which it also recommended change so that paid professional trustees cannot escape liability for negligence unless they can prove the settlor received independent advice. There are, however, arguments against such an approach that will have to be explored.

We hope to publish a consultation paper in 2002 and our report in 2002/20003.

(2) Apportionment – to examine:

- (a) the circumstances in which trustees may or must make apportionments between the income and the capital of the trust fund;**
- (b) the rights and duties of charity trustees in relation to investment returns on a charity’s permanent endowment;**
- (c) the circumstances in which trustees must convert and re-invest trust property; and**
- (d) the rules which determine whether money or other property received by trustees is to be treated as income or capital.**

The present law here includes a number of rigid, outdated and technical rules which create more difficulties in practice than they solve, given the very different investment climate in which they now operate. The rules are widely acknowledged to be unsatisfactory and were critically examined by the Law Reform Committee in its Twenty-Third Report, “The Powers and Duties of Trustees” (1982) Cmd 8733, and by the Trust Law Committee in a consultation paper in 1999.

The application of many of the apportionment rules is expressly excluded in modern trust instruments. However, their existence creates difficulties in relation to older trusts and home-made will trusts. The rules on when trustees must treat receipts as capital or income have caused considerable problems following the large scale demergers of many companies in recent years. When a company demerges, the issue arises as to whether shares of the new company issued to shareholders of the old company are to be treated as income or capital. Presently, for tax purposes they are treated as income, and for trust purposes as capital.

In relation to charitable trusts, the result of the present rules relating to permanent endowments is that charities with larger permanent endowments than they need cannot convert some of that capital into income. This can inhibit the most efficient and effective use and investment of charitable funds to achieve the charitable purpose.

We hope to publish our consultation paper in 2002 and our report in 2003/2004.

(3) The rights of creditors against trustees and trust funds – to examine the law governing the rights of creditors against trustees and the trust fund for liabilities incurred by the trustees on behalf of the trust.

Where trustees enter into a contract as trustee, they are personally liable for any debt arising under it, subject to a right to be indemnified from the trust fund for obligations properly incurred. The trustees' indemnity does not, however, provide any guarantee for a creditor even where the trust fund has sufficient assets to meet the liabilities incurred. This is because the trustees will not be entitled to the indemnity if the debt was improperly incurred, or if they have failed to obtain the consent of the beneficiaries where it was required.

Improving the position of creditors and trustees would inevitably be at the expense of beneficiaries. Striking a proper balance between the two interests will require great care and will need to be co-ordinated with any changes in the law relating to trustee exemption clauses. It will be necessary to strike the appropriate balance between any proposals which strengthen the protection of trustees and creditors against beneficiaries at the expense of the trust, and any proposals in relation to trustee exemption clauses that weaken the protection of trustees against claims by the beneficiaries.

It is anticipated that a consultation paper will be published in 2003 and our report in 2004.

FRAUD

Referred by: The Home Secretary

Date: April 1998

Topic: **To examine the law on fraud and in particular to consider whether: it is readily comprehensible to juries; is adequate for effective prosecution; is fair to potential defendants; and meets the need of developing technology including electronic means of transfer.**

As the terms of reference imply, there is a real need to review the law here. We have been conducting a comprehensive review of the offences of dishonesty. As a part of that work, the Home Secretary invited the Commission to consider the law on fraud, to make recommendations to improve the law and, in making these recommendations, to consider whether a general offence of fraud is desirable.

We published a consultation paper in response to this reference in 1999. In the light of the response to the consultation paper the criminal law team conducted a limited and informal consultation on revised proposals between July and September 2000. This has inevitably involved a delay, but work is continuing and we anticipate publishing a report and draft Bill in 2002.

PARTNERSHIP LAW

Referred by: The Minister of State, Department of Trade and Industry

Date: November 1997

Topic: **To carry out a review of partnership law jointly with the Scottish Law Commission, with particular reference to independent legal personality, continuity of business irrespective of changes in ownership, solvent dissolution, and a model partnership agreement. The review is to be conducted under the present law of partnership, namely the Partnership Act 1890 and the Limited Partnerships Act 1907.**

There are about 700,000 partnerships in the UK. The Partnership Act dates from 1890. We are reviewing the general law of partnership to enable it to meet the needs of business over a century later. Our consultation paper⁶⁰ was published in September 2000. Due to its length and the complexity of many of the issues raised we allowed for a longer consultation period, which ended in January 2001. We hope to finalise a report and draft Bill in the first half of 2002.

We are also in the process of completing the consultation paper on the law of limited partnerships. As a result of our preliminary consultations, with *inter alia* the venture capital industry, the most important user of limited partnerships in England, a number of problems with the 1907 Act have been identified. The review of partnership law provides an opportunity to remedy these problems, at a time when various jurisdictions – including Bermuda, the Cayman Islands, Delaware, Guernsey, Ireland, and Jersey – have introduced or modernised legislation on limited partnerships. The UK venture capital industry remains the largest and most developed in Europe,⁶¹ but other European jurisdictions are developing structures in a bid to increase their share. To compete, the UK needs to provide a modern law of limited partnerships. We intend to publish the consultation paper in the second half of 2001.

⁶⁰ Partnership Law: A Joint Consultation Paper (2000) Law Com No 159; Scot Law Com No 111.

⁶¹ It accounted for 49% of total European venture capital investment in 1998.

EVIDENCE IN CRIMINAL CASES

Referred by: The Home Secretary

Date: April 1994

Topic: **An examination of the principles relating to the admission of hearsay evidence and evidence of previous misconduct in criminal proceedings.**

Following recommendations by the Royal Commission on Criminal Justice,⁶² the Home Secretary invited the Law Commission to consider these matters, and to make appropriate recommendations, including, if they appear to be necessary in consequence of changes proposed to the law of evidence, changes to the trial process.

We published a consultation paper on hearsay in 1995,⁶³ followed by a report in June 1997.⁶⁴ All the 50 recommendations in that report have been accepted by the Government,⁶⁵ and one of those recommendations has been brought into effect.⁶⁶

The work on previous misconduct concerns the question of when it is fair for evidence of misconduct, on an occasion other than that the subject of the trial, to be adduced in evidence in a criminal trial. This covers not only the admissibility of a person's criminal record but also of misconduct which has not resulted in a conviction. The law has been heavily and frequently criticised as being illogical, uncertain and leading to potential miscarriages of justice. We published a consultation paper on previous misconduct in 1996⁶⁷ and plan to publish our report and draft Bill in autumn 2001.

(3) CONSOLIDATION OF LEGISLATION

- 1.13 Our current and future consolidation work includes the legislation relating to parliamentary and local government elections, to wireless telegraphy and to criminal appeals.

The Parliamentary and Local Government Elections Consolidation

- 1.14 This is a large project to consolidate the law relating to the franchise, the conduct of parliamentary elections in the United Kingdom and the conduct of local

⁶² (1993) Cm 2263, Chapter 8, para 25 and Recommendation 189, and para 30 and Recommendation 191.

⁶³ Consultation Paper No 138.

⁶⁴ Law Com No 245.

⁶⁵ Written Answer, *Hansard*, (HC) 17 December 1998, col 595, col 184W.

⁶⁶ Recommendation 50 was brought into effect in April 2000 by s 60 of the Youth Justice and Criminal Evidence Act 1999.

⁶⁷ Consultation Paper No 141.

government elections in England and Wales. (The conduct of local government elections in Scotland is a devolved matter and so outside the scope of a Westminster consolidation).

