



**Law
Commission**
Reforming the law

Annual Report 2021-22

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Law Com No 409

The Law Commission

Annual Report 2021-22

(Law Com No 409)

The Fifty Sixth Annual Report of the Law Commission

Presented to Parliament pursuant to section 3(3) of the Law Commissions Act 1965 Ordered by the House of Commons to be printed on 13 December 2022



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Law Commission Annual Report 2021-22

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 2021 to 31 March 2022, although we have also included references beyond the reporting period, up to and including July 2022 when the terms of this report were agreed.

Contents

Chair's introduction	1
Chief Executive's comment	3
Part One: Who we are and what we do	4
The Law Commission	5
Part Two: Review of our work for 2021–22	12
Commercial and Common Law	13
<i>Feature: Digital Assets</i>	18
Criminal Law	20
<i>Feature: Hate Crime</i>	24
Property, Family and Trust Law	26
<i>Feature: Modernising Property Law</i>	34
Public Law and the Law in Wales	36
<i>Feature: Coal Tips</i>	39
Part Three: Implementation of Law Commission law reform reports 2021–22	41
Reports implemented during the year	43
Reports in the process of being implemented	44
Reports awaiting implementation	50
Reports accepted but which will not be implemented	56
Reports awaiting a government decision	56
Part Four: How we work	67
Part Five: Our people and corporate matters	80
Appendix A: Implementation status of Law Commission law reform reports	88
Appendix B: The cost of the Law Commission	106
Appendix C: Tailored Review recommendations	107
Appendix D: Targets for 2021–22 and 2022–23	108

Chair's introduction



To The Right Honourable Dominic Raab MP, Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice.

I am delighted to be able to introduce the Law Commission's 56th Annual Report.

The past 12 months 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 Our work stretches from a series of projects focusing upon removing outdated legal restrictions to the operation of the digital economy through to online harm, hate crime, non-consensual intimate images, options for reform of the law relating to corporate crime, the admissibility of evidence in sexual assault and rape cases in the criminal courts, the law of contempt of court, a system of regulation for automated (robot) cars, remote driving, weddings and surrogacy. We have also engaged closely with Government as it considers our published reports, such as those concerning the reform of residential leaseholds and commonhold. In addition we have carried out a number of important law reform projects for the Welsh Government which considered how the system of devolved tribunals in Wales could be improved as well as a project with wider environmental implications relating to the regulation of coal tips in Wales. 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.

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. In the intervening period we have had a chance to 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.

As of the date of this report we are in negotiations with various government departments with a view to accepting invitations to commence a significant number of new law reform projects. The Law Commission is a small body, with about 69 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 rigorous independence and objectivity is critical to the trust and confidence that stakeholders repose in us and to their willingness to support solutions that we might propose. We are proud of the fact 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, balanced and evidence based.

In late March 2021, we published a consultation on a new 14th Programme of law reform. Under our governing statute we are required, periodically, to agree with the Lord Chancellor on behalf of Government, a programme of law reform. Typically, this will include about 14 or 15 projects which we will seek to undertake over a period of years. The consultation process has now closed. We received nearly over 200 detailed, worked-up, proposals for new law reform, often from professional and representative groups. We also received many hundreds of other suggestions from members of the public.

We have carried out initial sifts and are in the process of discussing various possible new projects with government departments.

It has become apparent to us that the process of finalising the programme will take longer than we initially forecast. Nonetheless, we remain committed to agreeing a new programme and in the interim, as fruitful discussions occur across Whitehall, we expect to accept invitations to take on as ad hoc ministerial references a number of new projects which have emerged out of the many excellent proposals put to us as part of the consultation exercise.

The Law Commission therefore remains in robust good health. I wish to take this opportunity to express my personal thanks and admiration for the work that my fellow Commissioners and their teams, undertake, supported as ever by our corporate support team.



Sir Nicholas Green
Chair

Chief Executive's comment



At the time of writing, there remains considerable uncertainty, not least in relation to the size of the civil service. The Law Commission is a lean organisation with a very small corporate support team supporting the lawyers and researchers who are focused upon front-line law reform work. We work in accordance with a funding model only recently agreed with the Ministry of Justice. Any reduction in our staff would simply mean that we would be able to undertake less work for Ministers across the whole of Government. This in turn would reduce the substantial social and economic benefits that our work has been demonstrated to provide, for example as set out in the independently commissioned 'Economic Benefits of Law Reform' report (2019).

Unsurprisingly, much of the reporting year has been spent planning for a post-pandemic environment. Thankfully, the staff of the Law Commission have emerged safely but, of course, everyone has been affected in different ways by their experiences of the last two years. We are delighted to be returning to our London office, taking the opportunity to reconnect – with one another and also with our stakeholders. Speaking personally, it has been great to see people coming together in the office as a matter of routine; I have greatly missed the little conversations which simply don't happen in a virtual environment.

We are turning our minds to the future, looking at how best to exploit some of the learning from the pandemic, for example, how the increased use of technology has enabled us to reach new audiences for our public consultations. This must be balanced by recementing what we have always known – that law reform is greatly enhanced by our staff and stakeholders coming together to build consensus.

We have also emerged with renewed vigour, moving from a business-as-usual approach, where the focus was simply to 'keep the show on the road' during the pandemic, to more forward-looking work, for example our refocused efforts around diversity and inclusion, which, as is highlighted in this report, is very much a priority for the organisation.

Overall, the Commission has coped well over the past two years. We have not stood still. Our staff have continued to work exceptionally hard to deliver our core business of law reform, indeed this has been an incredibly busy period for the Commission, with several high profile reports being published. At the same time, we have continued to attract highly relevant new work, demonstrating that the Commission continues to play a key role in providing solutions to some of the most complex legal issues facing society.

I wanted to conclude by thanking everyone at the Law Commission for all they have done to support the organisation as we emerge from a very uncertain couple of years. The new funding model has put in place the supporting structures, but it is our staff who ensure that our reputation for quality, rigour and expertise is maintained. I am grateful to them all.

A handwritten signature in black ink, which appears to read 'Phillip Golding'. The signature is fluid and cursive, written on a white background.

Phillip Golding
Chief Executive

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 31 March 2022, the Law Commissioners were:

- The Rt Hon Lord Justice Green¹, Chair.
- Professor Sarah Green², Commercial and Common Law.
- Professor Nick Hopkins³, Property, Family and Trust Law.
- Professor Penney Lewis⁴, Criminal Law.
- Nicholas Paines QC⁵, Public Law and the Law in Wales.

The Commissioners are supported by the staff of the Law Commission. The staff are civil servants and are led by a Chief Executive, Phillip Golding.

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 during 2021–22 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 three very experienced and knowledgeable Non-Executives, who have provided very valuable insight to the Board over the last year. They are: Baroness (Ruth) Deech DBE QC (Hon), Bronwen Maddox and Joshua Rozenberg QC (Hon). However, next year will see change. Baroness Deech has decided not to seek renewal after the expiry of her three year term in May 2022 and Bronwen Maddox will reach the end of her second term of three years in November 2022. We are working with the MoJ to run a campaign to find successors as the work of the Law Commission is greatly enhanced by the experience and skills of our Non-Executive Board Members.

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.

We are due to publish our Business Plan for 2022-23 later this summer. We expect our four priority areas to be:

- **Law reform** - ensuring that the law is fair, modern and clear.
- **How we engage with stakeholders** - ensuring we continue to work closely with stakeholders and adapt to changing work environments.
- **Developing a future ways of working model** - to apply best practice from the last two years to develop a new model.
- **Enhancing our approach to Diversity and Inclusion** - to identify ways to support those traditionally under-represented in the law.

Details will be available on our website.

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. This is currently being updated and we hope it will be finalised early in 2022/23. We do not, however, envisage it fundamentally altering the relationship with the MoJ, indeed, it is likely to help build on the very strong relationship we already have with the Department.

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 will 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.

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.

Tailored Review

In line with Cabinet Office requirements, the Law Commission was subject to a Tailored Review⁷ that was published in February 2019. A tailored review evaluates the work of an Arm's Length Body, providing robust challenge to and assurance on the continuing need for the organisation.

The review covered a wide range of areas including the Commission's purpose and objectives, finances and funding model, effectiveness, governance, diversity and transparency, openness and accountability. Overall, the report painted a very positive picture of the work the Commission is doing and the way it operates. A full list of the recommendations can be found at Appendix C.

Over the last year, we have continued to make positive progress towards either completing or commencing the implementation of recommendations included within the *Tailored Review of the Law Commission*. Outstanding actions are either ongoing or there are plans in place to take matters forward, for example, reviewing the Framework Document is being considered by the MoJ Arms Length Body Centre of Excellence.

The most positive progress in recent times has been made in relation to the Financial Model of the Law Commission, which will be covered in more detail in the next section.

The Law Commission's financial model

One of the most significant developments during the course of 2020/21 was the creation of a new agreement reached with the Lord Chancellor to address concerns about the Law Commission's funding model. The Commission is extremely grateful to the Ministry of Justice who have worked closely with us during 2021/22 to put this model into effect.

Without focusing in detail on the past, the Commission's funding model had over time developed into a hybrid model, whereby MoJ Core funding had been reduced by approximately 50%, with greater emphasis being placed on securing income-generating projects from other government departments so as to make up the shortfall. Not only was this model highly volatile, but it also risked skewing the type of work the Commission was asked to do. Numerous stakeholders were concerned that it affected our independence. We are grateful to those stakeholders for their support in setting out the arguments, most notably the Justice Committee, chaired by Sir Bob Neill MP.

The new model can be viewed on our website. In short, it returns to full funding from the MoJ. It does bring with it an expectation that other government departments will continue to contribute towards the cost of law reform projects, however, the Agreement makes clear that the focus is on where law reform is most needed (against agreed criteria), rather than whether the finances are available. This should lead to a more balanced portfolio of work, together with more transparency about the work we are undertaking.

During 2021/22, the new model has been implemented, with the Commission receiving its full budget from the Ministry of Justice. 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

⁷ <https://www.gov.uk/government/publications/tailored-review-of-the-law-commission>

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 working very well and we are pleased to see that the MoJ is particularly keen to make greater use of the Law Commission, while at the same time we continue to attract high quality work from across Whitehall. We again express our gratitude to Ministers and colleagues in the MoJ for their support.

14th Programme of Law Reform

During the course of this year, we consulted on our 14th Programme of law reform. The consultation closed at the end of July 2021. We received around 500 responses to our consultation, covering nearly 200 possibilities for law reform. We have spent much of 2021/22 refining those ideas into a short list of potential projects.

To aid the consultation process, the Commission sought to identify potential themes to support the Programme, together with a number of ideas for specific projects where we wanted to test our thinking. The themes are:

Emerging technology: The Commission has traditionally been associated with reform of existing laws. But over recent times we have developed real expertise in designing legal frameworks that both anticipate and confront the implications of future technologies, for example automated vehicles, and support the digital economy. There will be a growing need in the future for law which reflects developments such as AI and the use of algorithms in decision-making. In all of these areas it is necessary to consider not only the commercial and economic implications but also the need for proper consumer protection.

