



**Law
Commission**
Reforming the law

Annual Report 2022-23

HC 301

Law Com No 414

The Law Commission

Annual Report 2022-23

(Law Com No 414)

The Fifty Seventh Annual Report of the Law Commission

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Law Commission Annual Report 2022-23

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

This annual report covers the period 1 April 2022 to 30 September 2023.

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Chair's introduction



To The Right Honourable Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice.

I am delighted to introduce the Law Commission's 57th Annual Report.

During the period of this report the Law Commission has been exceptionally busy.

At any one time we are engaged in over 20 law reform projects. Our work stretches from a series of projects focusing upon removing outdated legal restrictions to the operation of the digital economy through to online harm, hate crime, non-consensual intimate images, commercial drones, contempt of court, arbitration, compulsory purchase in planning, new methods of disposing of the dead, wills and the admissibility of evidence in sexual assault and rape cases in the criminal courts. We have been pleased to see a number of our reports currently being implemented by Government, for example, communications and cyberflashing offences in the Online Safety Bill and the espionage offences in the National Security Bill. The Electronic Trade Documents Act 2023 received Royal Assent and is now in force. This seminal piece of legislation has been met with acclaim in the City and business circles.

I am delighted that a significant number of our proposals will be taken forward by the Government this legislative session:

- The Criminal Justice Bill will give effect to recommendations on intimate image abuse, modernising communications offences and confiscation of the proceeds of crime, and the option of expanding the identification doctrine for corporate criminal liability.
- The Arbitration Bill.
- The Automated Vehicles Bill.
- Significant aspects of the Leasehold and Freehold Reform Bill will reflect the Law Commission's work in this area.

In Wales we have delivered reports on devolved tribunals and on disused coal tips and the Government of Wales is now working on implementation. We are engaged in discussions with both Welsh Ministers and the Senedd about how we may deepen and broaden our working relationship with Wales. There are many reasons why the time is right to do this. One such is the fact that the Senate Reform Bill 2023, if adopted, will lead to an enlargement of the capacity of both the Senedd and the Welsh Government to pursue legislative reform.

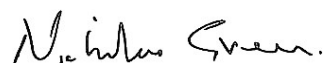
In late 2020 we agreed new governance and funding arrangements with the Lord Chancellor designed to enable the Commission to operate at an optimal level to generate economic and other benefits for England and Wales. Without involving any increase in our overall budget this resolved certain longstanding structural and other issues that had hindered our ability to work effectively. We now operate under the new model and, in our view, it has proven to be a success and in many different ways has enhanced our ability to deliver law reform to a high quality, on time and which meets the needs of Government, the economy and society more broadly. We are grateful in particular to the many officials in the MoJ who have worked constructively with us to ensure that the new arrangements do, in real time, improve efficiency.

We are in negotiations with various Government Departments in London and in Cardiff with a view to accepting invitations to commence a significant number of new law reform projects. The Law Commission is a small body, with fewer than 70 lawyers and researchers and a tiny support staff. A typical reform team will itself be small, often not more than 3 or 4 lawyers and researchers. The work is intense. Over the past 12 months a number of our consultation papers have generated responses running into the thousands, often containing strong and conflicting views from a wide range of stakeholders.

Our essential task is to listen carefully to these views and then to synthesise and analyse the evidence and endeavour to arrive at workable and durable solutions to problems that are often seen as, otherwise, intractable. It is the sheer intensity of our processes that is often the key to unlocking the most difficult societal problems.

In all of this our independence and objectivity are critical to the trust and confidence that stakeholders have in us and to their willingness to support solutions that we propose. We have a high implementation rate within Government which reflects the rigour of our analysis but also the fact that Government knows that it can trust that our proposals for reform are fair, rigorously tested and evidence based.

We will in the near future enter a period of uncertainty with the advent of an election. As ever, we will however continue our work unabated. The Law Commission remains in robust good health. This will be my final Annual Report. I hand over to my successor as Chair, Sir Peter Fraser, at the beginning of December after over 5 years in post. I wish to take this opportunity to express my personal thanks and admiration for the extraordinary work that my fellow Commissioners and their teams undertake, supported as ever by our Chief Executives, Head of Legal and corporate support team. It has been an enormous privilege to work with them.



Sir Nicholas Green
Chair

Chief Executive's comment



We are pleased to introduce the 2022/23 report of the Law Commission. This is our first report as Joint Chief Executives. We wish particularly to acknowledge the work of our predecessor, Phil Golding. He led the Commission through a period of significant change, and his legacy includes a new financial model that has put the Commission on a surer footing for the future. We are also extremely grateful to Matthew Jolley, who took on the role of interim Chief Executive for a period until our arrival.

The Law Commission is independent of Government, and our purpose, as set out in the Law Commissions Act 1965, is to keep under review all of the law of England and Wales. We research, consult and recommend reforms, in order to make the law simpler, and fairer. It is testament to the independent, rigorous and user-focused work that the Law Commission produces that around two-thirds of its recommendations have been implemented by Government in the 58 years it has operated.

Part of the Commission's contribution to society has been its ability to engage with the most difficult law reform questions of the day, considering issues of sensitive social policy, grappling with future technologies and ensuring that this jurisdiction remains world-leading. Our Commissioners are expert at tailoring the expanse of the law to fit new times. This year has been no exception: this report covers a range of projects including clarifying the law on surrogacy, providing certainty on the status of digital assets, advising government on remote driving, and examining how criminal appeals work.

As ever, we have been supported at every stage by the constructive and detailed input of our many stakeholders, whose contribution is absolutely essential to our work. We are extremely grateful to all of the individuals and organisations who contributed to our work in the course of this year.

Under the Chair's leadership, we have worked hard to broaden our reach internationally, fostering collaboration and advancing law reform around the world. As well as supporting the rule of law in developing nations, this engagement promotes advances in the Law of England and Wales, demonstrating international thought leadership. Building international networks also helps us to ensure that we can bring the most up to date thinking to our own law reform projects, understanding what has worked, and has not worked, in other jurisdictions.

As we look to the year ahead, there is set to be considerable change. We will welcome a new chair from 1 December. We will also have a new commissioner for Public Law and the Law in Wales in 2024. There may be a general election, and we anticipate finalising our 14th programme of law reform. Through this period of change, our priorities are to:

1. increase the impact of the Law Commission's work;
2. secure the talent pipeline for attracting and retaining staff and commissioners from a range of backgrounds, bringing the expertise and experience that is essential to delivery of our complex law reform work;
3. ensure that the Commission remains a supportive, stimulating and inspiring place where everyone can focus on delivery; and
4. maintain the independence of the Law Commission.

We are extremely grateful to our colleagues at the Commission – the legal staff and our Corporate Support Team, Commissioners and Non-Executive Board Members – for their dedication and commitment to delivering world leading law reform for the benefit of the people of England and Wales.



Joanna Otterburn & Stephanie Hack
Joint Chief Executives

Part One:

Who we are and what we do

The Law Commission

The Law Commission is headed by five Commissioners, all of whom are appointed by the Lord Chancellor. At 30 September 2023, the Law Commissioners were:

- The Rt Hon Lord Justice Green¹ Chair.
- Professor Sarah Green,² Commercial and Common Law.
- Professor Nick Hopkins,³ Property, Family and Trust Law.
- Professor Penney Lewis,⁴ Criminal Law.
- Nicholas Paines KC,⁵ Public Law and the Law in Wales.

The Commissioners are supported by the staff of the Law Commission. The staff are civil servants and were led by the previous Chief Executive, Phillip Golding and our two Joint Chief Executives Stephanie Hack and Joanna Otterburn over the period 2022-23.

The Law Commission was created by the Law Commissions Act 1965 for the purpose of reforming the law. It is a statutory arm's length public body, which is sponsored by the Ministry of Justice (MoJ).

The Law Commission's principal objective is to promote the reform of the law. We do this by reviewing areas of the law and making recommendations for change. We seek to ensure that the law is as simple, accessible, fair, modern and cost-effective as possible.

A number of specific types of reform are covered by the Law Commissions Act 1965:

- Simplification and modernisation of the law.
- Codification.
- Removal of anomalies.
- Repeal of obsolete and unnecessary enactments.
- Consolidation of legislation.

The progress we have made on our law reform projects between April 2022 and September 2023 is recorded in Part Two of this report.

Non-executive board members

The Law Commission's Non-Executive Board Members provide support, independent challenge and expertise to the Commission when it is meeting as a Board. The selection of projects and the content of Law Commission reports and consultation papers are, however, the responsibility of Commissioners.

During the course of this year, we have been fortunate to have in place one very experienced and knowledgeable Non-Executive, who has provided valuable insight to the Board over the last year: Joshua Rozenberg KC (Hon). We have recently announced that Dr Hannah White and Claire Bassett have taken over as Non-Executives. Baroness Shaista Gohir is expected to join us when Joshua Rozenberg KC concludes his term in February 2024.

1 Sir Nicholas Green joined the Commission on 1 August 2018.

2 Professor Sarah Green joined the Commission on 1 January 2020.

3 Professor Nick Hopkins joined the Commission on 1 October 2015.

4 Professor Penney Lewis joined the Commission on 1 January 2020.

5 Nicholas Paines QC joined the Commission on 18 November 2013.

Our objectives

We have worked together to identify the characteristics to which the Law Commission should aspire:

- To be the authoritative voice on law reform.
- To make a difference through our law reform work.
- To be proactive in promoting the need for law reform in key areas and achieve “good law”.
- To have a strong reputation in the UK and abroad for being effective in the delivery of law reform.
- To attract the best talent and be an excellent place to work.

Our Business Plan for 2022-23 priority areas are listed below:

- Ensuring that the law is fair, modern and clear
- How we engage with stakeholders
- Developing our future ways of working
- Enhancing our approach to Diversity and Inclusion

Our relationship with the Ministry of Justice

In July 2015, we agreed a Framework Document with the MoJ,⁶ which sets out the broad framework for the Department’s sponsorship of the Commission and how the relationship between us and the MoJ should operate.

The current Framework Document outlines the responsibilities of the MoJ sponsorship team in relation to the Commission. The sponsorship team and ALB Centre of Expertise are our primary contacts within the MoJ. Its members act as advocates for us within the Ministry and other

Departments, and ensure that we are aware of MoJ’s views and any relevant Departmental policies.

The Framework Document makes it clear that, while the sponsorship team and ALB Centre of Expertise have a role in monitoring the Commission’s activities, the MoJ has “no involvement in the exercise of the Commissioners’ judgment in relation to the exercise of their functions”.

The frequency with which Ministers of the MoJ and other Departments meet members of the Commission, and the scope of the Commission’s relationship with Parliament are also set out in the Framework Document, albeit that, in recent times, these arrangements have tended to operate more flexibly. It details the Lord Chancellor’s statutory duties in relation to the Commission and the direct relationship we have with Parliament through, for example, maintaining contacts with Parliamentarians and committee chairs, and giving evidence in relation to our functions or projects.

The Law Commission’s financial model

During 2021/22, a new financial model was implemented; we have continued with this financial model in 2022/23. This has greatly enhanced our ability to plan our work and staffing models. At the same time, we have been able to continue to source funding from other Whitehall Departments for a number of projects and have been able to return those funds to the MoJ as part of a year end planned underspend.

The new model is a vast improvement. It gives us the ability to plan more effectively, and ensure we recruit and retain staff to help us deliver law reform. For 2022/23 we were able to return income to MoJ at the end of the year in line with

⁶ Framework Document: Ministry of Justice and the Law Commission for England and Wales (2015) - https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/07/Law_Commission_MoJ_Framework_2015_web.pdf

the model. This is still a relatively new process, and we are keeping under review how it works over the course of a programme cycle.

14th programme of law reform

In the last Annual Report, we outlined the work that had taken place to prepare for the Commission's 14th Programme of law reform. We asked stakeholders what they thought should be included in our next work programme. That public consultation closed at the end of July 2021. We received around 500 responses to our consultation, covering nearly 200 possibilities for law reform. Further work and discussions had taken place to refine those ideas into a short list of potential projects.

In February this year we announced that we had extended the timetable for finalising the 14th Programme. We explained on our website that we had taken this decision in view of the Government's focus on priorities for the remainder of this Parliament. We said:

We do not consider that now is the right time to establish a new long-term programme of work which would cover the next five years and beyond. However, it remains our full intention to agree a new programme and in due course, we will move forward again with Government to agree one.

In the meantime, we noted that the Commission was fully engaged on current projects, including outstanding work on 13th Programme projects. We have also taken on new projects as Ministerial references, some of which were suggested to us by consultees as candidates for inclusion in a new programme.

Measuring success

The implementation of our recommendations for reform is clearly an important indicator of the success of the Law Commission. This is covered in detail in Part Three of this report.

However, implementation does not fully demonstrate the breadth of our impact. In an effort to assess our impact and influence, we take note of instances when the Law Commission is cited in judgments or during business in the Houses of Parliament. During the reporting period the Commission was mentioned 95 times in judgments in England and Wales (compared with 93 in 2021-22) and our name appears 768 times in Hansard (up from 339 in 2021-22), the official report of Parliamentary proceedings.

Our work is also widely quoted in academic journals and the media, with over 6,810 references to the Law Commission across national, local, trade and academic media during the reporting period. Some were supportive, others not. At the very least these figures show that we continue to engage the attention of people with an interest in the law and what can be achieved through its reform.

Historically, almost two-thirds of our reports have been implemented by Government in whole or in part with recommendations from a further 9% of reports either accepted and awaiting implementation or accepted but will not be implemented. However, there are many reasons why our recommendations for reform may not be implemented despite being accepted by Government. This may include a lack of Parliamentary time to debate our proposals or a change in Ministerial priorities.

The Law Commission in Wales

Accessibility of the Law in Wales and Consolidation Bills

Our 2016 report on the Form and Accessibility of the Law in Wales recommended a programme of codification of the law in Wales to improve its accessibility. The Welsh Government accepted the thrust of our report, and introduced the Legislation (Wales) Act 2019, which required the Counsel General to publish programmes to improve the accessibility of Welsh Law. To that end, the Senedd introduced a new Standing Order 26C on Consolidation Bills. This provides for a procedure to introduce consolidation bills, including those implementing Law Commission recommendations. In addition, there is scope under the procedure for the Law Commission to advise whether certain changes proposed in a Bill are appropriate for inclusion in a Consolidation Bill under the standing order. The first Bill to be introduced under the new standing order procedure is the Historic Environment (Wales) Bill, now Act. We continue to work with the Welsh Government to support its programme of simplification.

Wales Advisory Committee

A meeting in June 2023 marked the tenth anniversary of our Wales Advisory Committee (WAC). The Committee's support continues to be invaluable in advising us on the exercise of our statutory functions in relation to Wales, and to give the people of Wales a stronger voice in law reform.

Justice in Wales and the Law Council of Wales

In October 2019, the Commission on Justice in Wales, chaired by Lord Thomas of Cwmgiedd, published its report on the operation of the justice system in Wales and set a long-term vision for the future. It supported our project on devolved tribunals in Wales, which has since reported and endorsed the setting up of a Law Council of Wales, including a representative from the Law Commission. The Law Council has now been set up, and our Chair has attended on behalf of the Law Commission.

Part Two:

Review of our work in 2022-23

Commercial and Common law

Commissioner: Professor Sarah Green

Project	Update	Date published	Page
Review of the Arbitration Act 1996	Final report published	September 2023	page 11
Digital assets	Final report published	June 2023	page 12
Decentralised autonomous organisations	Call for evidence published	November 2022	page 12
Digital assets: which law, which court?	Project launched	October 2022	page 13
Insurable interest	N /A (project paused)		page 14

Review of the Arbitration Act 1996

The Arbitration Act 1996 sets out an enduring framework for arbitration which has helped to make the UK – and London in particular – a leading destination for commercial arbitrations. January 2022 marked 25 years from its coming into force, presenting a good opportunity to review it and ensure it remains up to date in all respects, particularly as other jurisdictions have enacted more recent reforms.

We are undertaking a review of the 1996 Act with a view to ensuring it is as clear, modern and efficient as possible. The aim is to maintain the attractiveness of England and Wales as a “destination” for dispute resolution and the pre-eminence of English law as a choice of law.

We published a consultation paper with proposals for reform in September 2022, and followed it up with a second, short consultation paper with further proposals in March 2023. Issues we have considered include:

1. introducing the capacity for arbitrators to dispose of issues that have no real prospect of success;
2. codifying a duty on arbitrators to disclose potential conflicts of interest;
3. strengthening arbitrator immunity;
4. strengthening court orders in support of arbitral proceedings; and
5. resolving difficulties over the law governing international arbitration agreements.

We published our final report, with draft Bill, in September 2023.

The sponsoring Department is the Ministry of Justice.

Digital assets

Digital assets are fundamental to modern society and the contemporary economy. They are used for an expanding variety of purposes — including as valuable things in themselves, as a means of payment, or to represent or be linked to other things or rights — and in growing volumes.

The term digital asset is extremely broad. It captures a huge variety of things including digital files, email accounts, domain names digitally recorded carbon credits and crypto-tokens. The technology used to create or manifest those digital assets is not the same. Nor are the characteristics or features of those digital assets.

Our work considers principles of private law, and particularly personal property law, in relation to digital assets. We consider whether digital assets can or should be objects of property rights. Property rights are important for the proper characterisation of numerous modern and complex legal relationships, including custody relationships, collateral arrangements and structures involving trusts. They are also important in cases of bankruptcy or insolvency, when objects of property rights are interfered with or unlawfully taken, and for the legal rules concerning succession on death.

Ensuring that personal property law can properly accommodate digital assets will lay a strong foundation for the development and adoption of digital assets. It will also incentivise the use of the law of England and Wales in transactions concerning digital assets. This could have significant benefits for the UK and the digital assets market in the UK.

We published a consultation paper in July 2022. We provisionally concluded that the common law of England and Wales has proven itself sufficiently flexible to accommodate some digital assets as objects of property rights and that, for the most part, no statutory intervention is required. We identified some remaining areas of

residual uncertainty and provisionally proposed law reform to ensure that digital assets benefit from consistent legal recognition and protection. Specifically, we were concerned that the law achieved this in a way that acknowledges the nuanced features of different digital assets as compared with traditional things in possession (generally speaking, tangible assets) and things in action (broadly, things which can only be claimed or enforced by action, such as debts and contractual rights). We provisionally proposed that certain digital assets (particularly crypto-assets) should be regarded as belonging to a third category of personal property separate from things in action and from things in possession.

We published our final report in June 2023.

The sponsoring Department is the Ministry of Justice.

Decentralised autonomous organisations (DAOs)

A DAO is a novel type of organisational structure involving multiple participants online, that might rely on blockchain systems, smart contracts, or other software-based systems.

DAOs are increasingly important in the context of crypto-token and decentralised finance ecosystems. While DAOs are sometimes likened to existing legal forms, such as general partnerships or unincorporated associations, they often have several different characteristics or elements which might distinguish them from those existing legal forms.

Some DAOs include a recognised legal form or incorporated entity within their structure. Many are involved with the development of code that is used to create smart contracts. Many DAOs also use smart contracts to automate or program some elements of their internal activity. Often those smart contracts are open-source and are themselves deployed to open-source blockchain systems.

As such, the term “DAO” does not necessarily represent any particular type of organisational structure and therefore cannot on its own imply any particular legal treatment. The legal treatment of any particular organisation which is described as a DAO will instead depend on how its particular organisational arrangements are structured.

Many thousands of DAOs exist today, but few appear to be structured using the law of England and Wales. Huge amounts of value flow through, are created, used and sometimes lost by DAOs. This raises questions about their legal status, the liabilities of those who participate in them, and the rules and regulations that apply to them.

The Law Commission is carrying out a scoping study to explore and describe the current treatment of DAOs under the law of England and Wales. Part of the purpose of the work is to identify options for how DAOs could be treated in law in the future in a way which would clarify their status and facilitate their use.

The scoping paper will also attempt to describe certain composite elements of DAOs and the broader crypto-token ecosystem. We have not been asked, at this stage, to make formal recommendations for law reform.

We published a call for evidence in November 2022, asking stakeholders for information on how DAOs are structured and operated, about how the law might best accommodate different types of DAO structures now and in the future and how DAO themselves might integrate into existing legal frameworks. We also asked where the law of England and Wales might be inhibiting the establishment and operation of DAOs, which alternative jurisdictions DAOs choose to structure their arrangements in, and why.

Our scoping paper is due in Winter 2023.

This project is sponsored by the Department for Business and Trade (DBT) and is also of interest to HM Treasury, noting the legal implications

that DAOs may have for both UK company law and rules covering financial service firms and crypto-tokens.

Digital assets: which law, which court?

This project will explore the application of English and Welsh private international law rules to emerging technology. It will build on other Law Commission projects concerning digital assets and electronic trade documents. In the course of each of those projects, we identified some challenging private international law questions. For example, which law should govern disputes which arise in connection with digital assets hosted on distributed ledger technology? Which court(s) should adjudicate those disputes? Such issues of private international law (or “conflict of laws”) are now the subject of this standalone project.

By providing clarity and proposing reforms to the private international law rules applicable to digital subject matter, this project seeks to provide greater certainty to the domestic and international commercial community. Our other projects aim to set out the relevant principles and suggest any necessary reform at the domestic level. However, given the decentralised nature of this technology, it is currently unclear in what circumstances English law will apply in the first place. So, setting out clear, workable private international law rules is a critical aspect of creating legal certainty around the use of digital assets and associated technology.

The Commission’s project also aims to support the growth of new, innovative digital technologies in the UK – helping to meet the Government’s stated goal of the UK becoming a global hub for digital assets.

We are currently undertaking research and initial stakeholder engagement in this area. We hope to publish a call for evidence in early 2024.

The sponsoring Department is the Ministry of Justice. Other Departments, including HM Treasury, also have an interest.

Insurable Interest

At its simplest, the requirement for insurable interest means that, for a contract of insurance to be valid, the person taking out the insurance must have an interest in the subject matter of the insurance. This generally means that they must stand to gain a benefit from the preservation of the subject matter of the insurance, or to suffer a disadvantage should it be lost or damaged. The Life Assurance Act 1774 and the Marine Insurance Act 1906 provide that the absence of insurable interest renders an insurance contract void and unenforceable.

The current law is unclear in some respects and antiquated and restrictive in others. It is inhibiting the insurance market's ability to write particular types of product for which there is demand. As a result, we, together with the Scottish Law Commission, are working to develop recommendations to simplify and update the law in this area and draft a Bill to implement those proposals.

Responses to our consultations have shown strong support for retaining the principle of insurable interest. It is said to guard against moral hazard, protect insurers from invalid claims and distinguish insurance from gambling. Stakeholders have particularly emphasised the need for reform of insurable interest in the context of life and related insurances, such as health insurance. In our most recent consultation, we proposed that archaic restrictions should be removed in order to allow people to ensure the lives of their children and cohabitants, and a greater ability to insure the lives of employees.

Our proposals are intended to be relatively permissive, to ensure that, broadly speaking, any legitimate insurance products that insurers want to sell and people wish to buy, can be made available. Whether insurance is appropriate in any given circumstances should be left to the market to determine, with regulatory intervention if necessary.

Work on the project is currently paused due to resource constraints

Criminal Law

Commissioner: Professor Penney Lewis

Project	Update	Date published	Page
Corporate Criminal Liability	Options paper published	June 2022	page 15
Confiscation of the Proceeds of Crime	Report published	November 2022	page 16
Contempt of Court	Project launched	June 2022	page 17
Criminal Appeals	Project launched	July 2022	page 17
	Issues paper published	July 2023	
Taking, Making and Sharing of Intimate Images Without Consent	Report published	July 2022	page 18
Evidence in Sexual Offences Prosecutions	Consultation paper published	May 2023	page 19

Corporate Criminal Liability

The criminal law of England and Wales has long struggled to fix corporate bodies with criminal liability.

The common law has tried to address this by looking for a person or persons who represent the company’s “directing mind and will”, usually from the company’s Board of Directors. However, this approach, known as the “identification doctrine” arguably does not reflect the way that decision making works in modern businesses, especially in large, complex organisations. This in turn has given rise to complaints that the law is unduly favourable to larger businesses with complicated legal structures or delegated decision-making, who are more difficult to convict of offences requiring proof of fault.

In November 2020, therefore, the Government asked the Commission to undertake a review

of the law relating to the criminal liability of “non-natural persons”, including whether the identification doctrine is fit for purpose, and to publish options for reform.