- 1.15 At present, the legislation is to be found in the Representation of the People Acts 1983 and 1985, both of which have been very heavily amended, notably by the Greater London Authority Act 1999, the Representation of the People Act 2000 and the Political Parties, Elections and Referendums Act 2000. The 1983 Act is also applied in Northern Ireland, with modifications, by the Elections (Northern Ireland) Act 1985 and the Elected Authorities (Northern Ireland) Act 1989.
- 1.16 There are various problems with the existing legislation. The text of the 1983 and 1985 Acts is rather hard to establish, since they have been so heavily amended and some provisions have become so entangled that it is hard to work out how they operate. The provisions are unhelpfully scattered between the different Acts, and it is hard to know sometimes how the different Acts inter-relate. It is not always easy to see which bits of the existing legislation apply to which elections. Another difficulty is that provisions are often stated to apply with modifications in particular circumstances, either in relation to particular kinds of elections, such as Greater London Authority elections, or in different parts of the United Kingdom such as Northern Ireland. These modifications are hard to follow.
- 1.17 Given the importance of the subject-matter to every citizen, it seemed timely to set out all the material afresh and in as accessible a form as possible. By the time of the General Election in June 2001 a considerable amount of work had been done and a first draft consisting of 220 clauses and 11 Schedules had been prepared.
- 1.18 After the Election, functions relating to elections were transferred from the Home Office to the Department of Transport, Local Government and the Regions. As a result there is currently uncertainty as to how quickly work on this consolidation can progress. We hope, however, that it will remain possible for this consolidation to be enacted during the period of the Eighth Programme of Law Reform.

The Wireless Telegraphy Consolidation

- 1.19 This is a medium-sized project. A first draft has been produced which runs to 96 clauses and 7 Schedules. It is a consolidation of the Wireless Telegraphy Acts 1949, 1967 and 1998, the Marine, &c., Broadcasting (Offences) Act 1967, Part VI of the Telecommunications Act 1984 and Part VIII of the Broadcasting Act 1990.
- 1.20 The draftsman of the Wireless Telegraphy Act 1998 commented that wireless telegraphy was a topic ripe for consolidation. The legislation in this area is spread over the different statutes listed above, all of which have been amended, in some cases heavily. The comprehensibility of the legislation is not helped by the fact that much of it is drafted in what now seems a distinctly antiquated style. The consolidation represents an opportunity to bring material together in one place

and, at the same time, to express it in a way that would be much easier to understand.

- 1.21 The legislation being consolidated is likely to be affected by the draft Bill which it was said in the Queen's Speech in June 2001 would be published to create a single regulator for the media and communications industries and reform the broadcasting and telecommunications regulations. So work on the consolidation has been temporarily suspended until the draft Bill is ready. We nevertheless hope that it will be possible for this consolidation to be enacted during the period of the Eighth Programme of Law Reform.

The Criminal Appeals Consolidation

- 1.22 This is another medium-sized project. A first draft has been produced which runs to 48 clauses and four Schedules. It is essentially a consolidation of the Criminal Appeal Act 1968, which has been heavily amended (in particular, by the Criminal Appeal Act 1995). The 1968 Act deals with appeals to the criminal division of the Court of Appeal, and appeals from there to the House of Lords.
- 1.23 Work on this project began in 1998, but has been delayed because of the demands placed on departmental lawyers by the heavy programme of current legislation in the criminal justice sphere. Further delay now seems very likely to occur because the Auld Review of the Criminal Courts is considering whether the appeals system needs to be reformed. The consolidation would need to take account of the outcome of that Review. We nevertheless hope that progress can be made on this consolidation during the period of the Eighth Programme of Law Reform.

(4) STATUTE LAW REVISION

- 1.24 Work on our next Statute Law Revision Report (our 17th) will be continuing during the period of the new Programme, together with the Scottish Law Commission. As always, the purpose of our work is to remove from the statute book legislation which has lost any practical utility or is simply obsolete. The work helps to modernise the statute book, leaving it clearer and shorter.
- 1.25 The areas of law that we hope to be examining shortly range from the administration of justice and employment to local government and the National Trust. We also hope to review the state of the statute book in the areas of medicine and mental health.
- 1.26 All these projects will be featured in our next Statute Law Revision Report which we hope to publish by the end of 2003. The report will include a draft Statute Law (Repeals) Bill to give effect to the proposals to repeal the various obsolete enactments identified in the report.

(5) ADVISORY AND OTHER WORK

- 1.27 We shall continue to be ready to undertake appropriate advisory and other work, as we have previously.⁶⁸

⁶⁸ See paras 3.19 - 3.22 below.

PART II

IMPLEMENTATION OF THE LAW

COMMISSION'S REPORTS

Introduction

2.1 Most of the Commission's law reform reports include recommendations for changing the law. The most frequent method of implementing those recommendations is

- By Act of Parliament, if the Government and Parliament accept the recommendations.

However, a small but increasing number of our reports:-

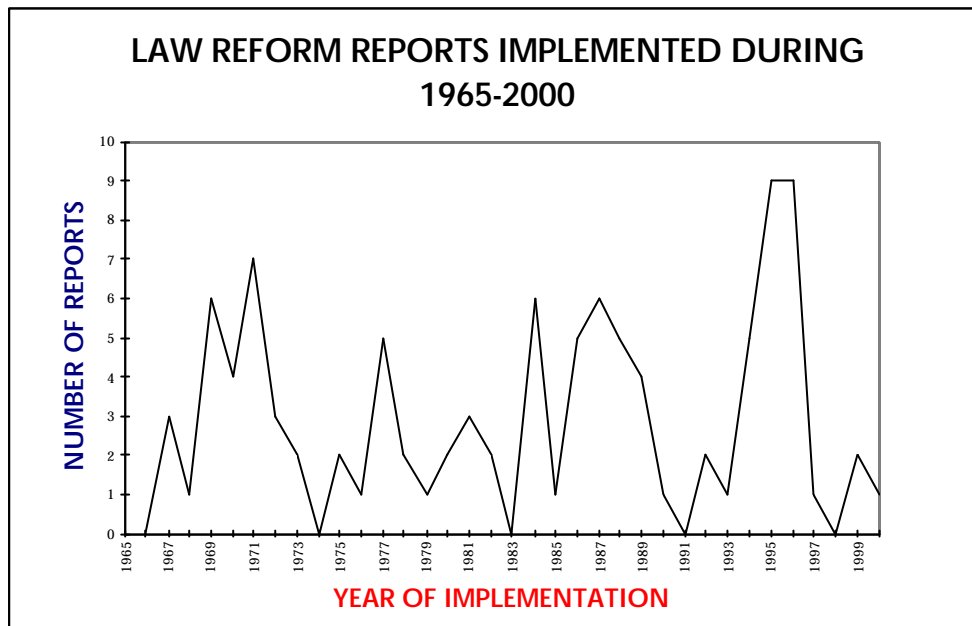
- Do not call for legislation at all, either because they do not recommend any change in the law or because they are intended as advice or guidance rather than as vehicles for law reform: examples are our reports on damages under the Human Rights Act, and on bail and the Human Rights Act;
- Are in effect implemented by the courts: see paragraphs 2.11 - 2.21;
- Could possibly be enacted by Statutory Instrument: see paragraphs 2.9 - 2.10;
- Are scoping studies: those on housing and on compulsory purchase are mentioned elsewhere: see pages 14 to 17.

2.2 This Part sets out the position on implementation.

(1) IMPLEMENTATION BY ACT OF PARLIAMENT

2.3 The graph below shows the pattern of implementation of the Commission's law reform reports since the Commission was established in 1965. Apart from showing the overall number of reports implemented, it demonstrates how the rate of implementation varies over time. We hope and believe that many reports which have not yet been implemented will ultimately be implemented when Parliamentary and other time allows. During the Seventh Programme we also continued to press for procedural reform in the long-term to facilitate Parliamentary scrutiny of law reform Bills.¹

¹ Annual Report for 1999, Law Com No 265 at paras 1.27 - 1.28.



NOTE: In a few, relatively rare, cases the implementation of one report may give rise to more than one Act; also, a single Act may, in some cases, implement more than one report.