Leaving the EU: Now that we have left the European Union, clarity, modernity and accessibility of the law will help to ensure that

legal services are at the forefront of enhancing the UK's competitiveness.

The environment: There is widespread domestic and international interest in promoting reforms to safeguard our environment and this will affect existing legal structures in a myriad of ways. We are keen to hear whether there may be legal barriers which might be restricting the adoption of greener initiatives.

Legal resilience: The COVID-19 pandemic has highlighted areas of the law which are outdated or which contain weaknesses which could not bear the stresses of emergency conditions. When strong law was required to meet the challenge, it proved wanting because it lacked the flexibility to meet the change of circumstance. Ensuring that the law is resilient enough to cater for exceptional circumstances should be an important aspect of the Commission's future work.

Simplification: A founding principle of the Commission is the simplification of law, including through codification or consolidation. Such work has not always been in vogue but its value is increasingly again being understood. For example, the new Sentencing Code, based on the Commission's recommendations, will save up to £250m over ten years and help avoid sentencing errors.

In terms of the latest position, in April 2022, the Commission decided to extend the timetable for finalising the Programme. We concluded that now is not the time to set in stone a list of projects which will determine a significant percentage of our work over the next four to five years and beyond. We are concerned that to do so will reduce our capacity to respond flexibly to law reform needs arising in the near future.

Within the extended timetable we intend to continue our discussions with Departments in Whitehall to refine the suggestions made to us as part of the public consultation. Where we have capacity to undertake new work before the

programme is finalised, we will seek ministerial references for individual projects.

We will continue to work on 13th Programme projects that are already under way and also seek to commence work on several other 13th Programme projects to which we are committed, but which we have not yet started.

We are extremely grateful to all of those who took the time to respond to our 14th Programme consultation. The quality of the submissions and the breadth of ideas advanced was truly impressive. We remain committed to taking forward as many law reform proposals as possible, whether as part of the future 14th Programme or, in the meantime, as ministerial references.

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 93 times in judgments in England and Wales (compared with 102 in 2020-21) and our name appears 339 times in Hansard (up from 227 in 2020-21), the official report of Parliamentary proceedings.

Our work is also widely quoted in academic journals and the media, with over 8,167 references to the Law Commission across national, local, trade and academic media during the reporting period (up from 5,650 in the previous year). 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 10% 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

Working with the Welsh Government

The Wales Act 2014 brought into force amendments to the Law Commissions Act 1965 to take account of Welsh devolution, making significant changes to our relationship with the Welsh Government and how we work with Welsh Ministers in relation to devolved matters.

The Act empowers us to give information and advice to Welsh Ministers. In turn, this enables Welsh Ministers to refer work directly to the Commission whereas, previously, referrals could be made only through the Wales Office. This was a very welcome development.

The 2014 Act also:

- Provides for a protocol⁸ setting out the working relationship between the Law Commission and the Welsh Government.
- Requires Welsh Ministers to report annually to the Senedd about the implementation of our reports relating to Welsh devolved matters.

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

Reforming the law in Wales

Our 12th Programme of Law Reform, published in July 2014, included, for the first time, two law reform projects that related to Wales only:

- The Form and Accessibility of the Law Applicable in Wales – a report was published in June 2016 with the majority of the recommendations accepted. See page 48 for more details.
- Planning Law in Wales – a report setting out recommendations for the simplification of planning law in Wales was published in December 2018. See page 49 for more details.

We underlined in our 13th Programme of Law Reform, published in December 2017, our resolve to undertake at least one law reform project on a devolved area of law. This was subsequently identified as devolved tribunals in Wales. Our proposals and questions concerning the structure and scope of a coherent tribunal system for Wales went to consultation at the end of 2020 and reported in December 2021. In November 2020, we were also delighted to accept a Ministerial Reference to undertake a project on Coal Tips in Wales, which reported in March 2022.

One of our Commissioners, Nicholas Paines QC, has special responsibility for the law in Wales.

We are grateful for the support and contributions we have received from our colleagues and stakeholders 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. We look forward to working with the Welsh Government to support the future use of the standing order, and their programme of simplification of the Law in Wales.

Wales Advisory Committee

The support we have received throughout the year from our Wales Advisory Committee (WAC) has been much appreciated. We established the Committee in 2013 to advise 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. The Committee continues to meet and to advise us on Welsh legal matters.

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 its future. It warmly 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, Sir Nicholas Green, has been attending on behalf of the Law Commission.

Welsh language policy

We published our Welsh language policy⁹ on 4 September 2017. This sets out our commitment to treating with linguistic parity projects relating to Wales and projects which are likely to have significant public interest in Wales. We routinely publish appropriate project documents, such as report summaries, bilingually.

The policy states that it will be reviewed regularly, with progress reported to the Board. This was undertaken by the Law Commission during 2021 and approved by the Board. A copy of the Review is on the Commission's website.

9 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/06/LC-Welsh-Language-Policy.doc>

Part Two:

Review of our work in 2021–22

Commercial and Common Law

Commissioner: Professor Sarah Green

Project	Update	Date published	Page
Smart Legal Contracts	Advice to Government published	November 2021	page 13
Electronic Trade Documents	Report with draft Bill published	March 2022	page 14
Digital Assets	Interim update paper published	November 2021	page 15
Review of the Arbitration Act 1996	Project launched	January 2022	page 15
Insurable Interest	Draft Bill published for comment	June 2018	page 16
Consumer Sales Contracts: Transfer of Ownership	Report published	April 2021	page 16

Smart Legal Contracts

Emerging technologies, such as distributed ledgers, are increasingly used to create “smart contracts”: computer programs which run automatically, in whole or in part, without the need for human intervention. Smart contracts can perform transactions on decentralised cryptocurrency exchanges, facilitate games and the exchange of collectibles between participants on a distributed ledger, and run online gambling programs. Smart contracts can also be used to define and perform the obligations of a legally binding contract. It is this specific type of smart contract – a “smart legal contract” that forms the object of our analysis.

Smart legal contracts can take a variety of forms with varying degrees of automation; different forms of smart legal contract give rise to different

legal considerations. Where the degree of automation in question takes the smart legal contract out of the realm of legal familiarity, legal issues may arise in novel contexts, particularly in the context of contract formation, interpretation and remedies. Additional questions arise if smart legal contracts are offered to consumers, and in determining whether the courts of England and Wales have jurisdiction to adjudicate disputes involving smart legal contracts.

We undertook a detailed analysis of the application of existing contract law to smart legal contracts. Our findings conclude that the current legal framework is clearly able to facilitate and support the use of smart legal contracts. Current legal principles can apply to smart legal contracts in much the same way as they do to

traditional contracts, albeit with an incremental and principled development of the common law in specific contexts. In general, difficulties associated with applying the existing law to smart legal contracts are not unique to them, and could equally arise in the context of traditional contracts. In addition, even though some types of smart legal contract may give rise to novel legal issues and factual scenarios, existing legal principles can accommodate them.

We also considered separate, related areas of law, such as the law of deeds and the rules on jurisdiction. Deeds and private international law are the two areas where we think further work is required to support the use of smart contract technology in appropriate circumstances.

We published our advice to Government on smart legal contracts on 25 November 2021.

Electronic Trade Documents

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.

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.

The recommendations in our report, and the Bill that would implement them, are intended to enable trade documents in electronic form to be used in the same way as their paper counterparts. To achieve this, the Bill sets out certain “gateway criteria” that a document in electronic form must satisfy in order to qualify as an “electronic trade document”. We recommend that electronic trade documents (that is, documents in electronic form which satisfy the gateway criteria) should be capable of being possessed, and that this principle should be set out explicitly in statute. Our recommendations mean that 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.

Potential benefits from reforming the law to allow for electronic trade documents include:

- Increased efficiency and lower operating costs: processing electronic documents can be quicker and cheaper than processing paper documents.
- Increased security and compliance: electronic documents offer transparency and traceability whilst the technology used may provide greater security. Cases of non-compliant documents commonly caused by human error are also reduced.
- Environmental benefits: largely from the reduced use of paper required during the trade process.

- Maintaining English law’s leading role in governing global transactions and helping to promote Britain’s role in international trade.

We published our report with draft Bill in March 2022.

Digital Assets

Digital assets are increasingly important in modern society. They are used for an expanding variety of purposes, including as valuable things in themselves, a means of payment or to represent other things or rights, and in growing volumes. Crypto-tokens, smart contracts, distributed ledger technology and associated technology have broadened the ways in which digital assets can be created, accessed, used and transferred. Such technological development is set only to continue.

Digital assets are generally treated as property by market participant and the law already recognises that some digital assets can be the object of property rights and can be “owned”. While the law of England and Wales is flexible enough to accommodate digital assets to a significant extent, our work so far suggests that certain aspects of the law need reform to aid the development of a sophisticated legal regime that recognises and protects the idiosyncratic and nuanced features of digital assets.

Our work will consider whether certain digital assets should be categorised as:

1. things in action;
2. things in possession (potentially by virtue of law reform); or
3. belonging to a third category of personal property which is neither a thing in action nor a thing in possession.

Property and property rights are vital to modern social, economic and legal systems and should be recognised and protected by the law. Reforming the law to provide legal certainty would lay a

strong foundation for the development and adoption of digital assets. It would also incentivise the use of English and Welsh law and the jurisdiction of England and Wales in transactions concerning digital assets. This could have significant benefits for the UK and the digital asset market in the UK.

We published a short call for evidence in April 2021 and an interim update paper in November 2021. We expect to publish a consultation paper with proposals for reform in mid 2022. See more about this project at page 19.

Review of the Arbitration Act 1996

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. To the extent we think they will further improve the Act, we will propose possible amendments to it. 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.

In the first months of our work, we have met or otherwise communicated with a significant number of stakeholders in the arbitration arena. These interactions have allowed us to identify areas of the Act on which to focus. Issues raised include:

1. the power to summarily dismiss unmeritorious claims or defences in arbitration proceedings;
2. the courts’ powers exercisable in support of arbitration proceedings;
3. the procedure for challenging a jurisdiction award;

4. the availability of appeals on points of law;
5. the law concerning confidentiality and privacy in arbitration proceedings;
6. electronic service of documents, electronic arbitration awards, and virtual hearings;
7. issues concerning discrimination in the appointment of arbitrators.

We aim to publish a consultation paper in the second half of 2022.

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. However, we will produce a report with final recommendations and a draft Bill when resource allows.

Consumer Sales Contracts: Transfer of Ownership

This project followed on from our July 2016 Report, Consumer Prepayments on Retailer Insolvency. In that report, we made a range of recommendations for the protection of prepaying consumers, including in relation to the transfer of ownership rules. 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.

