

THE LAW COMMISSION
THIRTY-FOURTH ANNUAL REPORT 1999
Law for the 21st Century

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pursuant to section 3(3) of the Law Commissions Act 1965*

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THE LAW COMMISSION

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 Carnwath CVO, *Chairman*
 Professor Hugh Beale ◦
 Miss Diana Faber
 Mr Charles Harpum
 Judge Alan Wilkie QC ◦

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

- Appointed from January 2000 to succeed Professor Andrew Burrows, who left in September, and Stephen Silber QC, who left in December, respectively.

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Law for the 21st Century

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

I have the honour to present, on behalf of the Law Commission, our 34th Annual Report, for the year 1999.

My first year as Chairman of the Commission has been busy and varied. We have issued 9 publications during the year, on subjects ranging from Directors' Duties in Company Law to Fraud in the Criminal Law. The year also saw the publication of the final reports in our comprehensive review of the Law of Damages for Personal Injury. The importance of this work is underlined by the convening of a five-judge Court of Appeal to consider our proposals for increasing the level of damages for non-pecuniary loss.* We also responded to a request for an urgent review of the law of Double Jeopardy in the Criminal Law, following the Macpherson report.

Current work is covered by our 7th Programme, which you approved in June. It includes the completion of our work on Land Registration and on Limitations, and a major review of the law of Partnerships. The programme takes full account of the Human Rights Act 1998, including a study of the law of Bail under the Act, and a review of the case law of the Strasbourg Court relating to the award of damages.

On the legislative front, two new Acts based on Commission reports reached the Statute Book during the year, and our proposals on Trustees' Powers are part of the Government's current legislative programme. The Government has also announced its acceptance, in whole or in part, of our recommendations in four other Reports (Aggravated Damages, Consents to Prosecution, Mental Incapacity, and Execution of Deeds and Documents by Bodies Corporate).

The most serious failing in implementation continues to be in respect of the Criminal Law. Although we have had useful discussions with the Home Secretary and his Department, there is no tangible sign of progress in implementation of any of our major reports (dating back to 1993). Decisions in the Courts continue to draw attention to defects in the substantive law in areas on which we have already reported. On a brighter note, the completion of our consolidation of sentencing legislation marks a significant step forward in the codification project, and further impetus is likely to be given by the review of Criminal Procedure under Lord Justice Auld, to whose work we shall be contributing. Another important development has been the establishment of a Ministerial Committee, under the chairmanship of David Lock MP, which is looking at problems of implementation in all areas of our work.

As noted elsewhere in this report, we have said goodbye during the year to two Commissioners, Andrew Burrows and Stephen Silber QC. They have served the cause of law reform with great distinction. We welcome their successors, Professor Hugh Beale and Judge Alan Wilkie QC. We have worked closely with the Scottish Law Commission on a number of projects. We have continued to enjoy good relations with Ministers and Civil Servants in all the Departments with which we deal, and are grateful for their support.

ROBERT CARNWATH, CHAIRMAN

* Since sending this report to the printers, we have learned that the Court of Appeal has given partial effect to these recommendations, in *Heil v Rankin*.

PART I

OVERVIEW OF THE YEAR

Introduction

- 1.1 In this Part of the report we give a summary of some of our publications and concerns in 1999. In the following Parts we describe in more detail each area of the Commission's work during this year. A summary of our role and methods appears in Appendix A.
- 1.2 In our law reform work we seek to ensure that the law is as simple, fair, modern and cost-effective as possible. Our methods concentrate on systematic law reform: careful selection of projects, following consultation; close study; comparison with the law in other countries; thorough consultation; and a final report which usually incorporates a draft Bill.

Our publications in 1999

- 1.3 During 1999 we issued 9 law reform publications (five final reports and four consultation documents). The reports consisted of: three on damages, concluding our work in this field; one on trustees' powers and duties; and one on regulating company directors' conflicts of interests and formulating a statement of their duties. The consultation documents were those on: the effect of illegality on contracts and trusts; offences of fraud and deception; double jeopardy; and bail and the Human Rights Act. Details are set out in Parts II - V below. We also published the Chronological Table of Private and Personal Acts, and an accompanying report. All these publications appear in full and in summary on our Internet site at <http://www.lawcom.gov.uk>.

Implementation of law reform reports

Summary

1.4 At the beginning of 1999 there were:

- (a) 2 of our reports where legislation had been introduced during the Parliamentary session,
- (b) 3 of our reports which had been accepted in full or in part, or in principle, by the Government and for which legislation had yet to be introduced and
- (c) 18 other reports of ours awaiting decisions by the Government.