We published our options paper in June 2022. Among the options we put forward were statutory reform of the identification doctrine, to extend liability to conduct sanctioned by members of a company’s senior management; the introduction of “failure to prevent” offences, in particular in respect of fraud by an associated person; giving courts the power to impose publicity orders on corporate offenders, requiring them to publicise their conviction; and reform of the personal liability of directors and senior managers so that they can only be convicted of offences requiring proof of fault where the commission of the offence by the company was with their consent or connivance, but not where it was merely attributable to their neglect.

We also put forward several civil options including requiring disclosure of large companies' anti-fraud policies; enabling prosecutors to bring civil actions in the High Court; and introducing administrative penalties for failure to prevent fraud.

The Government has taken action informed by some of the options we set out. Measures in the Economic Crime and Corporate Transparency Bill, awaiting Royal Assent, would introduce failure to prevent fraud, and reform of the identification doctrine for certain economic offences.

Confiscation of the Proceeds of Crime

A "confiscation order" is an order made personally against a defendant to pay a sum of money equivalent to some or all of their benefit from crime, depending on the assets available to the defendant. The defendant is not obliged to realise any particular asset to satisfy the order, as long as the sum of money is paid.

The perceived complexity of the legislation has motivated a desire for change. A guide produced for judges on confiscation describes the proliferation of appellate judgments over an eleven-year period.

On 9 November 2022 we published a final report setting out a comprehensive series of recommendations for reform of Part 2 of the Proceeds of Crime Act 2002.

The reforms are designed to make the confiscation regime fairer, more efficient and more effective:

- Accelerate confiscation proceedings by establishing strict timetables for hearings, which take effect immediately after the defendant has been sentenced for their crime.
- Give courts the power to impose "contingent enforcement orders" at the time that a confiscation order is made, meaning that if a defendant does not pay back the proceeds

of a crime within a set time, assets – including property or funds in a bank account – could instead be taken to recover the proceeds of crime.

- Strengthen "restraint orders", which can be imposed by a court to stop a defendant from protecting funds or assets that might later be involved in confiscation proceedings. Place the "risk of dissipation" test – the test currently used by courts to judge whether to use this order – on a statutory footing and clarify what could trigger the use of these orders.
- Strengthen law enforcement agencies' responses, through better police training and a national asset management strategy.
- Update the provisions that factor in a defendant's "criminal lifestyle", when assessing their benefit from crime. Confiscation from defendants deemed to have a criminal lifestyle will also include gains from their wider criminal conduct. We recommend that a defendant would have to commit fewer offences to be deemed to have a criminal lifestyle.
- Give greater consideration to the defendant's ability to pay, so that enforcement can be more effective. Defendants will be obligated to provide clearer and more detailed evidence of their financial position if they claim to be unable to pay their order.
- Create more flexible tools to ensure better enforcement. Give judges the power to adjust the funds that must be paid back by a defendant, depending on their personal circumstances. This would avoid situations where there is no realistic prospect of recovering the full amount of the confiscation order.
- Set out a clear statutory objective to govern the new confiscation regime – namely, to deprive defendants of their benefit from criminal conduct. This would provide clarity on the purpose of the regime and move away from any prior emphasis on "punishment".

We are currently working on a draft Bill to accompany our recommendations, which we hope the Government will implement in due course.

Contempt of Court

“Contempt of court” refers to a wide variety of conduct that may impede or interfere with a court case or the administration of justice.

Examples include deliberately breaching a court order, refusing to answer the court’s questions if called as a witness, or releasing photographs or publicly commenting on developments in court when reporting restrictions are in place.

The development of the law of contempt has been unsystematic, resulting in a regime that is often disordered and unclear. Problems arise from the confusing distinction between civil and criminal contempt of court, the multiple ways in which contempt can be committed, and the overlap between the law of contempt and criminal offences relating to the administration of justice, such as perverting the course of justice.

There are also growing concerns about the impact of social media and technological advancements on the administration of justice.

The Ministry of Justice and the Attorney General’s Office have asked the Law Commission to review the law on both criminal and civil contempt and in particular to consider:

- codification and simplification of the law of contempt, and the extent to which certain contempts should be defined as criminal offences;
- the responsibility for the adjudication, investigation and prosecution of contempts, as well as courts’ and tribunals’ powers and protections relating to contempt proceedings;
- the effectiveness of the current provisions on committing contempt by publishing information on court proceedings, including

consideration of the right to freedom of expression protected by Article 10 of the European Convention on Human Rights;

- the appropriateness of penalties for contempt of court; and
- whether problems might arise from procedure in contempt of court proceedings, and whether there is scope for improving the relevant procedural rules.

It is our intention to publish a consultation paper in Spring 2024, inviting views on our provisional proposals for reform.

Criminal Appeals

In July 2022, the Government asked the Law Commission to review the law relating to criminal appeals.

In recent years several leading bodies and organisations – including the Justice Select Committee and Westminster Commission on Miscarriages of Justice – have argued that the law in relation to criminal appeals is in need of reform.

This is in part because the piecemeal way in which the law has developed means that there are inconsistencies, uncertainties and gaps in the law on criminal appeals.

Concerns have also been expressed around requirements for new evidence and the tests used by the Court of Appeal and the Criminal Cases Review Commission (CCRC) – the body responsible for investigating potential miscarriages of justice. Some groups have claimed that the current system can make it difficult for wrongly convicted people to appeal where exculpatory evidence was available but not used at trial, and/or to obtain and analyse evidence which might suggest a person’s innocence.

Where an appeal against conviction is brought in the Court of Appeal, the test is whether the conviction is “unsafe”. For appeals against sentence, the test is whether the sentence is

“wrong in law”, “manifestly excessive” or “wrong in principle”, and in some cases where the appeal is brought by the Attorney General, “unduly lenient”. The CCRC is entitled to refer cases to the Court of Appeal where it considers there is a “real possibility” that the conviction, verdict, finding or sentence would not be upheld.

Appeals from Magistrates’ Courts are largely governed by the Magistrates’ Court Act 1980. Appeals to the Court of Appeal Criminal Division are governed by the Criminal Appeal Acts 1968 and 1995. However, other legislation also affects the criminal appeals process, including the Magistrates’ Court (Appeals from Binding Over Orders) Act 1956; the Administration of Justice Act 1960; the Senior Courts Act 1980; and the Criminal Cases Review (Insanity) Act 1999.

The law allows those convicted in the Magistrates’ Court two routes of appeal: an appeal by way of rehearing in the Crown Court (heard by a judge sitting with two magistrates); and an appeal “by way of case stated” to the High Court on a point of law. Appeals from the High Court in criminal cases cannot be made to the Court of Appeal but must be taken directly to the Supreme Court.

The Commission review of the law governing appeals in criminal cases is considering the need for reform with a view to ensuring that the courts have powers that enable the effective, efficient and appropriate resolution of appeals. It will also consider whether a consolidation of the current legislation on appeals would make the law clearer and more consistent.

The review includes the powers of the Court of Appeal (Criminal Division); the powers of the Attorney General to refer matters to the CACD; the conditions for allowing a referral to the CACD by the CCRC; the various mechanisms of appeal from findings in the Magistrates’ courts; and laws covering retention and access to evidence and records of proceedings.

The Commission published an issues paper in July 2023, and a public consultation followed. A consultation paper will follow in 2024 inviting views on our provisional proposals for reform.

Taking, Making and Sharing of Intimate Images Without Consent

The origins of this project are rooted in our Abusive and Offensive Online Communications Scoping Report which was published in November 2018. The increased use of smartphones and online platforms has made it easier to take photographs or film, alter or create images and send images to family and friends or the public at large. However, this also means that it is now easier to take or make images of others or to distribute images of others without their consent (whether the images were taken consensually or non-consensually in the first place).

This is particularly concerning when those images are “intimate” in nature, such as where the person is naked, engaging in a sexual act or when the image is taken up a person’s skirt or down a female’s blouse. This project reviewed the current range of offences which apply to the taking, making and sharing of intimate images without consent, identifying gaps in the scope of the protection currently offered, and making recommendations to ensure that the criminal law provides consistent and effective protection.

In our final report published on 7 July 2022 we made a number of recommendations for reform to the criminal law as it relates to taking, making and sharing intimate images without consent.

We recommended a new tiered framework of offences which uses one consistent definition of an intimate image, covers the full range of perpetrator motivations, and applies protective measures for victims consistently. This framework comprises the following new offences:

1. A “base offence” of taking or sharing an intimate image without consent.
2. More serious offences:
 - a. An offence of taking or sharing an intimate image without consent with the intention of causing the victim humiliation, alarm or distress.
 - b. An offence of taking or sharing an intimate image without consent with the intention that the image will be looked at for the purpose of obtaining sexual gratification.
 - c. An offence of threatening to share an intimate image.
3. An offence of installing equipment in order to commit a taking offence.

We also recommended that complainants of intimate image offences should benefit from automatic lifetime anonymity, automatic eligibility for special measures at trial, and restrictions on cross-examination of witnesses in proceedings. Finally, we recommended that Sexual Harm Prevention Orders should be available and notification requirements be triggered in cases of intimate image abuse where there is relevant sexual conduct of sufficient seriousness.

On 25 November 2022 the Government confirmed its intention to implement the recommendations contained in our report. In the immediate term, amendments to the Online Safety Bill, which awaits Royal Assent, will introduce new offences of sharing and threatening to share a person’s intimate images without their consent.

The Government intends to implement a more comprehensive package of measures covering our other recommendations in due course.

Evidence in Sexual Offences Prosecutions

The Government’s End to End Rape Review found that the prevalence of rape and sexual violence has remained steady in the last five years but there has been a sharp decrease in the number of prosecutions since 2016/2017.

There are many complex reasons for the decline in cases reaching court. Our focus is on how evidence is used in trials involving sexual offences. Academic research shows that some individuals hold misconceptions about sexual harm (“rape myths”) in relation to the credibility, behaviour and experience of complainants in cases involving a sexual offence. It is unclear how extensive such misconceptions might be amongst the public and how much impact they can have on the juror’s task of evaluating the evidence.

Some argue that jurors need more assistance with assessing evidence in relation to sensitive and challenging issues that may fall outside their own experience and understanding. We are considering whether more needs to be done in our criminal courts to tackle misconceptions.

Government has asked the Law Commission to examine the trial process and to consider the law, guidance and practice relating to the use of evidence in prosecutions of sexual offences. We are considering the need for reform in order to improve understanding of consent and sexual harm and the treatment of complainants and ensure that defendants receive a fair trial.

The project considers the current approach to addressing misconceptions during the trial process including:

- the use of jury directions and juror education generally;
- the admission of expert evidence to counter misconceptions surrounding sexual offences;
- the admission of evidence of the complainant’s sexual history;
- the admission of the complainant’s personal records including their medical and counselling records;
- the admission of evidence of the character of the defendant and complainant; and
- the use of special measures during the trial.

We began the project with a background paper (published in February 2022). This outlined the scope of this project, provided an introduction to the main legal concepts and issues and answered some frequently asked questions.

On 23 May 2023 we published a consultation paper containing our provisional proposals for reform. Conscious that our work is only the latest in a long line of similar reviews, we concluded the consultation paper by considering some ideas for radical reform. We did not make proposals in this chapter but instead considered arguments for and against some significant changes to the trial process for sexual offences. For example, we asked for views on the use of specialist examiners and specialist courts, and the introduction of juryless trials.

We held a public consultation which closed on 29 September 2023. We are now in the process of analysing consultation responses and expect to publish a report with final recommendations in 2024.

Property, Family and Trust Law

Commissioner: Professor Nick Hopkins

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Business Tenancies: the right to renew

All businesses – from cafes and shops in town centres, to companies occupying offices, warehouses and factories – need suitable premises from which to operate. Many of these businesses occupy their premises under tenancies, rather than owning the freehold.

Part 2 of the Landlord and Tenant Act 1954 gives business tenants the right to renew their tenancies when they would otherwise come to an end, allowing businesses to remain in their premises. This legal right to a new tenancy is often referred to as “security of tenure”.

Most business tenants automatically have the right to renew under the Act unless, before any

lease is granted, they agree with their landlord that the right to renew should not apply. In order to do that – by a process known as “contracting out” – various formalities must be followed.

But the legal framework is nearly 70 years old. While the Act has been updated to improve its flexibility and reduce the burdens on landlords and tenants associated with its operation, it is now nearly 20 years since the last significant updates were made.

In that time the world has changed and so has the commercial leasehold market. The rise of the internet and the impact of world events, including the financial crisis of 2008 and the Covid-19 pandemic, have all impacted on

the market. Government priorities have also evolved during this time; for example, there is now an increased focus on the environmental sustainability of commercial properties. We have heard that the Act is not working well for tenants or landlords, with criticism including that the law is burdensome, unclear and out-of-date. Often, tenants and landlords entering into business tenancies decide to contract out of the Act, meaning that tenants do not have the right to renew that the Act would otherwise give them.

The project was referred to the Law Commission by the Department for Levelling Up, Housing and Communities. It will comprise a wide review of Part 2 of the Landlord and Tenant Act 1954 with a view to its modernisation. The project is being undertaken pursuant to terms of reference agreed with Government which emphasise:

1. the creation of a legal framework that is widely used rather than opted out of, without limiting the rights of parties to reach their own agreements, by making sure legislation is clear, easy to use, and beneficial to landlords and tenants;
2. supporting the efficient use of space in high streets and town centres, now and in future, by making sure current legislation is fit for today's commercial market, taking into account other legislative frameworks and wider Government priorities, such as the "net zero" and "levelling up" agendas; and
3. the fostering of a productive and beneficial commercial leasing relationship between landlords and tenants.

We aim to publish a consultation paper as soon as possible in 2024.

Residential Leasehold and Commonhold

In England and Wales, properties can be owned either as freehold or as leasehold. Leasehold is a form of ownership where a person owns a property for a set number of years (for example, 99 or 125 years) on a lease from a landlord, who owns the freehold. Flats are almost always owned on a leasehold basis, but more recently leasehold has also been used for newly built houses. The Government has estimated that there are more than 4.5 million leasehold properties in England alone. However, the law which applies to leasehold is far from satisfactory.

The Ministry of Housing, Communities and Local Government (now the Department for Levelling Up, Housing and Communities) and the Welsh Government tasked us with providing a better deal for leaseholders and promoting fairness and transparency in the sector. Our work examined three issues: (1) leasehold enfranchisement and (2) the right to manage, both of which are statutory rights for leaseholders, and (3) commonhold, which provides an alternative form of ownership to leasehold.

In January 2020, we published a final report on one aspect of our enfranchisement project, namely the price that must be paid by leaseholders to make an enfranchisement claim.⁷ In July 2020, we published three further final reports covering all other aspects of the enfranchisement process, as well as on the right to manage and commonhold.⁸

Since publication of the Reports, the Law Commission has been undertaking work to support Government. That has included providing information and assistance to help Government in considering the Commission's recommendations. It has also supported the Government in the

⁷ (2020) LC 387.

⁸ (2020) LC 392.

(2020) LC 393.

(2020) LC 394.

development of legislation, for example by preparing instructions to Parliamentary Counsel.

In November 2023, it was announced in the King's Speech that Government would bring forward a Leasehold and Freehold Reform Bill, significant aspects of which are based on the options and recommendations made by the Law Commission.⁹

More information on the three strands of the project can be found below.

Leasehold Enfranchisement

Enfranchisement is the statutory right of leaseholders to obtain a leasehold extension or buy their freehold. For leaseholders of flats, buying the freehold involves leaseholders joining together with their neighbours to buy the freehold of their block (also known as "collective enfranchisement").

The recommendations set out in our final report on leasehold enfranchisement would place the vast majority of a home's value in the hands of the leaseholder. Our recommendations were designed to make the enfranchisement process easier, quicker and more cost effective, by:

- Improving the existing rights of leaseholders and giving owners of flats and houses a uniform right to enfranchisement wherever possible.
- Giving owners of flats and houses a right to extend their leases for 990 years at a peppercorn rent, in place of extensions of 90 or 50 years under the current law.
- Increasing the scope of enfranchisement so that more leaseholders can buy the freehold or extend their lease. We recommend that leaseholders should be able to enfranchise immediately after acquiring their lease and that flat owners should together be able to buy the freehold of premises where up to

50% of the building is commercial space rather than the current limit of 25%.

- Making it easier for leaseholders of flats to enfranchise by, for example, enabling groups of flat owners to acquire multiple buildings in one claim.
- Simplifying and reducing the legal and other costs of the procedure for acquiring a freehold or an extended lease.

We published our final report on the options that were available to Government to reduce the price payable by leaseholders to exercise enfranchisement rights in January 2020.

Right to Manage

The right to manage gives leaseholders the ability to take over the management of their building without buying the freehold. When the right to manage is acquired, the leaseholders take control of lease obligations relating to, for example, services, maintenance and insurance. Leaseholders who exercise the right to manage may manage the building themselves or choose to appoint their own managing agents.

The recommendations set out in our final report on the right to manage were designed to improve access to, and the operation of, the right for the benefit of all parties, making the procedure simpler, quicker and more flexible. We recommended:

- Relaxing the qualifying criteria, so that leasehold houses, and buildings with more than 25% non-residential space, and self-contained parts of buildings that can be managed separately, but otherwise do not meet the qualifying criteria, could qualify for the right to manage.
- Removing the requirement that leaseholders pay the landlord's costs of an RTM claim,

⁹ See the Background Briefing Notes to the King's Speech, p 45 (available at <https://www.gov.uk/government/publications/the-kings-speech-2023-background-briefing-notes>).

giving leaseholders significantly more control and certainty over the costs they will incur.

- Reducing the number of notices that leaseholders must serve in order to claim the right to manage and giving the tribunal the power to waive procedural mistakes.
- That leaseholders be permitted to acquire the right to manage over multiple buildings (such as an estate).
- Giving a right to request information about premises early on in the process so that an informed decision can be taken on claiming the right to manage.

The right to manage project was led by the Law Commission's commercial and common law team.

Commonhold

Commonhold provides a structure which enables the freehold ownership of flats and other types of interdependent properties, offering a way of owning property which avoids the shortcomings of leasehold ownership. It was introduced in 2002, but fewer than 20 commonhold developments have been created.

The project identified and made recommendations to reform aspects of the law of commonhold which impede its success, in order to help reinvigorate commonhold as a workable alternative to leasehold for both existing and new

In our final report, we made recommendations that would:

- Improve the potential for existing leaseholders to benefit from commonhold by removing the requirement that conversion to commonhold needs the unanimous agreement of leaseholders and others with particular interests in the building.
- Make commonhold more flexible by using "sections" (and other tools), which will enable commonhold to be used for larger, mixed-use developments.

- Enable shared ownership leases to be included within commonhold.
- Improve the day-to-day operation of commonholds – including to help ensure that commonholds are kept in good repair and are properly insured – which will enhance the experience of homeowners living within them.
- Provide homeowners with a greater say in setting the commonhold's costs and enhanced powers to take action against those who fail to pay their share.
- Provide greater certainty to mortgage lenders that their interests will be protected, including in the unlikely event of a commonhold association's insolvency, or on the termination of a commonhold at the end of a building's useful life.

In January 2021, the Secretary of State announced the creation of a Commonhold Council to "prepare homeowners and the market for the widespread take-up of commonhold". Professor Nick Hopkins was appointed to the Commonhold Council's Technical Support Group and was reappointed to the Group during the reporting period.

Financial Remedies on Divorce

Going through a divorce or ending a civil partnership is often a stressful period for any couple and is one which has significant consequences – for both their personal and family lives, as well as their finances.

Every year, tens of thousands of couples begin proceedings for separation which result in the use of financial remedy orders – orders which determine how their finances are divided after they are no longer together. Financial remedy orders can include the sale and transfer of property, maintenance for spouses, civil partners and children, and the splitting of pensions.

However, the laws which govern financial remedy orders are now several decades old, dating back to the Matrimonial Causes Act 1973, and subsequently mirrored in the Civil Partnership Act 2004.

Half a century after the passage of the 1973 Act, the Government has asked the Law Commission to review whether the current law is working effectively and delivering fair and consistent outcomes for divorcing couples.

In its review, the Law Commission will carry out a detailed analysis of the current laws on financial remedies, to determine whether there are problems with the current framework which require law reform, and what the options for reform might look like.

The project will consider the financial orders made by courts in England and Wales, as well as – for comparative context - the law in other countries. It will conclude by publishing a scoping report. This report could provide the basis for a full review with substantive recommendations for reform.

As part of its analysis of existing law, the Law Commission will consider whether there is potential for reform in specific areas such as:

- The discretionary powers given to judges over the division of financial assets, and whether there is a need for a clear set of principles, enshrined in law, to give more certainty to divorcing couples.
- The factors judges must consider when deciding which, if any, financial remedy orders to make.
- Whether there should be wider powers given to the courts to make orders for children over the age of eighteen.
- How maintenance payments for an ex-spouse or civil partner should work.
- Orders relating to pensions and whether they are overlooked when dividing the divorcing parties' assets.

- What consideration the courts should give to the behaviour of separating parties when making financial remedy orders.

We aim to publish the scoping paper in September 2024.

Making a Will

The law of wills is largely a product of the 19th century, with the main statute being the Wills Act 1837. The law that specifies when a person has the capacity to make a will (“testamentary capacity”) is set out in the 1870 case of *Banks v Goodfellow*.

Our project aims to modernise the law to take into account the changes in society, technology and the medical understanding of capacity that have taken place since the Victorian era. It considers a wide range of topics relating to how wills are made and interpreted.

We published a consultation paper in July 2017. Our provisional proposals included the introduction of a dispensing power enabling a court, on a case-by-case basis, to admit a will when formality requirements have not been complied with but the court is satisfied that a document represents the testator’s final wishes. It also provisionally proposed a new mental capacity test which takes into account the modern understanding of conditions like dementia, and changes to protect vulnerable people from being placed under undue pressure as to their testamentary intentions. Alongside that, there was a suggestion that the age for making a will should be lowered from 18 to 16. We also considered how to pave the way for the introduction of electronic wills, to better reflect the modern world, once the technology is in place which would enable fraud to be prevented.

In 2019, the Commission paused completion of the wills project to undertake a review of the law concerning weddings. We agreed to the Government's request that we prioritise work on weddings in light of the pressing need for reform in relation to how and where people can marry.

The project re-commenced in the Autumn of 2022. The remaining stages of our work are to complete our analysis of consultation responses, which will inform development of our final policy, and to prepare a final report and to instruct Parliamentary Counsel to draft a Bill that would give effect to our recommendations.

In addition, in view of the passage of time since our original consultation, and the impact of the Covid-19 pandemic on making a will, we are engaging further with stakeholders as we develop our final policy. On 5 October 2023 we published a supplementary consultation paper considering discrete issues on which we think there might be a shift in views among consultees, in the light of developments since our 2017 consultation paper.

Burial, Cremation and New Funerary Methods

In our 13th Programme of Law Reform we stated that the law governing how we deal with the bodies of our loved ones when they die is unfit for modern needs. It is outdated, with most of the Burial Acts dating back to the mid-19th Century and cremation governed by the Cremation Act 1902. It is piecemeal and complex, particularly in relation to burial, which has multiple Acts and different regimes for Anglican, local authority and private burial grounds. Within this context, certain issues – in particular, the lack of grave space for burial, and attendant questions around grave re-use – means reform is urgently needed.

The law does not ensure that a person's own wishes as to what should happen to their body following their death are carried out, which results in disputes and distress where family members disagree on the method, or who should keep ashes.

In addition, the law is not fit for purpose in relation to new funerary methods, such as alkaline hydrolysis, sometimes called "water cremation", or natural organic reduction, sometimes called "human composting", which are claimed to be more environmentally sustainable. In this sensitive context, the uncertainty arising from the absence of specific regulation can be a barrier to investment, limiting choice for individuals and families. Our aim is to create a future-proof framework that encompasses existing practices and is flexible to accommodate safe and dignified new practices.

We are currently in the scoping phase of the project, working with the Ministry of Justice to establish its terms of reference and timeframe. The areas we have identified where the law is in need of review are:

- burial, including the issues of grave re-use and exhumation, differences in regulation across sectors, and the opening and closing of burial grounds;
- cremation, including burial of ashes, entitlement to ashes, and accommodating diverse religious practices;
- new funerary methods; and
- rights and obligations relating to a person's body following their death, such as the ability of a person to make a legally binding decision, disputes between family members, and public health funerals (funerals where there is no family member or friends who can or will take responsibility for arrangements for the deceased's body).

