Law Commission

Reforming the law

Fourteenth Programme of Law Reform

HC 1256

Law Com No 421

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Fourteenth Programme of Law Reform

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The Law Commission

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

The Law Commissioners are:

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Professor Alison Young

The terms of this document were agreed on 16 April 2025, when the Law Commissioners were The Right Honourable Lord Justice Fraser (Chair), Professor Nicholas Hopkins, Professor Penney Lewis and Professor Alison Young.

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The text of this document is available on the Law Commission's website at http://www.lawcom.gov.uk.

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Fourteenth Programme of Law Reform

To The Right Honourable Shabana Mahmood MP, Lord Chancellor and Secretary of State for Justice

Chapter 1: Introduction

BACKGROUND

1.1 The Law Commission was established by the Law Commissions Act 1965 for the purpose of promoting the reform of the law. This year therefore represents the 60th anniversary of its establishment.

1.2 The Law Commission is required by statute to receive and consider proposals for law reform and to prepare and submit to the Lord Chancellor, from time to time, programmes for the examination of different branches of the law with a view to reform.[1]

1.3 We seek the Lord Chancellor's approval for the projects listed in Chapter 2 of this document as the Fourteenth Programme, in accordance with sections 3(1)(b) and 3(2) of the 1965 Act. The Thirteenth Programme was laid before Parliament as long ago as December 2017,[2] and there has been a considerable hiatus in finalising the Fourteenth Programme.

CONSULTATION

1.4 The Law Commission consults widely when drawing up programmes of law reform, in order to ensure that our work is as relevant, up-to-date and informed as possible. Our consultation for the Fourteenth Programme was launched on 24 March 2021, and ran until 31 July 2021.

1.5 Our consultation asked which areas of the law need to be reformed, and explained the criteria upon which we select projects. As well as asking that open question, we suggested that there might be some common themes which at that time ran across potential law reform projects.[3]

1.6 We also published a short document setting out some areas of the law that we thought at that time might benefit from reform. These potential projects were identified

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1 Law Commissions Act 1965, s 3(1)(a) and (b).

2 Thirteenth Programme of Law Reform (2017) Law Com No 377, which can be found at https://webarchive.nationalarchives.gov.uk/ukgwa/20240605042804/https://lawcom.gov.uk/document/programmes-of-law-reform/.

3 The themes we included were emerging technology, leaving the European Union, the environment, legal resilience, and simplification.

following discussions held both internally within the Law Commission and externally with stakeholders, and consultees were invited to comment on their merits. We suggested nineteen possible areas of work:

(1) Arbitration Act 1996 and trust law arbitration

(2) Automated decision-making

(3) Commercial leasehold

(4) Conflict of laws and emerging technology

(5) Contempt of Court

(6) Data sharing and information law

(7) Deeds and variation of contracts

(8) Family law

(9) Home Buying

(10) Justice in the digital age

(11) Law in Wales

(12) Legal protection for our environment

(13) Ownerless land

(14) Peer to peer sales

(15) Product liability and emerging technology

(16) Review of Appeal Powers in the Criminal Courts

(17) Technological advances and procedural efficiency in the Criminal Courts

(18) The search, production and seizure of electronic material

(19) The UK statute book

1.7 A large number of the consultation responses that we received commented upon these suggested projects. Five of them – Commercial Leasehold, Deeds, Ownerless Land, Product Liability, Public Sector Automated Decision Making – have been included in the final Fourteenth Programme. A further six – Review of the Arbitration Act, Business Tenancies: the right to renew (an aspect of Commercial Leasehold), Conflict of Laws and Emerging Technology, Financial Remedies on Divorce (an aspect of Family Law), Contempt of Court, and Review of Appeal Powers in the Criminal Courts – have each been referred to the Law Commission by way of ad hoc Ministerial References during the period between our consultation and publication of this Programme.

1.8 Substantial efforts were employed to raise awareness of the Fourteenth Programme consultation. Details were distributed to many stakeholders, including professional associations, legal academic groups, public sector organisations, membership and umbrella organisations in the private, public and third sectors, and individuals. The Commission publicised the details more widely through articles in the legal and third sector media, as well as via our website and social media accounts.

1.9 During the consultation period, the Chair, Commissioners, Chief Executive and staff met a wide range of individuals and groups who wanted to comment upon our project suggestions, or to suggest ideas of their own. We also met officials across Whitehall to gauge interest in suggested law reform projects.

1.10 In total, we received around 500 submissions. There were nearly 200 different topics suggested, with some attracting support from only one or two consultees, whereas others received support from numerous people.

1.11 In February 2023, we made the decision to pause the development of the Fourteenth Programme. This was due to the Government's focus on its priorities for the remainder of the Parliamentary term, coupled with the Law Commission being fully engaged on ongoing projects. After the General Election in July 2024, we resumed work on finalising this Programme.

1.12 The Law Commission would like to thank everyone who contributed to the Fourteenth Programme consultation. We are very grateful for the time and effort that our stakeholders put into advancing the case for law reform. We were delighted at the quality of the submissions and the breadth of the ideas put forward by consultees, and we believe that this has allowed us to develop a diverse, relevant and forward-looking Programme of Law Reform.

WALES

1.13 The Law Commission covers the jurisdiction of England and Wales. Law reform in Wales has always been an essential part of our work, but its nature has evolved as the devolutionary settlement in the UK has matured. We remain committed to meeting the law reform needs of both England and Wales in this evolving constitutional context.

1.14 The Wales Act 2014 amended the Law Commissions Act 1965 to take account of Welsh devolution, allowing Welsh Ministers to refer law reform projects directly to the Commission for the first time. Our work for Welsh Ministers is now governed by a protocol, signed in Cardiff by Sir David (now Lord) Lloyd Jones, our then Chair, and the First Minister of Wales, and presented to the National Assembly for Wales in July 2015.[4]

1.15 The Law Commission's relationship with the Welsh Government is now well established. We operate under a Welsh language policy and routinely publish appropriate consultation papers and reports bilingually. One of our Commissioners, Professor Alison Young, has special responsibility for the law in Wales. The Law Commission regularly convenes its Wales Advisory Committee, whose members are

[4] Protocol between the Welsh Ministers and the Law Commission (2015), Gen-LD10290.

the leading voices on the law in Wales, drawn from legal practice, the judiciary, academia, and the third sector. Their proceedings are also held both in English and Welsh. We are grateful to them for giving their time and experience to help support our work in Wales.

1.16 The Law Commission is currently engaged on an ongoing project on Agricultural Law in Wales. The Welsh Government has indicated that it would prefer to consider what Welsh work might follow on from that project separately from this Programme. Our immediate future work on reforming the law of Wales will therefore be referred to us by the Welsh Government using its powers under section 3(1)(ea) of the Law Commissions Act 1965,[5] rather than forming part of the Fourteenth Programme. The Commission remains committed to taking on a new Wales-only project on completion of our work on Agricultural Law in Wales, to be conducted alongside the main Programme.

THE LAW COMMISSION'S PROJECT SELECTION CRITERIA

1.17 This is the fourth Programme of Law Reform to be developed under the terms of the existing Protocol between the Lord Chancellor and the Law Commission, which was given statutory backing by the Law Commission Act 2009,[6] and the second under the equivalent Protocol in Wales.[7] The Protocols explain how Government and the Law Commission work together, and establish the procedure for creating a Programme of Law Reform.