At the end of 1999 there were:

- (a) 2 new Law Commission reforming Acts on the statute book,
- (b) 7 of our reports which the Government had accepted during or before the year and
- (c) 16 other reports of ours awaiting decisions by the Government.

(a) Legislation in 1999

1.5 Two new law reform statutes resulted from Law Commission reports, namely the *Trustee Delegation Act 1999*, implementing recommendations made in our report on Delegation by Individual Trustees (1994) Law Com No 220 and the *Contracts (Rights of Third Parties) Act 1999* implementing recommendations made in Privity of Contract (Law Com No 242) published in 1996. Our report on jurisdiction over offences of fraud and dishonesty with a foreign element (Law Com No 180) was implemented in Part I of the Criminal Justice Act 1993, which was brought into operation during 1999, as we anticipated in our last annual report. They bring to 102 the total number of our law reform reports implemented, in full or in part, between our establishment in 1965 and the end of 1999.

(b) Reports accepted in 1999

1.6 During 1999 the Government accepted five more of our reports, in full or in part, or in principle. Details of our report on trustees' powers and duties (Law Com No 260), which was accepted for legislation in the 1999/2000 Session, are given at paragraphs 5.6 - 5.11 below. Details of our report on mental incapacity (Law Com No 231) are at paragraphs 1.15 - 1.17.

1.7 The Government announced in July that it accepted all the recommendations in our report on Execution of Deeds and Documents by Bodies Corporate (Law Com No 253), published in August 1998.

1.8 The Government has accepted our recommendations on aggravated and restitutionary damages contained in the report Aggravated, Exemplary and Restitutionary Damages (Law Com No 247), published in 1997, but has rejected those on exemplary damages in the absence of a clear consensus whether to have a complete legislative overhaul or to abolish such damages. The decision was announced on 9 November 1999: Written Answer, *Hansard* (HC) vol 337, col 502W.

- 1.9 The Government has accepted in principle, and subject to a number of detailed points, the recommendations in our report Consents to Prosecution (1998) Law Com No 255. In that report we reviewed the system under which certain offences cannot be prosecuted without the prior consent of a Law Officer or of the Director of Public Prosecutions. We made recommendations to modernise the system in a principled way, and to reduce both delays and administrative burdens: Written Answer, *Hansard* (HC) 22 November 1999, vol 339, col 23W.
- 1.10 The Government decided not to implement the remainder of our report Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments (Law Com No 227), published in 1994, having rejected the second part of this report on ultra vires receipts. The House of Lords decision in *Kleinwort Benson v Lincoln City Council* in October 1998 meant that it was no longer necessary to bring forward legislation to implement the first part of the report, which recommended abolition of the mistake of law bar to restitution and which the Government had accepted in March 1998: Written Answer, *Hansard* (HC) 29 April 1999, vol 330, col 245W.

(c) More generally

- 1.11 At the year's end, there remained some 16 reports on which we awaited the Government's decision. They are shown in the list at Appendix C. We will continue to explore with Government its progress on implementation of these important reforms. We can report particular progress as follows.

(1) Offences Against the Person

- 1.12 We await the results of the consultations on the Home Office Consultation Paper¹ which set out their initial proposals for reforming the law in this area, based on our report, published six years ago (Law Com No 218). We continue to believe that implementation of these proposals is long overdue. In December the Government said that it hoped to bring forward legislation to reform the law on offences against the person as soon as Parliamentary time could be found: Written Answer, *Hansard* (HL) 2 December 1999, vol 607, col WA 54.

(2) Involuntary Manslaughter

- 1.13 Our report, published in 1996, recommended a new offence of corporate killing and the replacement of the present offence of involuntary manslaughter by two new offences, namely "reckless killing" and "killing by gross carelessness" (Law Com No 237). An interdepartmental working group of officials continued to consider the issues. In our view, this extremely valuable report could be taken forward by Government together with our report on offences against the person. Their implementation would be a very useful step towards codification of the criminal law. The Government has been considering the recommendations of the interdepartmental working group and expects to publish the Government's conclusions for consultation, and to consider the prospects for future legislation: Written Answer, *Hansard* (HC) 19 January 2000, vol 342, col 455W; 14 February 2000, vol 344, col 411W. The inadequacy of the existing law was underlined by the

¹ "Violence: Reforming the Offences Against the Person Act 1861" (February 1998).