Surrogacy

Surrogacy is where a woman – the surrogate – carries a child on behalf of someone else or a couple (the intended parents), with the intention that the intended parents become the child’s parents. Intended parents may enter into a surrogacy arrangement because of a medical reason that prevents them from carrying their own child to term. Or, in the case of same-sex male couples, surrogacy may be the only way for the couple to have a child with a genetic link with them.

In the UK surrogacy is principally governed by the Surrogacy Arrangements Act 1985 (SAA 1985) and certain provisions of the Human Fertilisation and Embryology Acts 1990 and 2008. The increased use of surrogacy brought to light significant concerns with the law. The project, undertaken jointly with the Scottish Law Commission, focused on a number of key areas, such as: the regulation of surrogacy including what payments the intended parents can make to their surrogate; the legal parental status of the intended parents and the surrogate with respect to the child born of the arrangement; and ensuring access to information for those born of surrogacy. The project was not concerned with consideration of whether surrogacy should be lawful, taking as its starting point, in line with Government’s policy position, that surrogacy is a legitimate way in which to build a family.

We published a consultation paper in June 2019 with provisional proposals to make surrogacy law fit for purpose and invited consultees’ views on a range of issues. We received 681 responses, including many from individuals and organisations who endorse and support the use of surrogacy, along with individuals and organisations who oppose surrogacy.

We published our final report (composed of our Report and a shorter Core Report) and draft legislation on 29 March 2023. Our recommendations provide a new regulatory

regime for surrogacy that offers clarity, safeguards and support – for the child, the surrogate and the intended parents, including:

- A new pathway to legal parenthood: a new regulatory route for domestic surrogacy arrangements, under which intended parents would become parents of the child from birth, rather than wait for months to obtain a parental order. This would be subject to the surrogate having the right to withdraw consent. The new pathway incorporates screening and safeguards, including medical and criminal records checks, independent legal advice and counselling that take place prior to the child being conceived.
- A regulatory route overseen by non-profit surrogacy organisations: individual surrogacy agreements under the new pathway will be overseen and supported by non-profit Regulated Surrogacy Organisations (RSOs). RSOs themselves will be regulated by the Human Fertilisation and Embryology Authority.
- Reforms to parental orders: despite the introduction of the new pathway, some intended parents will still need to obtain a parental order through the courts in order to become legal parents. We recommend reform to parental orders, including allowing the court to make a parental order where the surrogate does not consent, provided that the child’s lifelong welfare requires this. This would bring surrogacy law into line with other areas of family law.
- A new Surrogacy Register: created to give children born through surrogacy the opportunity to trace their origins when they are older, through a framework designed with surrogacy in mind.
- New rules on payments: our reforms provide clarity over which payments intended parents are permitted to make to the surrogate. Permitted payments include medical and wellbeing costs, those to recoup lost earnings,

pregnancy support, and travel. Prohibited payments include those made for carrying the child, compensatory payments, and living expenses such as rent. These payment rules ensure that the surrogate is not left either better or worse off through surrogacy, which protects against the risk of exploitation.

- Commercial surrogacy prohibited: our recommendations ensure that surrogacy continues to operate on an altruistic, rather than a commercial basis. Surrogacy arrangements will also remain unenforceable: the surrogate could not be forced to give the child to the intended parents because of the surrogacy agreement, as happens under some “for profit” systems overseas.
- International surrogacy agreements: many couples opt for agreements abroad, sometimes in countries where there is a particular risk of the exploitation of women and children. Our reforms are designed to encourage intended parents who want to use surrogacy to make domestic surrogacy arrangements instead. However, for those who do opt for international surrogacy arrangements, we also recommend legal and practical measures to safeguard the welfare of those children, for example through assisting them in acquiring UK nationality, and recording relevant information on the Surrogacy Register that we recommend.

Reform would produce significant benefits in the protection and enhancement of the rights and welfare of those who enter into and are born following surrogacy arrangements; our impact assessment also concluded that reform would produce financial savings for those involved, and Government, of over £24m across the next ten years.

On 8 November 2023, the Law Commission received an interim response from Government. The response said that the Department of Health and Social Care is working with other

Government departments to review the report’s recommendations to inform a full Government response.

Weddings

The central elements of the law which governs how and where people can get married date from the 18th and 19th centuries. Outdated rules and regulations have become stuck in time, failing to adapt to how people now want to celebrate their weddings.

How and where weddings can take place are tightly regulated and differ depending on the type of wedding. At present, couples have to make a choice between a religious or a civil ceremony, with no option for a ceremony reflecting other beliefs (such as humanism). With few exceptions, all couples must have their wedding in a place of worship, a register office or a venue approved for civil weddings. Couples can also not generally marry outdoors except in the grounds of approved premises.

If a couple does not comply with the legal requirements, which may happen with some religious ceremonies, their marriage may not be legally recognised. People often only discover the lack of legal status of their marriage when their relationship ends, on death or by separation. This means the parties are not counted as married and do not have the legal status or protection that comes with it.

Our project considered how and where people can get married in England and Wales, with a focus on giving couples greater choice within a simple, fair and consistent legal structure. The guiding principles for reform, set out in the terms of reference for the project, were certainty and simplicity; fairness and equality; protecting the state’s interest; respecting individuals’ wishes and beliefs; and removing any unnecessary regulation, so as to increase the choice and lower the cost of wedding venues for couples.

We published our final report on 19 July 2022. In it, we made recommendations for a new weddings law that gives couples greater choice within a simple legal framework to support and celebrate marriage.

We recommended comprehensive reform from the foundations up: an entirely new scheme to govern weddings. Our recommendations will transform the law from a system based on regulation of buildings to one based on regulation of the officiant responsible for the ceremony.

Under our recommendations, all couples, as well as all religious groups and (if enabled by Government to conduct weddings) non-religious belief groups, will have the freedom to decide where and how their weddings will take place.

1. Couples will be able to give notice of their intended wedding online, and to choose the registration district where they are then interviewed by a registration officer. Anglican preliminaries (for example, banns) will be retained for Anglican weddings.
2. Notice of upcoming weddings will be published online so that the information is accessible to the wider community.
3. Couples will be able to have a wedding ceremony that reflects their values and beliefs, by:
 - a. having a religious ceremony in a venue other than a place of worship and without having to incorporate prescribed words into the ceremony;
 - b. having a religious ceremony led by an interfaith minister that contains aspects of each of the couple's beliefs;
 - c. having some religious elements, such as hymns and prayers, incorporated into their civil ceremony, as long as the ceremony remains identifiably civil.
4. If permitted by Government to conduct weddings, non-religious belief organisations (such as Humanists) would be able to do so on the same basis as religious organisations.
5. Couples will be able to get married in a much wider variety of locations, including:
 - a. outside, in a place unconnected with any building, such as in a forest, on a beach, or in a local park;
 - b. in affordable local venues, such as community centres and village halls, as well as in their own homes;
 - c. in international waters on cruise ships that are registered in the UK.
6. If permitted by Government to conduct weddings, independent officiants (that is, officiants who are not registration officers and are not affiliated to a religious or non-religious belief organisation) will be able to conduct civil weddings.
7. There will be much greater clarity as to the consequences that follow when a couple has not complied with the required formalities, and fewer weddings conducted according to religious rites will result in a wedding that the law does not recognise at all.

While offering greater freedoms to couples, our recommended reforms were designed to preserve the dignity of weddings, to retain important safeguards, and to protect the longstanding practices and rules of religious groups.

Having published our final report, we are now awaiting Government's response. If Government accepts our recommendations, it will be necessary for a bill to be drafted to give effect to them.

Public law and the law in Wales

Commissioner: Nicholas Paines KC

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Planning Law in Wales

Following the publication of our final report in December 2018, we continue to work closely with the Welsh Government on the preparation of the Historic Environment (Wales) Bill and the Planning (Wales) Bill, which will incorporate many of our recommendations, and associated secondary legislation. The resulting Code will modernise and simplify the law on planning in Wales and will be the first fruit of the ambitious programme of consolidating and codifying Welsh statute law, set out by the Counsel General in September 2021.

Automated Vehicles

The Government's Centre for Connected and Autonomous Vehicles (CCAV) has asked the Law Commission and Scottish Law Commission to undertake a far-reaching review of the UK's regulatory framework for road-based automated vehicles. This will build on the work of CCAV and the insurance law reforms in the Automated and Electric Vehicles Act 2018. This project aims to promote confidence in the laws around the safe use of automated vehicles, and in the UK as a vibrant, world-leading venue for the connected and automated vehicle industry.

Our first consultation paper identified pressing problems in the law that may be barriers to the use of automated vehicles, from road traffic legislation which focuses on "the driver", to product liability, criminal offences and civil liability. Our second consultation focussed on the additional challenges of regulating vehicles where all the occupants are passengers and explored a framework for regulating automated passenger transport services.

We published a third and final consultation paper in 2021, revisiting in greater detail some of the issues raised in the earlier consultations. Following that consultation, our joint report was published in January 2022. Our recommendations cover initial approval and authorisation of self-driving vehicles, ongoing monitoring of their performance while they are on the road, misleading marketing, and both criminal and civil liability. This includes writing the test for self-driving into law; a two-stage approval and authorisation process building on current international and domestic schemes; a new in-use safety assurance scheme; new legal roles for users, manufacturers and service operators; and offences holding manufacturers and service operators responsible

for misrepresentation or non-disclosure of safety relevant information.

The Department for Transport welcomed the publication of the report in January and in August 2022 broadly accepted our recommendations and launched a consultation on a number of points with a view to developing proposals to legislate on self-driving vehicles. We continued to work closely with CCAV, assisting them with the implementation of our recommendations, while also working to provide advice on the law on remote driving.

Administrative Review

Administrative Review (AR) is the system, internal to a public decision maker, by which a decision concerning an individual is reconsidered – and is sometimes a prerequisite to appeals, or judicial review. AR decisions are determinative of many more social security, immigration, and tax claims than are determined by courts and tribunals. This work is intended to identify principles for effective AR in order to reduce the number of appeals and promote confidence in administrative decision making, including accommodating the anticipated growth in the use of automation to assist public decision making.

Subject to agreeing terms of reference for the project, we expect it to begin in 2023/24.

Aviation Autonomy

The aviation autonomy project is sponsored by the Future Flight Challenge at UK Research & Innovation (UKRI) and supported by the UK Civil Aviation Authority (CAA) and Department for Transport (DfT). The project will consider the reforms necessary to provide a robust and future-proofed legal framework capable of supporting the safe deployment of high automation and autonomous systems in aviation. It focuses on three use cases: drones (remotely piloted, non-passenger carrying vehicles),

Advanced Air Mobility (such as electrical vertical take-off and landing vehicles providing short journeys for up to ten people), and Air Traffic Management and Air Navigation Services.

The project started in late 2022 by reviewing the existing legislation to identify any legislative blocks, gaps or uncertainties. We expect to publish a consultation paper early in 2024.

Compulsory Purchase

The ability to purchase land using compulsory powers is essential to the implementation of large-scale projects to improve both local and national infrastructure as well as much-needed regeneration of towns and cities, and for the provision of housing.

At the same time, compulsory purchase powers can cause significant detrimental impacts on those individuals and businesses affected by them and should only be used as a last resort in the public interest.

It has been widely acknowledged for over two decades that the law of compulsory purchase in England and Wales is fragmented, hard to access and in need of modernisation. In the early 2000s, this led to a three-year project by the Law Commission, *Towards a Compulsory Purchase Code*, which resulted in the publication of two reports dealing with compensation and procedure respectively.

The recommendations of the 2003 and 2004 Law Commission reports were very favourably received, but not implemented in full. Since then, incremental changes to the law have been made. Yet there have been continued calls for comprehensive modern code.

We are aiming to consult in early 2024, with a view to producing a report and draft Bill by the end of 2025.

Part Three:

Implementation of Law Commission law reform reports 2022–23

There are several mechanisms in place which are designed to increase the rate at which Law Commission reports are implemented:

- The Law Commission Act 2009, which places a requirement on the Lord Chancellor to report to Parliament annually on the Government’s progress in implementing our reports.
- Protocols between the Law Commission and the UK and Welsh Governments, which set out how we should work together.
- The Law Commission parliamentary procedure.

Law Commission parliamentary procedure

A dedicated parliamentary procedure, approved by the House of Lords on 7 October 2010, has been established as a means of improving the rate of implementation of Law Commission reports. Bills are suitable for this procedure if they are regarded as “uncontroversial”; this is generally taken to mean that all front benches in the House are supportive in principle.

Ten Law Commission Bills have now followed this procedure:

- Electronic Trade Documents Act 2023, received Royal Assent on 20 July 2023.
- Charities Act 2022, received Royal Assent on 24 February 2022.
- Sentencing (Pre-consolidation Amendments) Act 2020, received Royal Assent on 8 June 2020. The Sentencing Code received Royal Assent on 22 October 2020 and came into force on 1 December 2020.

- Intellectual Property (Unjustified Threats) Act 2017, received Royal Assent on 27 April 2017.
- Insurance Act 2015, received Royal Assent on 12 February 2015.
- Inheritance and Trustees’ Powers Act 2014, received Royal Assent on 14 May 2014.
- Trusts (Capital and Income) Act 2013, received Royal Assent on 31 January 2013.
- Consumer Insurance (Disclosure and Representations) Act 2012, received Royal Assent on 8 March 2012.
- Third Parties (Rights against Insurers) Act 2010, received Royal Assent on 25 March 2010.
- Perpetuities and Accumulations Act 2009, received Royal Assent on 12 November 2009.¹⁰

In our report on The Form and Accessibility of the Law Applicable in Wales, we recommended that the Senedd should adopt a similar procedure, echoing an earlier call for this from the Senedd’s Constitutional and Legislative Affairs Committee. The Senedd has since introduced a new Standing Order 26C procedure for introducing Consolidation Bills, including those implementing Law Commission recommendations. There is also scope for the Law Commission to advise whether certain changes proposed in a Bill are appropriate for inclusion in a Consolidation Bill under the standing order (see page 9).

¹⁰ The Bill passed through Parliament as part of a trial for the Law Commission parliamentary procedure.

Implementation of our reports 2022–23

Between 1 April 2022 and 30 Sept 2023 we published six final reports with recommendations for law reform:

- Celebrating Marriage: A New Weddings Law, 18 July 2022.
- Building families through surrogacy: a new law (a joint report with the Scottish Law Commission), 28 March 2023.
- Confiscation of the proceeds of crime after conviction, 8 November 2022.
- Intimate Image Abuse, 7 July 2022.
- Digital Assets, 27 June 2023
- Review of the Arbitration Act 1996, 5 September 2023

We also published a command paper, our advice to Government on Remote Driving in February 2023.

The statistics from the creation of the Commission in 1965 to 30 September 2023 are:

- Law reform reports published – 253.
- Implemented in whole or in part – 160 (63%).¹¹
- Accepted in whole or in part, awaiting implementation – 17 (6%).
- Accepted in whole or in part, will not be implemented – 7 (3%).
- Awaiting response from Government – 27 (11%).
- Rejected – 31 (12%).
- Superseded – 11 (4%).

Reports implemented during the year

Electronic Trade Documents

- Final report published on 15 March 2022.¹²
- Electronic Trade Documents Bill introduced into Parliament in October 2022 and received Royal Assent on 20 July 2023. It came into force on 20 September 2023.

International trade is worth around £1.266 trillion to the UK. The process of moving goods across borders involves a range of actors including transportation, insurance, finance and logistics service providers. Despite the size and sophistication of the international trade industry, many of its processes, and the laws underlying them, are based on practices developed by merchants hundreds of years ago. In particular, international trade still relies on a special category of documents, such as bills of lading and bills of exchange, which, unlike other documents are said to embody rather than simply record a right or obligation. The act of transferring possession of a document like a bill of exchange can transfer the obligations which that document embodies, for example the obligation to pay money or deliver goods. Being the “holder” or having “possession” of a trade document therefore has special significance in law. However, the current law of England and Wales does not recognise electronic documents as things that can be possessed because they are regarded as being intangible. As a result, many of the documents used in international trade are still in paper form.

¹¹ This includes reports that have been accepted by Government and implementation is underway

¹² (2022) LC 405.

Over the past decade, the development of technologies such as distributed ledger technology has made the use of electronic documents in international trade increasingly feasible from a practical perspective. Without reform, the law will continue to lag behind, hindering the adoption of electronic trade documents and the significant associated benefits from being achieved.

We published a report with draft Bill in March 2023. We recommend that electronic trade documents (that is, documents in electronic form which satisfy certain criteria designed to replicate the salient features of paper documents) should be capable of being possessed, and set this principle out explicitly in the draft Bill. Our recommendations mean that, when implemented, electronic trade documents will have the same effect in law as their paper equivalents, they will be dealt with in the same way (for example, for the purposes of transfer and granting security) and the same substantive laws will apply whether a document is in paper or electronic form.

The project was commissioned by the Department for Digital, Culture, Media and Sport. Responsibility has now transferred to the Department for Science, Innovation and Technology after the recent machinery of Government changes.

The Government introduced the Electronic Trade Documents Bill into Parliament in October 2022, under the special parliamentary procedure for Law Commission bills. The Bill is based very closely on the Bill we published in our report, with a few Government amendments (including to extend the Bill to Scotland and Northern Ireland). Members of the Law Commission team supported the Bill's passage through Parliament. The Electronic Trade Documents Act 2023 received Royal Assent on 20 July 2023.

Public Nuisance and Outraging Public Decency

- Final report published on 24 June 2015.¹³

Public nuisance is a common law offence involving environmental danger or loss of amenity or offensive public behaviour. The related common law offence of outraging public decency involves indecent actions or displays that may cause offence to members of the public.

These two common law offences are unclear and ill-defined.

Public nuisance traditionally dealt with environmental nuisance such as noise, smells and obstruction. But its focus has shifted to more general forms of public misbehaviour. This brings a wider range of potential offenders into its scope.

Outraging public decency is a related offence which criminalises behaviour or displays which are lewd, obscene or disgusting and take place in public.

We recommended retaining the offences and restating them in statute largely in their existing form. However, as the offences are serious ones, punishable by up to life imprisonment, the recommendations provide that the defendant should be liable only if there is proof of intention or recklessness. At common law, public nuisance only requires proof of negligence, and outraging public decency has no requirement of fault.

Our recommendations on public nuisance were implemented in section 78 of the Police, Crime, Sentencing and Courts Act 2022, which was introduced into Parliament on 9 March 2021, and received Royal Assent on 29 April 2022.

The Government is still considering our recommendations on outraging public decency.

13 (2015) LC 358.

Reports in the process of being implemented

Coal Tip Safety in Wales

- Final report published on 23 March 2022.¹⁴
- Government response received on 22 March 2023.

In late 2020, the Welsh Government invited the Law Commission to evaluate current legislation and to consider options for new Welsh legislation to ensure an integrated and future-proofed legislative framework. The current legislation relating to coal tip safety, the Mines and Quarries (Tips) Act 1969, does not effectively address the management of disused coal tips. The legislation was enacted after the Aberfan disaster at a time when there was an active coal industry and disused tips were not thought to be a significant problem. Almost all tips in Wales, over 2000 in total, are now disused, and increased rainfall intensity as a result of climate change brings an increased risk of tip instability as illustrated by tip slides which occurred in Wales in February 2020 following Storms Ciara and Dennis.

After a consultation launched in June 2021, our final report was laid before the Senedd on 23 March 2022. It made several recommendations for a new regulatory framework for coal tip safety, to promote consistency in the management of coal tips across Wales and avert danger by introducing a proactive rather than reactive approach.

The new regulatory framework would introduce a single supervisory authority with a duty to ensure the safety of coal tips and achieve compliance with regulatory requirements to a consistent standard across Wales. It would feature a coal tips register, compiled and maintained by the supervisory authority, which would include a wide range of information including risk classifications

and management measures for each disused tip. There would be inspections of each tip, to assess their risk of instability, flooding, pollution and combustion. Those inspections would lead to the creation of tip management plans. Maintenance agreements and orders for lower risk tips would ensure that the required maintenance is carried out. For those coal tips designated as higher risk, an enhanced safety regime with increased involvement of the supervisory authority to manage the tip would reduce the chance of significant dangerous incidents occurring.

The Government's response in March 2023 accepted or accepted in modified form, the majority of the report's recommendations. These modifications mostly accommodate the expansion of the Government's proposed regime to phase-in other types of spoil tips over time. In most cases, where a recommendation has not been fully accepted, the underlying intention of our recommendation has been preserved and applied to the needs of a broader regime.

Devolved Tribunals in Wales

- Final report published on 8 December 2021.¹⁵
- Government response received in May 2022.

The rules and procedures governing tribunals in Wales have developed piecemeal from a wide range of different legislation. Much of the legislation was developed outside the devolution process, resulting in gaps in the legislation, notably following the creation of the office of the President of the Welsh Tribunals. The Law Commission was asked to make recommendations to help shape a Tribunals Bill for Wales, designed to create a single system for tribunals in Wales.

Following a consultation in December 2020, our 2021 report made a number of recommendations for reform, including:

¹⁴ (2022) LC 406.

¹⁵ (2021) LC 403.

1. Replacing the existing separate tribunals with a single unified first-tier tribunal, broken down into chambers catering for similar claims.
2. Bringing the Valuation Tribunal for Wales and school exclusion appeal panels within the new unified First-tier Tribunal.
3. Creating of an Appeal Tribunal for Wales, to hear appeals from the First-tier Tribunal. There would also be a new appeal route from school admission appeal panels to the education chamber.
4. Reforming the Welsh Tribunals Unit (the part of the Welsh Government which currently administers most devolved tribunals) into an independent non-Ministerial Department.
5. Standardising the processes for appointing and dismissing members of the tribunals and introducing a greater role for the President of Welsh Tribunals.
6. Standardising procedural rules across the tribunals and introducing a new Tribunal Procedure Committee to ensure that the rules are kept up to date.
7. Protecting judicial independence, by imposing a new statutory duty on Welsh Ministers and all those responsible for tribunals administration to uphold the independence of the tribunals.

In May 2022 the Welsh Government published “Delivering Justice for Wales”, which contained its formal response to our recommendations, accepting the broad thrust of them. The response stresses the Welsh Government’s commitment to having a unified, single structurally independent system of tribunals in Wales, and lays out the Welsh Government’s plans to create such a system, including an Appeal Tribunal for Wales, once further thinking on ways to take forward our proposals. In June 2023 the Government

published its White Paper (“A New Tribunal System for Wales”), consulting on a coherent statutory framework based on our report.

Enforcement of Family Financial Orders

- Final report published 15 December 2016.¹⁶
- Response from Government received on 23 July 2018

Each year thousands of separating couples apply to the family courts for financial orders. Sometimes these orders are not complied with. We published our report on the enforcement of these family financial orders in December 2016, following concerns raised by practitioners that the legal routes and procedures for enforcing payment of financial orders, contained in a range of legislation and court rules, were unnecessarily complex. This means that it can be difficult for parties, particularly litigants in person, to recover the money they are owed. The aim of the project was to make recommendations suggesting how this difficult area of law could be made more effective, efficient and accessible, and to strike a fairer balance between the interests of the creditor and the debtor.

Our report recommended the consolidation of all procedural rules dealing with the enforcement of family financial orders. It would create a “route map” for enforcement proceedings, in the form of an Enforcement Practice Direction, and provide comprehensive guidance for litigants in person. We recommended changes to the enforcement procedure to ensure early disclosure of the financial circumstances of the debtor so that an appropriate method of enforcement can be selected, with provision for the court to obtain information from third parties (Government Departments and private bodies such as banks). The report also recommended reforms to bring more of the debtor’s assets, including those held in pensions and in joint bank accounts, within the

16 (2016) LC 370.

scope of enforcement. Where debtors can pay, but will not, the report recommended new powers to disqualify debtors from driving, or to prevent them travelling abroad, in order to apply pressure to pay.

Our recommendations could result in creditors recovering additional funds of £7.5m to £10m each year, while debtors who cannot pay would be protected from undue hardship. The burden on the state would be reduced by making savings on welfare benefits. More widely, the benefits would include savings in court time; an increase in parties' access to and understanding of effective enforcement; and an increase in public confidence in the justice system.

We received the Government's full response in a letter from the then Parliamentary Under Secretary of State (Lucy Frazer MP) in July 2018. The Government has agreed to take forward those of our recommendations which do not require primary legislation to put into effect.

