



THE LAW COMMISSION

SECOND PROGRAMME OF LAW REFORM

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

LONDON
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PRICE 1s. 3d. net

LAW COM. No. 14

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. The Commissioners are—

The Honourable Mr. Justice Scarman, O.B.E., *Chairman*.

Mr. L. C. B. Gower, M.B.E.

Mr. Neil Lawson, Q.C.

Mr. N. S. Marsh, Q.C.

Mr. Andrew Martin, Q.C.

Mr. Arthur Stapleton Cotton is a special consultant to the Commission. The Secretary of the Commission is Mr. H. Boggis-Rolfe, C.B.E., and its offices are at Lacon House, Theobald's Road, London, W.C.1.

NOTE BY THE COMMISSIONERS

The Law Commissions Act 1965 requires the Commission "to prepare and submit to the Minister from time to time programmes for the examination of different branches of the law with a view to reform"¹. It has become clear that there is a pressing need for a start to be made with the codification of the criminal law; and the Commission warmly welcomed the recognition by Mr. Jenkins, when he was Home Secretary, of the urgency and importance of this task. The Commission therefore proposes that an examination should be made of this branch of the law with a view to its codification.

2. In our First Programme of law reform we included, as one item, a preliminary examination of three topics in family law, viz. matrimonial law, family inheritance and property law, and jurisdiction in family matters; and as a separate item we included the recognition of foreign divorces, nullity decrees and adoptions. As our work has progressed it has become clear that there is a need for the Commission to conduct a comprehensive examination of family law with a view to its codification.

3. The acceptance of these additional responsibilities, together with the work which remains to be done under the First Programme, will call for the full deployment of the Commission's resources. Nevertheless, we hope that it may be possible reasonably soon to add in a future programme the examination of some aspects of administrative law. We also have in mind the investigation of some further questions concerning the machinery of justice and the codification of the law of evidence. The former must await the recommendations of the Royal Commission on Assizes and Quarter Sessions and those of the Committee on the Enforcement of Judgment Debts, and the latter those of the Law Reform Committee and the Criminal Law Revision Committee which are now reviewing the law of evidence. Meanwhile, we have included in this programme one item, the interpretation of wills, the examination of which could, we understand, be undertaken by the Law Reform Committee without delay.

14th November 1967.

¹ Section 3 (1) (b)

SECOND PROGRAMME

Tabulated summary of subjects recommended for examination

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*The items in the Law Commission's First Programme were numbered I to XVII. For ease of reference the items in the present programme are numbered from XVIII onwards.

XVIII

CODIFICATION OF THE CRIMINAL LAW

The substantive criminal law is largely based on common law doctrines, some of which have later been incorporated into statutory provisions. Its procedural content is to be found in a number of statutes and in delegated legislation, though upon many matters common law doctrines maintain a basic importance. In the result important parts of the criminal law are complex and obscure, its terminology confusing and its provisions often out of accord with modern conditions. Yet no area of the law is of greater importance to the liberty of the individual and nowhere is it more vital for the law to be stated in clear terms and to take account of present-day needs.

2. We accordingly consider that there should be a comprehensive examination of the criminal law with a view to its codification. This will be a lengthy and complex task, even if, as we propose, the practical work is shared between the Commission and the Criminal Law Revision Committee. We cannot forecast more than the beginning stages of the task that we are proposing. As work progresses we shall map out the later stages.

Recommended: that, as a first step, an examination be made of the following topics:—

- (1) *General principles of the criminal law.* The work will be carried out in close touch with those concerned with other parts of the code.

Examining agency: the Commission with the assistance of a Working Party.

- (2) *Certain specific offences:*

- (a) Malicious damage to property, forgery, perjury, bigamy and offences against the marriage law.

Examining agency: the Commission.

- (b) Offences against the person (including homicide) and sexual offences.

Examining agency: the Criminal Law Revision Committee.

- (3) *Extra-territorial jurisdiction in criminal offences.*

Examining agency: the Commission.

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FAMILY LAW

Under Item X of our First Programme we were required to undertake a preliminary examination of the following three topics with a view to proposing, in the light of their social implications, the agencies to which they should be referred:—

- (a) Matrimonial law
- (b) Family inheritance and property law
- (c) Jurisdiction in family matters

2. Under Item XII of our First Programme we were to undertake an examination of the rules governing the recognition in English law of divorce, decrees of nullity of marriage and of adoptions obtained in, or having effect under, the law of other countries. For both Items X and XII the Commission is the examining agency.

3. We have made further progress in dealing with these topics since we recorded in our Second Annual Report² our progress up to June 1967. Having disposed of a considerable part of the preliminary examination required under Item X(a) (Matrimonial law) and having made some progress with (b) (Family inheritance and property law) and also with the examination required of us under Item XII, we think it desirable that our terms of reference under the whole of Items X and XII should be extended to embrace a complete review of family law.

4. We appreciate that it will be a long time before a review of all substantive and procedural aspects of family law can be completed and the law reduced to a code. But we hope to make immediate progress on certain branches of the law relating to matrimonial and domestic proceedings, on recognition of foreign decrees and on family inheritance and property.

Recommended: that a comprehensive examination of family law be undertaken with a view to its systematic reform and eventual codification.

Examining agency: the Commission.

² Law Com. No 12.

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INTERPRETATION OF WILLS

The technicalities of the rules governing the interpretation of wills have from time to time been criticised on the ground that in a number of cases they lead to constructions which are manifestly at variance with the intention of testators and generally on the ground that they are capable of producing absurd results.

2. It has also been suggested that in order to achieve justice in this field Judges might be given a limited power of rectification ; further, that evidence of the intention of the testator might be more freely admissible than it is under existing law.

Recommended : that the rules governing the interpretation of wills should be examined with a view to reform.

Examining agency : the Law Reform Committee.

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Printed in England

S.O. Code No. 39-86-2