1.18 When considering whether to include a project in the Fourteenth Programme, the Law Commission assessed each proposal against the following selection criteria:

(1) the extent to which the law in that area is unsatisfactory;

(2) the potential benefits that would flow from reform;

(3) whether the independent, non-political Commission is the most suitable body to conduct a review in that area of the law;

(4) whether the Commissioners and staff have or have access to the relevant experience;

(5) whether project-specific funding is available (if relevant);

(6) the degree of departmental support;

(7) the priority that should attach to the project when compared with other ongoing or potential projects;

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5 Inserted by the Wales Act 2014, ss 25(2), 29(2)(c).

6 Protocol between the Lord Chancellor (on behalf of the Government) and the Law Commission (2010) Law Com No 321, HC 499.

7 Protocol between the Welsh Ministers and the Law Commission (2015), Gen-LD10290.

(8) whether there is a Scottish or Northern Irish dimension to the project that would need the involvement of the Scottish and/or Northern Ireland Law Commissions; and

(9) whether there is a Welsh dimension that would need the involvement of the Welsh Government.

CONFIRMED PROJECTS FOR THE FOURTEENTH PROGRAMME

1.19 Having applied the criteria set out above, Commissioners have selected the following ten projects for the Fourteenth Programme of Law Reform.

Name of project	Policy responsibility
Agricultural tenancies	Department for Environment, Food and Rural Affairs
Commercial leasehold	Ministry of Housing, Communities and Local Government
Consent in the criminal law	Ministry of Justice
Deeds	Ministry of Justice
The defence of insanity	Ministry of Justice
Desecration of a corpse	Ministry of Justice
Management of housing estates	Ministry of Housing, Communities and Local Government
Product liability	Department of Business and Trade
Public sector automated decision making	Ministry of Justice
Ownerless land	Ministry of Housing, Communities and Local Government

1.20 Each of these projects is explained in more detail in Chapter 2.

1.21 The Law Commission is pleased to have arrived at such a broad range of impactful projects, which have the potential to bring significant benefits to England and Wales. These projects are ideally suited to the Law Commission in fulfilling its statutory function to ensure the law is fair, modern, simple and cost effective. They will enable the Law Commission to continue to deliver reforms which make a real difference to

people in England and Wales. As has been identified by independent economic research, our work to fulfil our statutory duty both generates significant economic gains (for example, efficiency gains) and has a range of other positive impacts, including promoting justice, the rule of law, and technology driven growth.[8]

1.22 This Programme represents a significant body of work for the Law Commission over the upcoming period. Nevertheless, the Commission expects also to take on further projects by Ministerial Reference under section 3(1) of the Law Commissions Act 1965 over the course of the Fourteenth Programme as new law reform priorities emerge. The Law Commission will also continue its work on the 17 different projects that are currently underway.

ONGOING LAW REFORM WORK AND FURTHER PROJECTS

1.23 Not all of the projects included in a programme of law reform are completed during the course of that programme. We set out for information in Chapter 3 details of projects from the Thirteenth Programme of Law Reform that are either already being conducted by the Commission, and which will be completed alongside Fourteenth Programme work, or which remain important projects for the Commission to work on in the future.[9]

1.24 We also set out in Chapter 3 details of ongoing projects which the Commission accepted as Ministerial References, including several – such as Disabled Children's Social Care, Compulsory Purchase, and Co-operative and Community Benefit Societies – which were originally suggested by consultees for the Fourteenth Programme. Furthermore, we discuss in that chapter our project on the law of homicide, which we have accepted as a Ministerial Reference, and which will include consideration of some discrete issues suggested to us by consultees.

1.25 In Chapter 4, we summarise a number of projects which we considered for the Fourteenth Programme of Law Reform, but which we have not been able to take forward in it. We may be able to accept some of these projects as Ministerial References during the course of this Programme, or may consider them for inclusion in a future programme of law reform.

WORKING WITH OTHER LAW COMMISSIONS

1.26 The Law Commission's role covers the law of England and Wales, but not the law of Scotland or the law of Northern Ireland.

1.27 The Commission has close relationships with the Scottish Law Commission, and we will discuss with them the best mechanism for ensuring that, where relevant, the

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8 Value of Law Reform 2019 Report and the 2024 Update, which can be found at https://lawcom.gov.uk/corporate-document/the-value-of-law-reform/ and https://lawcom.gov.uk/corporate-document/value-of-law-reform-update/ respectively.

9 Thirteenth Programme of Law Reform (2017) Law Com No 377, which can be found at https://webarchive.nationalarchives.gov.uk/ukgwa/20240605042804/https://lawcom.gov.uk/document/programmes-of-law-reform/.

position in Scotland is best reflected in any law reform proposals that Parliament might extend to Scotland.

1.28 The Northern Ireland Law Commission is currently non-operational, but we will work with the administration in Northern Ireland as appropriate.

Chapter 2: Fourteenth Programme Projects

INTRODUCTION

2.1 In this chapter, we set out the new projects that comprise our Fourteenth Programme of Law Reform. Some of these projects are already well defined, while the parameters of others will be clarified only after scoping work.

AGRICULTURAL TENANCIES

2.2 A significant portion of the land in England and Wales is dedicated to agriculture, much of which is tenanted. There are two types of agricultural tenancy under the current law:

(1) pre-1995 tenancies, governed by the Agricultural Holdings Act 1986, which generally provide lifetime security of tenure, rent control, and (often) succession rights; and

(2) post-1995 tenancies ("Farm Business Tenancies") governed by the Agricultural Tenancies Act 1995, which do not have any fixed statutory period, succession rights, or rent control.

2.3 We have heard that these regimes may not correctly balance the interests of landowners and tenants and that the lack of security of tenure and often short-term nature of many tenancies is a barrier to investment and the viability of some tenanted farm businesses. We have also been told that the current law may restrict tenant farmers from diversifying and adapting their businesses and benefiting from new opportunities. The current law may therefore hinder economic growth and opportunity for tenant farmers.

2.4 This project will consider whether the existing law properly balances giving tenant farmers sufficient security to encourage investment and maintain viable farm businesses, opportunities for new entrants to access farming opportunities, and the interests and confidence of landlords to let land. This project will also consider whether the law impedes tenant farmers from diversifying their businesses, including to farm in more sustainable ways; whether the law supports a collaborative approach between landlords and tenants; and whether there are technical issues which cause problems in practice. Detailed consideration of reform of the law in this important area is long overdue.

COMMERCIAL LEASEHOLD

2.5 Our current project, Business Tenancies: the Right to Renew, is addressing one aspect of commercial leasehold law, but there are a range of other issues in the commercial leasehold sphere needing review. This project will comprise two sub-projects.

2.6 The first sub-project will focus on commercial leasehold transactions, where we have heard that the law creates barriers for businesses, prevents commercially sound transactions and imposes needless bureaucracy. We will consider reform to two aspects of law that we have heard cause significant problems in practice: (1) issues with the Landlord and Tenant (Covenants) Act 1995 and (2) rights of first refusal under the Landlord and Tenant Act 1987 (in so far as the law relates to commercial premises).