A consultation on proposed changes to the Family Procedure Rules that deal with the enforcement of family financial orders, in line with the recommendations made by the Law Commission in its report, was undertaken by the Government in July and August 2020. In April 2023, changes were made to the Family Procedure Rules, supported by changes to standard draft orders and forms, that implemented some of the procedural recommendations that we made in the report. These changes have implemented much of what we recommended, and we believe that these changes will go a long way towards making enforcement in this area more efficient, effective and accessible

The Government has decided to wait until the Family Procedure Rule Committee has reviewed the operation of the 2023 rule change and decided whether it wishes to make further procedural

changes before taking a view on whether to implement the reforms which do require primary legislation.

Consumer Prepayments on Retailer Insolvency

- Final report published on 13 June 2016.¹⁷
- Government response received on 28 December 2018.

In the UK, online retail sales and the gift card and voucher market are booming, and consumers frequently pay in advance for products – from flights and theatre tickets to gym memberships and bathroom suites. Online sales in particular will have increased significantly during the lockdowns necessitated by COVID-19, with many physical shops closed.

If the business that has taken the prepayment becomes insolvent, consumers may be left with neither the item they paid for, nor any real prospect of a refund through the insolvency process (although they may have other avenues such as through their card provider).

In September 2014, the then Department for Business, Innovation and Skills (BIS, now BEIS) asked the Law Commission to examine the protections given to consumer prepayments and to consider whether such protections should be strengthened. We published our recommendations in July 2016, setting out five recommendations which would improve consumers' position on insolvency, particularly in cases where they are most vulnerable.

The Government's response said that the Law Commission's work would be further reflected upon. In particular, the Government said:

- It will engage with stakeholders in relation to creating a power for the Secretary of State to regulate in sectors where it is needed.

17 (2016) LC 368.

- It intends to take action to regulate Christmas savings schemes once the necessary legislative capability has been established by the new power.
- It has already taken action, working with UK Finance and insolvency practitioners (IPs) to encourage IPs to let consumers know about their rights to remedies through their debit or credit card provider.

The Government said it would not implement any change to the insolvency hierarchy to give a preference to the most vulnerable category of prepaying consumers. In this Government's view this recommendation could increase the cost of capital, harm enterprise and lead to calls for preferential status for other groups of creditors.

The Government said that the Law Commission's recommendations on transfer of ownership would require more work and consultation to determine whether, and how, to take them forward. In 2019, BEIS asked the Law Commission to undertake such work and to produce draft legislation on this topic. We have now published the results of this work, in the form of a final report, discussed elsewhere in this document under the heading Consumer Sales Contracts: Transfer of Ownership.

In April 2022, BEIS confirmed that the Government would legislate to ensure that consumer prepayments schemes marketed as, or understood to be, a savings mechanism (and not within the scope of existing protections) must protect customer payments by way of a trust or insurance, subject to certain exclusions.¹⁸ This is in line with our recommendations. It also said it would undertake further research to identify whether there are other sectors which pose particular risks to prepaying consumers.

Corporate Criminal Liability

- Options paper published on 21 June 2022.¹⁹

We published our options paper in June 2022. Among the options we put forward were statutory reform of the identification doctrine, to extend liability to conduct sanctioned by members of a company's senior management; the introduction of "failure to prevent" offences, in particular in respect of fraud by an associated person; giving courts the power to impose publicity orders on corporate offenders, requiring them to publicise their conviction; and reform the personal liability of directors and senior managers so that they can only be convicted of offences requiring proof of fault where the commission of the offence by the company was with their consent or connivance, but not where it was merely attributable to their neglect.

The Government has taken action informed by some of the options we set out. Measures in the Economic Crime and Corporate Transparency Bill, awaiting Royal Assent, would introduce failure to prevent fraud, and reform of the identification doctrine for certain economic offences.

Taking, Making and Sharing of Intimate Images Without Consent

- Report published on 7 July 2022.²⁰
- Government response published 25 November 2022.

In our final report published on 7 July 2022 we made a number of recommendations for reform to the criminal law as it relates to taking, making and sharing intimate images without consent.

We recommended a new tiered framework of offences which uses one consistent definition of an intimate image, covers the full range of

18 BEIS, Reforming competition and consumer policy: government response (April 2022).

19 (2016) LC 374.

20 (2023) LC 407.

perpetrator motivations, and applies protective measures for victims consistently.

We also recommended that complainants of intimate image offences should benefit from automatic lifetime anonymity, automatic eligibility for special measures at trial, and restrictions on cross-examination of witnesses in proceedings. Finally, we recommended that Sexual Harm Prevention Orders should be available and notification requirements be triggered in cases of intimate image abuse where there is relevant sexual conduct of sufficient seriousness.

On 25 November 2022 the Government confirmed its intention to implement the recommendations contained in our report. In the immediate term, it has put forward amendments to the Online Safety Bill, awaiting Royal Assent, which would criminalise the sharing of a person's intimate images without their consent and threats to share intimate images.

The Government intends to implement a more comprehensive package of measures covering our other recommendations in due course.

Pension Funds and Social Investment

- Final report published on 21 June 2017.²¹
- Interim Government response published on 18 December 2017.
- Final Government response published in June 2018.

This project was referred to us in November 2016 by the then Minister for Civil Society. We were asked to look at how far pension funds may or should consider issues of social impact when making investment decisions.

Our report found that barriers to social investment by pension funds are, in most cases, structural and behavioural rather than legal or regulatory. We identified steps which could be taken by the Government, regulators and others to minimise these barriers and made recommendations for reform. We also suggested further options for reform, for the Government to consider in due course.

The Government's final response was received in June 2018, agreeing to implement the recommended reforms.

In particular, the Government has implemented our recommended reforms in relation to trust-based pension schemes. The relevant provisions in the Occupational Pension Schemes (Investment) Regulations 2005 came into force on 1 October 2019.²² The Financial Conduct Authority has made similar changes, in force from 6 April 2020, to rules applying to contract-based pension schemes.²³

The Government's final response also identified further action in relation to some of the options for reform, including further work to review regulation of social enterprises and the level of the default fund charge cap.

Electronic Execution of Documents

- Final report published on 4 September 2019.²⁴
- Government response published 3 March 2020.

In the modern world, individuals and businesses demand modern, convenient methods of making binding transactions. Many parties are already concluding agreements entirely electronically.

21 (2016) LC 374.

22 Amendments made by the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018 (SI 2018/988).

23 Conduct of Business Sourcebook (Independent Governance Committees) Instrument 2019.

24 (2019) LC 386.

The benefits of this have been highlighted by the period of social distancing and home working necessitated by COVID-19.

The law has been grappling with electronic signatures for 20 years and more, with relevant case law and EU and UK legislation. Despite this, some stakeholders indicated that there was still uncertainty around the legal validity of electronic signatures, at least in some circumstances, as well as concerns around practical issues such as security, future-proofing of technology, and adequate protections for parties.

Our analysis of the existing law concluded that an electronic signature is already capable in law of being used to execute a document (including a deed). This is provided that: (i) the person signing the document intends to authenticate the document and (ii) any formalities relating to execution of that document are satisfied.

In March 2020, the Government welcomed our report and its conclusions on the existing law. In line with our recommendations, it undertook to convene an industry working group to consider practical issues including the possibility of video witnessing, and said the Government will ask the Law Commission to undertake a wider review of deeds in the future when resources allow.

The industry working group was convened and started work in 2021. Members of the group were appointed through public competition. The group published an interim report in February 2022 with the following objectives: (a) to analyse the current situation in England and Wales; (b) to set out simple best practice guidance which can be followed immediately, using existing technology; and (c) to make recommendations for future analysis and reform. A final report is due in 2022.

Smart Contracts

- Advice to Government published 25 November 2021.²⁵

The Law Commission was asked by the Lord Chancellor to include work on smart legal contracts as part of our Thirteenth Programme of Law Reform. In November 2019, the UK Jurisdiction Taskforce (“UKJT”) published its legal statement on cryptoassets and smart contracts. The UKJT Legal Statement concluded that, in principle, smart contracts are capable of giving rise to binding legal obligations, enforceable in accordance with their terms.

Following this, the Ministry of Justice asked us to undertake a detailed analysis of the current law as it applies to smart legal contracts, highlighting any uncertainties or gaps, and identifying such further work as may be required now or in the future. We concluded that the current legal framework of contract law in England and Wales is sufficiently flexible to facilitate and support the use of smart legal contracts, without the need for statutory law reform, and so did not make any recommendations in this regard. We identified deeds and private international law as two areas where we think future work is required to support the use of smart contract technology in appropriate circumstances. In relation to both of these areas, future law reform projects are in train.²⁶

²⁵ (2017) LC 373.

²⁶ On deeds, we recommended the need for a review of the law of deeds in our report on Electronic Execution of Documents, and Government confirmed that it would ask us to undertake this when resources allowed (see page 12 of this report). On conflicts of law and emerging technology, we have begun work on a new project called “Digital assets: which law, which court?”. See Part 2 for further details.

The Form and Accessibility of the Law Applicable in Wales

- Final report published on 29 June 2016.²⁷
- Response received from Welsh Government on 19 July 2017.

We published our report on the form, presentation and accessibility of the law relating to Wales on 29 June 2016. The report made a number of recommendations to the Welsh Government that seek to secure improvements in those aspects of both the existing law and future legislation in Wales.

The Welsh Government issued its final response on 19 July 2017. The report provides a helpful blueprint as to how the Welsh Government and others can take action to ensure that the law in Wales is more accessible. The Welsh Government was able to accept, or accept in principle, all except one of the recommendations.

The Welsh Government began to implement these recommendations by introducing a Bill into the Senedd on 3 December 2018. Part 1 of the Legislation (Wales) Act 2019 imposes a duty on the Counsel General and the Welsh Ministers to take steps to improve the accessibility of the law in Wales. In September 2021 the Counsel General published *The Future of Welsh Law*, a programme for making Welsh law more accessible covering the period 2021 to 2026.²⁸ The First Bill to be introduced pursuant to that programme was the *Historic Environment (Wales) Act 2023*.

Modernising Communications Offences

- Final report published 20 July 2021.²⁹
- Interim Government Response received 4 February 2022.

The recommendations in our report aim both to offer better protection for freedom of expression, and also to address effectively the harms arising from online abuse. The report sets out the ways in which the law could be modernised to address online and offline communications in a proportionate and efficient way. We recommend the following new or reformed criminal offences:

- a new “harm-based” communications offence to replace the offences within section 127(1) of the Communications Act 2003 and the Malicious Communications Act 1988;
- a new offence of encouraging or assisting serious self-harm;
- a new offence of cyberflashing; and,
- new offences of sending knowingly false communications, threatening communications, and making hoax calls to the emergency services, to replace section 127(2) of the Communications Act 2003.

The Government responded to our report on 4 February 2022 accepting some of our recommendations, and resolving to consider the rest.

The Government accepted most of our recommendations and included offences based on them in the *Online Safety Bill*. That Bill has now completed its passage through Parliament and awaits royal assent.

²⁷ (2016) LC 366.

²⁸ <https://gov.wales/the-future-of-welsh-law-accessibility-programme-2021-to-2026.html>.

²⁹ (2021) LC 399.

Planning Law in Wales

- Final report published on 3 December 2018.³⁰
- Interim Government response received on 17 May 2019.
- A detailed response was published in November 2020.

In December 2018, we published a wide-ranging report proposing over 190 technical reforms to planning legislation as it applies in Wales. Most of these were accepted by the Welsh Government in 2020, and many will be incorporated into the Historic Environment (Wales) Bill, laid before the Senedd in July 2022, and the Planning (Wales) Bill, to be laid later this Senedd term. These, along with updated secondary legislation, will form a new, bilingual Planning Code for Wales – which will be the first fruit of a groundbreaking programme of reforming Welsh statute law, following on from the commission’s 2016 report on the Form and Accessibility of the Law in Wales.

Commission staff are closely involved in supporting the drafting of the Planning Bill and associated secondary legislation.

An interim response in May 2019 noted that the Welsh Government has started work on a major consolidation Bill, which will incorporate many of the reforms put forward in our final report. A detailed response was published in November 2020 accepting most of the recommendations in our report. The aforementioned programme, The Future of Welsh Law, confirmed that a Planning law consolidation bill is due to be introduced in the Senedd. Commission staff are closely involved in supporting the drafting of the Bill and associated secondary legislation.

Protection of Official Data

- Final report published on 1 September 2020.³¹

In 2015, the Cabinet Office asked the Law Commission to review the effectiveness of the laws that protect Government information from unauthorised disclosure. We published a consultation paper on 2 February 2017 which suggested ways to improve the law that protects official information.

We published a final report with recommendations for change on 1 September 2020. In it we made 33 recommendations designed to ensure that:

- the law governing both espionage and unauthorised disclosures addresses the nature and scale of the modern threat;
- the criminal law can respond effectively to illegal activity (by removing unjustifiable barriers to prosecution); and
- the criminal law provisions are proportionate and commensurate with human rights obligations.

The Government responded to our recommendations in Annex B to their consultation on Legislation to Counter State Threats (Hostile State Activity), published on 13 May 2021. In it the Government welcomed many of our recommendations, in particular with regard to the Official Secrets Acts 1911, 1920 and 1939. Broadly, the Government noted our recommendations for reform of the Official Secrets Act 1989 and resolved to consider them in more detail.

The National Security Bill, which was introduced into the House of Commons on 11 May 2022, implements many of the espionage recommendations in our report in relation to the Official Secrets Acts 1911, 1920 and 1939. The bill has completed its Parliamentary stages and received Royal Assent on 11 July 2023.

³⁰ (2018) LC 383.

³¹ (2020) LC 395.

Reports awaiting implementation

Contempt of Court: Court Reporting

- Final report published on 26 March 2014.³²

This report aimed to modernise the way court reporting restrictions are communicated to the media. Reporting restrictions can be imposed by the judge in a case where publication of certain information may prejudice a fair trial. Typically, the order will provide that publication should be postponed until after the trial (or any linked trial) has finished. If the media breach such an order they will be in contempt of court and liable to criminal penalties. Under current law these important orders are communicated to the media by printing a copy of the order and posting it on the door of the court. This makes it difficult for the media to find out whether a reporting restriction is in place, leading to increased risks of prejudicing a fair trial, as well as the media being sometimes overly cautious in reporting, to avoid the risk of being found to be in contempt. In the report we recommended:

- Introducing a publicly accessible database available on the internet (similar to the one that already operates in Scotland) listing the court hearings in which restrictions are currently in place.
- Creating a more extensive restricted database where, for a charge, registered users could find out the details of the reporting restriction and could sign up for automated email alerts of new orders.

These recommendations would greatly reduce their risk of contempt for publishers – from large media organisations to individual bloggers – and enable them to comply with the court’s restrictions or report proceedings to the public with confidence.

We also undertook a pilot study that demonstrated the likely efficiency of such a scheme.

The Government welcomed these recommendations, suggesting that they would consider how an online reporting restriction database could be taken forward as part of a wider digital court reform programme.

Employment Law Hearing Structures

- Report published on 29 April 2020.³³

This project made recommendations to refine and rationalise areas of exclusive jurisdiction of the employment tribunals, and areas of overlap between the tribunal and the civil courts, recommending necessary and sensible adjustments in order to bring the law up to date, or enable the fair and effective determination of all or most employment disputes in one forum.

The Department for Business, Energy and Industrial Strategy, which oversees Government policy in respect of a significant number of the recommendations we have made, set out the Government’s response to the report. The Government’s focus is on addressing the challenges of COVID-19 on the labour market, while it highlighted measures taken to boost hearing capacity in Employment Tribunals. The Government accepted part of our recommendations aimed at improving the enforcement of tribunal judgements. On the whole, however, the lion’s share of our report’s recommendations have been deferred for later consideration, as the Government considers its policy.

A number of our recommendations, meanwhile, were separately considered by the Ministry of Justice and the Government Equalities Office who jointly responded to the report on 15 June 2022. This pointed to ongoing consideration of

³² (2014) LC 344.

³³ (2017) LC 373.

the case for extending the time limit for Equality Act based cases (except for equal pay) to six months as part of the Sexual Harassment in the Workplace consultation. It noted that a compelling case had been made by respondents for such an extension, including in pregnancy and maternity discrimination cases as well as sexual harassment cases. As to the general recommendations on time limits, extending time, contribution, the response did not commit to implementing our recommendations at the present time. The response noted that recommendations going to the flexible deployment of expert judicial resource across tribunals and courts were a matter for the judiciary, though it welcomed the aim of supporting the efficient operation of the employment dispute resolution system.

Event Fees in Retirement Homes

- Final report published on 29 April 2020.³⁴
- Interim Government response received on 26 November 2017.
- Final Government response received on 27 March 2019.

This project was referred to us by the Department for Communities and Local Government (now The Department for Levelling Up, Housing and Communities). It asked the Law Commission to investigate terms in long leases for retirement properties which require the consumer holding the lease to pay a fee on certain events – such as sale, sub-letting or change of occupancy. We called these “event fees”.

In March 2017, we published a report recommending reforms to address concerns that event fees are charged in unfair circumstances. They will also ensure that consumers are provided with clear information about event fees at an early stage in the purchase process. This will enable consumers to make informed decisions

about purchasing a retirement property, and to appreciate what that means for their future financial obligations.

The Government said in March 2019 that it will implement the report’s recommendations, with exception of two issues which the Government wishes to explore in further detail. In respect of these, the Government will:

- Seek to determine the best means of providing information to prospective buyers through an online database.
- Give further consideration to the recommendation for spouses’ and live-in carers’ succession rights to stay at a property without payment of an event fee, to explore the implications both for consumers and new supply.

Hate Crime

- Report published on 7 December 2021.³⁵

Building on the recommendations in our 2014 Report, this project reviewed the adequacy and parity of protection offered by the law relating to hate crime and made recommendations for its reform.

We launched our consultation paper on 23 September 2020. We received nearly 2500 consultation responses, which have helped shape our final recommendations.

In our final report published in December 2021, we made a number of recommendations for reform of hate crime laws. These include:

- The equal treatment of all protected characteristics across the various hate crime laws (including aggravated offences and stirring up offences).
- That “sex or gender” should not be added to the protected characteristics

³⁴ (2017) LC 373.

³⁵ (2021) LC 402.

for aggravated offences and enhanced sentencing as it would be ineffective at protecting women and girls and in some cases, counterproductive.

- Extending the offence of stirring up hatred to cover stirring up hatred on the grounds of sex or gender.
- Replacing the dwelling exemption with protection for private conversations to ensure they are exempted regardless of where they take place.

On 25 April 2023 the Government published a response to one of our recommendations.³⁶ In it they accepted our view that sex or gender should not be added as a protected characteristic for the purposes of aggravated offences and enhanced sentencing.

We also recommended that the Government undertake a review of the need for an offence of public sexual harassment. That review took place in 2022 and included a public consultation. Following that, a private members' bill took forward one of the options consulted on. The Government decided to support the bill. The Protection from Sex-based Harassment in Public Act 2023 received Royal Assent on 18 September 2023.

We continue to wait for the Government's response to our remaining recommendations.

Making Land Work: Easements, Covenants and Profits à Prendre

- Final report and draft Bill published on 8 June 2011.³⁷

There is a complex web of rights and obligations that link different parcels of land, and their owners, together. This project examined the general law governing three of those:

- Easements – rights enjoyed by one landowner over the land of another, such as rights of way.
- Covenants – promises to do or not do something on one's own land, such as to mend a boundary fence or to refrain from using the land as anything other than a private residence.
- Profits à prendre – rights to take products of natural growth from land, such as rights to fish.

Easements, covenants and profits à prendre are of great practical importance to landowners and can be fundamental to the use and enjoyment of property. However, the law governing these rights and obligations is ancient, complex and causes problems for legal practitioners and property owners. In our work, we looked closely at the characteristics of these rights, how they are created, how they come to an end, and how they can be modified.

Our report recommended reforms to modernise and simplify the law underpinning these rights, making it fit for the 21st century and introducing a modern registration system. The recommendations would remove anomalies, inconsistencies and complications in the current law, saving time and money by making it more accessible and easier to use. This would benefit those who rely on and engage with these interests

³⁶ Government response to recommendation 8 of the Law Commission's review of hate crime legislation (<https://www.gov.uk/government/publications/law-commission-review-of-hate-crime-legislation>).

³⁷ (2011) LC 327.

most: homeowners, businesses, mortgage lenders and those involved in the conveyancing process. They would give new legal tools to landowners to enable them to manage better their relationships with neighbours and facilitate land transactions. Furthermore, the reforms would give greater flexibility to developers when building estates where there would be multiple owners and users. In particular our recommendations would:

1. Make it possible for the benefit and burden of positive obligations to be enforced by and against subsequent owners.
2. Simplify and make clearer the rules relating to the acquisition of easements by prescription (or long use of land) and implication, as well as the termination of easements by abandonment.
3. Give greater flexibility to developers to establish the webs of rights and obligations that allow modern estates to function.
4. Expand the jurisdiction of the Lands Chamber of the Upper Tribunal to allow for the discharge and modification of easements and profits.

The Government announced in the Housing White Paper published on 7 February 2017 that: “The Government ... intends to simplify the current restrictive covenant regime by implementing the Law Commission’s recommendations for reform and will publish a draft Bill for consultation as announced in the Queen’s Speech”. This supplemented the earlier announcement on 18 May 2016 that the Government intended to bring forward proposals in a draft Law of Property Bill to respond to the Commission’s recommendations.

In recent years, the Commission has provided assistance to Government to understand the implications that the Commission’s recommendations would have in the context of Government’s wider leasehold and commonhold

reform programme. In August 2021 the Department for Levelling Up, Housing and Communities was provided with possible options and updates to the Commission’s work. The Commission’s formal recommendations are as set out in its 2011 Report.

Public Services Ombudsmen

- Final report published on 14 July 2011.³⁸

Our 2011 report focuses on five ombudsmen: the Parliamentary Commissioner, the Health Service Ombudsman, the Local Government Ombudsman, the Public Services Ombudsman for Wales and the Housing Ombudsman.

The report makes a series of recommendations aimed at improving access to the public services ombudsmen, ensuring that they have the freedom to continue their valuable work and improving their independence and accountability. The report’s key recommendation for a wider review has now taken place, which in turn has led to legislative reform to enable the creation of a single Public Service Ombudsman.

The Government published the draft Public Service Ombudsman Bill on 5 December 2016. If enacted, the draft Bill would abolish the present Parliamentary and Health Service Ombudsman and the Local Government Ombudsman and create a new organisation with strengthened governance and accountability. It would improve access to the ombudsman’s services by allowing for all complaints to be made with or without the help of a representative and in a variety of formats to meet the digital age.

The draft Bill was scrutinised by the Communities and Local Government Select Committee on 6 March 2017, with next steps still to be confirmed.

We are not aware of any further announcements to bring the draft Bill, and there was also no

38 (2011) LC 329.

reference to progressing the Bill or other legislation for reform of the Ombudsman landscape in either the Conservative Manifesto for the most recent General Election or in the recent King's Speech.

Regulation of Health and Social Care Professionals

- Final report and draft Bill published on 2 April 2014.³⁹

This project dealt with the professional regulatory structure relating to 32 health care professions throughout the UK, and social workers in England – more than 1.5 million professionals in total. It was the first ever tripartite project conducted jointly with the Scottish Law Commission and the Northern Ireland Law Commission.

Our final report and draft Bill set out a new single legal framework for the regulation of health and social care professionals and reforms the oversight role of the Government in relation to the regulators.

Since then, the Government has announced that it will take forward legislative changes to the regulators' fitness to practise processes and operating framework, stating that it believes these will realise the greatest benefits for regulatory bodies, registrants and the public.

The Government published its response on 29 January 2015, noting the need for further work on refining our recommendations to achieve the priorities of better regulation, autonomy and cost-effectiveness while maintaining a clear focus on public protection. On 31 October 2017, the Government published a consultation paper on reforming regulation which builds upon our report.

In the meantime, the Health and Social Care (Safety and Quality) Act 2015 implemented our recommendations that all regulatory bodies and

the Professional Standards Authority have the consistent overarching objective of promoting public protection and that regulatory bodies have regard to this objective in fitness to practise proceedings.

Simplification of the Immigration Rules

- Final report published on 14 January 2020.⁴⁰
- Final Government response received on 25 March 2020.

The Immigration Rules are long and complex. Since 2008, when a new points-based system was introduced, they have been increasingly criticised for being complex and unworkable. Our report sets out principles redrafted to make them simpler and more accessible.

On 25 March 2020, the Home Office announced that it accepted, in whole or in part, our recommendations for reform. It has established a Simplification of the Rules Review Committee to look at the drafting and structure of the Rules and ensure the simplification principles put in place now continue to apply in future, whilst providing ongoing support to continuously improve and adapt the Rules in a changing world.