2.4 Over two-thirds of our law reform reports have been implemented by Parliament, in full or in part.² The 1992/1997 Parliament implemented the most, twenty-six, largely because of a record of nine in 1995 and eight in 1996.³ The 1997/2001 Parliament only implemented four. The Bills connected with all our reports on consolidation and statute law revision have been implemented. The table which follows shows the number and rate of implementation of all our reports since our establishment in 1965 to the end of 2000, leaving aside annual reports, programmes etc.

² That proportion would be even higher if one discounted the inevitable gap between publication of our report and implementation by Parliament.

³ These figures should be read in the light of the note shown under the chart on this page.

**LAW COMMISSION REPORTS:
PUBLICATION AND IMPLEMENTATION
AS AT THE END OF 2000**

	IMPLEMENTABLE REPORTS PUBLISHED	REPORTS IMPLEMENTED ⁴	RATE OF IMPLEMENTATION OF REPORTS
LAW REFORM	150	101	67.3%
CONSOLIDATION	43	43 ⁵	100%
STATUTE LAW REVISION	18	18	100%
TOTAL	211 ⁶	162	76.8%

⁴ In this table a report is counted as implemented if (a) it is implemented in full or in part and (b) it is implemented by legislation, generally by Act of Parliament. Occasionally reports are in effect implemented by decisions of the courts; but they are not included in the table. : for example, during the Seventh Programme our reports on damages for non-pecuniary loss, mistake of law, and chancel repair liability were implemented by the courts, in full or in part: see paras 2.12, 2.13 - 2.15 and 2.16 - 2.17.

⁵ The number of consolidation Acts is very much larger, many having emanated from the Law Commission without the need for a formal report.

⁶ A few of our reports have not included draft legislation and were not intended for direct implementation. There have been 16 such reports on law reform, and one on statute law revision, bringing the total number of law reform and statute law revision reports published at the end of July 2001 to 227 and 19 respectively.

(i) The position on reports published during the Seventh Programme

2.5 During the period of the Seventh Programme we have published 11 law reform final reports with the following results to date (details are given in Part III):

Implemented	3 ⁷
Accepted and awaiting implementation	1
Under consideration	6
No implementation called for	1

(ii) The position on reports published before the Seventh Programme

2.6 With regard to the 14 law reform reports which had been published before the start of the Seventh Programme and on which there was no final outcome with government by then, the position to date is as follows:

Implemented	3
Accepted and awaiting implementation	8
Not accepted	1
Under consideration	6

2.7 The following reports, published before the Seventh Programme, have been implemented since then, in full or in part:-

YEAR	LAW COM NO	TITLE
1995	235	Transfer of Land: Land Registration – First Report of a Joint Working Group (jointly with HM Land Registry)
1996	242	Privity of Contract: Contracts for the Benefit of Third Parties
1996	243	Offences of Dishonesty: Money Transfers

⁷ Including one Bill currently in Parliament, and one report largely implemented by the courts: see p 38 and para 2.12 respectively.

2.8 The present position, with regard to the other reports published before the Seventh Programme and on which no decision had been made by government by then, is as follows⁸:-

YEAR	LAW COM NO	TITLE	DESTINATION
1994	222	Binding Over	Under consideration
1994	231	Mental Incapacity	Accepted
1995	236	Fiduciary Duties	Not accepted
1996	237	Legislating the Criminal Code: Involuntary Manslaughter	Accepted
1996	238	Landlord and Tenant: Responsibility for State and Condition of Property	Under consideration
1997	245	Evidence in Criminal Proceedings: Hearsay and Related Topics	Accepted
1997	246	Shareholder Remedies	Under consideration
1997	247	Aggravated, Exemplary and Restitutionary Damages	Accepted
1998	248	Legislating the Criminal Code: Corruption	Accepted
1998	249	Liability for Psychiatric Illness	Under consideration
1998	251	The Rules against Perpetuities and Excessive Accumulations	Accepted
1998	253	The Execution of Deeds and Documents by or on behalf of Bodies Corporate	Accepted
1998	255	Consents to Prosecution	Accepted

⁸ "Accepted" means accepted in full or in part.

(2) IMPLEMENTATION BY STATUTORY INSTRUMENT

- 2.9 Over the years it has mainly been primary legislation, ie Acts of Parliament, which have implemented Law Commission recommendations. That is likely to remain the single most frequent method of implementation. However, the recommendations in some of our reports, which deal with more technical and uncontroversial areas of law, may lend themselves also to implementation by secondary legislation, ie by Statutory Instrument.⁹
- 2.10 In recent years we have explored the possibility of more of our reports being implemented in this way. For example, with regard to the proposed replacement of the Trustee Investments Act, we assisted HM Treasury in the preparations for a draft Order under the Deregulation and Contracting Out Act 1994. We have also worked with the Land Registry to assist the Lord Chancellor's Department on the preparation of a draft Order, to be made under the Electronic Communications Act, to enable electronic conveyancing to be introduced.¹⁰ We have also taken considerable interest in the draft legislation which has been enacted as the Regulatory Reform Act 2001.¹¹ It provides power to make provision by order for the purpose of reforming legislation which has the effect of imposing burdens affecting persons in the carrying on of any activity. The legislation must include provision which removes or reduces at least one of those burdens. We are continuing to investigate the extent to which the Act may assist the implementation of Law Commission reports.

(3) THE COURTS' IMPLEMENTATION AND USE OF LAW COMMISSION PROPOSALS

- 2.11 Legislation should not be taken as the only measure of our success, and some of our recommendations can be implemented without legislation. In recent years the courts have increasingly given effect to our recommendations. As we have mentioned on several occasions in the recent past,¹² our reports have also had a significant effect in changing views on particular subjects and in leading to a gradual change in the law by developments through the courts or other means. We summarise a few from the period of the Seventh Programme.

(1) Damages for personal injury: non-pecuniary loss

- 2.12 In *Heil v Rankin*¹³ the Court of Appeal heard eight joined appeals on the issue of the appropriate level of damages for non-pecuniary loss. The hearing was arranged in response to our Report on Damages for Personal Injury: Non-

⁹ Eg, some of the recommendations in our report on Remedies in Administrative Law such as judicial review (1976) Law Com No 73 were implemented by the Rules of the Supreme Court (Amendment No 3) 1977.

¹⁰ Annual Report for 2000, Law Com No 268, at para 5.3.

¹¹ *Ibid*, at paras 1.61 – 1.63.

¹² Seventh Programme of Law Reform (1999) Law Com No 259 at para 2.1; Annual Report for 1999, Law Com No 265 at paras 1.10 and 1.26; and Annual Report for 2000, Law Com No 268 at paras 1.7, 1.28, 1.52 and 1.53.

¹³ [2001] QB 272.

Pecuniary Loss.¹⁴ We had recommended that the levels of damages for non-pecuniary loss for personal injuries should be increased, and that that increase should be made by the courts, the normal arbiters of the level of damages. The Court of Appeal accepted our recommendation that the level of awards for non-pecuniary loss should be increased, although the Court did not wholly follow our recommendations. The judgment is now reflected in “Guidelines for the Assessment of General Damages in Personal Injury cases”, 5th ed, Judicial Studies Board, 2000. We believe that this is the first time that the Commission has recommended that its proposals be implemented by the courts and without recourse to legislation.