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.

The recommendations are particularly designed to protect consumers who do not have any other protections in the event of consumer insolvency, such as a claim through a debit or credit card provider. 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.

We consulted on a draft Bill in July 2020. We published our final report and draft bill in April 2021.

Feature: Digital Assets

Introduction to the project

We use “digital assets” as a very broad term to mean any assets that are represented digitally or electronically. They are important in modern society in different ways and have been for many years: digital files, email accounts and domain names, for example. However, in more recent years, certain types of digital assets have emerged in growing volumes that have different qualities and which can be used for a wide range of purposes, including as valuable things in themselves, a means of payment or to represent other things or rights. Many of these digital assets are associated with (i) public-private key cryptography to evidence the authenticity of the participant proposing any update to the data representing the asset; and (ii) a mechanism to ensure that the same data has not been copied or updated (“spent”) twice.¹ For the purposes of this short entry, we will refer to these assets as “crypto-tokens”. Although our digital assets work does not focus on crypto-tokens to the exclusion of other digital assets, they are a significant focus of it.

The law of England and Wales has already shown itself to be sufficiently flexible to recognise certain types of digital asset, including crypto-tokens, as being capable of attracting property rights. Market participants can therefore already own and transact with digital assets with some level of confidence. But what type of property are they or should they be and, consequently, precisely which rules and protections attach, or should attach? This is the focus of our work.

Traditional categories of property

Property can be divided into two categories: real property (interests in land) and personal property. Personal property is further divided, at least traditionally, into:

1. things in action, being generally bare personal rights which have no independent form and exist only insofar as they are recognised by a legal system as a claim against a specified person (for example, a debt claim or a contractual claim);
2. things in possession, being things that have an existence of their own, independent of any individual or claim (generally, any tangible object).

Things in possession and things in action are susceptible to different types of legal treatment.

Although not currently capable of being possessed as a matter of law because they are regarded as intangible, digital assets have a factual existence in the world, regardless of the recognition given to them by any legal system, and regardless of whether anyone lays a claim to them. Certain types of digital asset, including crypto-tokens, are susceptible to similar types of control, and therefore to similar means of interference, as tangible objects.

We originally undertook this project on digital assets on the same basis as our related, but distinct, work on electronic trade documents work. That is, with the expectation that we would make proposals to make (certain) digital assets, including crypto-tokens, capable of being “possessed” (that is, to be things in possession), with all the associated consequences. The law of possession has developed over hundreds of years with many nuances and sophisticated tools which could potentially be extrapolated to apply to digital assets.

A possible change in approach

In April 2021, we published a call for evidence on digital assets, seeking information on how market participants regarded digital assets in law, and how they structured their dealings. Although we did not make any proposals for law reform in the call for evidence, we asked questions pointed at the consequences if certain digital assets were to be regarded in law as possessable.

We received 36 responses to the call for evidence, many of which were thoughtful and very detailed. The responses suggested, explicitly and impliedly, that a more nuanced approach should be considered, noting that many digital assets have features of both things in possession and things in action, as well as their own idiosyncratic features. The results of the call for evidence led us to change our assumptions about how the project should progress. Rather than assuming that possession should be “switched on” for cryptotokens and certain other digital assets with similar characteristics, we are now considering whether a third category of personal property (referred to in the common law as a “tertium quid”) would be a better way of recognising the idiosyncrasies of such assets.

This expansion in our thinking has necessitated a more expansive project. If the existing rules applying to things in possession (or, indeed, things in action) are not necessarily to be applied, it is necessary to consider how things in a third category of property should be dealt with in a variety of contexts, including:

1. acquisition, disposition, derivative transfer of title and competing claims;
2. the taking of security over digital assets;
3. custody relationships; and
4. legal remedies and actions.

International perspectives

In addition, because of the global nature of digital assets, particularly cryptotokens, we are alive to the need to ensure that our approach is compatible with the emerging approaches on the international stage. We are following closely the work of the UNIDROIT Digital Assets and Private Law Working Group (“the UNIDROIT Working Group”) which is developing a set of international principles designed to facilitate transactions in digital assets. Similarly, in the United States, the Uniform Law Commission’s Uniform Commercial Code and Emerging Technologies Committee (the “ULC”) is in the process of recommending changes to the United States Uniform Commercial Code (“UCC”). The Law Commission sits as an observer on both the UNIDROIT Working Group and the ULC Committee.

Next steps

We hope to publish a consultation paper in mid 2022.

Criminal Law

Commissioner: Professor Penney Lewis

Project	Update	Date published	Page
Corporate Criminal Liability	Options paper published	June 2022	page 20
Confiscation of the Proceeds of Crime	Consultation completed	December 2020	page 21
Hate Crime	Report published	December 2021	page 21
Review of the Communications Offences	Report published	July 2021	page 21
Taking, Making and Sharing of Intimate Images Without Consent	Report published	July 2022	page 22
Evidence in Sexual Offences	Background paper published	January 2022	page 23

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 project was unusual for the Commission in that it was overseen by both Professor Sarah Green, the Commissioner for commercial and common law, and Professor Penney Lewis, the Commissioner for criminal law.

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.

In our consultation paper, launched on 17 September 2020, we have provisionally proposed reforms to encourage the effective use of powers to prevent assets from being dissipated before a confiscation order is made, to ensure that when confiscation orders are made they realistically reflect what a defendant gained from crime, and to improve the enforcement of confiscation orders.

Our consultation paper considers how the existing statutory framework could be improved with the following objectives in mind: (1) to improve the process by which confiscation orders are made; (2) to ensure the fairness of the confiscation regime; and (3) to optimise the enforcement of confiscation orders.

The consultation period closed in December 2020. Having analysed responses, we are currently drafting the Report which is scheduled for publication in November 2022. This is taking longer than anticipated in large part because we were asked by the Home Office to produce draft legislation which will be published with the Report.

Hate Crime

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 on 7 December 2021, we made a number of recommendations for reform of hate crime laws. For further details see the feature below at page 24.

Review of the Communications Offences

The revolution in online communications has offered extraordinary new opportunities to communicate with one another and on an unprecedented scale. However, those opportunities also present increased scope for harm. As we noted in our Scoping Report on Abusive and Offensive Online Communications in 2018, the current criminal offences are ill-suited to addressing these harms.

Modernised and reformed communications offences would be better targeted at the reality of modern communication. This would provide better protection for the victims of such crimes, and avoid overcriminalisation.

We launched a consultation in September 2020.

The consultation period closed in December 2020.

In the report, published in July 2021, we recommended 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 (“CA 2003”) and the Malicious Communications Act 1988 (“MCA 1988”);
- a new offence of encouraging or assisting serious self-harm;
- a new offence of cyberflashing;
- a new offence of intentionally sending flashing images to a person with epilepsy with the intention to cause that person to have a seizure; 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 CA 2003.

Central to our recommended harm-based offence is a move away from a focus on broad categories of wrongful content (such as “grossly offensive”), to a more context-specific analysis: given those who are likely to see a communication, was harm likely? The aim is to ensure that communications that are genuinely harmful do not escape criminal sanction merely because they do not fit within one of the proscribed categories. Secondly, communications that lack the potential for harm are not criminalised merely because they might be described as grossly offensive or indecent, etc.

The Government accepted most of our recommendations and included offences based on them in the Online Safety Bill. That Bill had its second reading in the House of Commons on 11 May 2022.

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 reviews 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 consultation paper, published in February 2021, we set out a new framework of offences to cover the harmful behaviours we have identified. The proposed framework would provide a more unified and structured approach, providing victims with better protection and ensuring that appropriate orders are available to the courts when dealing with these offences.

The consultation period closed in May 2021. We have finished analysing responses and have considered our recommendations for reform. We will publish the final report in July 2022.

Evidence in Sexual Offences

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. As part of the broad range of work addressing that issue, in June 2021, the Government 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.

The project will consider 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 medical and counselling records; and
- special measures for complainants during the trial.

We published a background paper in January 2022, and are working towards publication of a consultation paper with provisional proposals for reform in November 2022.

Feature: Hate Crime

The problem

Hate crimes are acts of violence or hostility directed at people because of who they are. Hate crime laws in England and Wales have developed in various phases over the past two decades, and the law currently recognises five protected characteristics:

- race
- religion
- sexual orientation
- disability
- transgender identity

However, criminal law does not treat all of those protected characteristics equally. This means that someone who is assaulted based on disability is not afforded the same protection as someone who is assaulted because of their race.

Other major concerns include:

- The complexity and lack of clarity in the current laws which can make them hard to understand.
- Concerns about the particular challenges in prosecuting disability hate crimes.

The consultation paper

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

The report

In our final report published on 7 December 2021, we made a number of recommendations for reform of hate crime laws. These include:

- **Levelling up the protection for disability and LGBT+ victims**

Hate crime laws don't protect all five protected characteristics to the same degree. For example, aggravated offences only apply in respect of racial and religious hostility whilst the stirring up offences don't cover disability or transgender identity.

This current hierarchy of protection is widely seen as unfair and sends a distinctly negative message to victims of hate crimes on the basis of disability, sexual orientation and transgender identity. It also makes the laws needlessly complicated and is a cause of confusion.

The Law Commission has recommended that across the various hate crime laws (including aggravated offences and stirring up offences) all protected characteristics should be treated equally. This would provide much greater protection for victims of disability and LGBT+ hate crime in particular.

We have also recommended legal reforms to assist with prosecutions for exploitative forms of disability hate crime that lack obviously "hostile" features.

- **Tackling sex and gender abuse**

The Law Commission has recommended 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.

For example, if applied in the context of rape and domestic abuse it could make it more difficult to secure prosecutions and create

unhelpful hierarchies of victims. However, if these contexts are excluded, it would make sex or gender very much the poor relation of hate crime characteristics, applicable only in certain, limited contexts.

However, the Commission has made a number of recommendations to provide greater protection:

Extending the offence of stirring up hatred to cover stirring up hatred on the grounds of sex or gender. This would help to tackle the growing threat of extremist misogynist “incel” ideology, and its potential to lead to serious criminal offending.

A Government review of the need for a specific offence to tackle public sexual harassment, which would likely be more effective than adding sex or gender to hate crime laws.

- **Protecting freedom of expression**

Whilst the Commission has recommended some extensions to hate crime legislation, we have coupled these with reforms to hate speech laws and new protections for freedom of expression to ensure that only the most egregious hate speech is criminalised.

In relation to the stirring up hatred offences, the Commission has recommended:

- Replacing the dwelling exemption with protection for private conversations to ensure they are exempted regardless of where they take place.
- Explicit protection for “gender critical” views, criticism of foreign governments, and discussion of cultural practices, and immigration, asylum and citizenship policy.
- A new protection for “neutral reporting” of inflammatory hate speech by third parties.