Taxi and Private Hire Services

- Final report and draft Bill published on 23 May 2014.⁴¹

This project was proposed as part of the 11th Programme of Law Reform by the Department for Transport. Its aim was to take a broadly deregulatory approach to the process of modernising and simplifying the regulatory structures for this important economic activity.

In May 2012, we published our consultation paper, proposing a single statute to govern both the taxi and private hire trades, and the setting of

39 (2014) LC 345.

40 (2020) LC 388.

41 (2014) LC 347.

national standards in order to free up the private hire market. The interest was such that we had to extend the consultation period twice. We received just over 3,000 responses, a then record number for any of our consultations.

Some of our proposals provoked a great deal of controversy. In April 2013 we published a short interim statement explaining that we had changed our views on abolishing the ability of local licensing authorities to limit taxi numbers and had refined our views in other areas. We also published all of the responses received.

Our report and draft Bill were published in May 2014. Although the Government has not yet responded formally to our recommendations, two taxi and private hire measures – based on our recommendations – were included in the Deregulation Act 2015, which received Royal Assent in March 2015. In 2017, the Government commissioned a report by the Task and Finish Group on taxis and private hire vehicle licensing. Following that Group’s report, the Government in February 2019 declined, in the short term, a full replacement of the law. But it did commit to bring forward legislation when time allows to enable the setting of national minimum standards in licensing, increased powers for enforcement officers and to establish a database to assist in the sharing of relevant information. The Department is also currently considering the long-term regulation of passenger transport as part of the Future of Transport Regulatory Review.

The Welsh Government, after a consultation on taxi and private hire vehicle licensing which was based heavily on our recommendations, published in its Programme for Government in June 2021 a commitment to ‘Legislate to modernise the taxi and private hire vehicle sector and address the problems of cross bordering’.

Updating the Land Registration Act 2002

- Final report published on 24 July 2018.⁴²
- Final Government response received on 25 March 2021.

An effective land registration law is essential for everyone who owns land, whether the land is a home, a business or an investment. The core purpose of a register of title is to make conveyancing faster, easier and cheaper. However, time has shown that some aspects of the Land Registration Act 2002 are unclear, inefficient, or have unintended outcomes. With over 25 million registered titles in England and Wales – ranging from residential flats to farms and shopping centres – any inefficiencies, uncertainties or problems in the land registration system have the capacity to have a significant impact on the property market, and the economy as a whole. Uncertainty also makes advising clients difficult, incentivises litigation, and increases costs for landowners.

Our project was designed to update the Land Registration Act 2002. The project was not designed to fundamentally reformulate the Act, but to improve specific aspects of its operation within the existing legal framework. The 2002 Act was the product of a joint project between HM Land Registry and the Law Commission. While this was not a joint project, HM Land Registry funded the work, and we liaised closely with them as a key stakeholder so that we could fully understand the operational implications of our recommendations.

Our final report recommended some technical reforms to iron out the kinks in the law, help prevent fraud and make conveyancing faster, easier and cheaper for everyone.

42 (2018) LC 380.

In its response on 25 March 2021, the Government welcomed our examination of the Land Registration Act 2002. It has accepted 40 of the 53 recommendations and is further considering another 10 recommendations on which it has not yet reached final conclusions. The Government has indicated that it will consider implementation alongside wider land registration policy development and HM Land Registry business strategy priorities.

Wildlife

- Report on the control of invasive non-native species published in February 2014.⁴³
- Recommended reforms given effect in the Infrastructure Act 2015.
- Final report on remaining elements, with draft Bill, published on 10 November 2015.⁴⁴

Wildlife law is spread over numerous statutes and statutory instruments, some dating back to the 19th century. The legislation is difficult for people and businesses to access, for policy makers to adapt and for everyone to understand.

This project was proposed by Defra and included in our 11th Programme of Law Reform. It considered the transposition of key EU directives on wild birds and those animals and plants characterised as European Protected Species, and their integration with other, domestic, legal structures. It also sought to bring various purely domestic protection regimes for specific species into the same legislative structure. In March 2012, the Government asked us to add consideration of the possibility of appeals against licensing decisions by regulatory bodies to the project.

We held a consultation in 2012, proposing a single statute bringing together most of the law relating to wildlife. In addition to making specific proposals on the most appropriate way of transposing the EU directives, we also looked at the current regime for the enforcement of wildlife legislation, including both criminal offences and civil sanctions, and at appeals.

Following a request by Defra to bring forward one element of the project, we published a report on the control of invasive non-native species in February 2014. Our recommendations in relation to species control orders were given effect in the Infrastructure Act 2015. Our final report and draft Bill on the remaining elements of the project were published in November 2015.

The Government issued its response on 22 November 2016, explaining it would consider the implications of the UK's withdrawal from the EU on wildlife policy before deciding whether and how to implement our recommendations. Following a commitment to a review of wildlife legislation, for which the Law Commission's recommendations were relevant, the Government in March 2022 published its proposal to consolidate and rationalise wildlife and species protection legislation in chapter 5 of its Nature Recovery Green Paper.⁴⁵

43 (2014) LC 342.

44 (2015) LC 362 (two volumes).

45 <https://consult.defra.gov.uk/nature-recovery-green-paper/nature-recovery-green-paper/>.

Reports accepted but which will not be implemented

Bills of Sale

- Original report published on 12 September 2016.⁴⁶
- Updated report with draft Bill published on 23 November 2017.⁴⁷

In 2014, HM Treasury asked the Law Commission to review the Victorian-era Bills of Sale Acts. Bills of sale are a way in which individuals can use goods they already own as security for loans while retaining possession of those goods. They are now mainly used for “logbook loans”, where a borrower grants security over their vehicle. The borrower may continue to use the vehicle while they keep up the repayments, but if they default the vehicle can be repossessed, without the protections that apply to hire-purchase and conditional sale transactions.

In September 2016, the Law Commission recommended that the Bills of Sale Acts should be repealed and replaced with modern legislation that provides more protection for borrowers and imposes fewer burdens on lenders. The Government agreed with the majority of our recommendations and supported the Law Commission in drafting legislation to implement them. The Bill was announced in the Queen’s Speech in June 2017.

Our final recommendations are set out in a draft Goods Mortgages Bill, published in November 2017. After conducting a short consultation, the Government announced in May 2018 that it would not introduce legislation at this point in time. It cited the “small and reducing market and the wider work on high-cost credit”.

A Goods Mortgages Bill, based closely on our draft Bill, was introduced into Parliament as a private members’ bill in February 2020 by Lord Stevenson of Balmacara.⁵¹ At the time of writing, there was no date set for its second reading. The Law Commission has not been involved in this process.

Reports awaiting a government decision

20th Statute Law (Repeals) Report

- Report published on 3 June 2015.⁴⁸

The 20th Statute Law Repeals Report recommended the repeal of more than 200 Acts. The Bill accompanying the report covered a wide range of topics from agriculture and churches to trade and industry and taxation. The earliest repeal was from the Statute of Marlborough 1267. Passed during the reign of Henry III, the Statute is one of the oldest surviving pieces of legislation. The most recent repeal is part of the Consumers, Estate Agents and Redress Act 2007.

The draft Bill awaits implementation by the Government. For more information on statute law repeals, see page 67.

Anti-Money Laundering

- Final report published on 18 June 2019.⁴⁹

Money laundering is the process where criminals hide the origins of their illegally gained money. It is estimated to cost every household in the UK £255 a year and allows criminals to profit from their crimes. It is widespread, with between 0.7 and 1.28% of annual European Union GDP detected as being involved in suspect financial activity.

46 (2016) LC 369.

47 (2017) LC 376.

48 (2015) LC 357.

49 (2019) LC 384.

The current law has a system for reporting suspicious financial activity. This provides law enforcement with the means to investigate and gather intelligence and protects honest businesses from inadvertently committing a crime.

However, the reporting scheme is not working as well as it should. Enforcement agencies are struggling with a significant number of low-quality reports and criminals could be slipping through the net. Consequently, in December 2017 the Home Office asked the Law Commission to review limited aspects of the anti-money laundering regime in Part 7 of the Proceeds of Crime Act 2002 and the counter-terrorism financing regime in Part 3 of the Terrorism Act 2000.

We published our final report in June 2019, making 19 recommendations. Collectively, our recommendations will ensure a more proportionate and user-friendly regime; clarify the scope of reporting; reduce the burden of compliance and processing; and produce better quality intelligence for law enforcement. The Government is considering its response.

Arbitration

- Final report published on 5 September 2023.⁵⁰

The UK Government asked the Law Commission to review the Arbitration Act 1996, to determine whether there might be any amendments to be made in order to ensure that it is fit for purpose and that it continues to promote the UK as a leading destination for commercial arbitration.

We heard repeatedly from consultees that the Act works well, and that root and branch reform is not needed or wanted. Accordingly, we confined our recommendations to a few major initiatives and a very small number of minor corrections.

For example, we recommended the following (among other things):

1. codification of an arbitrator's duty of disclosure;
2. strengthening arbitrator immunity around resignation and applications for removal;
3. introduction of a power of summary disposal;
4. a new rule on the governing law of an arbitration agreement; and
5. repealing unused provisions on domestic arbitration agreements.

We are in discussions with Government officials about next steps.

Cohabitation: The Financial Consequences of Relationship Breakdown

- Final report published on 31 July 2007.⁵¹
- Holding response received from Government on 6 September 2011.⁵²

In this project, at the Government's request, we examined the financial hardship suffered by cohabitants or their children on the termination of cohabitants' relationships by breakdown or death. The existing law is a patchwork of legal rules, sometimes providing cohabitants with interests in their partners' property, sometimes not. The law is unsatisfactory: it is complex, uncertain and expensive to rely on. It gives rise to hardship for many cohabitants and, as a consequence, for their children.

Our report recommended the introduction of a new scheme of financial remedies that would lead to fairer outcomes on separation for cohabitants and their families. The scheme is deliberately different from that which applies between spouses on divorce and, therefore, does not treat

⁵⁰ (2023) LC 413.

⁵¹ (2007) LC 307.

⁵² Written Ministerial Statement, Hansard (HC), 6 September 2011, col 16WS.

cohabitants as if they were married. It would apply only to cohabitants who had had a child together or who had lived together for a specified number of years (which the report suggests should be between two and five years).

In order to obtain financial support – which might be in the form of a cash lump sum or transfer of a property, but not ongoing maintenance – applicants would have to prove that they had made contributions to the relationship that had given rise to certain lasting financial consequences at the point of separation. For example, one partner might have enjoyed an enhanced earning capacity because the other partner took on responsibility for childcare.

In broad terms, the scheme would seek to ensure that the financial pluses and minuses of the relationship were fairly shared between the couple. For example, if one partner was disadvantaged in the job market as a result of time spent bringing up the couple's children, they might receive some financial compensation from their former partner to support them while retraining or otherwise preparing to return to work.

The report recommended that there should be a way for couples, subject to necessary protections, to opt out of any such agreement, leaving them free to make their own financial arrangements.

In 2011, the Government announced that it did not intend to take forward our recommendations for reform during that Parliament.

In July 2022, the Women and Equalities Committee published its report on the rights of cohabiting partners, which recommended the implementation of an “opt-out” cohabitation scheme as recommended in our report, and that Government should commit to publishing draft legislation in the 2023-24 parliamentary session. The Committee further recommended that the Ministry of Justice should commission a

fresh review of our 2007 proposals to see if they need updating.

In November 2022 Government rejected the Committee's recommendation. Government stated that, given that our 2007 proposals were (then) 15 years old:

“... such proposals could not be implemented without a review of the 2007 report, nor without a fresh consultation. The Government believes that any future review or fresh consultation of the 2007 proposals would need to take into account any changes which may be made to the law on marriage and the law of financial provision on divorce. A future review and consultation would also need to take into account the fact that civil partnerships are now available for both opposite-sex and same-sex couples, allowing couples who do not wish to marry to enter into a legally recognised relationship which provides the same legal rights and responsibilities as marriage.”

Confiscation of the Proceeds of Crime After Conviction

- Final report published on 9 November 2022.⁵³

In 2018, the Home Office commissioned a Law Commission project with the objective of reforming Part 2 of Proceeds of Crime Act 2002.

In November 2022 we published a final report setting out a comprehensive series of recommendations for reform of Part 2 of the Proceeds of Crime Act 2002. The reforms are designed to make the confiscation regime fairer, more efficient and more effective.

The Government is considering its response.

Consumer Sales Contracts: Transfer of Ownership

- Final report published on 22 April 2021.⁵⁴

Consumers often pay for goods in advance of receiving them. This happens whenever consumers buy goods online. It can also happen when consumers pay for goods in a physical store, but the goods have to be made to the consumer's order, are not available to be taken away there and then or are left with the retailer to be altered. If the retailer goes insolvent before the goods are delivered to the consumer, who owns the goods? Currently, the answer depends on complex and technical transfer of ownership rules, which have remained largely unchanged since the late 19th century.

This project follows on from our July 2016 Report, *Consumer Prepayments on Retailer Insolvency*, discussed above on page 39. In that report, we made recommendations for reform of the transfer of ownership rules as they apply to consumers. The Department for Business, Energy and Industrial Strategy (BEIS) asked us to do further work on this issue, to produce legislation and to consider its potential impact. We consulted on a draft, and asked about the impact, in July 2020. We have now published our final report and draft legislation.

The draft legislation is intended to simplify and modernise the transfer of ownership rules as they apply to consumers, so that the rules are easier to understand. The draft legislation sets out in simple terms when ownership of the goods will transfer to the consumer. For most goods that are purchased online, ownership would transfer to the consumer when the retailer identifies the goods to fulfil the contract. This would occur when the goods are labelled, set aside, or altered to the consumer's specification, among other circumstances.

However, any decision as to whether to implement the final draft Bill would need to balance a number of relevant considerations to ensure that the benefits justify the potential costs. In particular, during the course of our work, we identified a common practice among retailers of delaying the point at which the sales contract is formed until the goods are dispatched to the consumer. This would reduce the impact of our reforms which, like most consumer protections, depend on a sales contract being in place. The evidence we have received about the practice does not suggest that it causes consumer detriment in more general terms, but we think this, and the case for our reforms, should be kept under review.

Criminal Records Disclosures: Non-Filterable Offences

- Final report published on 1 February 2017.⁵⁵

In July 2016, the Commission was asked by the Home Office to review one specific aspect of the criminal records disclosure system, known as "filtering".

On 1 February 2017, the Commission published its report. Within the narrow confines of this project, the report includes a recommendation that a statutory instrument should set out a single, itemised list of non-filterable offences in the future. We recommended a wider review of the disclosure system, which could include: the choice of offences for the list; the rules about multiple convictions and custodial sentences; and the effect on young offenders. The Government is considering our recommendations.

⁵⁴ (2021) LC 398.

⁵⁵ (2017) LC 371

Data Sharing Between Public Bodies

- Scoping report published between 11 July 2014.⁵⁶
- Interim Government response received on 24 December 2014.

Public bodies frequently report difficulties in sharing data with other public bodies, to an extent that impairs their ability to perform their functions for citizens. Some of these problems stem from defects in the law itself, and some from problems with understanding the law.

We conducted this project as a scoping review designed to identify where the problems truly lie and what should be done to address them. We ran a consultation during Autumn 2013 and published our scoping report in July 2014. In the report we concluded that a full law reform project should be carried out in order to create a principled and clear legal structure for data sharing.

The Government welcomed the publication of our scoping report and sent an interim response on 24 December 2014, which noted the usefulness of the scoping report and its resonance with the Government's work in the open policy making space. The open policy making process and subsequent public consultation identified a number of priority areas taken forward in the Digital Economy Act, which received Royal Assent on 27 April 2017.

Digital assets

- Final report published on 27 June 2023.⁵⁷

Law Commission was asked to make recommendations for reform to ensure that the law is capable of accommodating both crypto-tokens and other digital assets in a way which allows the possibilities of this type of technology to flourish. In our final report, published in June 2023, we conclude that the common law system in England and Wales is well placed to provide a coherent and globally relevant regime for existing and new types of digital asset.

We conclude that the flexibility of common law allows for the recognition of a distinct category of personal property that can better recognise, accommodate and protect the unique features of certain digital assets (including crypto-tokens and cryptoassets). We recommend legislation to confirm the existence of this category and remove any uncertainty.

To ensure that courts can respond sensitively to the complexity of emerging technology and apply the law to new fact patterns involving that technology, we recommend that Government create a panel of industry experts who can provide guidance on technical and legal issues relating to digital assets.

We also make recommendations to provide market participants with legal tools that do not yet exist in England and Wales, such as new ways to take security over crypto-tokens and tokenised securities. We recommend this work is undertaken by a multi-disciplinary project team.

We are in discussions with Government officials about next steps.

⁵⁶ (2014) LC 351.

⁵⁷ (2023) LC 412.

Hate Crime

- Report published on 7 December 2021.⁵⁸

Building on the recommendations in our 2014 Report, this project reviewed the adequacy and parity of protection offered by the law relating to hate crime and made recommendations for its reform.

We launched our consultation paper on 23 September 2020. We received nearly 2500 consultation responses, which have helped shape our final recommendations.

In our final report published in December 2021, we made a number of recommendations for reform of hate crime laws. These include:

- The equal treatment of all protected characteristics across the various hate crime laws (including aggravated offences and stirring up offences).
- That “sex or gender” should not be added to the protected characteristics for aggravated offences and enhanced sentencing as it would be ineffective at protecting women and girls and in some cases, counterproductive.
- Extending the offence of stirring up hatred to cover stirring up hatred on the grounds of sex or gender.
- Replacing the dwelling exemption with protection for private conversations to ensure they are exempted regardless of where they take place.

On 25 April 2023 the Government published a response to one of our recommendations. In it they accepted our view that sex or gender should not be added as a protected characteristic for the purposes of aggravated offences and enhanced sentencing.

We also recommended that the Government undertake a review of the need for an offence of public sexual harassment. That review took place in 2022 and included a public consultation. Following that, a private members’ bill took forward one of the options consulted on. The Government decided to support the bill. The Protection from Sex-based Harassment in Public Act 2023 received Royal Assent on 18 September 2023.

We continue to wait for the Government’s response to our remaining recommendations.

Electoral Law

- Report published on 16 March 2020.⁵⁹

This report set out our recommendation of a simplified and coherent legal governance structure for the conduct of elections and referendums in the UK. Primary legislation should contain the important and fundamental aspects of electoral law for all polls.

The current law should furthermore be modernised and simplified, in order to ensure it is understood, complied with, and enforced by the public, candidates and various institutional actors.

The Government has not formally responded to the report. The Elections Bill currently before Parliament does not consolidate electoral law in the way recommended by the Law Commissions. It does however introduce a digital imprint regime, requiring a person paying for digital political material to include information on their identity and on whose behalf, they are promoting the material, which was a recommendation made by the final report.

⁵⁸ (2021) LC 402.

⁵⁹ (2020) LC 389.

Intermediated Securities: a scoping paper

- Scoping paper published on 11 November 2020.

In the modern system of shareholding, investors “own” securities in the form of electronic entries channelled through financial institutions rather than in the form of share certificates issued directly by the company. This has made trading significantly quicker, cheaper and more convenient, but has been the subject of criticism over issues of corporate governance, transparency and legal certainty.

We were asked by the Department for Business, Energy & Industrial Strategy to produce a scoping study, providing an accessible account of the law and identifying issues in the current system of intermediation. The purpose of the scoping paper was to inform public debate, develop a broad understanding of potential options for reform and develop a consensus about issues to be addressed in the future. We were not asked to produce a full report with detailed recommendations for reform. However, we did set out options for further work which the Government is considering currently.

Intestacy and Family Provisions Claims on Death (Cohabitants)

- Final report and draft Inheritance (Cohabitants) Bill published on 14 December 2011.⁶⁰
- Holding response received from Government on 21 March 2013.

In this project, we examined two important aspects of the law of inheritance: the intestacy rules that determine the distribution of property where someone dies without a will; and the legislation that allows certain bereaved family members and dependants to apply to the court for family provision.

Our final report, Intestacy and Family Provision Claims on Death, was accompanied by two draft Bills to implement our recommendations. The first Bill was implemented and became the Inheritance and Trustees’ Powers Act 2014. The second Bill, the draft Inheritance (Cohabitants) Bill, would:

Reform the law regarding an application for family provision by the survivor of a couple (if they were not married or in a civil partnership) who had children together.

In defined circumstances, entitle the deceased’s surviving cohabitant to inherit under the intestacy rules where there was no surviving spouse or civil partner. Generally speaking, this entitlement would arise if the couple lived together for five years before the death or for two years if they had a child together.

The Government announced in March 2013 that it did not intend to implement the draft Inheritance (Cohabitants) Bill during the then current Parliament.

In July 2022, the Women and Equalities Committee published its report on the rights of cohabiting partners, which recommended that Government should immediately implement the recommendations in our 2011 report concerning intestacy and family provision claims for cohabiting partners.

In November 2022 Government rejected the Committee’s recommendation, on the basis that:

“... reform of inheritance and family provision rights for cohabitees needs to be considered as part of the wider approach to reform of the law on cohabitation rights, so that a consistent approach is taken.”

Government noted that it would wish to consult ahead of pursuing any reforms.

60 (2011) LC 331.

Kidnapping

- Final report published on 20 November 2014.⁶¹

The aim of the recommendations we made in our November 2014 report was to modernise the law on kidnapping and false imprisonment and address the gaps in the law relating to child abduction. Specifically, we recommended that:

- The kidnapping offence be redefined in statute but should remain triable in the Crown Court only.
- The existing offence of false imprisonment be replaced by a new statutory offence of unlawful detention.
- The maximum sentence for offences under sections 1 and 2 of the Child Abduction Act 1984 be increased from seven to 14 years imprisonment.
- Section 1 of the 1984 Act be extended to cover cases involving the wrongful retention of a child abroad – this would close the gap in the law highlighted in the case of *R (Nicolaou) v Redbridge Magistrates' Court*.⁶²

This work forms part of a wider project, Simplification of the Criminal Law, which originated in our 10th Programme of Law Reform. The Government continues to consider the feasibility of the Law Commission's recommendations.

Matrimonial Property, Needs and Agreements

- Final report and draft Bill published on 27 February 2014.⁶³
- Interim response received from Government on 18 September 2014.

This project was set up, initially under the title “Marital Property Agreements”, to examine the status and enforceability of agreements (commonly known as “pre-nups”) made between spouses and civil partners (or those contemplating marriage or civil partnership) concerning their property and finances.

In February 2012, the scope of the project was extended to include a targeted review of two aspects of financial provision on divorce and dissolution, namely provision for the parties' financial needs and the treatment of nonmatrimonial property.

We published our final report in February 2014, making the following recommendations:

- The meaning of “financial needs” should be clarified by the provision of guidance so that it can be applied consistently by the courts.
- Legislation should be enacted introducing “qualifying nuptial agreements”.
- Work should be done to assess whether a formula for calculating payments would be feasible, but only when sufficient data is available about divorce outcomes under the current law.

61 Kidnapping and related Offences (2014) LC 355.

62 [2012] EWHC 1647 (Admin); [2012] 2 Cr App R 23.

63 (2014) LC 343.

The Government's interim response was published on 18 September 2014. The Government has accepted and taken action on the recommendation for guidance. The Family Justice Council developed financial guidance for separating couples and unrepresented litigants, which it published in April 2016, followed by publication of guidance for the judiciary on financial needs in June 2016 (a second edition of which was published in April 2018). The Family Justice Council has also worked in partnership with AdviceNow, a charity which produces legal guides. AdviceNow's guide, "Sorting out your finances when you get divorced", was most recently updated in March 2022.

As regards the Law Commission's recommendations on a financial tool for separating couples, the Commission assisted the judiciary, family law academics and officials from the Ministry of Justice and Her Majesty's Courts' Service with a project to collect data about financial remedies cases. This resulted in the publication of a revised form D81 in February 2022 to record the parties' financial circumstances when a consent order is made in financial proceedings on divorce and dissolution of a civil partnership, which will produce a new set of data about financial provision in these circumstances. The collection of this data is a necessary step towards developing a formula to generate a range of outcomes for financial provision in divorce cases. As part of its current review of financial remedies on divorce, the Commission will scope whether the issues of matrimonial property, needs and agreements need to be reviewed beyond its recommendations in the 2014 report. This is necessary because the Law Commission's 2014 report considered discrete issues within the law of financial provision on divorce, rather than the underlying law governing financial remedies.