(2) Abrogation of the mistake of law rule

- 2.13 In *Kleinwort Benson v Lincoln City Council*¹⁵ the House of Lords considered the retention of the rule under which money was generally not recoverable in restitution on the ground that it was paid under a mistake of law. The House had regard to our consultation paper and report on payments made under a mistake of law.¹⁶ We had recommended that the mistake of law rule should be abrogated and that this change should be introduced by legislation.
- 2.14 A majority of the House of Lords, however, felt that there was no good reason for postponing the matter for legislation, especially as they did not know whether Parliament would legislate on the matter or, if so, when. They concluded therefore that the mistake of law rule should no longer be maintained.
- 2.15 The House also considered the issue of whether payments, made on the basis of a settled understanding of the law which is later changed by judicial decision, should not be recoverable on the ground of mistake of law. We had recommended that an act done in accordance with a settled view of the law should not be regarded as founding a mistaken claim by reason only that a subsequent decision of a court or tribunal departs from that view. However, a majority of the House held that to introduce such a defence via the common law would be inconsistent with the declaratory theory of judicial decision as applied in our legal system, under which the law as declared by the judge is the law applicable not only at the date of the decision but also beforehand.

(3) The rule in Sambasivam

- 2.16 One of our proposals in our Consultation Paper on Double Jeopardy was the abolition of the rule in *Sambasivam v Public Prosecutor*,¹⁷ which excluded evidence that a defendant was guilty of an offence of which he or she had formerly been acquitted. The issue was judicially considered in *R v Z*¹⁸ and the House of Lords

¹⁴ (1999) Law Com No 257.

¹⁵ [1999] 2 AC 349.

¹⁶ Restitution of Payments Made Under a Mistake of Law, Consultation Paper No 120; Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments (1994) Law Com No 227.

¹⁷ [1950] AC 458.

¹⁸ [2000] 2 AC 483.

came to the same conclusion. Lord Hutton, giving the leading speech, expressly adopted our reasons for abolishing the rule. Accordingly, no further recommendations were made on this issue in our final report.¹⁹

(4) Chancel Repairs

- 2.17 Owners of certain pieces of land have had a liability, of mediaeval origin, to repair the chancels of some parish churches, even if they were unaware of that liability when they purchased the land. In a report in 1985²⁰ we recommended that this liability should be phased out, over a 10 year period. In 1982 the Church of England had supported phasing out the liability. We continued discussions with the Government over the years since our report, not least pressing that the liability contravened the European Convention on Human Rights. In the event, the Government rejected our report. This was on the basis that, although the liability can cause hardship, it is often reflected in the sale price and is enforced in relatively few cases, and any scheme to bring the liability to an end might encourage enforcement where it still existed; and, although continuing the liability carried the risk of breaching the ECHR, so would its abolition.²¹
- 2.18 In *Aston Cantlow PCC v Wallbank*²² the Court of Appeal has recently struck down chancel repair liability under the Human Rights Act, effectively implementing our main recommendation.

(5) Other effects

- 2.19 Even when the courts are not directly implementing our recommendations, our reports also have a significant effect in providing guidance on particular subjects. To take just one year, the House of Lords or Court of Appeal referred to Law Commission works, such as consultation papers or reports, in at least 18 of the decisions reported in the Law Reports of 2000.
- 2.20 For example, in *R v Woolin*,²³ Lord Steyn, after having noted the “state of disarray” into which the law of murder was thrown after *R v Hyam*,²⁴ effectively restated the law relating to intention along the lines we suggested in our report on offences against the person and general principles.²⁵ Another example is to be found in the recent conjoined twins case.²⁶ In that case Brooke LJ made extensive reference to research which the Commission had carried out into the defence of necessity. He also noted that the work of the Commission, combined

¹⁹ Double Jeopardy and Prosecution Appeals (2001) Law Com No 267.

²⁰ Liability for Chancel Repairs (1985) Law Com No 152.

²¹ Written Answer, *Hansard* (HC) 29 July 1998, vol 593 cols 201-2 W.

²² *The Times* 15 June 2001.

²³ [1999] 1 AC 82, 90-93.

²⁴ [1975] AC 55.

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

²⁶ *In re A (Children) (Conjoined Twins: Medical Treatment)* (CA) [2000] 4 All ER 961.

with that of academic writers, had led to the newly identified common law defence of “duress of circumstances”.

- 2.21 In a case during this period the Court of Appeal said “Where a statute has been enacted as a result of the Law Commission, it is, as I see it, both appropriate and permissible for the court to consider those recommendations in order to help to identify both the mischief which the Act is designed to cure and the public policy underlying it”: Clarke LJ in *Yaxley v Gotts* [1999] 3 WLR 1217 at 1232.

PART III

WORK COMPLETED DURING THE SEVENTH PROGRAMME

Summary

During the Seventh Programme (ie April 1999 to July 2001 inclusive) we have issued a total of 27 publications¹:-

- 11 law reform reports*
- 6 law reform consultation papers*
- 3 special papers*
- 3 annual reports*
- 1 consolidation report*
- 1 Programme of Law Reform.*

They are listed at Appendix B.

Introduction

- 3.1 The period since the start of the Seventh Programme has been busy and productive. There has been a steady flow of Law Commission reports and consultation papers.² We published eight law reform reports and three consultation papers in the course of work carried out under Programme Items. We also published three reports and three consultation papers following references received from Ministers.
- 3.2 We welcome the implementation (in whole or part) by Parliament of five of our law reform reports during the Seventh Programme.³ We hope that this figure will improve during the new Parliament which started in 2001. In addition, we have received the Government's response on nine reports, all but one of which they accepted. We have continued to strengthen our working relationships with the Government Departments principally concerned with the results of our work, not least in gaining their thorough commitment to our starting individual projects. We

¹ Including the papers given at a conference we arranged on law reform in March 2001.

² See para 2.5 above.

³ Land Registration Bill, currently in Parliament; Trustee Act 2000; Contracts (Rights of Third Parties) Act 1999; Trustee Delegation Act 1999; and Late Payment of Commercial Debts (Interest) Act 1998.

also believe that the Lord Chancellor's establishment of a Ministerial Committee on Law Reform⁴ demonstrates the value which the Government places on our work.

3.3 In recent years a significant number of our reports have in effect been implemented by the courts. We give details at paragraphs 2.11 - 2.21 above.

3.4 We now set out the specific law reform projects undertaken by the Commission from April 1999, when the Seventh Programme began, until the end of July 2001, under the Items in that Programme:

- 1: Damages
- 2: Limitation of actions
- 3: Illegal transactions
- 4: Compound interest
- 5: Property law
- 6: The law of trusts
- 7: The law of business associations
- 8: Electronic commerce
- 9: Third parties' rights against insurers
- 10: Criminal law

3.5 We set out the present status of each report which recommended a change in the law. Only one of these reports has so far been implemented by Parliament,⁵ although the Government has indicated acceptance of one further report. We mention above⁶ the outcome to date of reports published under earlier programmes on which decisions had not been made by government by then.

3.6 We then describe the work done following specific references to us by Ministers. We have also included in this Part a description of our consolidation and statute law revision work during this period, and a mention of some of our other law reform work during this period.

⁴ Described in our Annual Report for 2000, Law Com No 268 at paras 1.59 - 1.60.

⁵ One other Bill is currently in Parliament, and another report was largely implemented by the courts: see p 38 and para 2.12 respectively.

⁶ Paras 2.5-2.8.

(1) THE SEVENTH PROGRAMME OF LAW REFORM

ITEM 1: DAMAGES

Recommended: **that an examination be made of the principles governing and the effectiveness of the present remedy of damages for monetary and non-monetary loss, with particular regard to personal injury litigation. Certain matters to which specific consideration is to be given include:**

- (a) deductions and set-offs against monetary loss (excluding, unless expressly approved, the recovery provisions of the Social Security (Recovery of Benefits) Act 1997;⁷**
- (b) awards to cover medical, nursing and other expenses incurred by the plaintiff;**
- (c) the law relating to fatal accidents, including bereavement damages;**
- (d) the award of damages for pain and suffering and other forms of non-pecuniary loss.**

Work on this item was completed by the publication of the following reports during this period:

Year	Law Com No	Title	Destination
1999	257	Damages for Personal Injury: Non-Pecuniary Loss.	Implemented ⁸
1999	262	Damages for Personal Injury: Medical, Nursing and other Expenses	Under consideration
1999	263	Claims for Wrongful Death	Under consideration

ITEM 2: LIMITATION OF ACTIONS

Recommended: **that there be a review of the law on limitation of actions, with a view to its simplification and rationalisation**

Work on this item was completed by the publication of the following report during this period:

Year	Law Com No	Title	Destination
2001	270	Limitation of Actions	Under consideration

⁷ The recoupment provisions were previously contained in the Social Security Administration Act 1992.