Property, Family and Trust Law

Commissioner: Professor Nick Hopkins

Project	Update	Date published	Page
Leasehold Enfranchisement	Government support	N/a	page 27
Right to Manage	Government support	N/a	page 28
Commonhold	Government support	N/a	page 28
Conservation Covenants	Government support	N/a	page 29
Surrogacy	Consultation completed	October 2019	page 30
Weddings	Consultation completed	January 2021	page 31
Making a Will	Paused	N/a	page 32
Technical Issues in Charity Law	Government support	N/a	page 32

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.¹⁰ In July 2020, we published three further final reports covering all

¹⁰ (2020) LC 387.

other aspects of the enfranchisement process, as well as on the right to manage and commonhold.¹¹

In January 2021, the Secretary of State for Housing, Communities and Local Government indicated that it was the Government’s intention to proceed with reforms that were based on some of the options set out in our January 2020 report, and recommendations set out in our July 2020 report on enfranchisement.¹² Government is continuing its work considering the remainder of our recommendations and we look forward to its response in respect of them. In March 2021, the Minister for Housing and Local Government in the Welsh Government indicated her “support [for] the approach set out by the Law Commission recommendations” and that it was her intention to “[seek] the UK Government’s agreement that ... officials work together to explore a joint approach to legislation enacting the Law Commission’s recommendations”.¹³

Furthermore, in the background briefing notes accompanying the 2022 Queen’s Speech¹⁴, it was noted that the Government remains committed to a number of areas of reform, including “making it easier and cheaper for [leaseholders] to extend their lease or buy their freehold, and simpler and quicker to take control of the management of their building”, and “delivering a reformed commonhold system”.

To assist Government, the Law Commission has been undertaking work, such as preparing instructions to Parliamentary Counsel, that will be necessary to implement the options and recommendations that the Government has said

it will proceed with. The Law Commission has also been undertaking work that will be necessary if Government accepts the remainder of our recommendations in due course.

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 would 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.
- 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

11 (2020) LC 392.
(2020) LC 393.
(2020) LC 394.

12 For further details, see <https://questions-statements.parliament.uk/written-statements/detail/2021-01-11/hcws695>

13 For further details of the statement, see <https://senedd.wales/media/lbylpozn/210317-jj-written-statement-next-steps-on-leasehold-reform-english.docx>. As the Minister’s statement was made in the light of a forthcoming election, the Minister highlighted that the statement could not “fetter the decision making of any future Senedd”. For further details of the statement, see <https://senedd.wales/media/lbylpozn/210317-jj-written-statement-next-steps-on-leasehold-reform-english.docx>.

14 See <https://www.gov.uk/government/publications/queens-speech-2022-background-briefing-notes>.

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. The Secretary of State's January 2021 announcement set out the Government's plans in that area in light of the options set out by the Law Commission.

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 would improve access to, and the operation of, the right for the benefit of all parties, making the procedure simpler, quicker and more flexible. We have 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, 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 homes.

In our final report, we have 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 has been involved in its work during the reporting year.

Conservation Covenants

Currently, landowners can agree to use or not to use their land in a particular way. But any agreement will be enforceable against future owners only if certain conditions are met. It must impose only restrictions (for example, not to build on the land), not positive obligations (for example, to maintain a dry stone wall). And those restrictions must “touch and concern” other land nearby by providing an identifiable benefit to that land. This limitation can make it difficult to pursue long-term conservation goals.

This project considered the case for permitting landowners to enter into long-lasting and enforceable agreements where a conservation objective would be met by an obligation to use, or not use, land in a particular way. These types of agreements, which already exist in other jurisdictions such as the USA, Canada, Australia, New Zealand and Scotland, are not specifically linked to nearby land. They allow a landowner to agree, for example, to maintain a woodland habitat and allow public access to it, or to refrain from using certain chemicals on land.

The consultation for this project ran from March to June 2013, and we published our final report and draft Bill on 24 June 2014. The report recommended the introduction of a new statutory scheme of conservation covenants in England and Wales. In this scheme, a conservation covenant would:

- Be formed by the agreement of two parties – a landowner (a person with a freehold estate or leasehold estate of more than seven years), and a responsible body designated by the Secretary of State.
- Be able to contain both restrictive and positive obligations.
- Be capable of binding the landowner’s successors in title (that is, all subsequent owners) after he or she has disposed of the land.
- Be made for the public good.

The then Secretary of State for the Environment, Food and Rural Affairs (Rt Hon Elizabeth Truss MP) wrote to the Commission on 28 January 2016 praising the quality of our work and giving a commitment to explore the role conservation covenants could play in the 25 Year Environment Plan being prepared by the department. In the 25 Year Plan published in 2018,¹⁵ the Government confirmed that, working with landowners,

15 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment* (2018) p 62

conservation groups and other stakeholders, it would review and take forward our proposals for a statutory scheme of conservation covenants.

The Department for Environment, Food and Rural Affairs (Defra) consulted on our proposals (suggesting some largely minor changes) in early 2019. It published its response to consultation on 23 July 2019 announcing an intention to introduce legislation for conservation covenants in England (but not Wales) in the Environment Bill. The Law Commission's recommended scheme was introduced as Part 7 of the Environment Bill on 15 October 2019. The Environment Bill fell on the subsequent dissolution of Parliament for a general election.

The Bill was reintroduced in the 2019-21 Parliamentary session and carried over into the 2021-22 session. The Bill was enacted on 9 November 2021.

The Law Commission provided support to Defra during the passage of the Bill.

Surrogacy

Surrogacy is where a woman – the surrogate – bears 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 has brought to light significant concerns with the law. The project, undertaken jointly with the Scottish Law Commission, focuses on a number of key areas, including: 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 is not concerned with consideration of whether surrogacy should be lawful. The project takes as a 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. Our key provisional proposals and questions include:

- The creation of a new pathway to parenthood that will allow intended parents to be the legal parents of a child born of a surrogacy arrangement when the child is born, reflecting the shared intentions of the surrogate and intended parents, rather than legal parental status being transferred after the birth by a parental order.
- The regulation of surrogacy organisations, which will continue to be non-profit, by the Human Fertilisation and Embryology Authority, which, along with licensed clinics, will provide oversight of the new pathway to parenthood. And an overhaul of the other laws around surrogacy currently contained in the SAA 1985.
- Asking a series of questions about what sort of payments it should be possible for intended parents to make to surrogates, to better understand stakeholder views, with a view to building consensus on permissible payments.
- The creation of a national register of surrogacy, to safeguard access to information for children born of a surrogacy arrangement about their intended parents, surrogate and (if applicable) gamete donors.

- For international surrogacy arrangements: unified Government guidance, practical suggestions regarding applications for passports and visas to reduce delays for children born of an international surrogacy arrangement returning to the UK and changes to the law safeguarding children born to a UK surrogate in an arrangement with intended parents from overseas.

Currently, we are drafting our report and instructing parliamentary counsel to draft legislation. We expect to publish our final report with our recommendations for reform of the law, accompanied by a draft Bill, in autumn 2022.

Weddings

The main law which governs how and where people can get married dates from 1836 and has failed to keep pace with modern life.

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 either in a place of worship or licensed secular venue and cannot marry outdoors or even in the garden of a licensed venue.

If a couple fails to comply with the legal requirements for a wedding, either intentionally or without realising, the law might not recognise them as being legally married. This means the parties do not have the legal protection that would otherwise come with marriage. The risk of having a wedding that is not legally recognised arises most often with some religious wedding ceremonies. It is often discovered only when a couple's relationship breaks down, or when one of the couple dies, and can have devastating consequences for the financially weaker party - most often women - but also for children born during the relationship.

Our project is considering 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. We are looking at what should happen before, during and after the ceremony. The guiding principles for reform are 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.

In our consultation paper, launched on 3 September 2020, we suggested a comprehensive new legislative scheme to update the law governing each aspect of the process of getting married. It would replace the outdated, overly restrictive current law of weddings, much of which dates from 1836.

To modernise and improve weddings law, our proposals include changes that would:

- Allow weddings to take place outdoors, for example on beaches, in parks, in private gardens and on the grounds of current wedding venues.
- Allow weddings to take place in a wider variety of buildings (for example, in private homes) and on cruise ships.
- Offer couples greater flexibility over the form their wedding ceremonies will take.
- Simplify the process and remove unnecessary red tape to make it fair to couples, more efficient, and easier to follow. For example, couples will be able to complete the initial stage of giving notice of their intended wedding online or by post, rather than having to do so in person.
- Provide a framework that could allow non-religious belief organisations (such as Humanists) and/or independent celebrants to conduct legally binding weddings – though we are not considering whether they should be permitted to do so.

- Ensure that fewer weddings conducted according to religious rites result in a marriage that the law does not recognise at all.

We are aiming to publish the final report, with recommendations to the Government, in July 2022.

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 want 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.

The Commission has 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 Commission remains committed to completing its work on wills, the timetable for which remains under review.

Following our pausing of the wills project, the law of wills came under scrutiny during the COVID-19 pandemic, when social distancing measures inhibited in-person witnessing. In developing its response to this issue, the Government consulted with the Law Commission on reforming the law of wills.

The remaining stages of our work will be to complete our analysis and policy formulation, to prepare a final report and to instruct Parliamentary Counsel to draft a Bill that would give effect to our recommendations.

Technical Issues in Charity Law

There are more than 169,000 charities registered with the Charity Commission and thousands more that are not required to register. Charities are a force for good and millions donate regularly to help them to help others. But there are problems with the law within which charities operate, which means that time and money is spent on administration when it could be used to further charitable causes.

We were asked by the Government to focus initially on social investment by charities. We reported on that topic in 2014. The majority of our recommendations for reform were implemented in the Charities (Protection and Social Investment) Act 2016, which received Royal Assent on 16 March 2016.

We then returned to consider a wide range of other technical issues in charity law. We consulted on a range of reforms designed to support and equip the charities sector by ensuring the legal framework in which it operates is fair, modern, simple and cost effective. We published our final recommendations on 14 September 2017.¹⁶

These recommendations were designed to remove unnecessary administrative and financial burdens faced by charities as a result of inappropriate regulation and inefficient law, while safeguarding the public interest in ensuring that charities are run effectively. The reforms would save charities a large amount of time, as well as money. Those cost savings include an estimated £2.8m per year from increased flexibility concerning sales of land.

The Government responded to our recommendations in March 2021, accepting 36 of our 43 recommendations (one in part).¹⁷ The Government asked us to assist with updating the draft Bill that we published alongside the report, including engaging with the Charity Law Association and other stakeholders to seek any comments on whether any technical changes should be made to the draft Bill. The Bill was announced in the 2021 Queen's Speech and introduced in the House of Lords under the Parliamentary procedure for Law Commission Bills on 26 May 2021. The Charities Act 2022, which implements the Law Commission's recommendations, was enacted on 24 February 2022.¹⁸

¹⁶ (2017) LC 375.