2.7 The second sub-project will be a scoping project, focusing on the law governing the maintenance, repair and upgrading of leased commercial buildings. There is concern that the law in this area is causing confusion and unfairness, and has not kept pace with modern priorities (such as the need to improve the environmental sustainability of buildings or to reinvigorate the high street). As part of this scoping work, we will consider the law relating to dilapidations, service charges, and the interaction between environmental frameworks and commercial leasehold law. Scoping work will enable us to understand the problems that exist and to test which might have a law reform solution.

CONSENT IN THE CRIMINAL LAW

2.8 The absence of consent provides much of the justificatory force both for offences against the person and for many sexual offences. Although the subject of extensive judicial consideration and legislative reform over the last 40 years, the law remains unsettled, incoherent, and unpredictable. Faced with unusual fact patterns, the courts have, for example, struggled to achieve a consistent answer to important and central questions about the effect of deceit on consent. Social attitudes have also continued to evolve, though they rarely pull in one direction, as demonstrated by the differing approaches to consent as a defence taken by some stakeholders in the contexts of body modification on the one hand; and so-called “rough sex” on the other.

2.9 In 1994 and 1995, the Law Commission published two consultation papers on consent and offences against the person.[10] We paused this work citing the lack of any consensus and the sensitivity of issues involved.[11] The time is now right for a thorough review of the law of consent. This would provide the opportunity to place consent on conceptually surer foundations and so to resolve existing inconsistencies, to provide greater predictability, and to modernise the criminal law in England and Wales.

DEEDS

2.10 The current law of deeds is outdated, in part due to technological developments. For example, it is not clear whether current law supports the creation of deeds which are wholly or partly defined by code. It is also necessary to consider the merits and implications of *Mercury Tax Group Ltd) v Her Majesty’s Commissioners of Revenue*

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10 Consent and Offences Against the Person (1994) Law Commission Consultation Paper No 134; Consent in the Criminal Law (1995) Law Commission Consultation Paper No 139.

11 Eighth Programme of Law Reform (2001) Law Com No 274, 44.

and Customs,[12] in which Mr Justice Underhill (as he then was) referred to a document as needing to be "a discrete physical entity (whether in a single version or in a series of counterparts) at the moment of signing". Some stakeholders argue that certain deed requirements, such as witnessing, attestation, and delivery, should be amended, replaced or removed.

2.11 This project will review the law of deeds, including consideration of:

(1) broad issues about the efficacy of deeds, including whether the concept remains fit for purpose;

(2) whether there should be amendments to the existing requirements of deeds, including witnessing, attestation, and delivery; and

(3) whether amendments to the law of deeds are required to ensure that compliance with the requirements of deeds can be facilitated by smart contracts.

2.12 This project will take a holistic approach, and deal with both deeds executed on paper and electronically. It will also ensure that necessary protections for individuals are not lost.

THE DEFENCE OF INSANITY

2.13 This project will consider when a person should not be criminally liable because of a mental condition at the time they committed an alleged offence.

2.14 The Law Commission has addressed this issue before. We published a Discussion Paper on 23 July 2013 with our provisional proposals for reform of the defences of insanity and automatism.[13] However, we did not continue with this work, prioritising instead the logically prior work on unfitness to plead.

2.15 The current rules that govern the insanity defence (also referred to as "insane automatism") date from 1843. They have been widely criticised for a number of reasons:

(1) it is not clear whether the defence of insanity is available in all cases;

(2) the law lags behind psychiatric understanding, and this partly explains why, in practice, the defence is underused, and medical professionals do not apply the correct legal test;

(3) the label of "insane" is outdated as a description of those with mental illness, and simply wrong as regards those who have learning disabilities or learning difficulties, or those with epilepsy; and

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12 *R (Mercury Tax Group Ltd) v Her Majesty's Commissioners of Revenue and Customs* [2008] EWHC 2721 (Admin), [2009] STC 743.

13 A well-known definition of automatism takes it to involve "an involuntary movement of the body or limbs of a person [following] a complete destruction of voluntary control": *Watmore v Jenkins* [1962] 2 QB 572, 587, by Winn J. (quoted in Insanity and Automatism: A Scoping Paper (July 2012)).

(4) the case law on insane and non-insane automatism[14] is incoherent and produces results that may run counter to common-sense.

2.16 The empirical data suggest that the defence of insanity is successfully raised in only a small number of cases. We published a scoping paper in July 2012 in which we asked questions to discover whether the current law causes problems in practice, and if so, the extent of those problems. The responses to that paper informed the Discussion Paper.

DESECRATION OF A CORPSE

2.17 There is not currently an explicit offence of desecration of a dead body in England and Wales. The position is surveyed in an article by Dr Imogen Jones:

> The law capable of applying to such circumstances is primarily constituted of antiquated and vague common law offences, supplemented by statutory provisions dealing with very narrow circumstances (such as organ donation, medical research and coronial jurisdiction).[15]

2.18 The criminal law, as it stands, does not adequately deal with the desecration of a dead body. In some cases, the existing offences (either at common law or in statute) do not capture certain behaviours; in others, the offences are not used to prosecute the behaviour in practice. These concerns relate both to sexual offending, such as intimate image abuse, mutilation, and other non-sexual offending, including a killer's refusal to provide the location of their victim's body.

2.19 Potential gaps in the criminal law identified so far, which this project will address, include:

(1) dismemberment, mutilation or maiming of a corpse;

(2) interference with a corpse which does not amount to mutilation or maiming, such as placing, drawing or writing something on the corpse;

(3) failing to treat a corpse with dignity or respect, including taking, making or sharing images of a dead person which are not intimate or indecent;

(4) intimate image abuse involving a dead person which does not fall within the offence of possession of extreme pornography;[16] and

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[14] As we note in Insanity and Automatism: A Scoping Paper (July 2012): "English case law has drawn a distinction between "insane automatism" (which it classifies as "insanity") and "sane automatism". It has done this by distinguishing between whether the cause of the accused's lack of control was due to an "internal factor" (ie some malfunctioning of the person's body) or an "external factor" (such as a blow to the head).

[15] I Jones, 'A grave offence: corpse desecration and the criminal law' (2017) 37(4) *Legal Studies* 599, 602. Dr Jones is an academic who has written on this issue and made a submission to the Fourteenth Programme consultation.

[16] Criminal Justice and Immigration Act 2008, s 63.

(5) peri-mortem conduct which would be an offence if the victim were alive when it occurred, but the evidence does not establish whether the victim was alive or dead at the time of the conduct.

MANAGEMENT OF HOUSING ESTATES

2.20 It has become common for housing estates to be built where the developer, or an associated management company, retains the roads and common areas of the estate. These estates may involve a mix of freehold and leasehold tenures, and may also contain a mix of residential and business tenancies (such as shops). The houses are then sold on condition that the homeowners will pay a service charge to the developer or management company for their upkeep, and sometimes for the provision of other services.

2.21 We have been told that these management arrangements are sometimes designed to maximise profits for the management company, with homeowners being charged excessively. Under the current law, the residents on housing estates have some powers to challenge excessive fees but have no right to take over the management of their estates.