Misconduct in Public Office

- Final report published on 4 December 2020.⁶⁴

Misconduct in public office is a common law offence: it is not defined in any statute. It carries a maximum sentence of life imprisonment. The offence requires that: a public officer acting as such; wilfully neglects to perform his or her duty and/or wilfully misconducts him or herself; to such a degree as to amount to an abuse of the public's trust in the office holder; without reasonable excuse or justification.

On 4 December 2020, the Commission published its report. We recommended that the current offence should be repealed and replaced with two statutory offences:

- An offence of corruption in public office: which would apply where a public office holder knowingly uses or fails to use their public position or power for the purpose of achieving a benefit or detriment, where that behaviour would be considered seriously improper by a "reasonable person". A defendant to this offence will have a defence if they can demonstrate that their conduct was, in all the circumstances, in the public interest.
- An offence of breach of duty in public office: which would apply where a public office holder is subject to and aware of a duty to prevent death or serious injury that arises only by virtue of the functions of the public office, they breach that duty, and in doing so are reckless as to the risk of death or serious injury.

64 (2020) LC 397.

To provide greater clarity on the scope of the offence, we also recommended that there be a list of positions capable of amounting to “public office” set out in statute.

Finally, we recommended that consent of the Director of Public Prosecutions should be required to prosecute the offence, to ensure that the right cases are prosecuted, and to prevent vexatious private prosecutions.

The Government is considering its response.

Offences Against the Person

- Report published on 3 November 2015.⁶⁵

This was a project for the modernisation and restatement of the main offences of violence, which are:

- Those contained in the Offences Against the Person Act 1861.
- The offences of assault and battery, which are common law offences.
- Assault on a constable, which is an offence under the Police Act 1996, section 89.

Our aim was to replace all these offences with a single modern and easily understandable statutory code largely based on a draft Bill published by the Home Office in 1998 but with some significant changes and updating. Our best estimate of the gross savings from the recommended reform is around £12.47m per annum.

We published our report in November 2015 and are awaiting a response from the Government.

Residential Leasehold (Enfranchisement, Right to Manage and Commonhold)

- Final reports published on 9 January 2020⁶⁶ and on 21 July 2020.⁶⁷

On 9 January 2020, we published a final report on one aspect of our enfranchisement project, namely the price that must be paid by leaseholders to make an enfranchisement claim. In July 2020, we published three further final reports covering all other aspects of the enfranchisement process, as well as on the right to manage and commonhold.

Since publication of the Reports, the Law Commission has been undertaking work to support Government. That has included providing information and assistance to help Government in considering the Commission’s recommendations. It has also supported the Government in the development of legislation, for example by preparing instructions to Parliamentary Counsel.

In November 2023, it was announced in the King’s Speech that Government would bring forward a Leasehold and Freehold Reform Bill, significant aspects of which are based on the options and recommendations made by the Law Commission.⁶⁸

For further details about our work, see pages 22, 23 and 24.

65 (2015) LC 361.

66 (2020) LC 387.

67 (2020) LC 392, (2020) LC 393, and (2020) LC 394.

68 See the Background Briefing Notes to the King’s Speech, p 45 (available at <https://www.gov.uk/government/publications/the-kings-speech-2023-background-briefing-notes>).

Rights to Light

- Final report and draft Bill published on 4 December 2014.⁶⁹

Rights to light are easements that entitle landowners to receive natural light through defined apertures (most commonly windows) in buildings on their land. The owners of neighbouring properties cannot substantially interfere with the right, for example by erecting a building that blocks the light, without the consent of the landowner.

In our final report, we recommended:

- Establishing a statutory notice procedure allowing landowners to require their neighbours to tell them within a set time limit if they plan to seek an injunction to protect their right to light.
- Introducing a statutory test to clarify when the courts may order damages to be paid, rather than halting development or ordering a building to be demolished by granting an injunction (this takes into account the Supreme Court decision in the case of *Coventry v Lawrence*).⁷⁰
- Updating the procedure whereby landowners can prevent their neighbours from acquiring rights to light by prescription.
- Amending the law governing when an unused right to light is to be treated as having been abandoned.
- Giving power to the Lands Chamber of the Upper Tribunal to discharge or modify obsolete or unused rights to light.

In his July 2023 report on the implementation of Law Commission recommendations, the Lord Chancellor stated that the Government had been carefully considering the report and that there were no immediate plans to implement the recommendations as a result of other legislative priorities, but that the position would be kept under review.⁷¹

Search Warrants

- Final report published on 7 October 2020.⁷²

The Home Office invited the Law Commission to conduct a review to identify and address pressing problems with the law governing search warrants, and to produce proposals for reform which would clarify and rationalise the law.

We published a consultation paper on 5 June 2018. In addition, we undertook several activities to assist in understanding the practical side of search warrants. We spent time with Staffordshire Police, who gave us operational insight into applying for and executing search warrants. This included accompanying constables during the execution of a search warrant. We attended the offices of Privacy International, who demonstrated to us first-hand the capability of mobile phone extraction tools and the quantity of data that they can extract. We also attended a number of court hearings that concerned the treatment of material seized following the execution of a search warrant.

In our final report, we made 64 recommendations. These aim to make the law simpler, fairer, more modern and efficient and to strike a balance between effectively investigating crime whilst strengthening safeguards for those being investigated.

The Government is considering its response.

69 (2014) LC 356.

70 (2014) UKSC 13

71 Implementation report (July 2023), para 87, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1172023/implementation-law-commission-recommendations-2018-2023.pdf.

72 (2020) LC 369

Surrogacy

- Final report and draft legislation published on 29 March 2023.⁷³

This project, conducted jointly with the Scottish Law Commission, examined the law and regulation of the practice of surrogacy; where a woman – the surrogate – becomes pregnant with a child that may, or may not, be genetically related to her, carries the child, and gives birth to the child for another individual or couple – the intended parents (at least one of whom must be genetically related to the child).

From June to October 2019, we consulted on provisional proposals for, and asked open questions about, the reform of the law. We received 681 responses.

Working from Government’s policy starting point that surrogacy is a legitimate way in which to build a family, we undertook a comprehensive review of the law in this area, and made recommendations for reform covering, in particular, legal parenthood of the child born following a surrogacy arrangement, including recommendations for a new pathway to parenthood and reform of the existing mechanism of parental orders; a new framework for regulation, including the type of payments that should be permitted; the recording of and access to information about surrogacy arrangements for children born through surrogacy; and international surrogacy arrangements.

On 8 November 2023, the Law Commission received an interim response from Government. The response said that the Department of Health and Social Care is working with other Government departments to review the report’s recommendations to inform a full Government response.

For further details about our work, see page 27.

Termination of Tenancies for Tenant Default

- Final report published on 31 October 2006.⁷⁴

This project examined the means whereby a landlord can terminate a tenancy because the tenant has not complied with his or her obligations. This is an issue of great practical importance for many landlords and tenants of residential and commercial properties. The current law is difficult to use and littered with pitfalls for both the layperson and the unwary practitioner. It does not support negotiated settlement and provides insufficient protection for mortgagees and sub-tenants.

Our report recommended the abolition of forfeiture and its replacement by a modern statutory scheme for the termination of tenancies on the ground of tenant default that would balance the interests of all parties affected and promote more proportionate outcomes.

Government asked the Law Commission to update its 2006 report, Termination of Tenancies for Tenant Default, given the passage of time and to take into account the implications of the reforms of residential leasehold that were underway. In August 2021, the Department for Levelling Up, Housing and Communities was provided with possible options and updates to the recommendations for Government’s consideration. Government is reviewing these. The Commission’s formal recommendations are as set out in its 2006 Report.

73 (2023) LC 411

74 (2006) LC 303

The High Court’s Jurisdiction in Relation to Criminal Proceedings

- Report and draft Bill published on 27 July 2010.⁷⁵
- Holding response received from Government on 13 March 2015.⁷⁶

This project made recommendations for rationalising and simplifying the ways that judicial review and appeals by way of case stated can be used to challenge Crown Court decisions.

The Government is continuing to consider these recommendations.

Unfitness to Plead

- Final report and draft Bill published on 13 January 2016.⁷⁷
- Interim Government response received on 30 June 2016.

The law relating to unfitness to plead addresses what should happen when a defendant who faces criminal prosecution is unable to engage with the process because of his or her mental or physical condition. The law aims to balance the rights of the vulnerable defendant with the interests of those affected by an alleged offence and the need to protect the public. However, the current law in this area is outdated, inconsistently applied and can lead to unfairness.

After a wide-ranging consultation conducted in Winter 2010–11, we published an analysis of responses and an issues paper in 2013 and our final report and draft Bill in January 2016.

The Government provided an interim response on 30 June 2016, acknowledging our work and noting that a substantive response would be provided in due course. We continue to work with officials and look forward to receiving a response.

Weddings

- Final report published on 19 July 2022.⁷⁸

This project considered all of the formalities which a couple is required to go through in order to have a legally recognised marriage: the preliminaries (also known as giving notice); rules about the ceremony itself including where it can take place, who must attend and what must be said; and the registration of the marriage. The current law is a complex maze of rules governing different types of ceremonies, dependent on the particular type of building in which the wedding takes place.

From September 2020 to January 2021, we consulted on provisional proposals for a new scheme to govern weddings law, receiving more than 1,600 consultation responses.

In our final report, we recommended comprehensive reform from the foundations up, for an entirely new scheme to govern weddings law. Our recommendations will transform the law from a system based on regulation of buildings to one based on regulation of the officiant responsible for the ceremony.

We await Government’s response to our final report.

For further details about our work, see page 28.

75 (2010) LC 324.

76 Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015), paragraph 99.

77 (2016) LC 364 (two volumes)

78 (2022) LC 408.

Part Four:

How we work

The work of the Commission is grounded in thorough research and analysis of case law, legislation, academic and other writing, and other relevant sources of information both in the UK and overseas. It takes full account of the European Convention on Human Rights and relevant retained EU law. Throughout this process, where appropriate, we act in consultation or work jointly with the Scottish Law Commission.

Our programmes of law reform

We are required to submit to the Lord Chancellor programmes for the examination of different branches of the law with a view to reform. Earlier sections of this report provide details about the current position in relation to the 14th Programme.

During 2022-23, we have continued work on projects selected for our 13th Programme of Law Reform, which we launched in December 2017, and earlier programmes. Details of this work are set out in Part Two of this report. The full list of the fourteen projects selected for our 13th Programme can be found in our annual report for 2017–18.

Decisions about whether to include a particular subject in a programme of reform are based on the criteria published as an annex to the Financial Model. These are:

Impact: The extent to which law reform will impact upon the lives of individuals, on business, on the third sector and on the Government. Benefits derived from law reform can include:

- The extent to which the law in that area is unsatisfactory.
 - modernisation, for example supporting and facilitating technological and digital development;
 - economic, for example reducing costs or generating funds;
 - fairness, for example supporting individual and social justice;
- improving the efficiency and/or simplicity of the law, for example ensuring the law is clearly drafted and coherent to those who need to use it;
 - supporting the rule of law, for example ensuring that the law is transparent; and,
 - improving access to justice, for example, ensuring procedures do not unnecessarily add to complexity or cost.

Sustainability: Whether an independent, non-political, Law Commission is the most suitable body to conduct a proposed project.

Opinion: The extent to which proposed law reform is supported by Ministers/Whitehall, the public, key stakeholders, Parliament and senior judiciary.

Urgency: Whether there are pressing reasons (for example, practical or political) why reform is required. To ensure a manageable programme of work, the Commission seeks a mix of: (a) urgent projects with tight or fixed timeframes and (b) longer-term projects where there is more flexibility over delivery. There has to be a realistic assessment of the time and resource required to undertake the work to the quality expected from the Law Commission.

Balance: So far as possible the Commission seeks a portfolio of work which takes account of: (a) the statutory requirement to keep all areas of the law under review; (b) the balance of work across Government Departments (i.e. different Departmental law reform priorities); and (c) the balance of legal skills and expertise available to the Commission.

It is important that the Law Commission's role in relation to the people of Wales is recognised in any Programme. We have therefore agreed with the Lord Chancellor that, wherever possible, each Law Commission Programme should contain a minimum of one Wales-specific project.

Although we have a duty to “take and keep under review all the law”,⁷⁹ it is important that our efforts are directed towards areas of the law that most need reform and reforms that are most likely to be implemented. We focus on change that will deliver real benefits to the people, businesses, organisations and institutions to which that law applies.

The Law Commissioners

The five Law Commissioners work full time at the Law Commission, except that the Chair sits as a judge for one working week in four.

In accordance with Government policy for all non-Departmental public bodies, there is a Code of Best Practice for Law Commissioners. It incorporates the Seven Principles of Public Life and covers matters such as the role and responsibilities of Commissioners.⁸⁰

Consultation

We aim to consult fully with all those potentially affected by our proposals. We engage with stakeholders from the outset of a project, even before a piece of work is officially adopted, and conduct thorough, targeted consultations throughout. This allows us to acquire a good understanding of the issues that are arising in an area of law and the effect they are having, and gives us a clear picture of the context within which the law operates. We use this to assess the impact of our proposed policies and refine our thinking.

Our consultations can include meetings with individuals and organisations, public events, conferences, symposia and other types of event, as well as interviews and site visits. We often work through representative organisations, asking them to help us reach their members and stakeholders.

During our formal consultations we ask for written responses and provide a number of ways for consultees to submit these. All the responses we receive are analysed and considered carefully. Aggregated analyses, and in some cases individual responses, are published on our website, usually alongside our final report.

We follow the Government Consultation Principles issued by the Cabinet Office.⁸¹

Making recommendations for reform

We set out our final recommendations in a report. If implementation of those recommendations involves primary legislation, the report may contain a Bill drafted by our in-house Parliamentary Counsel. The report is laid before Parliament. It is then for the Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless an MP or Peer opts to do so.

After publication of a report the Commissioner, members of the relevant legal team and the Parliamentary Counsel who worked on the draft Bill will often give assistance to Government Ministers and Departments to help them take the work forward.

Not all law reform projects result in formal recommendations to the Government. The Commission also has the statutory remit to provide advice to the Government and we sometimes will also undertake scoping studies to help identify potential areas on which to prioritise future law reform work, subject to Government support.

79 Law Commissions Act 1965, s 3(1).

80 <http://www.lawcom.gov.uk/about/who-we-are>.

81 <https://www.gov.uk/government/publications/consultation-principles-guidance>.

Other law reform projects

In addition to the law reform projects that make up our programme, we also undertake law reform projects that have been referred to us directly by Government Departments.

During 2022–23, 4 projects were referred to us by the Government:

- Criminal Appeals – to review the law relating to criminal appeals in criminal cases, with a view to ensuring that courts have powers that enable the effective, efficient and appropriate resolution of appeals (see page 17).
- Financial remedies on divorce – to assess the reform options for the laws governing finances on divorce and the ending of a civil partnership (see page 24)
- Business Tenancies: the right to renew – to consider how the right to renew business tenancies, set out in Part 2 of the Landlord and Tenant Act 1954, is working and options for reform (see page 21).
- Compulsory Purchase – a project to review the law on compulsory acquisition of land and compensation (see page 31)

Figure 4.1 Common stages of a law reform project



Statute Law

The Law Commission’s statutory functions set out in section 3(1) of the Law Commissions Act 1965 include a duty “to prepare from time to time at the request of the Minister comprehensive programmes of consolidation and statute law revision, and to undertake the preparation of draft Bills pursuant to any such programme approved by the Minister”.

Over time a vast body of legislation has built up – this is commonly referred to as the “statute book”. Since its creation, the Law Commission has performed two important functions which are designed to modernise the statute book and make it more accessible:

- Removing legislation that is obsolete or which has lost any modern purpose. The legislation appears to be still in force, but this is misleading because it no longer has a job to do. This may be because the political, social or economic issue an Act was intended to address no longer exists or because an Act was intended to do a specific thing which, once done, means it has served its purpose.
- Replacing existing statutory provisions, which are spread across multiple Acts, may have been drafted decades ago and have been amended multiple times, with a single Act or series of related Acts, drafted according to modern practice. This process of “consolidation” does not alter the effect of the law, but simply updates and modernises it.

Outdated, obscure or obsolete legislation can cost time and money for those who work with the law. It makes the law more difficult to understand and interpret, and places a further obstacle in the way of accessibility.

The work of the Law Commission improves the accuracy and modernity of the statute book so it can be used with greater confidence, and navigated more easily. As social and technological change continues to be reflected in new legislation, and as internet access to statutory law makes it more readily available, the need for systematic and expert review of existing legislation will continue.

Statute Law Repeals

In the past, the Law Commission has identified candidates for repeal by research and consultation. The legal background to an Act is examined in detail, as are the historical and social circumstances which might have led to it. We consult on proposed repeals and then prepare a draft Bill. The repeals are carried out by means of Statute Law (Repeals) Acts. Nineteen of these have been enacted so far, between them repealing over 3,000 Acts in their entirety and partially repealing thousands of others.

In recent times, enthusiasm in Government for repeals work has reduced, which in turn makes it difficult for the Commission to allocate resource to this aspect of our work. Nevertheless, we remain committed to repeals work and will continue to consider ways in which we can focus our attention on those areas of law which have the potential to cause genuine confusion.

Consolidation

Between our establishment in 1965 and 2006, we were responsible for 220 consolidation Acts. Since then only three have been produced: the Charities Act 2011, the Co-operative and Community Benefit Societies Act 2014 and the Sentencing Act 2020. This change reflects the fact that, in a time of reduced funding in most areas of public services, consolidation is perhaps seen by the Government to be a lower priority. There has, however, been a new focus on consolidation work in Wales. The need for simplification of the law remains as great as it ever has been, however, and so we are encouraged by the reception that some of our recent technical reform work has received.

The Legislation (Wales) Act 2019, which implements some of the recommendations in our report on the Form and Accessibility of the Law Applicable in Wales, places a duty on the Counsel General to keep under review the accessibility of the law in Wales, and introduces a commitment by the Welsh Ministers to prepare a programme to improve the accessibility of Welsh law at the start of each new Senedd term. That has borne fruit in the announcement by the Counsel General in the Senedd, in September 2021, of *The Future of Welsh Law: A Programme for 2021-2026*.^{Footnote}

That programme includes as its flagship two major Bills, based in part on our 2018 report on *Planning Law in Wales – the Historic Environment (Wales) Bill* (*Bil yr Amgylchedd Hanesyddol (Cymru)*), which has now been laid before the Senedd; and the *Planning (Wales) Act* (*Deddf Cyllunio (Cymru)*), which is to follow later in this Senedd term. When they have been enacted, they will represent a landmark in the development of the law in Wales. The Commission is actively assisting with the preparation of these, and associated secondary legislation.

The Counsel General has also confirmed that the Welsh Government hopes to identify further consolidation projects to be prepared during this Senedd term (2021-2026). We welcome this commitment to providing modern, accessible legislation to members of the public in Wales, in both languages. We hope to see more consolidation, and even codification, of Welsh law in coming years, and stand ready to assist.

In addition to the above, the Windrush Lessons Learned Independent Review recommended that, the Law Commission should consolidate immigration legislation (building on its review of the Immigration Rules).

Following publication of the review the Home Office and the Law Commission agreed that the Commission's Parliamentary Counsel would begin work on that consolidation. Counsel worked on the project from January 2022 until October 2023 at which point the work, which was being funded by the Home Office, was paused at their request.

Implementation

Crucial to the implementation of our consolidation and statute law repeals Bills in Westminster is a dedicated Parliamentary procedure. The Bill is introduced into the House of Lords and, after Second Reading, is scrutinised by the Joint Committee on Consolidation Bills. The Committee is appointed by both Houses specifically to consider consolidation and statute law repeal Bills and will hear evidence from the Law Commission. After this, the Bill returns to the House of Lords and continues through its remaining stages. There is now also a new procedure in Wales for consolidation bills, including those implementing Law Commission recommendations.

The Law Commission and Government

Government response to Law Commission reports

In March 2010 we agreed a statutory Protocol⁸² with the Lord Chancellor that governs how the Commission and Government Departments should work together on law reform projects. The latter part of the Protocol sets out Departmental responsibilities once we have published a report. The Minister for the relevant Department will provide an interim response to us as soon as possible but not later than six months after publication of the report. We expect to receive a final response within a year of the report being published.

Improving the prospects of implementation

The Protocol also says that we will only take on work where there is a “serious intention” to reform the law by the Government. As a result this confirmation is sought from the relevant Departments before any law reform projects get underway. While this is not a guarantee that the Government will accept or implement our recommendations for reform, it enables us to commit resources to a project in the knowledge that we have a reasonable expectation of implementation.

Accounting to Parliament for implementation

Law Commission Act 2009 requires the Lord Chancellor to report to Parliament on the extent to which our proposals have been implemented by the Government. The report must set out the Government’s reasons for decisions taken during the year to accept or reject our proposals and give an indication of when decisions can be expected on recommendations that are still

being considered. The Lord Chancellor issued the seventh of these reports on 30 July 2018 covering the period 12 January 2017 to 30 July 2018. In July 2023 the Government has published its regular report on the implementation of Law Commission proposals from January 2018 to January 2023. The Lord Chancellor’s eighth report covers the implementation of Law Commission projects from January 2018 to January 2023.

The Law Commission and the Welsh Government

The Wales Act 2014 provides for a protocol⁸³ to be established between the Law Commission and the Welsh Government. This protocol was agreed and presented to the Senedd on 10 July 2015. It sets out the approach that we and Welsh Ministers jointly take to our law reform work. It covers how the relationship works throughout all the stages of a project, from our decision to take on a piece of work, through to the Ministers’ response to our final report and recommendations.

In a direct reflection of the obligations placed on the Lord Chancellor by the Law Commission Act 2009, the 2014 Act also requires Welsh Ministers to report annually to the Senedd about the implementation of our reports relating to Welsh devolved matters. The seventh Welsh Government Report on the Implementation of Law Commission Proposals (Adroddiad ar weithredu cynigion Comisiwn y Gyfraith) was laid before the Senedd on 15 February 2022.⁸⁴

82 Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission (2010) LC 321.

83 Protocol rhwng Gweinidogion Cymru a Comisiwn y Gyfraith/Protocol between the Welsh Ministers and the Law Commission (2015).

84 Report on the Implementation of Law Commission Proposals 2021-2022 (senedd.wales)

External Engagement

Engaging effectively with people and groups outside of the Commission is absolutely critical to the success of our work. We work hard to establish strong links with a wide range of organisations and individuals who have an interest in law reform, and we greatly value these relationships. We are indebted to all those who send us feedback on our consultation papers, contribute project ideas for our programmes of law reform, and provide input and expertise at all stages of the process of making recommendations to the Government.

It would not be possible in this annual report to thank individually everyone who provides us with guidance or offers us their views. We would, however, like to express our gratitude to our Wales Advisory Committee and all those organisations and individuals who have worked with us as members of advisory groups on our many projects and who have contributed in so many ways to our work during the course of the year.

We also acknowledge the support and interest shown in the Commission and our work by a number of ministers in Westminster and in Cardiff, Members of Parliament and of the Senedd and peers from across the political spectrum, and by public officials. We continue to make progress in extending the number of ways in which we engage with our friends and supporters.

In the Westminster Parliament and the Welsh Senedd, we are often invited to give evidence to special committees and sessions to assist with their inquiries and their consideration of Bills, some of which may include provisions that have derived from Law Commission recommendations. By way of example, on 7 July 2022, Professor Penney Lewis with Dr Nicholas Hoggard gave oral evidence to the National Security Bill Committee on the implementation of our espionage

recommendations from the Protection of Official Data project.

In a slightly different context, on 12 January 2022 Professor Sarah Green gave evidence before a Special Public Bill Committee in the House of Lords, in support of the Electronic Trade Documents Bill. That Bill, which was based closely on Law Commission recommendations, received Royal Assent on 20 July 2023 and the Act came into force on 20 September 2023.

We have a statutory duty to promote the reform of the law and continue to work hard in this area. Alongside the production of various infographics to explain in plain English each new law reform project, we regularly speak to students and engage with law reformers and officials from across Britain and the world.

We participated in our annual 5 Nations Law Commissions meeting with the Chairs of the Scottish, Irish, Northern Irish and Jersey law reform agencies. We provided support to law reformers in Eswatini and Somaliland and were also pleased to welcome visitors in person, including staff from the South Australian Law Reform Institute and officials from the Office of Legal Counsel of the Republic of Korea. We attended the Commonwealth Association of Law Reform Agencies conference in Goa, India. We also held a successful virtual roundtable with law reform institutions from New Zealand, Australia, Canada, South Africa, Ireland, Northern Ireland and Scotland. We plan to hold further meetings to discuss institutional and operational matters, as well as reform issues in particular areas of the law.