¹⁷ Available at: <https://www.gov.uk/government/publications/government-response-to-law-commission-report-on-technical-issues-in-charity-law>.

¹⁸ <https://www.legislation.gov.uk/ukpga/2022/6/contents/enacted>.

Feature: Modernising Property Law

Property Law Reform has always played an important role in the Law Commission's work. It featured in the Commission's very first programme of law reform in 1965, which included projects on the transfer of land and the codification of the law of landlord and tenant. 57 years later – and as the coverage of property law reform in our 13th programme demonstrates – the demand for reform shows no signs of slowing down.

Driving this demand is the need for a modern framework which supports our relationships with land and neighbours, and between landlords and leaseholders. Almost everyone will be affected by property law at some stage in their life as it governs how we buy, sell, rent, own and use property. Ensuring that property legislation keeps pace with society's changing expectations, needs and values is therefore vital, but it is not an easy task. Property law is contained in vast swathes of legislation and case law which has developed over centuries. Rules are often antiquated, complex and unwieldy. As a result, property law can sometimes act as a barrier to progress rather than a flexible tool that works for society's benefit.

As will be seen from the previous pages, the Commission is working to make home ownership fit for purpose and to provide purchasers with the security that they expect from home ownership. Looking to the future, we have been told of numerous other areas of property law that would benefit from being updated. These areas include (but are by no means exhaustive) the following.

Rules governing business tenancies. We have been told that provisions originally designed to protect business tenants may now be limiting the flexibility that business tenants need today. There are, for example, detailed rules that restrict the circumstances in which business tenancies might be brought to an end and how these rules may be opted out of. These rules can create unnecessary bureaucracy where the landlord and tenant wish to come to some other arrangement that benefits them both.

Rules governing the home-buying process. It is a longstanding complaint that the home buying process is not working as effectively as it should be. Although it is a very common transaction – with over one million residential property transactions in every year - the process is often slow, complex and costly. It is estimated that up to 1/3rd of home buying transactions fail and that 25% of these failures cause the buyer and seller to waste costs in excess of £1,000. While efforts are being made in the market to speed up the process and reduce costs, we have been told that legal barriers may be limiting that.

Rules relating to “ownerless land”. The law has to provide a solution in a number of situations when land would otherwise have no legal owner, for example where a landowner dies without any close family, or a company which owns land fails. Such land, which is often referred to as “ownerless land”, passes automatically to the Crown. But the current law that applies is antiquated, complex and unfit for purpose and there is a great deal of uncertainty about what happens after the land has passed. This uncertainty can have significant practical consequences, including preventing the land being made safe or being put to any constructive use. One example we are aware of is an underground fire in a coal mine near residential properties which no one had legal responsibility to address.

We have also been told that certain aspects of property law may be blocking innovations in the environmental sphere. Reform in this area could help unlock the full potential of land to capture harmful carbon emissions, support environmentally beneficial farming techniques, encourage energy-efficiency in rented buildings, and help prevent floods and coastal erosion.

These are just a few of the areas we have been told about. While keeping property law up to date is a challenge, the Law Commission is uniquely placed to take it on. We have over 57 years of experience in updating complex areas of property law, balancing competing interests and building consensus. The Commission is committed to understanding how property law works on a practical level and, with Government's support, we will continue our work to modernise property law so that it matches today's expectations.

Public Law and the Law in Wales

Commissioner: Nicholas Paines QC

Project	Update	Date published	Page
Planning Law in Wales	Report published; working on Bill	December 2018	page 36
Devolved Tribunals in Wales	Report published	December 2021	page 36
Automated Vehicles	Report published	January 2022	page 37
Administrative Review	Project pending	2021/22	page 37
Coal Tips Safety in Wales	Report published	March 2022	page 38

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.

Devolved Tribunals in Wales

Following publication of a consultation paper in December 2020, we published a final report, which was laid in the Senedd in December 2021. The Law Commission had been asked to make recommendations to help shape the Tribunals Bill for Wales, designed to regulate a single system for tribunals in Wales. 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. Our report made a number of recommendations for reform, including:

- Replacing the existing separate tribunals with a single unified first-tier tribunal, broken down into chambers catering for similar claims.
- Bringing the Valuation Tribunal for Wales and school exclusion appeal panels within the new unified First-tier Tribunal.
- The creation 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.
- Reforming the Welsh Tribunals Unit (the part of the Welsh Government which currently administers most devolved tribunals) into an independent non-ministerial department.
- Standardising the processes for appointing and dismissing members of the tribunals and introducing a greater role for the President of Welsh Tribunals.

- Standardising procedural rules across the tribunals and introducing a new Tribunal Procedure Committee to ensure that the rules are kept up to date.
- 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. 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.

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 Government has since committed to legislating on self-driving vehicles. Government is considering the detail of the Law Commissions’ recommendations as a priority and will publish a formal response in due course. We continue 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 2022/23.

Coal Tips Safety in Wales

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 report published in March 2022. For further details, see the feature below at page 39.

Feature: Coal Tips

In February 2020, unprecedented rainfall in South Wales precipitated a coal tip slide, when an estimated 60,000 tonnes of coal tip waste slipped down the Llanwonno hillside at Tylorstown in the Rhondda. Fortunately, no homes were destroyed, or human lives lost. The slide nevertheless blocked the river, buried a water main and broke a sewer. As part of its response to the Tylorstown emergency, the Welsh Government asked the Law Commission to undertake an independent review of coal tip safety legislation and make recommendations for its reform. Our terms of reference required us to evaluate current legislation and to consider options for new legislation. We were asked to develop a robust, integrated and future-proofed regulatory system for identifying, recording, inspecting and maintaining coal tips throughout their lifecycle. Our project started in November 2020.

The current law

The Mines and Quarries (Tips) Act 1969 governs the safety and stability of mining waste in the UK. It was enacted in response to the Aberfan disaster in October 1966, when a coal tip slide engulfed a row of houses and a school, killing 28 adults and 116 children. At the time, the coal mining industry remained active, and so the 1969 Act was designed to regulate the tipping of waste from operational coal mines, as well as mines and quarries associated with the extraction of other minerals. While Part 2 made provision for disused tips, such tips were considered a lesser problem. Today they are the chief concern.

Consultation

Our consultation paper, published on 9 June 2021, reviewed coal tip safety law and identified shortcomings in the current management of disused tips. The 1969 Act left responsibility for disused tips to local authorities but gave them only limited powers of intervention, contingent on identifying an existing risk to the public by reason of a tip having become unstable. The

mechanisms for requiring owners to carry out remedial work were cumbersome and time consuming. The alternative remedial mechanism under the 1969 Act – that the local authority does the work and charges the owner – was also unwieldy. The fragmentation of powers across local authorities led to inconsistent safety standards and risk classifications.

We also found gaps in the 1969 Act's regulatory scheme. It did not create a general duty to ensure the safety of coal tips, nor provide a power to require or undertake preventive maintenance to prevent a tip becoming a danger. It did not cover hazards other than instability. There was no central point of responsibility and thus no overarching mechanism to prioritise tips based on risk. The law did not facilitate proportionate, low cost intervention that would reduce the risk of dangerous slips.

There were other difficulties which did not stem from the provisions of the 1969 Act, but which impacted on its operation. Loss of specialism resulting from the virtual cessation of coal mining in Wales, together with constraints on resources, limited local authorities' capacity to exercise their powers.

We provisionally proposed a new regulatory framework for coal tip safety. We held a series of consultation events and were able to conduct a site visit to Tylorstown in the Rhonda Fach valley. We received 69 responses to our consultation, which expressed strong support for our key provisional proposals and provided useful answers to our questions.

Final report

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. The framework 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.

Welsh Government white paper

We await the Welsh Government's formal response to our recommendations. However, it recently published its Coal Tip Safety (Wales) White Paper, which consults on further aspects of our proposed framework and indicates that the Government is giving serious consideration to our recommendations.

Part Three:

Implementation of Law Commission law reform reports 2021–22

There are a number of 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.

Nine Law Commission Bills have now followed this procedure:

- 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 2009.¹⁹

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 10 cross ref-to para 166).

Implementation of our reports 2021–22

Between 1 April 2021 and 31 March 2022 we published seven final reports with recommendations for law reform:

- Consumer sales contracts: transfer of ownership, 23 April 2021.
- Modernising Communications Offences: A Final Report, 21 July 2021.
- Hate crime laws: Final report, 7 December 2021.
- Devolved Tribunals in Wales Report, 9 December 2021.
- Automated Vehicles Joint Report, 26 January 2022.
- Electronic Trade Documents Final Report, 16 March 2022.
- Regulating Coal Tip Safety, 24 March 2022.

¹⁹ The Bill passed through Parliament as part of a trial for the Law Commission parliamentary procedure.

We also published a command paper on Smart Legal Contracts: Advice to Government on 25 November 2021.

The statistics from the creation of the Commission in 1965 to 31 May 2022 are:

- Law reform reports published – 249.
- Implemented in whole or in part – 155 (64%).
- Accepted in whole or in part, awaiting implementation – 19 (7%).
- Accepted in whole or in part, will not be implemented – 7 (3%).
- Awaiting response from Government – 27 (9%).
- Rejected – 31 (13%).
- Superseded – 11 (5%).

Reports implemented during the year

Conservation Covenants

- Final report and draft Bill published on 24 June 2014.²⁰
- Response received from Government on 28 January 2016.
- The Law Commission's recommended scheme was enacted as Part 7 of the Environment Act 2021, on 9 November 2021.

On 24 June 2014 we published a final report in respect of our work on conservation covenants. The Law Commission's recommended scheme was enacted as Part 7 of the Environment Act 2021 on 9 November 2021.

For further details about our work, see page 29.

Technical Issues in Charity Law

- Final report published on 14 September 2017.²¹
- Final Government response received on 22 March 2021 accepting 36 of our 43 recommendations.
- The recommendations were enacted as the Charities Act 2022 on 24 February 2022.

On 24 June 2014 we published a final report in respect of our work considering a wide range of technical issues in charity law. The Government accepted 36 of our 43 recommendations (one in part). The Charities Act 2022, which implements our recommendations, was enacted on 24 February 2022.

For further details about our work, see page 32.

Public Nuisance and Outraging Public Decency

- Final report published on 24 June 2015.²²

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.

20 (2014) LC 349.

21 (2017) LC 375.

22 (2015) LC 358.

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 present 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.

Reports in the process of being implemented

Consumer Prepayments on Retailer Insolvency

- Final report published on 13 June 2016.²³
- 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.
- 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

23 (2016) LC 368.

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.²⁴ 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.

Pension Funds and Social Investment

- Final report published on 21 June 2017.²⁵
- 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 2019.²⁶ The Financial Conduct Authority has made similar changes, in force from 6 April 2020, to rules applying to contract-based pension schemes.²⁷

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 2019.²⁸
- 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. The benefits of this have been highlighted by the period of social distancing and home working necessitated by COVID-19.