⁸ Most of the recommendations in this Report were dealt with in February 2000 by the Court of Appeal in *Heil v Rankin* [2000] 2 WLR 1173: see para 2.12 above.

ITEM 3: ILLEGAL TRANSACTIONS

Recommended: **that an examination be made of the law on illegal transactions, including contracts and torts**

We published the following consultation paper during this period:

Year	CP No	Title
2001	160	The Illegality Defence in Tort

ITEM 4: COMPOUND INTEREST

Recommended: **that an examination be made of the courts' power to award compound interest.**

No publication has been issued under this Programme Item: see page 10 above.

ITEM 5: PROPERTY LAW

Recommended: **that an examination be made of:**

- (a) land registration;**
- (b) easements and analogous rights, together with a possible system of land obligations;**
- (c) the property rights of home-sharers; and**
- (d) such other aspects of the creation, transfer and extinction of rights in or over registered and unregistered land as may from time to time appear to the Law Commission and to your Department to be required.**

Work on Item 5(a) was completed by the publication of the following report during this period:

Year	Law Com No	Title	Destination
2001	271	Land Registration for the 21st Century: A Conveyancing Revolution	In Parliament

ITEM 6: THE LAW OF TRUSTS

Recommended: **that an examination be made of:**

- (a) the powers and duties of trustees to administer trusts in the best interests of the beneficiaries or objects including, in particular, trustees' powers of collective delegation and powers of investment;**
- (b) the formal requirements for the creation of trusts and interests in land and for the disposition of equitable interests;**
- (c) such other aspects of the law of trusts as may from time to time appear to the Law Commission or other examining agency and to your Department to require examination.**

We published the following report during this period:

Year	Law Com No	Title	Destination
1999	260	Trustees' Powers and Duties (in part, jointly with the Scottish Law Commission)	Implemented

It has been decided not to take forward the project on the formal requirements for the creation of trusts and interests in land and for the disposition of equitable interests, as a substantial part of the work on this project will be overtaken by the Lord Chancellor's proposed order under section 8 of the Electronic Communications Act 2000 which will facilitate electronic conveyancing. A Consultation Paper on Electronic Conveyancing was issued by the Lord Chancellor in March 2001. The advent of electronic conveyancing will make the case for legislative reform less pressing than in relation to other projects. However, the requirements under section 53(1) (b) and (c) for a declaration of trust and the disposition of an equitable interest or trust respectively, to be in signed writing, will not be affected by the Lord Chancellor's proposed Order. The present requirements give rise to a number of practical difficulties, for example, in relation to the electronic trading of certain types of securities. Further orders under section 8 of the 2000 Act will be needed to overcome these difficulties.

ITEM 7: THE LAW OF BUSINESS ASSOCIATIONS

Recommended: **that an examination be made of such aspects of company and partnership law as may from time to time appear to the Law Commission and to the Department of Trade and Industry to require examination.**⁹

Before the Seventh Programme, the Government had launched a thorough and wide-ranging review of core company law. As early as the Department of Trade and Industry's initial Consultation Paper in 1998,¹⁰ and a further consultation document in 1999,¹¹ they referred to:-

our report on shareholder remedies,¹² which contributed to the discussion of "civil sanctions", one of the issues in the DTI's review;¹³

our work, jointly with the Scottish Law Commission, on the law relating to directors' duties;¹⁴ and

the review of partnership law which we are conducting with the Scottish Law Commission and which is informing the DTI's company law review.¹⁵

This Item was included in the Seventh Programme in case it was advisable for specific remits to be made to the Law Commission and the Scottish Law Commission during the progress of the review, as the Consultation Paper had indicated.¹⁶ In the event, no such remits were necessary.

⁹ Ie, in addition to the project on partnership law, which has been referred to the Law Commission and the Scottish Law Commission by the Minister of State at the DTI: see p 22 above.

¹⁰ Modern Company Law for a Competitive Economy (DTI).

¹¹ "The Strategic Framework", issued by the Company Law Review's Steering Group.

¹² Jointly with the Scottish Law Commission; Law Com No 261; Scot Law Com No 173.

¹³ Para 6.3 of the DTI's Consultation Paper.

¹⁴ Para 3.7 of the DTI's Consultation Paper.

¹⁵ Para 5.7 of the DTI's Consultation Paper. The Law Commission's review "may well lead in the longer term to a better unlimited liability vehicle for the needs of modern business" ("The Strategic Framework", the consultation document issued by the Company Law Review's Steering Group, para 5.2.10).

¹⁶ Para 7.7.

ITEM 8: ELECTRONIC COMMERCE

Recommended: **that an examination be made of the current law and of proposals for domestic and international law reform with a view to assisting the development of domestic proposals and to making recommendations of additional reforms necessary to facilitate electronic commerce.**

No publication has been issued under this Item: see page 9 above.

ITEM 9: THIRD PARTIES' RIGHTS AGAINST INSURERS

Recommended: **that the Law Commission, jointly with the Scottish Law Commission, examine the scope and operation of the Third Parties (Rights Against Insurers) Act 1930 in the light of the current law and market practices of the insurance industry.**

Work on this item was completed by the publication of the following report¹⁷ during this period:

Year	Law Com No	Title	Destination
2001	272	Third Parties – Rights against Insurers	Under consideration

ITEM 10: CRIMINAL LAW

Recommended:

- (1) that an examination be made of the criminal law, with a view to codification of the main areas, including:**
 - (a) all offences of dishonesty, including those arising under the Theft Acts 1968 and 1978 and the Forgery and Counterfeiting Act 1981;**
 - (b) the law relating to the liability of those who assist and encourage others to commit crime;**
 - (c) the law relating to consent, with particular reference to offences against the person and sexual offences; and**
- (2) that an examination be made of particular areas of criminal law, evidence and procedure where issues arise in connection with the application of the Human Rights Act 1998.**

¹⁷ Jointly with the Scottish Law Commission. To be published on 31 July 2001.

We published the following report during this period:

Year	Law Com No	Title	Destination
2001	269	Bail and the Human Rights Act 1998	Under consideration

We also reported on Consent in Sex Offences, as described on page 46 below.

We published the following consultation papers during this period:

Year	CP No	Title
1999	155	Legislating the Criminal Code: Fraud and Deception
1999	157	Bail and the Human Rights Act 1998

Consent as a defence

The genesis of this project was the Report on Offences Against the Person and General Principles.¹⁸ In the course of preparing that Report the Commission had to consider the effect of the consent of the victim on liability for the infliction of physical hurt or injury. This, in turn, gave rise to Consultation Paper No 134 on Consent and Offences Against the Person.

The response to Consultation Paper No 134 was such that the Commission embarked on a wide ranging study of Consent in the Criminal Law,¹⁹ not limited to offences against the person. That too raised questions of the meaning of consent, capacity to consent, effect on consent of fraud, mistake, force, threats, abuse of power and other pressures, and the mental element in relation to consent. Once again the response to that consultation paper was substantial. The task of analysing that response and developing policies on the multitude of difficult legal and philosophical issues which it threw up has, inevitably, been lengthy and painstaking.