After the previous year's success, we were also delighted to host our second-ever online session for potential new Research Assistants, alongside our usual programme of outreach visits to individual universities. The event received over 1000 sign-ups and is now available to watch on our website.

We continue to use a variety of channels to reach a wide range of audiences. During the reporting period, there were close to half a million (435,396) page views on our website. Our X (formerly Twitter) account has grown and now reaches more than 23,700 followers. Over 300,000 tweet impressions were generated over the last 18 month period. We now also regularly use LinkedIn to engage with some of our audiences.

For our proactive announcements, we have consistently secured wide coverage in the national press and broadcast media. This is all supported by local and trade media. Notably, for the launch of our final report on surrogacy, we secured coverage across several major broadcasters and national newspapers, as well as in over 200 articles in local and trade press.

Speaking on law reform

As an outward facing organisation, the Commission's Chair, Commissioners and staff have been active speaking at many different events both virtually and in-person. Many have been hybrid events allowing for increased access for stakeholders.

Some examples of our speaking engagements during 2022-23 are:

- Taking part in a series of roundtables with businesses, charities and legal practitioners to discuss how to reform the law governing corporate criminal liability.
- Organising and taking part in roundtables and Q&A sessions to discuss our provisional proposals to reform intimate image abuse offences with Parliamentarians, academics, victim survivors and victim support groups, prosecutors, defence practitioners, and children and young people stakeholders.
- Organising and taking part in an academic symposium on reforms to the criminal trial process for sexual offences.
- Taking part in a roundtable for Parliamentarians with the Secretary of State for Digital, Culture, Media & Sport and the Parliamentary Under-Secretary of State for Tech and the Digital Economy in relation to the implementation of our recommendations on Modernising Communications Offences in the Online Safety Bill.
- Organising and leading roundtables on digital assets including for academics, practitioners and the judiciary.
- Delivering keynote lecture at Annual Law and Technology Conference.
- Delivering keynote at Annual Crypto Disputes Conference.
- Delivering Current Legal Problems Lecture, UCL.
- Presenting at the New York State Bar Association symposium on the Metaverse and Web3.
- Presenting at Harris Manchester College, Oxford Digital Assets Conference.
- Presenting at King's College, Cambridge Digital Assets Conference.
- Presenting at London Court of International Arbitration, European Users Group, Paris, discussion seminar.
- Presenting on arbitration at an International Chamber of Commerce conference.
- Participating in a discussion seminar at the Alternative Dispute Resolution APPG.
- Range of events on Arbitration, including those hosted by COBAR, Brick Court Chambers, Thomas Reuters, British Institute of International and Comparative Law.
- Presenting a review of the Law Commission's work on property law reform to the annual conference of the Property Bar Association.
- Speaking about work on surrogacy at a conference on Future Directions in Surrogacy Law.

- Speaking about the Commission's report on weddings law at the National Celebrants Convention.
- Speaking at the opening of the Nordic Centre for Comparative and International Family Law in Aalborg.
- Speaking at the 2nd International Surrogacy Forum in Copenhagen
- Giving the keynote speech at the Compulsory Purchase Association's National Conference.
- Speaking at the annual Legal Wales Conference on the Law Commission's work in Wales.
- Appearing before the Constitutional and Legislative Affairs Committee of the Senedd on the first use of the consolidation Bills procedure to introduce the Historic Environment (Wales) Bill.
- Giving the keynote speech at the annual LawWorks conference.

Diversity and inclusion

The Law Commission champions inclusivity, diversity and respect, and we continue to make significant steps in this area.

We undertook a Diversity and Inclusion audit which assessed our current approach against best practice and will inform our next Diversity and Inclusion Strategy.

We continue to strive to create opportunities at the Commission for a diverse range of applicants. After reviewing the initial results of the recently introduced situational judgement test ahead of our 2023/24 research recruitment campaign, we introduced several initiatives to further diversity our recruitment practices. We provided additional resources to enable applicants from a variety of backgrounds to succeed at interviews and took steps to further diversify our recruitment panels.

As part of our aim to attract as broad and diverse a pool of talent as possible to ensure we are representative of the communities we serve, we have also continued our Lawyer and Commissioner Diversity Work Shadowing Scheme. The aim of the scheme is to aid diversity amongst our future applicants by giving people from under-represented backgrounds a chance to shadow a lawyer or Commissioner. We are delighted to have been able to offer opportunities to applicants in both the Commissioner and lawyer roles across the Commission's four teams. We have also continued our engagement with legal organisations and universities to raise awareness of research assistant opportunities at the Commission, both virtually and in-person. We continue to specifically target universities with a higher proportion of students from those communities underrepresented in the law. Taken together, this means that we undertake outreach work in all our legal roles.

We believe that, as a public body, the Law Commission should use its position and reputation to offer opportunities to people who may otherwise struggle to progress their legal career. We have established relationships with a number of organisations to offer internships and support placements for those who are traditionally under-represented in the law. This aims to help the future pipeline of lawyers and researchers. Similarly, we continue to support the Government Legal Department's Summer diversity scheme by offering our time and resources.

As an outward facing organisation, we recognise the impact of our work on the wider society. We have undertaken work to strengthen our approach to Equality Impact Assessments, which consider the impact of our proposals and recommendations on different communities. We have recently introduced new guidance and a more detailed process, to ensure that possible equality impacts are considered robustly throughout every project.

As part of our ongoing focus on learning and development, staff have had the opportunity to attend various training sessions and awareness events. We will continue to expand our programme of events promoting diversity and inclusion.

Our partner law commissions and the devolved authorities

We continue to work closely with our colleagues in the Scottish Law Commission, seeking views as appropriate and engaging on a regular basis. The Automated Vehicles and Surrogacy projects were jointly undertaken with the Scottish Law Commission. The Law Commissions worked closely together, including reciprocal attendance at each other's Peer Review meetings, at which draft publications were reviewed.

The Northern Ireland Law Commission has not been operational since 2015 but remains on a statutory footing under the Justice (Northern Ireland) Act 2002. We are pleased that a Chair was appointed in June 2021 with whom we have been in contact and, although the NILC is still operating on a very restricted basis, we look forward to considering how we can work together in future, both in relation to individual projects and at a more corporate level, at an appropriate time.

Part Five:

Our people and corporate matters

The Law Commission is grateful to everyone within the organisation for their hard work, expertise and support as well as their contribution to the work of the Commission. This has been especially so during what has been a very uncertain time for our staff.

Budget

The Law Commission’s core funding, provided to us by Parliament and received through the MoJ, for 2022–23 was £4.49m.

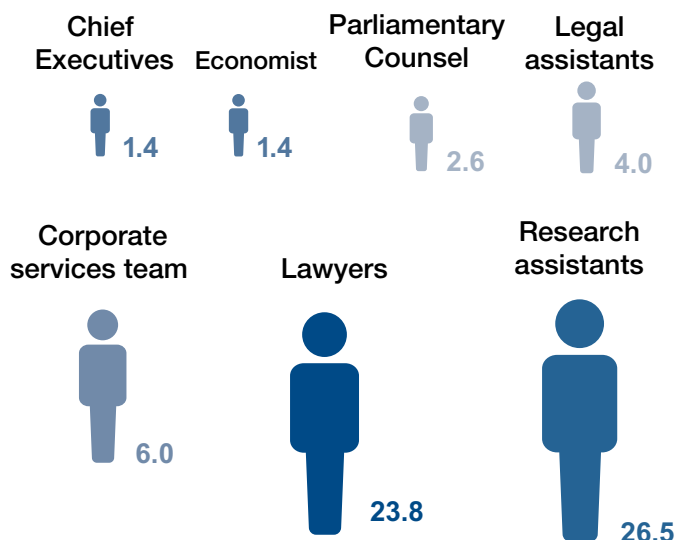
Our core funding amount was a slight increase on the £4.4m agreed under our new Financial Model. Our actual running costs for the 2022-23 financial year equated to £4.6m (excluding the accommodation recharge met by MoJ detailed in the financial appendix). As agreed with MoJ under the Model, we were able to return funds amounting to £1.8m (a planned underspend) over and above the actual running costs of the Commission due to receiving in more funding than expected from Whitehall Departments towards the individual law reform projects undertaken on their behalf.

Staff at the commission

The Commissioners are supported by the staff of the Law Commission. The staff are civil servants and are led by the Chief Executives.

In 2022–23, there were 73 people working at the Law Commission (full-time equivalent: 67.5 as at 31 September 2023).⁸⁵

Figure 5.1 People working at the Commission (full-time equivalent, at 30 September 2023)



Chief Executives

Our Chief Executives are responsible for setting the strategic direction of the Commission, in discussion with the Chair and other Commissioners, and for staffing, funding, organisation and management. The Chief Executives are the Commission’s Budget Holder. They are also responsible for the day-to-day management of the Law Commission’s relationship with the MoJ, including liaising with and influencing senior Departmental officials and promoting contacts and influence within government Departments.

The Chief Executives provide advice and assistance to the Chair and other Commissioners, including support of the Chair in his relationships with Ministers, the senior judiciary, relevant Parliamentary committees and the media.

⁸⁵ Excluding the Chair, Chair’s Clerk and Commissioners.

Legal staff

Our lawyers and legal assistants are barristers, solicitors or legal academics from a wide range of professional backgrounds, including private practice and public service.

We organise the legal staff into four teams to support the Commissioners: commercial and common law; criminal law; property, family and trust law and public law and the law in Wales.

The four teams undertake law reform work, with one Commissioner responsible for the work of the team. The teams are led by a team head, a senior lawyer who provides direct support to the relevant Commissioner and leads the team of lawyers and research assistants working with the Commissioner to deliver their projects. One of the team managers also acts as Head of Legal Services, working closely with the Chief Executives on strategic law reform and staffing issues, and representing the Commission in dealings with key legal stakeholders. Team heads generally do not lead on specific law reform projects themselves; their role focuses on project managing the team's work, providing legal and policy input into those projects, recruiting, mentoring and managing staff and working with the Chief Executives on corporate matters. The team heads also lead on relationships with key stakeholders inside and outside Government for the projects in their area. Team heads report to the Chief Executives.

Individual lawyers within teams ordinarily lead on law reform projects. They will, with the support of a research assistant, research the law, lead on the development and drafting of policy proposals and papers, and liaise with key stakeholders alongside the team head. The lawyers will undertake much of the day-to-day work on a law reform project.

We are fortunate to have in-house Parliamentary Counsel who prepare the draft Bills attached to the law reform reports, and who are seconded

to the Law Commission from the Office of the Parliamentary Counsel. We are delighted to have their expertise available to us.

Research assistants

Each year we recruit a number of research assistants to assist with research, drafting and creative thinking. They generally spend a year or two at the Commission before moving on to further their legal training and careers.

For many research assistants working at the Commission has been a significant rung on the ladder to a highly successful career.

The selection process is extremely thorough, and we aim to attract a diverse range of candidates of the highest calibre through contact with faculty careers advisers, as well as through our website and social media channels. A comprehensive outreach programme was undertaken as part of the 2021 recruitment process, targeting law faculties at a wider range of universities and on campus presentations.

In 2022, we recruited 17 new research assistants and the 2023 research assistant campaign is now complete, with the new recruits due to start in September 2023.

We recognise the contribution our research assistants make, particularly through their enthusiastic commitment to the work of law reform and their lively participation in debate.

Economic and analytical services

The Commission benefits from the expertise of an economist who provides specialist advice in relation to the assessment of the impact of our proposals for law reform. As a member of the Government Economic Service, our economist also provides an essential link with the MoJ and other government Department analytical teams.

Corporate Services

The corporate services team is responsible for the operational and corporate side of the organisation, making sure that the Commission runs effectively and efficiently. Although small, the team has a wide portfolio of responsibilities and has had another successful year, delivering a high-quality service to the Commission.

The corporate services team leads on providing the following services for the Commission:

- Governance.
- Transformation.
- Strategy and planning.
- Human Resources.
- Information Technology.
- Financial Management.
- Internal, external and strategic communications.
- Knowledge and records management.
- Information assurance.
- Health and safety.
- Business continuity.
- Diversity and Inclusion

Freedom of information

The Freedom of Information Act encourages public authorities to make as much information as possible available to the public. Under the Act, we are required to adopt a publication scheme that contains information we routinely make available and ensure that information is published in accordance with the scheme.

We make a significant amount of information available under our publication scheme. One of its benefits is that it makes information easily accessible and free-of-charge to the public, which removes the need for a formal Freedom of Information request to be made.

The Information Commissioner's Office has developed and approved a model publication scheme that all public authorities must adopt. We have adopted this scheme and we use the definition document for Non-Departmental public bodies to identify the type of information that we should publish. Among this is a quarterly disclosure log of requests made under the Freedom of Information Act that we have received and dealt with. More details can be found on our website.

General data protection regulation (GDPR)

As a consultative organisation, the Commission takes its responsibilities for the effective handling of personal data seriously. As a result, we ensured that a policy⁸⁶ setting out how we process and store personal data was in place prior to GDPR coming into force in May 2018. We have updated our guidance recently to reflect the latest position following the UK's exit from the EU. We hold regular holding to account meetings with the MoJ to ensure that we are meeting our GDPR obligations.

Information assurance

In 2022-23 we have had zero notifiable incidents. We have processes in place, agreed with MoJ, so that should any incidents occur, they will be dealt with swiftly and in line with MoJ policies.

Health and safety

During the year, there were no notifiable incidents in relation to staff of the Commission and the Health and Safety at Work etc Act 1974.

86 <https://www.lawcom.gov.uk/document/handling-personal-data/>.

Sustainability

Our actions in relation to energy saving contribute to the overall reduction in consumption across the MoJ estate.

Paper is widely recycled in the office. All our publications are printed on paper containing a minimum of 75% recycled fibre content, and we have in recent times drastically reduced the quantity of our printed materials.

The Law Commission continues to support the MoJ's policy of reducing the supply of single use plastics in its buildings.

During 2022-23 staff have continued a hybrid pattern of work, consistent with the approach taken in the Ministry of Justice. In turn, the Law Commission's gas and electricity usage in Petty France over this period is less than it was pre-COVID-19 pandemic. This is still an increase from 2021-22, however during this period staff were largely working remotely due to the COVID-19 pandemic. Our decreased energy usage is beneficial for the environment and our carbon footprint.



Nicholas Green

**Sir Nicholas Green,
Chair**



S Green

Professor Sarah Green



N.P. Hopkins

Professor Nick Hopkins



Penney Lewis

Professor Penney Lewis



Nicholas Paines

Nicholas Paines QC



*Otterburn
Hack*

**Joanna Otterburn &
Stephanie Hack,
Joint Chief Executives**

Appendices

Appendix A:

Implementation status of Law Commission law reform reports

LC No	Title	Status	Related Measures
2023			
413	Review of the Arbitration Act 1996	Pending	
412	Digital assets	Pending	
411	Building families through surrogacy: a new law	Pending	
2022			
410	Confiscation of the proceeds of crime after conviction	Pending	
408	Celebrating Marriage: A New Weddings Law	Pending	
407	Intimate image abuse	Accepted, pending implementation	Online Safety Bill
406	Regulating Coal Tip Safety	Pending	
405	Electronic Trade Documents Final Report	Implemented	Electronic Trade Documents Act 2023
404	Automated Vehicles Joint Report	Pending	
2021			
403	Devolved Tribunals in Wales Report	Accepted	
402	Hate crime laws: Final report	Implemented in part. Further response pending.	
401	Smart legal contracts: advice to Government	Pending	
399	Modernising Communications Offences	Accepted, pending implementation	Online Safety Bill
398	Consumer sales contracts: transfer of ownership	Pending	
2020			
397	Misconduct in Public Office	Pending	
396	Search Warrants	Pending	
395	Protection of Official Data	Implemented in part	
394	Commonhold	Pending	
393	Right to Manage	Pending	
392	Leasehold Enfranchisement	Accepted in part; pending in part	
390	Employment Law Hearing Structures	Pending	
389	Electoral Law	Pending	
388	Simplification of the Immigration Rules	Accepted	

LC No	Title	Status	Related Measures
387	Leasehold Enfranchisement - options to reduce the price payable	Implemented in part	
2019			
386	Electronic Execution of Documents	Accepted	
384	Anti-money Laundering: the SARS Regime	Pending	
2018			
383	Planning Law in Wales	Accepted in part; pending in part	
382	Sentencing Code	Implemented	Sentencing (Pre-Consolidation Amendments) Act 2020
381	Abusive and Offensive Online Communications: A Scoping Report	Accepted	
380	Updating the Land Registration Act 2002	Accepted in part; Pending in part	
2017			
376	From Bills of Sale to Goods Mortgages	Accepted but will not be implemented	
375	Technical Issues in Charity Law	Accepted	
374	Pension Funds and Social Investment	Accepted; implemented in part	Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018
373	Event Fees in Retirement Properties	Accepted in part; pending in part	
372	Mental Capacity and Deprivation of Liberty	Implemented in part	Mental Capacity (Amendment) Act 2019
371	Criminal Records Disclosures: Non-Filterable Offences	Pending	
2016			
370	Enforcement of Family Financial Orders	Accepted in part; pending in part	
369	Bills of Sale	Superseded	Superseded by LC 376

LC No	Title	Status	Related Measures
368	Consumer Prepayments on Retailer Insolvency	Accepted	
366	Form and Accessibility of the Law Applicable in Wales	Implemented	Legislation (Wales) Act 2019
365	A New Sentencing Code for England and Wales Transition	Superseded	Conclusions carried forward into LC382
364	Unfitness to Plead	Pending	
2015			
363	Firearms Law – Reforms to Address Pressing Problems	Implemented	Policing and Crime Act 2017 (Part 6); Antique Firearms Regulations 2021
362	Wildlife Law	Implemented in part; pending in part	Infrastructure Act 2015
361	Reform of Offences against the Person (HC 555)	Pending	
360	Patents, Trade Marks and Designs: Unjustified Threats	Implemented	Intellectual Property (Unjustified Threats) Act 2017
358	Simplification of Criminal Law: Public Nuisance and Outraging Public Decency	Implemented in part	
2014			
356	Rights to Light (HC 796)	Pending	
355	Simplification of Criminal Law: Kidnapping and Related Offences	Pending	
N/a	Social Investment by Charities	Implemented	Charities (Protection and Social Investment) Act 2016
353	Insurance Contract Law (Cm 8898;SG/2014/131)	Implemented	Insurance Act 2015; Enterprise Act 2016
351	Data Sharing between Public Bodies: A Scoping Report	Pending	
350	Fiduciary Duties of Investment Intermediaries (HC 368)	Accepted	
349	Conservation Covenants (HC 322)	Accepted	
348	Hate Crime: Should the Current Offences be Extended? (Cm 8865)	Accepted in part	

LC No	Title	Status	Related Measures
347	Taxi and Private Hire Services (Cm 8864)	Implemented in part, pending in part	Deregulation Act 2015
346	Patents, Trade Marks and Design Rights: Groundless Threats (Cm 8851)	Superseded	Superseded by LC360
345	Regulation of Health Care Professionals: Regulation of Social Care Professionals in England (Cm 8839 / SG/2014/26 / NILC 18 (2014))	Accepted	
344	Contempt of Court (2): Court Reporting (HC 1162)	Pending	
343	Matrimonial Property, Needs and Agreements (HC 1039)	Implemented in part; pending in part	
342	Wildlife Law: Control of Invasive Non-native Species (HC 1039)	Implemented	Infrastructure Act 2015
2013			
340	Contempt of Court (1): Juror Misconduct and Internet Publications (HC 860)	Implemented	Criminal Justice and Courts Act 2015
339	Level Crossings (Cm 8711)	Accepted but will not be implemented	
337	Renting Homes in Wales/Rhentü Cartrefi yng Nghymru (Cm 8578)	Implemented	Renting Homes (Wales) Act 2016
336	The Electronic Communications Code (HC 1004)	Implemented	Digital Economy Act 2017
2012			
335	Contempt of Court: Scandalising the Court (HC 839)	Implemented	Crime and Courts Act 2013 (s33)
332	Consumer Redress for Misleading and Aggressive Practices (Cm 8323)	Implemented	Consumer Protection (Amendment) Regulations 2014; Consumer Rights Act 2015
2011			
331	Intestacy and Family Provision Claims on Death (HC 1674)	Implemented in part	Inheritance and Trustees' Powers Act 2014
329	Public Service Ombudsmen (HC 1136)	Pending	
327	Making Land Work: Easements, Covenants and Profits à Prendre (HC 1067)	Accepted	

LC No	Title	Status	Related Measures
326	Adult Social Care (HC 941)	Implemented	Care Act 2014 and Social Services and Well-Being (Wales) Act 2014
325	Expert Evidence in Criminal Proceedings in England and Wales (HC 829)	Implemented	Criminal Procedure Rules
2010			
324	The High Court's Jurisdiction in Relation to Criminal Proceedings (HC 329)	Pending	
322	Administrative Redress: Public Bodies and the Citizen (HC 6)	Rejected	
320	The Illegality Defence (HC 412)	Rejected	
2009			
319	Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (Cm 7758)	Implemented	Consumer Insurance (Disclosure and Representation) Act 2012 (c6)
318	Conspiracy and Attempts (HC 41)	Accepted but will not be implemented	
317	Consumer Remedies for Faulty Goods (Cm 7725)	Implemented	Consumer Rights Act 2015
315	Capital and Income in Trusts: Classification and Apportionment (HC 426)	Implemented	Trusts (Capital and Income) Act 2013
314	Intoxication and Criminal Liability (Cm 7526)	Rejected	
2008			
313	Reforming Bribery (HC 928)	Implemented	Bribery Act 2010 (c23)
312	Housing: Encouraging Responsible Letting (Cm 7456)	Rejected	
309	Housing: Proportionate Dispute Resolution (Cm 7377)	Accepted in part	
2007			
307	Cohabitation: The Financial Consequences of Relationship Breakdown (Cm 7182)	Pending	
305	Participating in Crime (Cm 7084)	Pending	

LC No	Title	Status	Related Measures
2006			
304	Murder, Manslaughter and Infanticide (HC 30)	Implemented in part	Coroners and Justice Act 2009 (c25)
303	Termination of Tenancies (Cm 6946)	Pending	
302	Post-Legislative Scrutiny (Cm 6945)	Implemented	See Post-Legislative Scrutiny: The Government's Approach (2008) Cm 7320
301	Trustee Exemption Clauses (Cm 6874)	Implemented	See Written Answer, Hansard (HC), 14 September 2010, vol 515, col 38WS
300	Inchoate Liability for Assisting and Encouraging Crime (Cm 6878)	Implemented	Serious Crime Act 2007 (c27)
297	Renting Homes: The Final Report (Cm 6781)	Rejected for England, Accepted in principle for Wales	
2005			
296	Company Security Interests (Cm 6654)	Implemented in part	
295	The Forfeiture Rule and the Law of Succession (Cm 6625)	Implemented	Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011
292	Unfair Terms in Contracts (SLC 199) (Cm 6464; SE/2005/13)	Implemented	Consumer Rights Act 2015
2004			
291	Towards a Compulsory Purchase Code: (2) Procedure (Cm 6406)	Accepted but will not be implemented	
290	Partial Defences to Murder (Cm 6301)	Implemented	Coroners and Justice Act 2009 (c25)
288	In the Public Interest: Publication of Local Authority Inquiry Reports (Cm 6274)	Accepted but will not be implemented	
287	Pre-judgment Interest on Debts and Damages (HC 295)	Rejected	

LC No	Title	Status	Related Measures
2003			
286	Towards a Compulsory Purchase Code: (1) Compensation (Cm 6071)	Accepted but will not be implemented	
284	Renting Homes (Cm 6018)	Superseded	See LC 297
283	Partnership Law (SLC192) (Cm 6015; SE/2003/299)	Implemented in part; Accepted in part; Rejected in part	The Legislative Reform (Limited Partnerships) Order 2009
282	Children: Their Non-accidental Death or Serious Injury (Criminal Trials) (HC 1054)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
281	Land, Valuation and Housing Tribunals: The Future (Cm 5948)	Rejected	
2002			
277	The Effective Prosecution of Multiple Offending (Cm 5609)	Implemented	Domestic Violence, Crime and Victims Act 2004 (c28)
276	Fraud (Cm 5560)	Implemented in part	Fraud Act 2006 (c35)
2001			
273	Evidence of Bad Character in Criminal Proceedings (Cm 5257)	Implemented	Criminal Justice Act 2003 (c44)
272	Third Parties – Rights against Insurers (SLC 184) (Cm 5217)	Implemented	Third Parties (Rights Against Insurers) Act 2010 (c10); Third Parties (Rights against Insurers) Regulations 2016
271	Land Registration for the Twenty-First Century (jointly with HM Land Registry) (HC 114)	Implemented	Land Registration Act 2002 (c9)
270	Limitation of Actions (HC 23)	Rejected	
269	Bail and the Human Rights Act 1998 (HC 7)	Implemented	Criminal Justice Act 2003 (c44)
267	Double Jeopardy and Prosecution Appeals (Cm 5048)	Implemented	Criminal Justice Act 2003 (c44)
1999			
263	Claims for Wrongful Death (HC 807)	Rejected	
262	Damages for Personal Injury: Medical and Nursing Expenses (HC 806)	Rejected	