2.22 This project will consider how residents could be given greater control over the management of their housing estates. The project will examine whether the right to manage ("RTM") regime that benefits leaseholders in blocks of flats could be adapted to apply to housing estates, and any additional or alternative solutions to the problems of estate-management. These may be needed as a consequence of the differences between blocks of flats and housing estates and of the different legal structures (leasehold and freehold) involved. We will review how any new scheme for the management of housing estates would interact with the current law governing the RTM in leasehold flats, and with the recommendations made by the Law Commission in our 2020 RTM Report.

OWNERLESS LAND

2.23 Ownerless land – for example, land that was owned by a company which has dissolved – passes to the Crown. Depending on its location, it may pass to the Duchies of Cornwall or Lancaster. Other land transfers to the Treasury Solicitor as bona vacantia (the Crown's ancient right to "unowned goods"). The Treasury Solicitor has a power of disclaimer. If a freehold is disclaimed, the land reverts ("escheats") to the Crown Estate, as the Crown is presumed to be the ultimate owner of land in England and Wales. The Crown is not liable for this land unless it performs acts of management or control, but there are uncertainties about what that means and it prevents the Crown from engaging with ownerless land.

2.24 Although many plots of land that escheat cause no issues, other land can have significant development potential, or can present significant environmental or safety hazards. We have been informed by stakeholders about blocks of flats, dangerous industrial sites and mines, recycling centres, reservoirs, and city landmarks that have become ownerless.

2.25 The current law is antiquated and confusing. It can provide an obstacle to returning land to profitable use, to remediating environmental and safely problems, and to

development. It can mean that the Crown does not take certain measures in respect of sites. For example, we have heard that these uncertainties prevent the Crown from giving permission to a public body to inspect the property or from fencing a dangerous site. This project will carry out a review of the law of bona vacantia and escheat, both concepts being of considerable age. It will review the Crown's liability shield for ownerless land. We will consider whether some types of ownerless land should pass to a body other than the Crown and review powers of certain parties to obtain vesting orders. The project will also examine the rights of leaseholders where the landlord's title escheats. Alongside these areas of reform, the project will aim to clarify the law, addressing the survival of derivative interests that affect ownerless land and the impact of bona vacantia and escheat on the land registration system.

PRODUCT LIABILITY AND EMERGING TECHNOLOGIES

2.26 The UK's product liability regime, contained in the Consumer Protection Act 1987 ("CPA"), has not kept pace with the rapid development of emerging technologies, including artificial intelligence ("AI") and the increased use of digital products. Emerging technologies pose a range of legal challenges to the existing product liability regime, particularly in relation to the CPA definitions of "product", "defect" and what qualifies as "damage" for the purposes of the CPA. Given that the CPA is a significant bulwark of consumer protection, it is imperative that it is capable of application with respect to technological advances.

2.27 Other international jurisdictions are already working on law reform in this area. For example, the CPA is based on an EU directive that was updated by the EU in 2024. We also recommended a project on this topic in our first consultation paper on Aviation Autonomy, published in February 2024. Given modern technological developments, this project is overdue.

2.28 Issues this project will address include the following:

(1) The question of updating the definition of "product" in the CPA to expressly include software, whether supplied via tangible or intangible medium.

(2) Whether the "long-stop" liability period of ten years should be extended, given that some products arising from emerging technologies can be upgraded iteratively.

(3) Whether the "state of the art" defence should be amended to account for emerging technologies that can be updated iteratively.

(4) Difficulties for claimants in pursuing claims with respect to highly technical and opaque technology, such as AI.

(5) Whether the definitions of "defect" and "damage" in the CPA should be amended to take into account the impact of emerging technologies.

PUBLIC SECTOR AUTOMATED DECISION MAKING

2.29 Automated decision making ("ADM") encompasses decisions made by or for public bodies using algorithmic processes and artificial intelligence. These processes involve

varying degrees of human input and oversight. There is no specific legal framework governing the use of ADM by the state to make decisions affecting the public: public law developed to ensure the accountability of human officials and not automated systems. Fundamental legal questions – such as whether it is lawful to use an ADM system to discharge a particular statutory function – remain unanswered. At the same time, judicial review is not well-suited to scrutinising decisions made using ADM.

2.30 Developing a coherent legal framework to facilitate good and lawful ADM can reasonably be described as the most significant current challenge in public law. ADM will inevitably become more and more prevalent, and the legal principles of the 20th century need to adapt to the technological advances of the 21st Century. There are legal risks and potential harms to the public and public confidence in government when ADM goes wrong. This will undermine the potential benefits of ADM.

2.31 This project will seek to make recommendations about the legal framework necessary to promote good, lawful ADM. It may recommend legislative change, if needed, as well as focusing on when ADM systems can be effectively regulated by the common law or governmental guidance. It will start with a scoping phase, considering the extent to which public law facilitates or presents barriers to the use of ADM and identifying significant ADM systems across Government and the legal barriers they face. It will then move on to a subsequent phase looking at general solutions and involving targeted work with specific departments on particular systems. Potential outcomes from the project include recommendations for:

(1) an overarching legal framework for ADM;

(2) bespoke law reform for ADM in particular departmental areas; or

(3) a best practice guide on the lawful use of ADM and considerations to take account of when developing policy and legislation.

Chapter 3: Ongoing projects

INTRODUCTION

3.1 In this chapter, we give a brief overview of other projects, originating from before the Fourteenth Programme, upon which the Law Commission is either currently working or which it is planned will commence once resources allow. Further detail about our ongoing projects can be found on our website.[17]

ADMINISTRATIVE REVIEW

3.2 This project, which is part of our Thirteenth Programme of Law Reform, will consider the internal systems used by public bodies to ensure they are making correct decisions. These are sometimes called internal appeals, reviews or reconsiderations – and the process is sometimes a prerequisite to a formal appeal before a tribunal, or judicial review.

3.3 Administrative review decisions determine many more social security, immigration, and tax claims than courts and tribunals, which consider only a small subset of decisions. Still, the success rates at appeal in some areas is high. Our review will aim to identify principles for effective administrative review which:

(1) promote correct decisions, first time;

(2) reduce the number of successful appeals before tribunals and courts;

(3) promote organisational learning and positive feedback loops between the formal judicial processes and internal decision-making processes; and

(4) promote confidence in administrative decision making, including accommodating the anticipated growth in the use of automation to assist public decision making.

AVIATION AUTONOMY

3.4 This project, which commenced in September 2022, involves a review of the UK's regulatory framework for civil aviation, aiming to prepare the UK for the advent of autonomy in aviation. It is sponsored by the Civil Aviation Authority and the Department for Transport. The work is funded by, and forms part of, UK Research and Innovation's Future Flight Challenge. In the project, we are considering the existing law and identifying where there are gaps, uncertainties or provisions which could prevent the safe deployment of highly automated and autonomous systems. There is a particular focus on areas where the law allocates responsibilities to a human (for example, a pilot or remote pilot) and the issues that arise where functions are performed by autonomous systems; and how to allocate civil and criminal

[17] See https://lawcom.gov.uk/current-projects/.

responsibility where functions are performed by a system or shared between a human and a system.

3.5 The first consultation paper of the project was published in February 2024 and examined two of three use cases: drones, and vertical take-off and landing systems. The second consultation paper, which was published in April this year, proposed law reform measures relating to the third use case: air traffic management and air navigation systems. The final report is due to be published in early 2026.