In 1999, the Home Office embarked on a Review of Sex Offences. As part of its remit the Home Office is considering, in the context of sex offences, the meaning of consent, capacity to consent, the mental element of sex offences insofar as they focus on consent or the lack of it, and matters which prevent a valid consent being given such as force, threats, deceit, mistake and age. In the light of the work which had already been done by the Commission, the Home Office sought our assistance in connection with its review. The Commission was happy to assist by refocussing its ongoing work on consent to concentrate on sex offences. The result of that work was the report we submitted, which was published as an appendix to the Home Office Review.

In that report we covered: the meaning of consent; capacity to consent, whether on the ground of age, or mental disability; invalidity of consent, whether on the ground

¹⁸ (1993) Law Com No 218.

¹⁹ (1995) Consultation Paper No 139.

of mistake, deceit or threat; and the mental element of sex offences in relation to the presence or absence of the victim's consent, all in the context of sex offences.

The responses to the consultation papers were highly polarised, particularly on the issue of consent for non-sexual offences, and no consensus emerged. Bearing in mind the matters we have already reported on, the amount of work that would be required to reach conclusions on the very difficult and sensitive issues involved, and the urgency attaching to our other work, we have decided it would not be worthwhile for us to produce any further report on this topic.

Human rights

During the course of the Seventh Programme²⁰ we started and completed work on bail and the Human Rights Act 1998. Over many years we have increasingly taken human rights aspects into account in our work, and we will continue so to do. In the absence of any specific Reference to us by Government, we do not have plans to undertake any further specific projects on the impact of the Act.

(2) REFERENCES TO THE COMMISSION BY MINISTERS

- 3.7 We published the following consultation papers during this period, pursuant to References which Ministers had made to us under section 3(1)(e) of the Law Commissions Act 1965:

Year	CP No	Title	Referred by
1999	156	Double Jeopardy	Home Secretary
2000	158	Prosecution Appeals against Judges' Rulings	Home Secretary
2000	159	Partnership Law ^o	Minister of State Department of Trade and Industry

^o Jointly with the Scottish Law Commission.

²⁰ It included the words, "that an examination be made of particular areas of criminal law, evidence and procedure where issues arise in connection with the application of the Human Rights Act 1998".

3.8 We also published the following reports during the period, pursuant to References by Ministers under section 3(1)(e) of the 1965 Act.

Year	Law Com No	Title	Destination
1999	261	Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties ^o	Under consideration
2000	266	Damages under the Human Rights Act 1998 ^o	Advisory ²¹
2001	267	Double Jeopardy and Prosecutions Appeals	Accepted in part ²²
2001	–	Compulsory Purchase and Compensation: A Scoping Paper	A review of this area of law is now part of our work ²³
2001	–	Reform of Housing Law: A Scoping Paper	A review of this area of law is now part of our work ²⁴

^o Jointly with the Scottish Law Commission.

(3) CONSOLIDATION OF LEGISLATION

3.9 During this period, two consolidation Bills were presented to Parliament, though only one reached the statute book. The one which was enacted included amendments to give effect to Law Commission recommendations. Both Bills were prepared by draftsmen working for the Commission. The number of consolidation Bills presented to Parliament in this period does not fully reflect the consolidation work done at the Commission during the Seventh Programme. Consolidation is always prey to changes in the legislative climate. This was illustrated during the Seventh Programme by the fact that work on the armed

²¹ The purpose was to inform, not to propose reform.

²² The part about double jeopardy appears to have been accepted in principle: Home Office background note to the Queen's Speech on 20 June 2001.

²³ See p 14 above.

²⁴ See p 16 above.

forces consolidation (four Bills running to over 600 pages in total) had to be discontinued following the Government's decision to move to a single tri-service Act, rather than having separate Acts for each of the armed forces.

3.10 To give an idea of the work involved, we summarise the background to each of the two Bills presented:

(i) Powers of Criminal Courts (Sentencing) Act 2000

3.11 The Act was a major undertaking, running to 168 clauses and 12 Schedules. It consolidated the legislation relating to the powers of criminal courts to sentence and otherwise deal with convicted persons. Prior to the consolidation, the relevant powers were spread over a dozen Acts, ranging from the Children and Young Persons Act 1933 to the Youth Justice and Criminal Evidence Act 1999. The effect of legislative activity in this field over recent years had been that the arrangement of the material had become completely illogical, causing great difficulty for those who had to apply it and leading to mistakes.

3.12 The consolidation has brought together the relevant provisions and put them in a rational order. The main benefit is to create a single piece of legislation to which the courts and practitioners can refer, instead of a multiplicity of inter-relating Acts. The consolidation also helps understanding by re-stating clearly provisions that have become unintelligible with age and amendment.

3.13 Work on the consolidation brought to light the need for various amendments. Some were made by the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999. Others, founded on Law Commission recommendations, were made by the consolidation itself.

(ii) European Parliamentary Elections Bill

3.14 The Bill consolidated the European Parliamentary Elections Acts of 1978, 1993 and 1999. The 1978 Act was never in a very satisfactory form, owing to the drastic surgery performed on it during its passage through Parliament. In addition, it has since been heavily amended, in particular by the 1999 Act.

3.15 The Bill is relatively short, running to 18 clauses and four Schedules. It is a straight consolidation (i.e. it does not include any amendments to give effect to Law Commission recommendations, as no recommendations were needed). However, in the course of drafting the Bill, one or two lacunae in the existing legislation became apparent and were dealt with in the Political Parties, Elections and Referendums Act 2000.

3.16 The Bill was introduced in the 1999/2000 Session of Parliament and passed through the Joint Committee, but fell at the end of the Session for lack of time. It was then held back to enable it to be enacted after the House of Commons (Removal of Clergy Disqualification) Bill. The intention is to reintroduce it in the 2001/2002 Session.

(4) STATUTE LAW REVISION

- 3.17 Since our Seventh Programme of Law Reform was published in June 1999 we have completed several major projects of statute law revision. These include work in the areas of trade and industry, agriculture and property law. The trade and industry project includes obsolete enactments reflecting social and economic changes since 1945 including the price controls of the 1970s and the privatisation of publicly-owned industries in the 1980s. The agriculture project reflects changes in agricultural development, production and marketing since 1945, many of the changes coming about as a result of the influence of the Common Agricultural Policy following the United Kingdom's accession to the EEC in 1973. The property law project includes many obsolete provisions dating back to the 1925 property law consolidations.
- 3.18 Other projects have been completed on ecclesiastical law, public health and environment law and on the law relating to births, marriages and deaths. In each case we have produced a consultation document inviting comments on a selection of repeals and have circulated the document to Government departments and other interested bodies and individuals.

(5) ADVISORY AND OTHER WORK

- 3.19 We have continued to respond to requests which Government departments make to us for advice.²⁵ We also do substantial work following publication of some of our reports.²⁶ On occasion we respond to consultation papers issued by the Government. The following are examples of advisory work.
- 3.20 In January 1999 the Home Secretary announced a review of the law of sexual offences. In view of this we decided, within the context of our wide-ranging work on consent as a defence to criminal offences generally, to focus on the issues raised by the defence of consent in *sexual* offences. In February 2000 we submitted to the Sex Offences Review a special report containing our final recommendations on those issues entitled "Consent in Sex Offences – A Report to the Home Office Sex Offences Review". This report was not laid before Parliament, or published as a Command Paper in the ordinary way, but was included as an appendix to the Review's report to the Home Secretary,²⁷ which was published in July 2000. It is also available from the Commission as a free-standing document.
- 3.21 Judge Wilkie QC, the Criminal Law Commissioner, has contributed to the work of the Judicial Studies Board. He and one of the joint team managers have also attended meetings and provided papers for Lord Justice Auld and his Criminal Courts' Review. One of the joint team managers assists the inter-departmental

²⁵ Law Commissions Act 1965, s 3(1)(e).

²⁶ See para 2.10 above and paras A.20 - A.21 in Appendix A below.

²⁷ Setting the Boundaries: Reforming the Law on Sex Offences.

committee which is considering those of our recommendations in our Report on Involuntary Manslaughter²⁸ which the Government has not accepted.