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

25 (2016) LC 374.

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

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

28 (2019) LC 386.

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 2021.²⁹

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.³⁰

²⁹ (2017) LC 373.

³⁰ 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 13 of this report). On conflicts of law and emerging technology, we have announced a project to begin in the second half of 2022.

Enforcement of Family Financial Orders

- Final report published on 15 December 2016.³¹
- 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 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. These non-statutory reforms can be implemented through changes in court rules and practice directions; court administration; and the provision of guidance. This will implement 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.

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.

The Government has decided to await the implementation of the non-statutory reforms before taking a view on whether to implement the reforms which do require primary legislation.

31 (2016) LC 370.

The Form and Accessibility of the Law Applicable in Wales

- Final report published on 29 June 2016.³²
- 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 2026.³³

Modernising Communications Offences

- Final report published on 20 July 2021.³⁴

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 Online Safety Bill, introduced into the House of Commons on 11 May 2022, will implement our recommendations for new harm-based communications offences, and a new cyberflashing offence.

³² (2016) LC 366.

³³ <https://gov.wales/the-future-of-welsh-law-accessibility-programme-2021-to-2026.html>.

³⁴ (2021) LC 399.

Planning Law in Wales

- Final report published on 3 December 2018.³⁵
- 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 2020.³⁶

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.

³⁵ (2018) LC 383.

³⁶ (2020) LC 395.

Reports awaiting implementation

Contempt of Court: Court Reporting

- Final report published on 26 March 2014.³⁷

This report aims 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 detail 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 2020.³⁸

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

³⁷ (2014) LC 344.

³⁸ (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 2020.³⁹
- 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.

Making Land Work: Easements, Covenants and Profits à Prendre

- Final report and draft Bill published on 8 June 2011.⁴⁰

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.

³⁹ (2017) LC 373.

⁴⁰ (2011) LC 327.

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 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 also 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.

During the reporting year, we have assisted Government’s work to understand the implications that the Commission’s recommendations would have in the context of Government’s wider leasehold and commonhold reform programme.

Public Services Ombudsmen

- Final report published on 14 July 2011.⁴¹

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

41 (2011) LC 329.

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 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 the in the recent Queen's Speech.

Regulation of Health and Social Care Professionals

- Final report and draft Bill published on 2 April 2014.⁴²

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 2020.⁴³
- 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.

42 (2014) LC 345.

43 (2020) LC 388.

Taxi and Private Hire Services

- Final report and draft Bill published on 23 May 2014.⁴⁴

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 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 2018.⁴⁵
- 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

⁴⁴ (2014) LC 347.

⁴⁵ (2018) LC 380.

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.

In its full 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 on February 2014.⁴⁶
- Recommended reforms given effect in the Infrastructure Act 2015.
- Final report on remaining elements, with draft Bill, published on 10 November 2015.⁴⁷

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.⁴⁸

46 (2014) LC 342.

47 (2015) LC 362 (two volumes).

48 <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 2016.⁴⁹
- Updated report with draft Bill published on 23 November 2017.⁵⁰

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 2015.⁵²

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 71.

49 (2016) LC 369.

50 (2017) LC 376.

51 <https://services.parliament.uk/Bills/2019-21/goodsmortgagesbill.html>.

52 (2015) LC 357.

Anti-Money Laundering

- Final report published on 18 June 2019.⁵³

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.

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.

Cohabitation: The Financial Consequences of Relationship Breakdown

- Final report published on 31 July 2007.⁵⁴
- Holding response received from Government on 6 September 2011.⁵⁵

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 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.

⁵³ (2019) LC 384.

⁵⁴ (2007) LC 307.

⁵⁵ Written Ministerial Statement, Hansard (HC), 6 September 2011, col 16WS.

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. The Government is still considering the recommendations.

Consumer Sales Contracts: Transfer of Ownership

- Final report published on 22 April 2021.⁵⁶

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 page 16. 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 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.

⁵⁶ (2021) LC 398.

Criminal Records Disclosures: Non-Filterable Offences

- Final report published on 1 February 2017.⁵⁷

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.

Data Sharing Between Public Bodies

- Scoping report published between 11 July 2014.⁵⁸
- 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.

Hate Crime

- Final report published on 7 December 2021.⁵⁹

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.

57 (2017) LC 371.

58 (2014) LC 351.

59 (2021) LC 402.

- 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.

Electoral Law

- Report published on 16 March 2020.⁶⁰

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.

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.

⁶⁰ (2020) LC 389.

Intestacy and Family Provisions Claims on Death (Cohabitants)

- Final report and draft Inheritance (Cohabitants) Bill published on 14 December 2011.⁶¹
- 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. The Government is still considering the recommendations.

Kidnapping

- Final report published on 20 November 2014.⁶²

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*.⁶³

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.

61 (2011) LC 331.

62 Kidnapping and related Offences (2014) LC 355.

63 [2012] EWHC 1647 (Admin); [2012] 2 Cr App R 23.

Matrimonial Property, Needs and Agreements

- Final report and draft Bill published on 27 February 2014.⁶⁴
- 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 non-matrimonial 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 to 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.

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.

The Government is considering the Law Commission’s recommendations on a financial tool for separating couples and on qualifying nuptial agreements as part of a wider consideration of family law and will respond in due course. The Commission is also assisting 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. This is a necessary step towards developing a formula to generate a range of outcomes for financial provision in divorce cases.

Misconduct in Public Office

- Final report published on 4 December 2020.⁶⁵

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.

⁶⁴ (2014) LC 343.

⁶⁵ (2020) LC 397.

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.

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

- Scoping report and draft Bill published on 3 November 2015.⁶⁶

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 2020⁶⁷ and on 21 July 2020.⁶⁸

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.

66 2015) LC 361.

67 (2020) LC 387.

68 (2020) LC 392, (2020) LC 393, and (2020) LC 394.

In January 2021, the Secretary of State for Housing, Communities and Local Government indicated that it was the Government’s intention to proceed with reforms that were based on some of the options set out in our January 2020 report, and recommendations set out in our July 2020 report on enfranchisement.⁶⁹ Government is continuing its work considering the remainder of our recommendations and we look forward to its response in respect of them. In March 2021, the Minister for Housing and Local Government in the Welsh Government indicated her “support [for] the approach set out by the Law Commission recommendations” and that it was her intention to “[seek] the UK Government’s agreement that ... officials work together to explore a joint approach to legislation enacting the Law Commission’s recommendations”.⁷⁰

Furthermore, in the background briefing notes accompanying the 2022 Queen’s Speech,⁷¹ the Government indicated that it remains committed to a number of areas of reform, including “making it easier and cheaper for [leaseholders] to extend their lease or buy their freehold, and simpler and quicker to take control of the management of their building”, and “delivering a reformed commonhold system”.

For further details about our work, see pages 27, 28 and 28.

Rights to Light

- Final report and draft Bill published on 4 December 2014.⁷²

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*).⁷³
- 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.

69 For further details, see <https://questions-statements.parliament.uk/written-statements/detail/2021-01-11/hcws695>.

70 As the Minister’s statement was made in the light of a forthcoming election, the Minister highlighted that the statement could not “fetter the decision making of any future Senedd”. For further details of the statement, see <https://senedd.wales/media/lbylpoz/n/210317-jj-written-statement-next-steps-on-leasehold-reform-english.docx>.

71 <https://www.gov.uk/government/publications/queens-speech-2022-background-briefing-notes>.

72 (2014) LC 356.

73 (2014) UKSC 13.

In his July 2018 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.⁷⁴

Search Warrants

- Final report published on 7 October 2020.⁷⁵

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.

Termination of Tenancies for Tenant Default

- Final report published on 31 October 2006.⁷⁶

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.

In March 2019, the Housing, Communities and Local Government Select Committee recommended that the Government implement our recommendations.⁷⁷ In response, the Government has asked us to update our report.⁷⁸ Work on that has been undertaken during the reporting year.

74 Implementation report (July 2018), para 42, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730404/implementation-of-law-commission-recommendations-report-2017-2018.pdf

75 (2020) LC 369.

76 (2006) LC 303.

77 Housing, Communities and Local Government Committee, Leasehold Reform, Twelfth Report of Session 2017–19 (March 2019) HC1468, para 185, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/1468/1468.pdf>.

78 Government response to the Housing, Communities and Local Government Select Committee report on Leasehold Reform (July 2019) CP 99, para 85, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814334/CCS0519270992-001_Gov_Response_on_Leasehold_Reform_Web_Accessible.pdf.

The High Court's Jurisdiction in Relation to Criminal Proceedings

- Report and draft Bill published on 27 July 2010.⁷⁹
- Holding response received from Government on 13 March 2015.⁸⁰

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 2016.⁸¹
- 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.

79 (2010) LC 324.

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

81 (2016) LC 364 (two volumes).

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.

In the case of Northern Ireland, we have been delighted to note that the Law Commission there has been re-established and we have already held fruitful discussions with the Chair and secretariat about how we can work together, both in relation to individual projects and at a more corporate level.

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 2020-21, 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”,⁸² 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.

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.⁸³

Making recommendations for reform

We set out our final recommendations in a report. If implementation of those recommendations involves primary legislation, the report will often 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.

⁸² Law Commissions Act 1965, s 3(1).

⁸³ <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 2021–22, six projects were referred to us by the Government:

- Contempt of Court – to review the law on contempt of court and consider reform to improve its effectiveness, consistency, and coherence (see page 50).
- Evidence in Sexual Offence Prosecutions – to examine the trial process and to consider the law, guidance and practice relating to the use of evidence in prosecutions of sexual offences (see page 23).
- Review of the Arbitration Act 1996 – to review the Act and ensure it is still fit for purpose now that it is 25 years old. This project was referred to us by the MoJ (see page 15).
- Conflict of laws and emerging technology - to set out the current rules on private international law as they may apply in the digital context and, if appropriate, make recommendations for reform to ensure that the law in this area remains relevant and up to date. This project was referred to us by the MoJ. We intend to start work on this in the second half of 2022.⁸⁴
- Decentralised autonomous organisations (“DAOs”) - to explore and describe the current treatment of DAOs under the law of England and Wales and identify options for how they should be treated in law in the future in a way which would clarify their status. This project was referred to us by BEIS. We intend to start work on this in the second half of 2022.⁸⁵
- Remote Driving – an issues paper considering the need and options for regulating remote driving on public roads (see page 37).

⁸⁴ For further details, see <https://www.lawcom.gov.uk/project/conflict-of-laws-and-emerging-technology/>

⁸⁵ For further details, see <https://www.lawcom.gov.uk/project/decentralised-autonomous-organisations-daos/>

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 its form.

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 increases its availability, 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 is 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. It may be that there are opportunities to reinvigorate this work in light of the UK's exit from the EU. Now the UK has control of all the relevant legislation, there are opportunities to bring greater coherence to the areas of domestic legislation most affected by leaving the EU. We recognise that individual government departments will already have identified specific high priority areas in need of reform.