BURIALS, CREMATION AND NEW FUNERARY METHODS

3.6 The burial, cremation and new funerary methods project was taken on through our Thirteenth Programme of Law Reform (originally under the name "A Modern Framework for Disposing of the Dead"). It comprises three sub-projects.

(1) Our burial and cremation sub-project published a consultation paper in October 2024. We consulted on proposals to address gaps in safeguards relating to burial grounds which arise from the current patchwork of legislation. We also made provisional proposals to enable grave reuse and reclamation in a wider range of burial grounds than is currently permitted, and to address unresolved issues in cremation law. We aim to report by early 2026.

(2) The second sub-project, new funerary methods, will make recommendations about a framework for the regulation of new funerary methods. These are potential alternatives to the established funerary methods of burial, cremation and burial at sea and include alkaline hydrolysis and human composting, which are in use in other jurisdictions. Decisions about which new funerary methods should be regulated under the framework will be for Government to make. We expect to publish a consultation paper by summer 2025 and to report, with a draft Bill, in spring 2026.

(3) The final sub-project, rights and obligations relating to funerals, funerary methods, and remains, will begin once the burial and cremation sub-project finishes. It will address the nature of human remains, who should get to make decisions about a body after death, and whether a person should be able to make binding decisions about their own body. We aim to report at the end of 2027.

BUSINESS TENANCIES: THE RIGHT TO RENEW

3.7 In 2023, we accepted a reference from the Ministry of Housing, Communities and Local Government to conduct a wide review of Part 2 of the Landlord and Tenant Act 1954. That Act gives business tenants the right – often referred to as “security of tenure” – to renew their tenancies when they would otherwise come to an end, allowing them to remain in their premises.

3.8 Our first consultation paper, published in November 2024, asked key questions about which model of security of tenure is appropriate and about the scope of the Act. A second, technical, consultation paper will be published in due course.

CHANCEL REPAIR LIABILITY AND REGISTRATION

3.9 This project formed part of our Thirteenth Programme of Law Reform. Chancel repair liability is an obligation on a landowner to pay for repairs to their local church. It has its origins in pre-Reformation ecclesiastical law and is rarely enforced, but when it is the liability can be huge.

3.10 Under the Land Registration Act 2002, a purchaser of registered land should not be bound by chancel repair liability unless it is recorded in the register. However, we have been informed that there are some uncertainties about the nature of the liability which raises questions about whether the 2002 Act is having the effect that was intended. It is possible that unregistered chancel repair liabilities may still be binding on purchasers.

3.11 This project is examining whether the law should be clarified so that a purchaser of land can be certain that the land is not burdened by an unregistered chancel repair liability. Due to current uncertainties about the law, homebuyers and other purchasers of land spend millions each year on searches and insurance to help protect themselves from chancel repair liability. The project has the potential to save purchasers these costs.

COMPULSORY PURCHASE

3.12 Compulsory purchase is the acquisition of land without the consent of the owner. It can only be carried out with statutory authority, for a public purpose and with payment of compensation to the owner. The ability of public authorities to purchase land using powers of compulsory purchase is vital to support development in the public interest. But compulsory acquisition of property can have a huge detrimental impact on the individuals and businesses affected. The procedures of compulsory purchase, and the compensation payable to those affected, is therefore tightly controlled by law. But the law is fragmented, unnecessarily complicated and in need of modernisation. It is substantially derived from legislation and case law from the nineteenth century and is still couched in archaic language.

3.13 The Law Commission previously conducted a project on compulsory purchase. That project culminated in reports in 2003 and 2004 on compensation and procedure, respectively. However, our recommendations were not taken forward by the Government at the time. Calls for a comprehensive, simplified and modern set of laws have persisted. The current project is a Ministerial Reference and the sponsoring department is the Ministry of Housing, Communities and Local Government. It examines the laws governing both procedure for compulsory purchase and the assessment of compensation. Its core aim is to consolidate and codify the law, whilst making technical changes with a view to simplifying, modernising and harmonising the legislation. We published a consultation paper in December 2024 and the consultation was concluded in early 2025. After analysing stakeholder responses, we aim, subject to a review point with the Department, to publish a report and draft Bill.

CONTEMPT OF COURT

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

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

3.16 The development of the law of contempt has been unsystematic, resulting in a regime that is often disordered and unclear. Problems arise from the confusing distinction between civil and criminal contempt of court, the multiple ways in which contempt can be committed, and the overlap between the law of contempt and criminal offences relating to the administration of justice, such as perverting the course of justice. There are also growing concerns about the impact of social media and technological advancements on the administration of justice.

3.17 On 9 July 2024 we published a consultation paper containing our provisional proposals. Our objective is to produce a law of contempt that is easier to understand, fairer, and that better protects the administration of justice.

3.18 The public consultation closed on 29 November 2024. We will publish our report in two parts. Following a request from the Home Secretary, Attorney General and Lord Chancellor to expedite work on some of the issues in our project, part one will be published in autumn 2025 and will address liability for contempt and the role of the Attorney General in contempt proceedings. Part two will be published in 2026 and will address all remaining issues.

CO-OPERATIVES AND COMMUNITY BENEFIT SOCIETIES

3.19 Co-operatives and community benefit societies are business associations. They are alternatives to, for example, companies and partnerships. Co-operatives are associations of consumers, producers, or workers. Part of their purpose is to harness economies of scale. For example, when producers or workers combine as members of a co-operative, the co-operative might command better prices in the market for the produce or labour. When consumers combine as members of a co-operative, the co-operative might access cheaper prices for goods or services. The co-operative can then pass on those better prices when selling to its consumers, buying from its producers, or paying its workers. Community benefit societies carry on business for the benefit of the community. They can engage in a range of activities, from owning a local pub, through publishing a newspaper or developing a local renewable energy network, to providing social housing.

3.20 Co-operatives and community benefit societies are governed by the Co-operative and Community Benefit Societies Act 2014. We have been asked by HM Treasury to review the Act, to ensure that it fits the nature and needs of co-operatives and community benefit societies, and to ensure that regulation is proportionate and effective. We published a consultation paper in September 2024. It set out a range of proposals for reform including in respect of registration requirements, society shares, and directors' duties. We expect to publish a final report with a draft Bill in late 2025.

CRIMINAL APPEALS

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

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

3.22 In July 2022, the Government asked the Law Commission to review the law relating to criminal appeals. We are considering the need for reform with a view to ensuring that the courts have powers that enable the effective, efficient and appropriate resolution of appeals. It will also consider whether a consolidation of the current legislation on appeals would make the law clearer and more consistent.

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

3.24 In July 2023, we published an Issues Paper to which we received over 150 responses including from serving prisoners, state bodies such as the Crown Prosecution Service, individual lawyers, academics and campaigners, professional bodies, charities and representative groups. In February 2025 we published a consultation paper in which we made provisional proposals for reform. We expect to publish a final report in 2026.

DIGITAL ASSETS AND ELECTRONIC TRADE DOCUMENTS IN PRIVATE INTERNATIONAL LAW

3.25 When parties to a private law dispute are based in different countries, or the facts and issues giving rise to the dispute cross national borders, questions of private international law arise. In which country's courts should the parties litigate their dispute? Which country's law should be applied to resolve it? How can the judgment be enforced in another country? Private international law is the body of domestic law that supplies the rules used to determine these questions.