Court of Appeal in the Attorney General's reference arising out of the unsuccessful prosecution of Great Western Trains following the Southall disaster.² The Court agreed with the Law Commission's analysis of the existing law and commended the Commission's draft Bill as a "useful starting point" for reform of the law.

(3) Corruption

- 1.14 An interdepartmental Working Group has been considering the reform of the criminal law of corruption, on which we issued a report recommending four new offences to replace the present elderly statutes and common law, and to modernise and rationalise the law (1998, Law Com No 248). The Government said in July that it hoped to publish a discussion paper toward the end of 1999: Written Answer, *Hansard* (HC) 22 July 1999, vol 335, col 625. The Neill Committee noted our report, and recommended that the Government should produce legislation as soon as possible (Committee on Standards in Public Life, Sixth Report, January 2000).

(4) Mental Incapacity

- 1.15 This is an area of constantly increasing importance; one reason for this is the rising population of elderly people. Our report (Law Com No 231), published in 1995, contained recommendations for a single comprehensive piece of legislation to provide for the personal welfare, health care and financial affairs of people who lack mental capacity. Most of our recommendations found favour with most of those who have commented on them. In December 1997 the Government published a Green Paper, "*Who Decides? Making Decisions on Behalf of Mentally Incapacitated Adults*". Following that consultation, in October 1999 the Government published in its report "*Making Decisions*"³ its plans to reform the law on making decisions on behalf of mentally incapacitated adults.
- 1.16 We warmly welcome what is clearly acceptance of the majority of our recommendations, even although the Government has not wholly followed all of them - for example, omitting any proposals on advance statements about healthcare (sometimes described as living wills or advance directives). There is also no commitment to take forward our recommendations for public law protection for vulnerable people. We understand that there were several reasons for this. First, although a majority of the responses on this issue in the Government's consultation favoured legislation, there was no consensus on what the legislation should cover. Secondly, many of the issues should be covered in a code of practice which the Department of Health are preparing for tackling and preventing abuse of vulnerable adults. It is also relevant that the current Care Standards Bill is establishing an independent regulatory system for the care of vulnerable adults. We also note the ongoing review of the Mental Health Act 1983, in which we have also taken an interest. Following the report of an expert committee chaired by Professor Geneva Richardson, the Government published a Green Paper, "Reform of the Mental Health Act 1983", in November.

² Attorney General's reference No 2/1999: 15 February 2000.

³ Cm 4465.

- 1.17 Meanwhile, the Adults with Incapacity (Scotland) Bill is passing through the Scottish Parliament. Although that Bill does not contain provisions on advance statements, it is largely based on the Scottish Law Commission's report on incapable adults, which was parallel with our own report. The approaches proposed in that Bill are broadly similar to those for England and Wales, although there are differences as the existing legal framework differs in some respects. Similar reforms are being considered for Northern Ireland.

(5) Divorce

- 1.18 In 1990 we published our report on the Ground for Divorce. We particularly recommended that it should no longer be possible to obtain a divorce quickly and easily by the simple but often unjust and painful expedient of one party claiming that the other had committed adultery or behaved intolerably. We recommended that the parties should instead have a period of at least one year during which they could consider the arrangements needed if they were to be divorced and decide whether or not their marriage had irretrievably broken down.
- 1.19 In 1993 the previous Government published its own consultation paper, linking our recommendations to its own proposals about mediation and about other arrangements on the breakdown of marriage. This was followed by a White Paper and by Part II of the Family Law Act 1996, both largely building on the proposals in the consultation paper. The Act includes a requirement that married people considering divorce attend information meetings designed to save saveable marriages and, where this is not possible, promote mediation in divorce as an alternative to adversarial litigation.
- 1.20 The present Government announced in June that it no longer intended to implement Part II in 2000. The Lord Chancellor said that pilot projects which had been run to test the provision of information meetings had produced disappointing preliminary research results. He said that the full research results would not be ready until early in 2000, when the Government would consider whether further research was necessary: Written Answer, *Hansard* (HL) 17 June 1999, col WA 39; (HC) 17 June 1999, vol 333, col 213W.

(6) Liability for Psychiatric Illness

- 1.21 Our report in 1998 (Law Com No 249) considered the law regarding the suffering of psychiatric illness as a result of injury caused to someone else through a defendant's negligence. Our recommendations are being considered by the Lord Chancellor's Department. The Government announced that it had carefully considered our recommendations, and that it would undertake a comprehensive assessment of the individual and aggregate effects of the recommendations in this report and in Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits; and Claims for Wrongful Death, which are described in more detail at paragraphs 2.5 - 2.9 below: Written Answer, *Hansard* (HC) 9 November 1999, vol 337, col 502W.