LC No	Title	Status	Related Measures
261	Company Directors: Regulating Conflicts of Interests (SLC 173) (Cm 4436; SE/1999/25)	Implemented	Companies Act 2006 (c46)
260	Trustees' Powers and Duties (SLC 172) (HC 538; SE2)	Implemented	Trustee Act 2000 (c29)
257	Damages for Personal Injury: Non-Pecuniary Loss (HC 344)	Implemented in part	See Heil v Rankin [2000] 3 WLR 117
1998			
255	Consents to Prosecution (HC 1085)	Accepted (Advisory only, no draft Bill)	
253	Execution of Deeds and Documents (Cm 4026)	Implemented	Regulatory Reform (Execution of Deeds and Documents) Order 2005
251	The Rules against Perpetuities and Excessive Accumulations (HC 579)	Implemented	Perpetuities and Accumulations Act 2009 (c18)
249	Liability for Psychiatric Illness (HC 525)	Rejected	
248	Corruption (HC 524)	Superseded	See LC 313
1997			
247	Aggravated, Exemplary and Restitutionary Damages (HC 346)	Rejected	
246	Shareholder Remedies (Cm 3759)	Implemented	Companies Act 2006 (c46)
245	Evidence in Criminal Proceedings: Hearsay (Cm 3670)	Implemented	Criminal Justice Act 2003 (c44)
1996			
243	Money Transfers (HC 690)	Implemented	Theft (Amendment) Act 1996 (c62)
242	Contracts for the Benefit of Third Parties (Cm 3329)	Implemented	Contracts (Rights of Third Parties) Act 1999 (c31)
238	Responsibility for State and Condition of Property (HC 236)	Accepted in part but will not be implemented; Rejected in part	
237	Involuntary Manslaughter (HC 171)	Implemented in part	Corporate Manslaughter and Corporate Homicide Act 2007 (c19); see LC 304

LC No	Title	Status	Related Measures
1995			
236	Fiduciary Duties and Regulatory Rules (Cm 3049)	Rejected	
235	Land Registration: First Joint Report with HM Land Registry (Cm 2950)	Implemented	Land Registration Act 1997 (c2)
231	Mental Incapacity (HC 189)	Implemented	Mental Capacity Act 2005 (c9)
230	The Year and a Day Rule in Homicide (HC 183)	Implemented	Law Reform (Year and a Day Rule) Act 1996 (c19)
229	Intoxication and Criminal Liability (HC 153)	Superseded	See LC 314
1994			
228	Conspiracy to Defraud (HC 11)	Implemented	Theft (Amendment) Act 1996 (c62)
227	Restitution: Mistakes of Law (Cm 2731)	Implemented in part	See Kleinwort Benson v Lincoln City Council [1999] 2 AC 349
226	Judicial Review (HC 669)	Implemented in part	Housing Act 1996 (c52); Access to Justice Act 1999 (c22); Tribunals, Courts and Enforcement Act 2007 (c15)
224	Structured Settlements (Cm 2646)	Implemented	Finance Act 1995 (c4); Civil Evidence Act 1995 (c38); Damages Act 1996 (c48)
222	Binding Over (Cm 2439)	Implemented in part	In March 2007, the President of the Queen's Bench Division issued a Practice Direction
221	Termination of Tenancies (HC 135)	Superseded	See LC 303
220	Delegation by Individual Trustees (HC 110)	Implemented	Trustee Delegation Act 1999 (c15)
1993			
219	Contributory Negligence as a Defence in Contract (HC 9)	Rejected	
218	Legislating the Criminal Code: Offences against the Person and General Principles (Cm 2370)	Implemented in part	Domestic Violence Crime and Victims Act 2004 (c28)

LC No	Title	Status	Related Measures
217	Effect of Divorce on Wills (Cm 2322)	Implemented	Law Reform (Succession) Act 1995 (c41)
216	The Hearsay Rule in Civil Proceedings (Cm 2321)	Implemented	Civil Evidence Act 1995 (c38)
215	Sale of Goods Forming Part of a Bulk (SLC 145) (HC 807)	Implemented	Sale of Goods (Amendment) Act 1995 (c28)
1992			
208	Business Tenancies (HC 224)	Implemented	Regulatory Reform (Business Tenancies) (England and Wales) Order 2003
207	Domestic Violence and Occupation of the Family Home (HC 1)	Implemented	Family Law Act 1996 (c27), Part IV
205	Rape within Marriage (HC 167)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
1991			
204	Land Mortgages (HC 5)	Rejected	
202	Corroboration of Evidence in Criminal Trials (Cm 1620)	Implemented	Criminal Justice and Public Order Act 1994 (c33)
201	Obsolete Restrictive Covenants (HC 546)	Rejected	
199	Transfer of Land: Implied Covenants for Title (HC 437)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
196	Rights of Suit: Carriage of Goods by Sea (SLC 130) (HC 250)	Implemented	Carriage of Goods by Sea Act 1992 (c50)
194	Distress for Rent (HC 138)	Implemented in part	Tribunals, Courts and Enforcement Act 2007 (c15), Part III (enacted, but not yet brought into force)

LC No	Title	Status	Related Measures
1990			
193	Private International Law: Choice of Law in Tort and Delict (SLC 129) (HC 65)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
192	Family Law: The Ground for Divorce (HC 636)	Implemented	Family Law Act 1996 (c27), Part II (enacted, but never brought into force)
1989			
188	Overreaching: Beneficiaries in Occupation (HC 61)	Implemented in part	Trusts of Land and Appointment of Trustees Act 1996 (c47)
187	Distribution on Intestacy (HC 60)	Implemented in part	Law Reform (Succession) Act 1995 (c41)
186	Computer Misuse (Cm 819)	Implemented	Computer Misuse Act 1990 (c18)
184	Title on Death (Cm 777)	Implemented	Law of Property (Miscellaneous Provisions) Act 1994 (c36)
181	Trusts of Land (HC 391)	Implemented	Trusts of Land and Appointment of Trustees Act 1996 (c47)
180	Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC 318)	Implemented	Criminal Justice Act 1993 (c36), Part I
178	Compensation for Tenants' Improvements (HC 291)	Rejected	
177	Criminal Law: A Criminal Code (2 vols) (HC 299)	Superseded	Superseded by the criminal law simplification project: see Tenth Programme.
1988			
175	Matrimonial Property (HC 9)	Rejected	
174	Landlord and Tenant: Privity of Contract and Estate (HC 8)	Implemented	Landlord and Tenant (Covenants) Act 1995 (c30)
173	Property Law: Fourth Report on Land Registration (HC 680)	Superseded	See LC 235
172	Review of Child Law: Guardianship (HC 594)	Implemented	Children Act 1989 (c41)

LC No	Title	Status	Related Measures
1987			
168	Private International Law: Law of Domicile (SLC 107) (Cm 200)	Rejected	
166	Transfer of Land: The Rule in Bain v Fothergill (Cm 192)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
165	Private International Law: Choice of Law Rules in Marriage (SLC 105) (HC 3)	Implemented	Foreign Marriage (Amendment) Act 1988 (c44)
164	Formalities for Contracts for Sale of Land (HC 2)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
163	Deeds and Escrows (HC 1)	Implemented	Law of Property (Miscellaneous Provisions) Act 1989 (c34)
161	Leasehold Conveyancing (HC 360)	Implemented	Landlord and Tenant Act 1988 (c26)
160	Sale and Supply of Goods (SLC 104) (Cm 137)	Implemented	Sale and Supply of Goods Act 1994 (c35)
1986			
157	Family Law: Illegitimacy (Second Report) (Cmnd 9913)	Implemented	Family Law Reform Act 1987 (c42)
1985			
152	Liability for Chancel Repairs (HC 39)	Rejected	
151	Rights of Access to Neighbouring Land (Cmnd 9692)	Implemented	Access to Neighbouring Land Act 1992 (c23)
149	Criminal Law: Report on Criminal Libel (Cmnd 9618)	Rejected	
148	Property Law: Second Report on Land Registration (HC 551)	Implemented	Land Registration Act 1988 (c3)
147	Criminal Law: Poison Pen Letters (HC 519)	Implemented	Malicious Communications Act 1988 (c27)
146	Private International Law: Polygamous Marriages (SLC 96) (Cmnd 9595)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
145	Criminal Law: Offences against Religion and Public Worship (HC 442)	Implemented	Criminal Justice and Immigration Act 2008 (c4)

LC No	Title	Status	Related Measures
143	Criminal Law: Codification of the Criminal Law: A Report to the Law Commission (HC 270)	Superseded	See LC 177
142	Forfeiture of Tenancies (HC 279)	Rejected	
141	Covenants Restricting Dispositions, Alterations and Change of User (HC 278)	Implemented in part	Landlord and Tenant Act 1988 (c26)
138	Family Law: Conflicts of Jurisdiction (SLC 91) (Cmnd 9419)	Implemented	Family Law Act 1986 (c55), Part I
1984			
137	Private International Law: Recognition of Foreign Nullity Decrees (SLC 88) (Cmnd 9347)	Implemented	Family Law Act 1986 (c55), Part II
134	Law of Contract: Minors' Contracts (HC 494)	Implemented	Minors' Contracts Act 1987 (c13)
132	Family Law: Declarations in Family Matters (HC 263)	Implemented	Family Law Act 1986 (c55), Part III
127	Transfer of Land: The Law of Positive and Restrictive Covenants (HC 201)	Rejected	
1983			
125	Property Law: Land Registration (HC 86)	Implemented	Land Registration Act 1986 (c26)
124	Private International Law: Foreign Money Liabilities (Cmnd 9064)	Implemented	Private International Law (Miscellaneous Provisions) Act 1995 (c42)
123	Criminal Law: Offences relating to Public Order (HC 85)	Implemented	Public Order Act 1986 (c64)
122	The Incapacitated Principal (Cmnd 8977)	Implemented	Enduring Powers of Attorney Act 1985 (c29)
121	Law of Contract: Pecuniary Restitution on Breach of Contract (HC 34)	Rejected	
1982			
118	Family Law: Illegitimacy (HC 98)	Implemented	Family Law Reform Act 1987 (c42)
117	Family Law: Financial Relief after Foreign Divorce (HC 514)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)

LC No	Title	Status	Related Measures
116	Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions (HC 513)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
114	Classification of Limitation in Private International Law (Cmnd 8570)	Implemented	Foreign Limitation Periods Act 1984 (c16)
114	Property Law: The Implications of Williams and Glyns Bank Ltd v Boland (Cmnd 8636)	Superseded	See City of London Building Society v Flegg [1988] AC 54
1981			
112	Family Law: The Financial Consequences of Divorce (HC 68)	Implemented	Matrimonial and Family Proceedings Act 1984 (c42)
111	Property Law: Rights of Reverter (Cmnd 8410)	Implemented	Reverter of Sites Act 1987 (c15)
110	Breach of Confidence (Cmnd 8388)	Rejected	
1980			
104	Insurance Law: Non-Disclosure and Breach of Warranty (Cmnd 8064)	Rejected	
102	Criminal Law: Attempt and Impossibility in Relation to Attempt, Conspiracy and Incitement (HC 646)	Implemented	Criminal Attempts Act 1981 (c47)
99	Family Law: Orders for Sale of Property under the Matrimonial Causes Act 1973 (HC 369)	Implemented	Matrimonial Homes and Property Act 1981 (c24)
1978			
96	Criminal Law: Offences Relating to Interference with the Course of Justice (HC 213)	Rejected	
95	Law of Contract: Implied Terms in Contracts for the Sale and Supply of Goods (HC 142)	Implemented	Supply of Goods and Services Act 1982 (c29)
91	Criminal Law: Report on the Territorial and Extra-Territorial Extent of the Criminal Law (HC 75)	Implemented in part	Territorial Sea Act 1987 (c49)
89	Criminal Law: Report on the Mental Element in Crime (HC 499)	Rejected	

LC No	Title	Status	Related Measures
88	Law of Contract: Report on Interest (Cmnd 7229)	Implemented in part	Administration of Justice Act 1982 (c53); Rules of the Supreme Court (Amendment No 2) 1980
86	Family Law: Third Report on Family Property: The Matrimonial Home (Co-ownership and Occupation Rights) and Household Goods (HC 450)	Implemented	Housing Act 1980 (c51); Matrimonial Homes and Property Act 1981 (c24)
1977			
83	Criminal Law: Report on Defences of General Application (HC 566)	Rejected	
82	Liability for Defective Products: Report by the two Commissions (SLC 45) (Cmnd 6831)	Implemented	Consumer Protection Act 1987 (c43)
79	Law of Contract: Report on Contribution (HC 181)	Implemented	Civil Liability (Contribution) Act 1978 (c47)
1976			
77	Family Law: Report on Matrimonial Proceedings in Magistrates' Courts (HC 637)	Implemented	Domestic Proceedings and Magistrates' Courts Act 1978 (c22)
76	Criminal Law: Report on Conspiracy and Criminal Law Reform (HC 176)	Implemented in part	Criminal Law Act 1977 (c45)
75	Report on Liability for Damage or Injury to Trespassers and Related Questions of Occupiers' Liability (Cmnd 6428)	Implemented	Occupiers' Liability Act 1984 (c3)
74	Charging Orders (Cmnd 6412)	Implemented	Charging Orders Act 1979 (c53)
73	Report on Remedies in Administrative Law (Cmnd 6407)	Implemented	Rules of Supreme Court (Amendment No 3) 1977; Supreme Court Act 1981 (c54)
1975			
69	Exemption Clauses: Second Report by the two Law Commissions (SLC 39) (HC 605)	Implemented	Unfair Contract Terms Act 1977 (c50)
68	Transfer of Land: Report on Rentcharges (HC 602)	Implemented	Rentcharges Act 1977 (c30)
67	Codification of the Law of Landlord and Tenant: Report on Obligations of Landlords and Tenants (HC 377)	Rejected	

LC No	Title	Status	Related Measures
1974			
62	Transfer of Land: Report on Local Land Charges (HC 71)	Implemented	Local Land Charges Act 1975 (c76)
61	Family Law: Second Report on Family Property: Family Provision on Death (HC 324)	Implemented	Inheritance (Provision for Family and Dependants) Act 1975 (c63)
60	Report on Injuries to Unborn Children (Cmnd 5709)	Implemented	Congenital Disabilities (Civil Liability) Act 1976 (c28)
1973			
56	Report on Personal Injury Litigation: Assessment of Administration of Damages (HC 373)	Implemented	Administration of Justice Act 1982 (c53)
55	Criminal Law: Report on Forgery and Counterfeit Currency (HC 320)	Implemented	Forgery and Counterfeiting Act 1981 (c45)
53	Family Law: Report on Solemnisation of Marriage in England and Wales (HC 250)	Rejected	
1972			
48	Family Law: Report on Jurisdiction in Matrimonial Proceedings (HC 464)	Implemented	Domicile and Proceedings Act 1973 (c45)
1971			
43	Taxation of Income and Gains Derived from Land: Report by the two Commissions (SLC 21) (Cmnd 4654)	Implemented in part	Finance Act 1972 (c41), s 82
42	Family Law: Report on Polygamous Marriages (HC 227)	Implemented	Matrimonial Proceedings (Polygamous Marriages) Act 1972 (c38); now Matrimonial Causes Act 1973 (c18)
1970			
40	Civil Liability of Vendors and Lessors for Defective Premises (HC 184)	Implemented	Defective Premises Act 1972 (c35)
35	Limitation Act 1963 (Cmnd 4532)	Implemented	Law Reform (Miscellaneous Provisions) Act 1971 (c43)

LC No	Title	Status	Related Measures
34	Hague Convention on Recognition of Divorces and Legal Separations: Report by the two Commissions (SLC 16) (Cmnd 4542)	Implemented	Recognition of Divorces and Legal Separations Act 1971 (c53); now Family Law Act 1986 (c55), Part II
33	Family Law: Report on Nullity of Marriage (HC 164)	Implemented	Nullity of Marriage Act 1971 (c44), now Matrimonial Causes Act 1973 (c18)
31	Administration Bonds, Personal Representatives' Rights of Retainer and Preference and Related Matters (Cmnd 4497)	Implemented	Administration of Estates Act 1971 (c25)
30	Powers of Attorney (Cmnd 4473)	Implemented	Powers of Attorney Act 1971 (c27)
29	Criminal Law: Report on Offences of Damage to Property (HC 91)	Implemented	Criminal Damage Act 1971 (c48)
1969			
26	Breach of Promise of Marriage (HC 453)	Implemented	Law Reform (Miscellaneous Provisions) Act 1970 (c33)
25	Family Law: Report on Financial Provision in Matrimonial Proceedings (HC 448)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45); now largely Matrimonial Causes Act 1973 (c18)
24	Exemption Clauses in Contracts: First Report: Amendments to the Sale of Goods Act 1893: Report by the Two Commissions (SLC 12) (HC 403)	Implemented	Supply of Goods (Implied Terms) Act 1973 (c13)
23	Proposal for the Abolition of the Matrimonial Remedy of Restitution of Conjugal Rights (HC 369)	Implemented	Matrimonial Proceedings and Property Act 1970 (c45)
21	Interpretation of Statutes (HC 256)	Rejected	
20	Administrative Law (Cmnd 4059)	Implemented	See LC 73
19	Proceedings against Estates (Cmnd 4010)	Implemented	Proceedings against Estates Act 1970 (c17)
18	Transfer of Land: Report on Land Charges affecting Unregistered Land (HC 125)	Implemented	Law of Property Act 1969 (c59)

LC No	Title	Status	Related Measures
17	Landlord and Tenant: Report on the Landlord and Tenant Act 1954, Part II (HC 38)	Implemented	Law of Property Act 1969 (c59)
	1968		
16	Blood Tests and the Proof of Paternity in Civil Proceedings (HC 2)	Implemented	Family Law Reform Act 1969 (c46)
	1967		
13	Civil Liability for Animals	Implemented	Animals Act 1971 (c22)
11	Transfer of Land: Report on Restrictive Covenants	Implemented in part	Law of Property Act 1969 (c59)
10	Imputed Criminal Intent (Director of Public Prosecutions v Smith)	Implemented	Criminal Justice Act 1967 (c80), s 8
9	Transfer of Land: Interim Report on Root of Title to Freehold Land	Implemented	Law of Property Act 1969 (c59)
	1966		
8	Report on the Powers of Appeal Courts to Sit in Private and the Restrictions upon Publicity in Domestic Proceedings (Cmnd 3149)	Implemented	Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 (c63)
7	Proposals for Reform of the Law Relating to Maintenance and Champerty	Implemented	Criminal Law Act 1967 (c80)
6	Reform of the Grounds of Divorce: The Field of Choice (Cmnd 3123)	Implemented	Divorce Reform Act 1969 (c55); now Matrimonial Causes Act 1973 (c18)
3	Proposals to Abolish Certain Ancient Criminal Offences	Implemented	Criminal Law Act 1967 (c58)

Appendix B

The cost of the law commission

The cost of the Commission is met substantially from core funding provided by Parliament (section 5 of the Law Commissions Act 1965) and received via the Ministry of Justice. The Commission also receives funding contributions from Departments towards the cost of some law reform projects, in accordance with the Protocol between the Government and the Law Commission.

	2021–2022 (April–March)		2022–2023 (April–March)	
	£000	£000	£000	£000
Commissioner salaries (including ERNIC) ⁸⁷	559.6		562.8	
Staff costs ⁸⁸	4125.9		3883.1	
		4685.5		4445.9
Research and consultancy	1.4		-19.7	
Communications (printing and publishing, translation, media subscriptions, publicity and advertising)	147.1		152.1	
Design, print and reprographics				
Events and conferences (non-training)				
Information technology				
Equipment maintenance				
Library services (books, articles and on-line subscriptions)				
Postage and distribution				
Telecommunications				
Accommodation recharge (e.g. rent, rates, security, cleaning) (met by MoJ) ⁸⁹	720.6		616.9	
Travel and subsistence (includes non-staff)	-0.5		16.9	
Stationery and office supplies	38.4		30.00	
Recruitment				
Training and professional bodies membership				
Recognition and reward scheme awards				
Childcare vouchers				
Health and Safety equipment/services				
Hospitality	0.0		0.0	
		907.0		796.2
TOTAL		5592.5		5242.1⁹⁰

87 Excludes the Chairman who is paid by HM Courts and Tribunals Service (HMCTS).

88 Includes ERNIC, ASLC, bonuses (not covered under recognition and reward scheme), secondees and agency staff.

89 In November 2013 the Law Commission moved to fully managed offices within the MoJ estate. This cost is met by MoJ directly.

90 Figures will form part of the wider MoJ set of accounts which will be audited.

Appendix C

tailored review recommendations

	Recommendation
1	The Law Commission of England and Wales should continue to carry out the functions required by the Law Commissions Acts of 1965 and 2009.
2	The Law Commission of England and Wales should remain in its current delivery form as an Advisory Non-Departmental Public Body.
3	With a view to maintaining the independence and capability of the Law Commission, the MoJ ALB Centre of Expertise, Finance Business Partners, Policy Sponsors and the Law Commission should conduct a review of the current funding model and other funding arrangements to ensure that the Law Commission's funding model is sufficiently robust.
4	With a view to improving awareness and engagement, the Law Commission should consider, as part of planned website changes, how project pages on the website could clearly display 'next steps' post-publication of the report and recommendations, for quick reference by stakeholders and consultation respondents.
5	With a view to increasing implementation rates, the Law Commission should be clear in job descriptions for the Chair and Commissioners that they have a role in networking and meeting with Parliamentarians and Senior Officials to increase awareness of the Law Commission and its work. Training and/or supporting guidance should be developed by the Law Commission on how and when Commissioners should seek to build relationships with Parliamentarians.
6	With a view to maintaining good corporate governance, the Commission's Code of Best Practice should be updated in line with guidance provided by the 2017 Functional Review of Public Bodies Providing Expert Advice to Government.
7	With a view to improving the working relationship with the MoJ, the Law Commission should work with the MoJ ALB Centre of Expertise to review and update the Framework Document. Specific consideration should be given to:
7a	Whether the current meetings between Ministers and the Law Commission remain an effective means of engagement.
7b	Requirements that representatives of the Law Commission meet with senior policy officials from the MoJ for strategy discussions to ensure MoJ Projects are conducted successfully.
7c	Clear division of responsibilities between assurance partnership provided by ALB Centre of Expertise and sponsorship provided by Policy Sponsor team.
8	With a view to improving the diversity of Commissioners, the Law Commission should work in collaboration with the MoJ Public Appointments Team, to attract a more diverse range of individuals by undertaking more outreach and promotion activity regarding the role of the Commissioner by utilising the Commission's stakeholder network and targeting more diverse groups within the sector.
9	With a view to improving all elements of diversity at all levels, the Law Commission should prioritise the publication of a Diversity and Equality Strategy, in line with that of Government, during the year 2019–20. The strategy should include a plan for implementation and monitoring of progress.

Appendix D

Targets for 2022–23 and 2023–24

2022–23

Target	Outcome
To publish reports on:	
Weddings	Report published 18 July 2022
Surrogacy	Report published 28 March 2023
Confiscation of the Proceeds of Crime	Report published 9 November 2023
Intimate Image Abuse	Report published 7 July 2022
Corporate Criminal Liability	Options paper published 10 June 2022
To publish consultations on:	
Review of the Arbitration Act 1996	Two consultation papers published: September 2022 and March 2023
Evidence in Sexual Offences	Consultation paper published May 2023

2023–24

Target	
To publish reports on:	To publish consultations on:
Digital assets	Contempt of Court
Review of the Arbitration Act 199	Wills – Supplementary Consultation Paper
	Criminal Appeals
	Autonomy in Aviation
	Compulsory Purchase
	Disabled Children’s Social Care