3.26 Modern technologies challenge the territorial premise on which the existing rules of private international law have been developed. In this respect, the advent of the internet was a catalyst of socio-economic change that has posed significant challenges for private international law. More recent innovations, such as crypto-tokens and distributed ledgers, add novel problems to these existing challenges.

3.27 The Ministry of Justice asked the Law Commission to conduct this project considering how private international law rules will apply in the digital context. In particular, the Law Commission was asked to consider the disputes which are likely to arise in the digital context (including contractual, tortious and property disputes), and make any reform recommendations it considers necessary to Government. Our project has a particular focus on crypto-tokens and trade documents in electronic form (such as electronic bills of exchange).

3.28 We have published two FAQ documents explaining how the current law applies in the context of electronic trade documents and crypto-tokens respectively. We published a consultation paper in June 2025. We expect to publish a final report in 2026.

DISABLED CHILDREN'S SOCIAL CARE

3.29 Disabled children's social care law refers to the body of rules which determine:

(1) whether a disabled child can get help from social services to meet their needs;

(2) what help they can get; and

(3) how they go about getting it.

The law in this area is out of date. For example, the definition of disability dates back to the 1940s. The law is inaccessible. It is spread across numerous statutes dating from 1970 onwards, which have to be read alongside an extensive body of regulations, case law and guidance. The law is also – potentially – unfair, in the sense that it permits children with similar needs to be treated differently, depending on where they live.

3.30 In this project, we are looking at disabled children's social care law and considering whether it sufficiently meets the needs of disabled children and their families. The project will make recommendations aimed at simplifying and modernising the law and promoting clarity and consistency. In carrying out the project, we have regard to the Government's wider work on children's social care, and how disabled children's social care law aligns with other parts of the statute book concerning social care, support for Special Educational Needs and children's rights.

3.31 The project was a Ministerial Reference, following a recommendation in the 2022 Independent Review of Children's Social Care. We carried out a consultation between October 2024 and January 2025. We aim to publish our final report in September 2025. The sponsoring department is the Department of Education.

EVIDENCE IN SEXUAL OFFENCES PROSECUTIONS

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

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

(1) the use of jury directions and juror education generally;

(2) the admission of expert evidence to counter misconceptions surrounding sexual offences;

(3) the admission of evidence of the complainant's sexual history;

(4) the admission of the complainant's personal records including their medical and counselling records;

(5) the admission of evidence of the character of the defendant and complainant; and

(6) the use of special measures during the trial.

3.34 We published a background paper in February 2022 which outlined the scope of the project, provided an introduction to the main legal concepts and issues, and answered some frequently asked questions.

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

3.36 We held a public consultation which closed on 29 September 2023. We are now in the process of analysing consultation responses and expect to publish a report with final recommendations in the summer of 2025.

FRIENDLY SOCIETIES

3.37 Friendly societies are organisations that provide insurance or other benefits to their members. Friendly societies have a "mutual" ownership model. This means they are owned and (mainly) funded by their members, and profits are distributed to the membership or reinvested for the benefit of the membership. Unlike in companies, there are no shareholders or outside investors. Friendly societies and other mutual organisations represent a different business strategy and ethos compared to companies run for the financial benefit of their shareholders. In providing schemes of mutual support, friendly societies can serve an important commercial purpose, especially in terms of fostering economic corporate diversity and financial inclusion.

3.38 We have been asked by HM Treasury to review the law that applies to friendly societies, and to make recommendations to modernise it so that they can thrive and continue to serve their members. Our review covers two main pieces of legislation: the Friendly Societies Act 1974 and the Friendly Societies Act 1992. These Acts cover a wide range of societies. In particular, the 1974 Act does not just apply to friendly societies and applies to other types of societies including benevolent societies and working men's clubs.

3.39 We published a consultation paper in March 2025. It covers a range of issues including whether the 1974 Act should be retained; how legacy assets can be protected, and how demutualisation might be disincentivised; how transfers of business engagements could be made simpler and more cost-effective, and challenges associated with raising capital. We aim to publish our final report in 2026.

KINSHIP CARE

3.40 Kinship care has been described as "Any situation in which a child is being raised in the care of a friend or family member who is not their parent for a significant amount of

the time. The arrangement may be temporary or longer term".[18] It is estimated that 141,000 children live in kinship care arrangements in England and Wales. Most commonly, kinship care will be an alternative to the child entering the care system, or a way of caring for a child who is the subject of a care order.

3.41 The variety of methods by which kinship care can be formalised, including by way of special guardianship orders, child arrangements orders and by fostering, is complex to navigate and confusing for kinship carers, who do not always feel confident that the order underpinning their arrangement is right for their circumstances. Our project on kinship care came to the Law Commission by way of a Ministerial Reference in December 2023. Work commenced in 2025.

LAW OF HOMICIDE

3.42 The law of homicide was subject to a thorough review by the Law Commission in the early 2000s. In the almost 20 years since, the problems we identified have remained largely unchanged. When we reported in 2006, we described the law governing homicide as a "rickety structure set upon shaky foundations. Some of its rules have remained unaltered since the seventeenth century, even though it has long been acknowledged that they are in dire need of reform. Other rules are of uncertain content, often because they have been constantly changed to the point that they can no longer be stated with any certainty or clarity".

3.43 As society and the law has moved on, new problems and possible limitations with the existing law have emerged. These include the operation of the law of joint enterprise, how diminished responsibility should be reflected in any new classification of homicide offences, and the extent to which the law reflects a modern understanding of the effects of domestic abuse.

3.44 In December 2024, the Commission agreed with the Ministry of Justice that we should revisit homicide law. We have agreed to reconsider and update our 2006 recommendations, to consider defences and partial defences to murder, especially now that the 2009 reforms have had time to bed down, and to conduct a complete review of the statutory sentencing framework for murder.

3.45 Our existing project on defences to murder for victims of abuse who kill their abuser will now form part of the wider project on homicide.

MODERNISING THE LAW OF WILLS

3.46 This project stems from our Twelfth Programme of Law Reform. Our project is a review of the law governing wills to ensure that it remains fit for purpose.

3.47 We published a consultation paper in July 2017. In 2019, we agreed with Government to pause completion of the wills project to undertake a review of the law concerning weddings. We re-commenced the wills project in Autumn 2022. In October 2023, in a supplementary consultation paper, we re-consulted on two topics where we thought

[18] Department for Education, *Stable Homes, Built on Love: Implementation Strategy and Consultation* (February 2023) p 85.

developments may have caused consultees' views to shift: electronic wills and the rule that a marriage or civil partnership revokes a will.

3.48 We published our final report with our recommendations for reform, along with a draft Bill, in May 2025.

MODERNISING TRUST LAW

3.49 Trusts are used by a range of people within the UK, but also by individuals and corporations internationally, many of whom choose our domestic law and courts to govern their arrangements. That decision makes our law an important global export, bringing a range of business to the UK.

3.50 A number of leading stakeholder groups have outlined various technical problems and limitations with our current trust law. A reform project reviewing the law of trusts would consider an outdated area of the law, with a view to modernising it, which would help to preserve its reputation. The general law of trusts has not been comprehensively reviewed since 1925. In contrast, many other "onshore" and "offshore" jurisdictions – including Scotland, Jersey, New Zealand and Singapore – have updated their trust law and been creative in maintaining a healthy trust market. As well as problems with the existing law, stakeholders have outlined the development of alternative, flexible trust and trust-like structures in other jurisdictions that are not available in England and Wales. Not all of these structures may be suitable for this jurisdiction, but there is a strong argument that their advantages and disadvantages should be evaluated.