- 3.22 Professor Partington, the Commissioner for Housing and Administrative Justice, has also assisted the Judicial Studies Board. In addition, he is a member of the Civil Justice Council. He was an expert consultee to the Leggatt Review of Tribunals, and has been appointed as an independent expert for work on administrative justice being undertaken by the Council of Europe.

(Signed) ROBERT CARNWATH, *Chairman*
HUGH BEALE
STUART BRIDGE
MARTIN PARTINGTON
ALAN WILKIE

MICHAEL SAYERS, *Secretary*
13 July 2001

²⁸ (1996) Law Com No 237.

APPENDIX A

(Para 1.1)

THE WORK OF THE LAW COMMISSION

Introduction

- A.1 This Appendix describes the Commission and the importance of its work today. It summarises its aims, methods and advantages.

The Commission's role

- A.2 The Law Commission exists "for the purpose of promoting the reform of the law".¹ It is our duty to keep the whole of the law of England and Wales under review.² Parliament has directed us to have a view to the systematic development and reform of the law, and had drawn particular attention³ to the desirability of codification, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law.

The Commission's aims

- A.3 Much of the law in England and Wales is of high quality. However, many areas of the law need reform and modernisation to keep pace with the rapid changes in society.

- A.4 The Commission aims⁴ to make the law:-

fairer

simpler

more modern and

cheaper to use.

Fair

- A.5 It is vital that the law is fair. It must therefore be based on sound principles. A balance needs to be maintained between competing interests. The law should respect the rights,⁵ dignity and fallibility of the individual. It should ensure fair and equal treatment for the citizen. It should also enable disputes to be resolved speedily and without unnecessary litigation.

¹ Law Commissions Act 1965, s 1(1).

² Law Commissions Act 1965, s 3(1); see also *ibid*, s 1 (1) and (5).

³ Law Commissions Act 1965, s 3(1).

⁴ See (1993) Law Com No 210, paras 1.13-1.18; (1994) Law Com No 223, paras 1.1-1.9; (1995) Law Com No 234, paras 1.9-1.31; and (1999) Law Com No 259, pp 48-49.

⁵ Various rights are protected in the European Convention on Human Rights, to which the Human Rights Act 1998 has given further effect in the United Kingdom.

Simple

- A.6 The law should be both simple and without unnecessary complications. This includes simplicity in the language of the legislation. It should also be as clear and as easy to understand as possible. Clarity will make it more accessible and predictable to those who have to use it.⁶ Defects and anomalies should be eliminated. Laws which are obsolete or unnecessary should be repealed. Wherever possible, different laws dealing with the same subject matter should be consolidated into a single piece of legislation.

Modern

- A.7 The law should be modern, so that it meets current needs. It must keep pace with scientific, technological and economic development, with changes in society and with community and cultural attitudes and expectations.

Cost-effective

- A.8 If the law is to be usable and accessible it must be as efficient as possible while observing fairness. The law needs to maintain proper standards while at the same time causing as little expense as possible to all who are affected by it, whether the ordinary citizen, business or the State.

The Commission's methods

- A.9 The Commission uses the following methods to achieve its aims, developing new methods for new needs.
- A.10 The Commission's work is based on thorough and thoughtful 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. Its preliminary research seeks to establish the existing legal position here and, if appropriate, in comparable jurisdictions. It highlights the current shortcomings, and considers ways in which other jurisdictions have tried to overcome them and ways in which commentators have suggested overcoming them. Most usually we look to the law of other common law jurisdictions and we often gain considerable assistance from the reports of their law reform bodies.
- A.11 The process of law reform draws out many new legal principles in accordance with the values of society. A systematic approach to law reform is necessary to ensure consistency in the law.
- A.12 We take full account both of the European Convention on Human Rights and of European Community law. The European Convention has had a considerable effect on our work for some years, as has the Human Rights Act 1998 since its

⁶ A current example of work which we are undertaking where clarity and simplicity of language are specifically mentioned in our terms of reference is our work on unfair contract terms.

implementation. We take human rights issues into account when formulating our recommendations,⁷ and some of our reports have largely concentrated on them.⁸

- A.13 We are conscious of the increasing significance of legal initiatives within the European Union. For example, we seek to reflect the increasing momentum towards harmonisation of legal principles within the European Union by focusing more on civil law jurisdictions when undertaking comparative studies⁹ in our publications. In the past we have also played a significant role in the reform of private international law and, subject to resources, we are available should our assistance be sought with respect to the Hague Conventions or other similar matters.
- A.14 We consult extensively by issuing public consultation papers which describe the present law and its shortcomings and set out possible options for reform. The consultation process is taken very seriously and extends to a wide range of people. It covers those who have a real interest in the subject, including the legal and other professions, members of interest groups, business people, consumers of goods and services, central and local Government and the public at large. Our publications are also made available on the Internet as they are published, and we invite comments by e-mail or on disk. We also consult and seek advice in other ways, by forming working parties and advisory groups, by holding seminars and in less formal ways.
- A.15 Many of the Commission's projects have important social or economic aspects. In some of these, we use or commission empirical research of a socio-legal or economic nature to assist our work, eg on compensation for personal injury, on evidence of previous misconduct in criminal proceedings and on the duties of company directors. We may also issue questionnaires to professionals or members of the public.
- A.16 We place particular importance upon the consequences of the changes we recommend, ranging from their practical effect upon the public to their cost implications for Government and others.
- A.17 We publish all our reports, setting out our final conclusions and recommendations in straightforward terms, normally with an executive summary.
- A.18 Our Parliamentary Counsel prepare legislation in the form of draft Bills attached to most of our reports. This has enormous benefits: it provides an additional way of ensuring that the policy behind the recommendations is fully worked through

⁷ A few examples are: Double Jeopardy and Prosecution Appeals (2001) Law Com No 267; Consent in Sex Offences (2000); Company Directors' Duties (1999) Law Com No 261, Scot Law Com No 173; Liability for Chancel Repairs (1985) Law Com No 152.

⁸ Eg, our reports on Damages under the Human Rights Act and on Bail and the Human Rights Act.

⁹ A statutory duty under s 3(1)(f) of the 1965 Act.

and is focused in its practical implications; and it ensures that draft legislation is ready for the Government to put to Parliament if it accepts our recommendations.

- A.19 While being careful to preserve our independence, we have developed closer links with the main Government departments responsible for the legislation covered by our projects, both before and after publication of our reports. We have regular meetings with the departments, at Ministerial and/or official level. We discuss a proposed project with the department in advance, to ensure that the department is fully committed to the project and to assist the department and the Ministerial Committee on Law Reform. Nowadays, we often seek financial assistance from the department to enable us to undertake a particular project. We also keep the department informed of progress during the project. This enables the Commission for example to be kept informed of relevant work planned by Government and of relevant research or other studies in which Government is involved.
- A.20 Once we have published our report, if the department are minded to recommend to Ministers the rejection of a significant part of it, the department now generally give us their reasons, and the opportunity to comment before they finalise their advice for Ministers. The department also endeavour to ensure that decisions about implementation of the report are made as soon as possible.
- A.21 We have been playing an increasing part in assisting the Government, not only when it is considering our recommendations but also when our Bills are being prepared for implementation by Parliament and in support of the legislation during the legislative process. The Commission, and the draftsmen at the Commission, frequently assist the Government department responsible for the Bill. We believe that this is an important contribution which we should make as a permanent law reform body. It also helps to minimise duplication of work. An example during the Seventh Programme has been the Trustee Act 2000.
- A.22 Several new initiatives have been taken at the Commission, sometimes with the assistance of the Lord Chancellor's Department or others, to improve our effectiveness. For example, we have welcomed the opportunity to review areas of law which have not previously been entrusted to us, such as housing and compulsory purchase. The Lord Chancellor appointed a new Commissioner with particular expertise in housing law, to head a major review and in an exceptionally short timescale. We have redirected our resources and have established a Housing and Administrative Justice Team, instead of a Company and Commercial Law Team, while still retaining the capacity to undertake some work in that field. We have sought early commitment to our projects by Government departments. We use established criteria to help us assess our and others' suggestions for new law reform projects.