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 are signs that this is changing, with the implementation of the Sentencing Code, a new project on Immigration consolidation and the 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.

In November 2018, we published our final report on The Sentencing Code. In it we recommended a major consolidation of the legislation which governs sentencing procedure, and included two draft Bills, one of which contained the Sentencing Code and the other of which contained proposed pre-consolidation amendments.

The law on sentencing affects all criminal cases and is applied in hundreds of thousands of trials and thousands of appeals each year. Before the coming into force of the Sentencing Code, it was spread across a vast number of statutes. The law in this area is frequently amended and amendments are frequently brought into force at different times for different cases. The result was that there were multiple versions of the law in force and it was difficult to identify which should apply to any given case. This made it difficult, if not impossible at times, for practitioners and the courts to understand what the relevant law of sentencing procedure actually was in any given case. This led to delays, costly appeals and unlawful sentences.

The Secretary of State for Justice accepted the principal recommendation of the report in May 2019. The Sentencing (Pre-consolidation Amendments) Act received Royal Assent on 8 June 2020. This is a short, technical Act that facilitated the consolidation process and the “clean sweep.” The Sentencing Act 2020, containing the Sentencing Code, received Royal Assent on 22 October 2020 and the Code came into force on 1 December 2020. The Code has been widely welcomed by practitioners and we estimate that it will save millions over the next decade by avoiding unnecessary appeals and reducing delays in sentencing clogging up the court system.

The Windrush Lessons Learned Independent Review recommended that, building on its review of the Immigration Rules, the Law Commission should consolidate immigration legislation.

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. The project is being funded by the Home Office and work on it began in January 2022.

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*.⁸⁶

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.

Implementation

Crucial to the implementation of our consolidation and statute law repeals Bills in Westminster is a dedicated Parliamentary procedure (see page 42 for more information). The Bill is introduced into the House of Lords and, after Lords 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 (see page 10).

86 Programme to improve the accessibility of Welsh law (gov.wales)

The Law Commission and Government

Government response to Law Commission reports

In March 2010 we agreed a statutory Protocol⁸⁷ 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 2018⁸⁸ covering the period 12 January 2017 to 30 July 2018. The next report is being drafted at the time of writing.

The Law Commission and the Welsh Government

The Wales Act 2014 provides for a protocol⁸⁹ 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 2022.⁹⁰

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

88 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730404/implementation-of-law-commission-recommendations-report-2017-2018.pdf

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

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

Informing debate and scrutiny

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.

On 15 September 2021, Professor Nick Hopkins gave oral evidence to the House of Lords Special Public Bills Committee on the Charities Bill. The Bill, which was enacted as the Charities Act 2022, was introduced under the Special Procedure for Law Commission Bills and implemented the majority of the Law Commission's recommendations in its Report on Technical Issues in Charities Law.

On 23 November 2021, Professor Penney Lewis and Dr Nicholas Hoggard provided oral evidence to the House of Commons Petitions Committee on online abuse in relation to the recommendations of the Commission's Modernising Communications Offences report and our ongoing work on Hate Crime Laws.

On 1 December 2021, Professor Penney Lewis provided oral evidence to the House of Commons Home Affairs Committee on the Commission's project on evidence in sexual offences.

On 2 February 2022, Professor Nick Hopkins gave oral evidence to the Women and Equalities Committee for its inquiry into the rights of cohabiting partners, answering questions on the Law Commission's reports on the financial consequences for cohabitants when their relationship ends by separation or death, and its current review of weddings law.

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.⁹¹

External Relations

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.

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

Communications

Since 1965, we have changed the lives of many people by reforming the law for the better. Underpinning this is the need to communicate effectively to enable greater public engagement in our consultations, create awareness of what we do amongst government departments and build momentum behind our recommendations for reform.

The Commission's communications offering is structured on the industry best practice – the Government Communications Service Modern Communications Operating Model (MCOM).

We continue to reach wide audiences through our campaigning and marketing channels. During the reporting period, there were over half a million (508,000) page views on our website. Our Twitter account has grown and now reaches more than 21,300 followers (an increase from 19,500 in the previous year). Over 700,000 tweet impressions were generated over the last year.

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. For example, for the launch of our final report on automated vehicles, we secured coverage across almost all leading national newspapers, as well as over 100 articles across local and trade press.

We continue to implement our internal communications strategy, leveraging on a modern, new intranet to ensure that staff are kept updated on the key messages both within the Law Commission and MoJ. We aim for this strategy to bring the organisation in line with internal communications best practice.

Education and engagement

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 practitioners from across Britain and the world.

Much of our engagement has been virtual, but that has enabled us to reach out more widely than perhaps has been the case in the past. We held a successful video-meeting with sister Agencies in Australia, New Zealand and Scotland designed to highlight areas of mutual interest, both at individual project level and more corporately. Follow-up sessions are currently being organised. Of course, we have been much less able to host international delegations because of the pandemic restrictions, however, we hope to see a gradual return to in-person meetings, including our previous engagement with the Commonwealth Association of Law Reform Agencies and the Institute of Advanced Legal Studies, both of whom arranged annual visits from international law reform agencies.

In terms of reaching new audiences, we were also delighted to host, for the first time, an online session for potential new Research Assistants. This was over and above the usual outreach activity we undertake with individual universities. It was attended by over 1000 people and can also be viewed on our website. It is another positive example of how we can make use of technology to reach new audiences.

Speaking on law reform

As an outward facing organisation the Commission's Chair, Commissioners and staff have been active speaking at many different events that have taken place virtually due to the COVID-19 pandemic. We look forward to hopefully returning to more physical events over the following 12 months.

Over 2021–22, this has included:

- 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 currently before Parliament.
- British Blockchain Association, International Conference (Prof Sarah Green).
- Annual Heilbron Lecture (Prof Sarah Green)
- Lexology – Digital disputes and decentralised justice: the possible v the practical in arbitration (Prof Sarah Green).
- Presenting to G7 Expert Level Working Group on digital assets (Matt Kimber) and electronic trade documents (Laura Burgoyne).
- Panel member on Crypto Regulation, India Law Forum, 82nd SKOCH Summit (Matt Kimber).
- Presenting at Paris Arbitration Week (Nathan Tamblyn).
- Presenting at Lincoln's Inn event celebrating the Arbitration Act 1996 (Prof Sarah Green)
- Presenting at LawtechUK smart contracts event "Contracts, just smarter" (Daniella Lupini).
- Professor Nick Hopkins presented the Law Commission's recommendations on the reform of commonhold at meetings of the Commonhold Council, which was established to advise the government on the implementation of a reformed commonhold regime and chaired by Lord Greenhalgh.
- Professor Nick Hopkins and Spencer Clarke spoke about the England and Wales and Scottish Law Commissions' consultation paper on surrogacy at an event held by the Surrogacy Network.
- Professor Nick Hopkins spoke about the Law Commission's work on Weddings at the Resolution National Conference;
- Elizabeth Welch and Professor Rebecca Probert spoke about our work on Weddings at a monthly CPD session of the Association of Independent Celebrants and in a webinar, "Weddings law reform – a discussion", hosted by Anthony Gold.
- Nicholas Paines QC gave interviews on BBC Radio 4's Law in Action and Times Radio on the Commission's Coal Tip Safety project.
- Sir Nicholas Green and Nicholas Paines QC gave presentations at the annual Legal Wales Conference on the Law Commission's work in Wales.
- Nicholas Paines QC, accompanied by his Scottish counterpart and the project team, presented the Law Commissions' recommendations regarding Automated Vehicles at two sessions of the Connected and Automated Mobility (CAM) All-Party Parliamentary Group.

Social responsibility

Every year a team, made up of our legal and other staff, join members of the judiciary and teams from many of London's law firms and sets of chambers in the annual London Legal Walk. We were delighted that the event returned in October 2021 and a significant number of staff from the Commission participated. In total, our staff raised £1,587 for the London Legal Support Trust, which organises the event. The funds go to support free legal advice agencies in and around London, including Law Centres and pro bono advice surgeries.

Diversity and inclusion

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

In July 2021 we recruited a Diversity and Inclusion Coordinator to oversee and support the delivery of our Diversity and Inclusion Strategy, published in June 2021. The strategy sets out realistic and measurable actions that we are taking to make progress as an organisation. The Diversity and Inclusion Coordinator has played an active role in encouraging involvement from staff at the Law Commission to deliver the strategy objectives, including organising a Diversity and Inclusion Group to allow for a greater range of input into our strategy. As part of our ongoing focus on learning and development, staff have undertaken training including gendered language workshops, imposter syndrome sessions, and a panel discussion for International Women's Day. We will continue to grow our programme of events promoting diversity and inclusion.

As part of the strategy, in November 2021 we relaunched the Commissioner Work Shadowing Scheme, expanding it to cover lawyer roles. 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 nine of the 18 applicants' opportunities to talk with lawyers or Commissioners during this reporting year. Alongside this, we have continued our engagement with legal organisations and universities to raise awareness of research assistant opportunities at the Commission, albeit adapting to a virtual environment. We specifically target universities with a higher proportion of students from those communities under-represented in the law. Taken together, this means that we now undertake outreach work in all our legal roles.

As part of our research assistant outreach work, ahead of our 2022/23 research assistant recruitment campaign we introduced a situational judgement test, to ensure the recruitment process is fair and transparent. We are yet to find out the impact of this, however, the outcome will be analysed to ensure the tests predict performance with certainty to ensure it is as beneficial as possible.

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. Therefore, we have worked with a number of organisations to offer internships to those who are traditionally under-represented in the law. This may help the future pipeline of lawyers and researchers but, more than that, we believe it is part of our responsibility as a public body to offer such opportunities, regardless of the potential future benefit to our organisation. 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 and have therefore commenced work designed to strengthen our approach to Equality Impact Assessments, which consider the impact of our proposals and recommendations on different communities. We have held sessions to ensure our staff have greater awareness of the diverse range of communities we serve, including those affected by the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

When it comes to recruitment, we encourage applications from all suitably qualified applicants irrespective of their background. We have shown our commitment to becoming disability confident by signing up to the Government's Disability Confident Scheme (DCS) making us a Disability Confident Committed employer (Level 1). We will continue work in this area to progress up the levels. All candidates are also consulted about reasonable adjustments required, to ensure a fair and transparent process for all.

We also recognise that there is always more to be done. We have several ongoing actions for 2022/23, all of which are aimed at improving diversity and inclusion at the Commission; further details can be found in our published strategy.⁹² We have also launched work to conduct a diversity and inclusion audit, to assess our current strategy against best practice and demonstrate our commitment to this area.

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 have been jointly undertaken with the Scottish Law Commission. The Law Commissions work closely together, including reciprocal attendance at each other's Peer Review meetings, at which draft publications are reviewed.