3.51 This project was agreed with the Ministry of Justice as part of our Thirteenth Programme of Law Reform. It will be an initial scoping study investigating problems with trust law with a view to identifying aspects of trust law to take forward in one or more law reform projects. The project will not consider the law of mistake (which has significant tax consequences), nor the question of whether trusts should have legal personality.

OBJECTS IN MUSEUM COLLECTIONS

3.52 Museums face significant problems dealing with objects where, as result of poor or non-existent acquisition records (often from a time when record keeping did not meet modern standards), legal title is uncertain or the owners are unknown or cannot be found. Museums are concerned about dealing with such objects (for example, by transferring them to other museums) because of the risk of being found liable for a civil wrong (conversion) if they were not in fact entitled to do so.

3.53 Particular problems are faced by local authorities that are responsible for running museums because of a lack of clarity as to how – at law – such items are held, and when they can be legitimately (and ethically) disposed of. Moreover, certain national museums can only dispose of items following an arguably unnecessary process requiring the authorisation of the Secretary of State.

3.54 This project was taken on as part of our Thirteenth Programme of Law Reform, with the support of the Department of Culture, Media and Sport. It will review these problems with a view to providing clear legal rules as to how objects are held and can be dealt with. Such rules would help to reassure potential donors, who will have a

better understanding of what can and cannot be done with their donation. Similarly, those responsible for museum collections will be able to manage their collections more effectively without having first to seek expensive specialist legal advice to ascertain the applicable legal rules, or incur unnecessary storage costs for items that have no continuing heritage value. We aim to start the project in 2025.

TRUST LAW ARBITRATION

3.55 Arbitration is a form of dispute resolution. If two or more parties have a dispute which they cannot resolve themselves, instead of going to court, they can appoint a third person as an arbitrator to resolve the dispute for them by conducting arbitral proceedings which result in the arbitrator(s) issuing an award. Arbitration is widely used for commercial disputes and the recent Arbitration Act 2025 has continued the leading role that the law of England and Wales has in this area.

3.56 However, the existing law does not recognise as valid and enforceable a clause in a trust instrument requiring any disputes between trustees and beneficiaries of the trust to be submitted to arbitration. Beneficiaries may have recourse to arbitration where they have a free-standing agreement with the trustees, but difficulties may arise as to the range and enforceability of awards. This project, which originated as a Reference from the Ministry of Justice, will consider whether and how the law could allow for and facilitate trust law arbitration, other than in respect of a dispute about the validity of the trust disposition itself; and consider whether and how creditors and minor, unborn, unascertained, and incapacitated beneficiaries could be bound by an arbitral award.

Chapter 4: Further potential projects

INTRODUCTION

4.1 The Law Commission was delighted at the breadth of the ideas for law reform put forward by consultees in response to our Fourteenth Programme consultation.

4.2 In this chapter, we discuss some of the proposals which we have not been able to take forward as part of the Fourteenth Programme. In some cases, we explain why we are not planning to conduct further work on these areas for the time being. In other cases, we refer to proposals which we believe could have significant merit as law reform projects. If resources allow, it may prove possible to accept one or more of these projects as References from Ministers during the course of the Fourteenth Programme.

DATA SHARING AND INFORMATION LAW

4.3 The domestic legislative framework regulating data protection currently comprises of the following main laws:

(1) the Data Protection Act 2018;

(2) the UK General Data Protection Regulation ("UK GDPR");

(3) the Human Rights Act 1998, Schedule 1, article 8;

(4) the common law on confidentiality; and

(5) the Privacy and Electronic Communications Regulations 2003.

4.4 Stakeholders regard the law as complex and unclear, resulting in both actual and perceived obstacles to desirable sharing of data in the public interest. This complexity has arguably been exacerbated by the conversion of the UK GDPR from retained EU law to assimilated law. A project on data sharing and information law project would make recommendations to consolidate or streamline this legal framework.

FINANCIAL REMEDIES ON DIVORCE

4.5 We considered several family law projects for inclusion in this Programme of Law Reform. Whilst we have not been in a position to include such work in this Programme, we remain keen to undertake projects in this important field.

4.6 Of particular note, we would welcome the opportunity to continue our work on Financial Remedies on Divorce. Our scoping report, published in December 2024, concluded that there was work to be done in reforming the law, and we suggested to Government that there were four possible models upon which reform could be based. A response to that report is awaited from Government and, because of that, future work in this area has not been determined for inclusion in the Fourteenth programme. Once the response is available, we will engage with Government to determine

whether there is more that the Law Commission can contribute to deliver much needed reform.

HOME BUYING

4.7 Buying a home can be one of the most important transactions that a person enters into in their lifetime. However, it can also be one of the most stressful. The process of buying a home can be slow, complex and opaque, and there is the potential for significant upfront costs to be incurred by those involved in the transaction, without any guarantee that a sale will proceed.

4.8 A project in this area was supported by a significant number of stakeholders when we consulted on the Fourteenth Programme of Law Reform, and we have considered the project carefully (as we did at the time of preparing our Thirteenth Programme).

4.9 The problems in the Home Buying process are multifaceted and our emerging view is that the Commission could best contribute in this complex area by undertaking research and a scoping exercise, to establish what lessons might be learned from other jurisdictions and to identify where law reform can deliver improvements. Having reached that view, we will continue to engage with Government about the possibility of the Law Commission undertaking work on this important topic, while Government undertakes its own work to improve the home buying and selling process.[19]

UNFAIR TERMS IN RESIDENTIAL LEASEHOLD

4.10 A project on unfair terms in residential leasehold was included as part of our Thirteenth Programme of Law Reform as a project for the Ministry of Housing, Communities and Local Government. The project originated from our work on Event Fees in Retirement Properties, which reported in 2017.[20]

4.11 It was envisaged that the project would consider whether, each time a lease is assigned, this should be seen as creating a new contract between the landlord and leaseholder for the purposes of the law of unfair terms. When considering potential unfair terms, courts could then focus on the circumstances that existed when the current leaseholder took the assignment of the lease.

4.12 Given other work on leasehold, this project no longer forms part of our plan for future work.

VULNERABLE ADULTS AT RISK

4.13 The proposed vulnerable adults project would review the law relating to intervention by the state in the lives of vulnerable adults who have mental capacity, but who are at risk of exploitation or abuse.

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19 See https://www.gov.uk/government/news/home-buying-and-selling-to-become-quicker-and-cheaper.

20 Event Fees in Retirement Properties (2017) Law Com No 373: https://webarchive.nationalarchives.gov.uk/ukgwa/20241223105353/https://lawcom.gov.uk/project/event-fees-in-retirement-properties/.

4.14 The Law Commission previously published a report on this area in 1995. Its recommendations were not taken forward. As a result, over the last 20 years, the High Court has developed the use of the inherent jurisdiction to deal with such cases. The scope of this jurisdiction is neither clearly defined nor consistently applied. Views differ on fundamental issues such as whether the court may make orders against the vulnerable adult themselves, on significant matters such as where they live, and the role (if any) that the adult's consent, or lack of it, plays in the decision-making process. The end result is a system where local authority stakeholders lack certainty as to the actions they can lawfully take to safeguard the welfare of vulnerable adults within their area, and whether and when judicial sanction is required.