A.23 While recognising that most of our reports will continue to recommend reform of the law by primary legislation, we have been issuing a number of other types of report.¹⁰ For example:-

we have recommended reform by the courts;

we have issued reports which provide advice or guidance, rather than recommendations for change; and

we shall continue to consider advising the use of subordinate legislation to put our recommendations into effect.

A.24 We are taking steps to reduce to a minimum the time taken for our law reform projects, while recognising that good quality law reform rightly takes time. We use a more sophisticated project initiation process: this helps us in planning projects. Our Programmes now summarise the work we completed during the previous Programme. Our annual reports now publish a summary set of objectives for the coming year, giving our major targets for publications.

A.25 While we are clearly independent of the Government, many of our recent activities and methods have fitted well with the thrust of the Modernising Government programme which the Government is taking forward,¹¹ for example, regarding the areas of law we review, ensuring our recommendations are based on sound evidence, working in cooperation with the private sector, taking equality and diversity issues into account, and in innovative and creative working methods and approaches to personnel matters and funding. We are using a variety of means to ensure that our publications are as user-friendly as possible.

Work with the Scottish Law Commission and other law reform agencies

A.26 Where law applying to the whole of Great Britain is involved, several of our projects are undertaken jointly with the Scottish Law Commission, or in consultation with them. There is at present no precisely comparable body for Northern Ireland but the Law Reform Advisory Committee advises the Secretary of State for Northern Ireland on questions of civil law and we frequently consult with them. This enables us to produce recommendations which are most likely to be suitable for the whole of the United Kingdom. This approach continues to be a feature of our work even after the creation of the Scottish and Northern Ireland Parliaments.

A.27 There are many bodies and institutions similar to ourselves across the world. We are in regular contact with a number of them. This is becoming more necessary with the increasing globalisation of law and the changes brought about by technological innovation. We draw on their experiences as part of our study of foreign laws in areas covered by our projects.

The advantages of a Law Commission

¹⁰ See Part II above.

¹¹ Discussed in our Annual Report for 2000 at paras 1.64 - 1.66.

- A.28 There are considerable advantages in a separate and permanent law reform body. The main advantages are as follows.

Independence

- A.29 The recommendations of an independent law reform body have a particular value because they are not dependent on the views of the Government of the day or indeed on any other current views. In a modern and democratic society, it is desirable that non-party political law reform should be considered by an independent body. At the same time, there must be confidence in the work and standing of that body. That confidence is needed both by consultees, who must be sure that they are participating in a project of real significance, and by the Government, who are the ultimate recipients of its recommendations. The Commission is publicly accountable. It publishes all its reports and consultation papers, as well as its annual report - which are laid before Parliament.

Expertise

- A.30 During its 36 years the Law Commission has built up a fund of expertise, knowledge and specialist contacts in the law and in law reform. Its independence and its reputation have attracted Commissioners and staff of considerable ability. Commissioners have been appointed against the background of the statutory requirements for eligibility, as well as the special demands of law reform.
- A.31 The Commission's methods ensure that recommendations are thoroughly worked through before they reach the Government and Parliament. Opinion from all quarters are obtained and taken fully into account. In addition, expertise is brought in from outside by way of consultants who assist with aspects of particular projects or conduct the empirical research which is needed on occasion. The Commission is immensely grateful for the huge amount of assistance it receives from so many quarters.
- A.32 A distinctive feature of the Law Commission is the presence of Parliamentary Counsel at the Commission. They draft all the Commission's law reform Bills. In addition, most consolidation Bills are drafted at the Commission.
- A.33 The Commission has used its experience to establish strong links with Government Departments, Parliament, the judiciary, all areas of the legal profession and legal academics, enabling the Commission to benefit from the pooled knowledge and skills available. The Commission cultivates this dynamic relationship and the resulting interplay of legal ideas and arguments, which bears fruit in discussion of specific issues within projects.

Purpose and Focus

- A.34 The Commission has a single central purpose: promoting the reform of the law. It benefits greatly from having a purpose which is so closely focused. It can concentrate its energy, time and resources, free from the distractions faced by Ministers and Government Departments. The Commission also provides a focus for law reform activity throughout England and Wales, so reducing duplication of effort. A body established for the purpose of law reform is able to undertake

subjects which are broader and more closely interlinked than would be feasible for others.

Continuity

- A.35 There is great benefit in having a continuing body devoted to law reform. The Commission has acquired experience in the processes which are most useful for the complex task of law reform. In addition, projects are often linked by their subject matter, so that the knowledge and experience gained in one project benefits the Commission when working at a different time on another; and the Commission's continuity ensures a consistent approach. Systematic development and reform of the law are required by the 1965 Act. It is best achieved by a permanent body.
- A.36 Before the Commission was established, law reform had been effected by departmental and inter-departmental committees, ad hoc committees of experts, and bodies constituted to look at particular aspects of the law. This was generally done on a part-time and temporary basis, and was comparatively sparse and random. Such alternatives are worthwhile but far from satisfactory. The Law Commission was established to overcome such problems and because consistency of quality would be more assured than when the work was undertaken on an ad hoc basis.
- A.37 A permanent Law Commission saves Government Departments' resources in conducting the law reform process, and in producing both recommendations and draft legislation. As a standing body, it is then able to engage in a continuing discussion with Government, over what can sometimes be some years, on the merits of its recommendations.

APPENDIX B
PUBLICATIONS ISSUED FROM
1 APRIL 1999 TO 31 JULY 2001

(Page 35)

Year	No	Title
1999	Report – Law Com No 257	Damages for Personal Injury: Non-Pecuniary Loss
	Law Com No 258	Annual Report for 1998
	Law Com No 259	Seventh Programme of Law Reform
	Report – Law Com No 260	Trustees’ Powers and Duties (in part, jointly with Scottish Law Commission)
	Report – Law Com No 261	Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties (jointly with Scottish Law Commission)
	Report – Law Com No 262	Damages for Personal Injury: Medical, Nursing and other Expenses: Collateral Benefits
	Report – Law Com No 263	Claims for Wrongful Death
	Consultation Paper No 155	Legislating the Criminal Code: Fraud and Deception
	Consultation Paper No 156	Double Jeopardy
	Consultation Paper No 157	Bail and the Human Rights Act 1998
2000	Report – Law Com No 264	Powers of Criminal Courts (Sentencing) Bill: Report on the Consolidation of Legislation relating to Sentencing (jointly with Scottish Law Commission)
	Law Com No 265	Annual Report for 1999

Year	No	Title
2000	Report – Law Com No 266	Damages under the Human Rights Act 1998 (jointly with Scottish Law Commission)
	Consultation Paper No 158	Prosecution Appeals against Judges’ Rulings
	Consultation Paper No 159	Partnership Law (jointly with Scottish Law Commission)
	Special	Consent in Sex Offences: A Report to the Home Office Sex Offences Review
2001	Report – Law Com No 267	Double Jeopardy and Prosecution Appeals
	Law Com No 268	Annual Report for 2000
	Report – Law Com No 269	Bail and the Human Rights Act 1998
	Report – Law Com No 270	Limitation of Actions
	Report – Law Com No 271	Land Registration (jointly with Land Registry)
	Report – Law Com No 272	Third Parties – Rights against Insurers (jointly with Scottish Law Commission)
	Consultation Paper No 160	Illegal Transactions (Tort)
	Special	Reform of Housing Law: A Scoping Paper
	Special	Compulsory Purchase and Compensation: A Scoping Paper