As previously mentioned, we have been delighted to note that the Northern Ireland Law Commission has been re-established. We have already held fruitful discussions with the Chair and secretariat about how we can work together, both in relation to individual projects and at a more corporate level.

92 <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2021/06/Diversity-and-Inclusion-strategy-final-2.pdf>

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 2021-22 was £4.2m.

As previously mentioned, this figure is based on the new Financial Model. To some extent 2021-22 was a transitional year given the previous financial arrangements were made up of a significant amount of income from other Whitehall Departments. In 2022-23, we envisage a slight increase in funding to the £4.4m agreed in the new Model. We will continue to receive funding from Whitehall Departments for individual projects and will agree with the MoJ what funds we are able to return over and above the actual running costs of the Commission, which equated to £4.9m in this reporting year (excluding the accommodation recharge met by MoJ detailed in the financial appendix). At the end of 2021-22, we were able to return £1.5m by way of a planned underspend.

Staff at the Commission

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

In 2021-22, there were 69 people working at the Law Commission (full-time equivalent: 64.5 as at 31 March 2022).⁹³

Figure 5.1 People working at the Commission (full-time equivalent, at 31 March 2022)

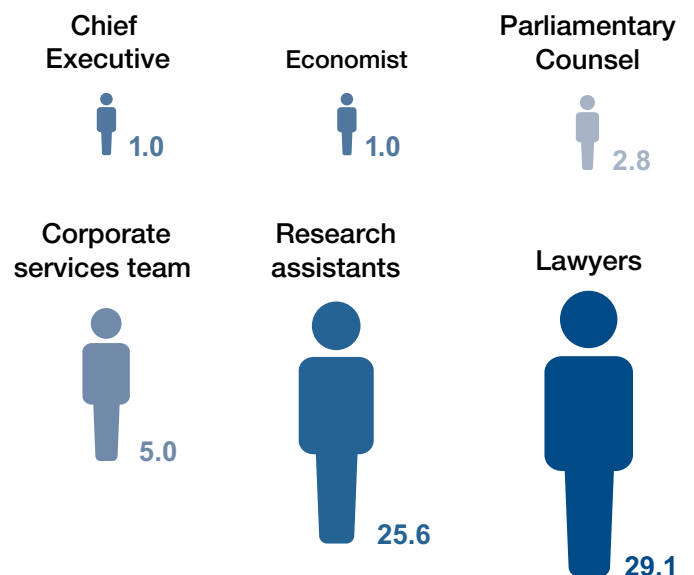
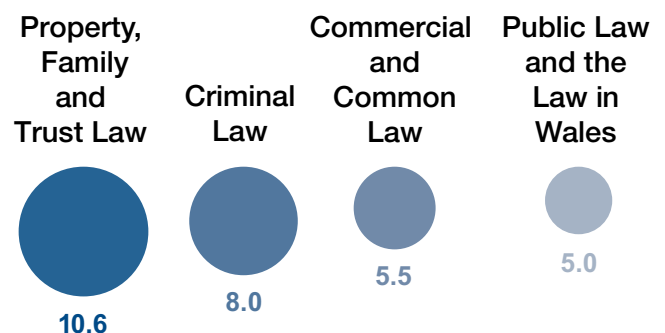


Figure 5.2 Lawyers (full-time equivalent, at 31 March 2022)



93 Excluding the Chair, Chair's Clerk and Commissioners.

Chief Executive

Our Chief Executive is 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 Executive is the Commission's Budget Holder. He is 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 Executive provides 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.

Legal staff

Our lawyers 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 Executive 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 Executive 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 Executive.

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 2021, we recruited 19 new research assistants and the 2022 research assistant campaign is now complete, with the new recruits due to start in September 2022.

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.

Senior Management Team

Our Senior Management Team is formed of the Chief Executive, legal team heads, head of corporate services, Parliamentary Counsel and the economist. They meet twice a month and take decisions on the day-to-day running of the Commission as well as reviewing all programme and project planning relating to our law reform projects.

We have increased transparency by communicating Senior Management Team decisions not only to all staff but also via formal papers to the Board.

Working at the Commission

Staff engagement

The results of the annual People Survey show the Law Commission with an engagement index of 83% for 2021. This represented 4% point increase from the previous year. We are pleased with the strength of these results, but several areas have been highlighted where we will want to make improvements. A People Survey Working Group, comprised of staff from across the Commission, will lead this work.

Groups and committees

To help create networks across peer groups, the Commission created cohorts for each role in 2017. This has provided colleagues with the opportunity to regularly meet, input on corporate initiatives and progressively improve their skills through sharing advice on training and development as well as providing a coaching role to support each other.

In June 2019, we held the inaugural meeting of our Learning and Development (L&D) committee formed of staff from each of the teams in the Commission. The committee has been tasked with identifying and promoting the sharing of best practice in relation to L&D opportunities in the Commission, ensuring equal access to

opportunities across the Commission's teams and keeping the L&D policy up to date.

We are also committed to supporting the mental wellbeing of our staff. In order to aid this, in October 2018 we set up a network of mental health allies in the Commission. Formed of volunteers from across the Commission, the network provides a first point of contact for anyone who is experiencing mental health difficulty and would like to talk to someone about what they can do about it. The network also helps to organise events for the Commission focussing on topics such as mindfulness.

In September 2018, the Law Commission formed a social committee following feedback from the people survey. The social committee helps to organise events that bring together the staff of the Commission. The events, such as Law Commission potluck lunches, have been a huge success and regularly receive positive feedback from across the organisation.

The work of the Mental Health Allies and Social Committee has been incredibly valuable in supporting staff as the Law Commission moved to remote working in response to the COVID-19 outbreak.

Investing in our people

The Law Commission is keen to invest in the continuing professional development of all our staff. In addition to providing access to formal training, we look for other informal development opportunities wherever possible. Clearly, such opportunities have been limited in the last year, nevertheless we have run a several lunch and learn sessions to allow staff to hear about our Commissioners experiences, careers and outside interests. In addition to this we have run a session focussed on the legal profession opportunities with the Government Legal Department Traineeship.

Whistleblowing

All civil servants are bound by the Civil Service Code, which sets out the core values – integrity, honesty, objectivity and impartiality – expected of all MoJ employees.

Staff are encouraged to raise immediately any concerns they have about wrongdoing or breaches of the Civil Service Code by following the whistleblowing procedure. We follow the MoJ whistleblowing procedure, which is made available to all staff via the Law Commission intranet.

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 policy⁹⁴ 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 2021-22 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.

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 2021-22, most of our staff have been working remotely due to COVID-19. In turn, the Law Commission's electricity and gas usage in Petty France over this period has drastically reduced. Similarly, our paper usage has been minimal. All of this is beneficial for the environment.

Whilst we expect consumption of gas, electricity and paper usage to increase at Petty France as staff gradually return to the office, we are not expecting to use the same levels as pre-COVID-19 due to higher levels of flexible working within our workforce.

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



Nicholas Green

**Sir Nicholas Green,
Chair**



Sarah Green

Professor Sarah Green



N.P. Hopkins

Professor Nick Hopkins



Penney Lewis

Professor Penney Lewis



Nicholas Paines

Nicholas Paines QC



Phillip Golding

**Phillip Golding,
Chief Executive**

Appendices

Appendix A:

Implementation status of Law Commission law reform reports

LC No	Title	Status	Related Measures
2022			
406	Regulating Coal Tip Safety	Pending	
405	Electronic Trade Documents Final Report	Pending	
404	Automated Vehicles Joint Report	Pending	
2021			
403	Devolved Tribunals in Wales Report	Accepted	
402	Hate crime laws: Final report	Pending	
401	Smart legal contracts: advice to Government	Pending	
399	Modernising Communications Offences	Accepted in part	
398	Consumer sales contracts: transfer of ownership	Pending	
2020			
397	Misconduct in Public Office	Pending	
396	Search Warrants	Pending	
395	Protection of Official Data	Accepted 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	
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

LC No	Title	Status	Related Measures
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
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	

LC No	Title	Status	Related Measures
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	
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	

LC No	Title	Status	Related Measures
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/Rhentu 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	
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

LC No	Title	Status	Related Measures
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	
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

LC No	Title	Status	Related Measures
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	
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	

LC No	Title	Status	Related Measures
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	
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

LC No	Title	Status	Related Measures
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
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 <i>Kleinwort Benson v Lincoln City Council</i> [1999] 2 AC 349

LC No	Title	Status	Related Measures
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)
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)

LC No	Title	Status	Related Measures
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)
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

LC No	Title	Status	Related Measures
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)
1987			
168	Private International Law: Law of Domicile (SLC 107) (Cm 200)	Rejected	
166	Transfer of Land: The Rule in <i>Bain v Fothergill</i> (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)

LC No	Title	Status	Related Measures
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)
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	

LC No	Title	Status	Related Measures
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)
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	

LC No	Title	Status	Related Measures
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	
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)

LC No	Title	Status	Related Measures
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	
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 Dependents) 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)

LC No	Title	Status	Related Measures
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)
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)

LC No	Title	Status	Related Measures
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)
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)

LC No	Title	Status	Related Measures
	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.

	2020–2021 (April–March)		2021–2022 (April–March)	
	£000	£000	£000	£000
Commissioner salaries (including ERNIC) ⁹⁵	559.7		559.6	
Staff costs ⁹⁶	3757.4		4125.9	
		4317.1		4685.5
Research and consultancy	8.1		1.4	
Communications (printing and publishing, translation, media subscriptions, publicity and advertising)	197.2		147.1	
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) ⁹⁷	671.8		720.6	
Travel and subsistence (includes non-staff)	6.5		-0.5	
Stationery and office supplies	13.3		38.4	
Recruitment				
Training and professional bodies membership				
Recognition and reward scheme awards				
Childcare vouchers				
Health and Safety equipment/services				
Hospitality	0.2		0.0	
		897.1		907.0
TOTAL		5630.7⁹⁸		5592.5

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

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

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

98 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 2021–22 and 2022–23

2021–22

Target	Outcome
To publish reports on:	
Weddings	Carried over to 2022-23
Hate Crime	Report published 7 December 2021
Confiscation of the Proceeds of Crime	Carried over to 2022-23 to include draft Bill
Intimate Image Abuse	Report published 7 July 2022
Corporate Criminal Liability	Options paper published 10 June 2022
Review of the Communications Offences	Report published July 2021
Coal Tip Safety in Wales	23 March 2022
Automated Vehicles	25 January 2022
To publish consultations on:	
Corporate Criminal Liability	Discussion paper published 9 June 2021
Coal Tip Safety in Wales	9 June 2021
Automated Vehicles	18 December 2020
Devolved Tribunals in Wales	16 December 2020

2022–23

Target	
To publish reports on:	To publish consultations on:
Weddings	Evidence in sexual offences
Surrogacy	Contempt of court
Confiscation of the Proceeds of Crime	