4.15 A project in this area would look at when the law should permit or require the state to take action in relation to a vulnerable adult, what actions can or should be taken, and the principles to be applied by the courts in sanctioning such actions.

(signed) Sir Peter Fraser, Chair
Nick Hopkins
Penney Lewis
Alison Young

Joanna Otterburn and Roshnee Patel

Joint Chief Executives

16 April 2025

Appendix 1: List of consultees

The Commission is grateful to everyone who responded to the consultation, and considered all responses irrespective of the format in which they were sent.[1]

Submissions received by the Commission included those from the following:

Access to Records Campaign Group

Ada Lovelace Institute

Agricultural Law Association

Alex Griffith

AlgorithmWatch

Amar

Andreas Gledhill KC

APPEAL

Archfields (Hendon) Allotments Association

Ario Advisory

Arman Sarvarian, University of Surrey

Associated Retirement Community Operators

Association of British Insurers

Association of Drainage Authorities

Association of Pension Lawyers

Association of Personal Injury Lawyers

Barnet Allotment Federation

Baroness Ruth Deech KC (Hon)

Barry Fletcher

Ben Giaretta

Bethany de Montjoie Rudolf

Bird and Bird LLP

Birth Registration Reform Group

British Parking Association

Carole McCartney, Northumbria University

Chancery Bar Association

Chara Bakalis, Oxford Brookes University

Charity Law Association

Chartered Institute of Arbitrators

Chartered Trading Standards Institute

Chris Pearce

Chris Rispin

Christopher Jessel

[1] The list of consultees in this Appendix is based on our records from 2021. The Commission's formal consultation response pro forma included notice that all responses will be treated as public documents. Where no such notice has been given to a consultee, for example because they contacted the Commission by email without completing the pro forma, the Commission must work on the basis that we do not have consent to publish either the response or the personal details of the individual responding. To do so could result in the Law Commission breaching its legal obligations to protect individuals' information.

Churches' Legislation Advisory Service

CILEX

Cinnamon Rogers

City of London Law Society Commercial Law Committee

City of London Law Society Financial Law Committee

City of London Law Society Insolvency Law Committee

City of London Law Society Land Law Committee

City of London Law Society Regulatory Law Committee

Clifford Chance LLP

CMS Cameron McKenna Nabarro Olswang LLP

Coffin Club Colchester

Colin McLauchlan

Commons Law Community Interest Company

Connect2Law Ltd

ConnecteDNA Research Team

CoramBAAF

Council for Licensed Conveyancers

Criminal Appeal Lawyers Association

Criminal Appeal Office

Crown Prosecution Service

D M Chambers

David Daley

David Glass

David Hodson

David Madgwick

David Pollard

Dean Kingham

Dee Quealy

Dermot Leeper

Diane Fowley

Disabled Children's Partnership

Dot Wood

Dr Alan Brown and Dr Katherine Wade, Universities of Glasgow and Leicester

Dr Andrew Hayward, Durham University

Dr Charlotte Hursey

Dr Connal Parsley, University of Kent

Dr Emma Laurie, University of Southampton

Dr Emma Milne, Durham University

Dr Jamie Grace, Sheffield Hallam University

Dr Joe Purshouse, University of East Anglia

Dr Julia Brophy

Dr Kyriaki Noussia, University of Exeter

Dr Laura Downey, Dr Rachael Dickson and Professor Muireann Quigley, University of Birmingham

Dr Lawrence McNamara, University of York

Dr Lisa Rodgers, University of Leicester

Dr Lucy Welsh, University of Sussex

Dr M Gorar, University of Hertfordshire

Dr Marion Oswald, Northumbria University

Dr Mark Dsouza, UCL

Dr Nataly Papadopoulou, University of Leicester

Dr Neil Ogg

Dr Nora Ni Loideain, School of Advanced Study, University of London

Dr Oliver Butler, Wadham College, University of Oxford

Dr Philip Bremner, Dr Craig Lind and Dr Maria Moscati, University of Sussex

Dr Rajnaara Akhtar and Professor Rebecca Probert, De Montfort University and University of Exeter

Dr Samantha Davey, University of Essex

Dr Sharon Thompson, Cardiff University

Dr Stuart Calimport

Dr Sue Chadwick

Dr Tanya Palmer, University of Sussex

Dr Tracy Elliott and Dr Daniel Bansal

Dr W Kuan Hon

Easy Online Divorce

Edita Ficzová

Edwin Rothwell

Elaine Ravenhall

Eleanor Wilson

Elena Urso, Università di Firenze

Elizabeth Muirhead

Emily Carroll, University of Birmingham

Emma German

Employment Lawyers' Association

England & Derbyshire LLP

Environment Agency

Family Court Superheroes

Family Justice Council

Family Law in Partnership

Financial Markets Law Committee

Financial Ombudsman Service

Frances Kelly

Frances Kelly

Fraud Advisory Panel

Freshfields Bruckhaus Derringer LLP

Gavin Oldham

Gaye Rees

Gillian Switalski

Graham Redman

Graham Smith

Guy Fetherstonhaugh KC

Hausfeld & Co LLP

Helen Carr, Caroline Hunter and Ed Kirton-Darling

Helen Coverdale, PSL Restructuring & Insolvency, LexisNexis UK

Helen Lofthouse

Herbert Smith Freehills

HM Land Registry

Holly Greenwood, Dennis Eady and Julie Price, Cardiff University

Holman Fenwick Willan LLP

Howard League for Penal Reform

Hugh Beale

Hugh James

Iain Wightwick

Ian Williams, UCL

ICAEW

Ijeoma Omambala KC, Rebecca Tuck KC, Eleena Misra, Nadia Motraghi, Anna Whitehouse and Maternity Action

Imogen Goold, St Anne's College, University of Oxford

Imogen Jones, University of Leeds

Independent Office for Police Conduct

Inside Justice

Insolvency Lawyers Association

Institute and Faculty of Actuaries (IFoA) and the Investment Consultants Sustainability Working Group (ICSWG)

Institute of Legacy Management

Interactive Investor

International Trust Arbitration Organisation

Irwin Mitchell LLP

Jack Anderson, Neil Allen, Margaret Flynn, Professor Paul Kingston, Pete Morgan, Professor Jonathan Parker, Bridget Penhale, Professor Michael Preston-Shoot, Katie Scott and Carolyn Taylor

Jacquie Leach

Jamie Barnes

Jane Christmas

Jane Evatt

Jane Karthaus

Jennie Graham

Jennifer Cobbe, University of Cambridge

Jessica Giles, The Open University

Joanna Janeczko

John Nightingale

John Stebbing

Joyce Whittaker

Julia Smithers Excell

Just for Kids Law

JUSTICE

Justice Committee

Karen Maxwell, Clare Ambrose and Michael Collett KC

Kathryn Harvey

Keith Bush

Kieron Duggan

Kit Fotheringham and Helen Smith, University of Bristol

Klaus Reichert

LawWorks

Lawyers in Local Government

Leigh Day

Leonora Onaran, University of Southampton

Lesley Bainbridge

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