(7) Structured Settlements

- 1.22 In the course of reviewing the remedy of damages, in 1994 we published our report on structured settlements. That report has mainly been enacted,

particularly in the Damages Act 1996. Under that Act, when a court in England and Wales decides the return to be expected from investing a lump sum award of damages for pecuniary loss for personal injury, it would take account of the rate of return determined by the Lord Chancellor. However, the power to determine the rate of return has not yet been used. We recommended that the rate of return on Index Linked Government Stocks should be used in the calculation of future pecuniary loss, which is what the House of Lords decided in *Wells v Wells, Page and Sheerness Steel Co.*⁴ We reported Governmental action in our last annual report. It was announced this year that the Lord Chancellor would be issuing a consultation paper canvassing views on how the rate should be set and reviewed, before deciding whether and how to exercise the power provided by the Act.

(8) *Fiduciary Duties*

- 1.23 We referred in our last annual report to the Government's intention that the Financial Services and Markets Bill would implement provisions on the lines of those in our 1995 report on fiduciary duties (Law Com No 236). We understand that the Government intends to introduce the provisions during the passage of the Bill through Parliament.

(9) *Judicial Review*

- 1.24 We published our report on Judicial Review and Statutory Appeals in 1994 (Law Com No 226). Much of the report remains unimplemented. In March 1999 the Lord Chancellor announced a review of the Crown Office List, which deals with judicial review in the High Court. It would cover our recommendations and include the procedures, organisation and work of the Crown Office List. A report is expected shortly.

(10) *Repairing Obligations*

- 1.25 Our report on Responsibility for State and Condition of Property on repairing liabilities in leases made recommendations to modernise and clarify the law (1996, Law Com No 238). In 1998 the Department of the Environment, Transport and the Regions issued a consultation paper⁵ seeking views on proposals and options for change to the housing fitness standard, which was the subject of one of our recommendations. A new rating system is being piloted by the DETR in some local authorities. We understand that, when the Department's examination is completed (which was expected to be by August 1999 but has been delayed), it will consider our recommendations as one of a number of possible options for reform.

Law Commission Reports as Aids to Interpretation

- 1.26 As we said in our last annual report, all our reports can play a valuable role in the clarification and development of the law (paragraphs 1.31 - 1.32). In a case this year the Court of Appeal said "Where a statute has been enacted as a result of the recommendations of the Law Commission, it is, as I see it, both appropriate and

⁴ [1998] 3 WLR 329.

⁵ "Housing Fitness Standard".

permissible for the court to consider those recommendations in order to help to identify both the mischief which the Act is designed to cure and the public policy underlying it”: Clarke LJ in *Yaxley v Gotts* [1999] 3 WLR 1217 at 1232.

Modernisation of Parliamentary Procedures

- 1.27 The Select Committee on Modernisation of the House of Commons continued its work during 1999. The Law Commission continued to press for further procedural reform in the longer term to facilitate Parliamentary scrutiny of law reform bills. Our Chairman submitted evidence to the Royal Commission on the Reform of the House of Lords, on the question of implementation of law reform proposals. As well as the retention and improvement of existing procedures which are particularly suitable for Law Commission Bills, he asked that a fast-track procedure (such as a special joint committee of the two Houses) should be developed for consideration of uncontroversial law reform bills.⁶ The Royal Commission’s report in January 2000 recommended that the reformed second chamber should consider what steps might be taken to expedite the Parliamentary consideration of law reform Bills proposed by the Law Commissions.
- 1.28 The House of Lords’ Select Committee on Delegated Powers and Deregulation suggested in its fourteenth report (April 1999, HL55) that our law reform proposals might be taken forward for implementation by a system of Orders. The Government took up this suggestion (Twenty Eighth Report, HL111) and the Law Commission was in discussion with it on how best the proposal might be applied to Law Commission recommendations. Legislation on regulatory reform may open possibilities to give effect to some of our uncontroversial recommendations for law reform, particularly where they lift a burden of some kind.

Ministerial Committee on Law Reform

- 1.29 During 1999, a new Committee of Ministers was formed, chaired by Mr David Lock MP, who is a Parliamentary Secretary at the Lord Chancellor’s Department. The Committee’s role is to consider the way forward on outstanding Law Commission reports, and to develop greater co-ordination between the Commission’s programme of work and the Government’s priorities for legislation. The Law Commission looks forward to co-operating closely wherever it can with the Committee, not least in order to bring about speedy acceptance and implementation of our recommendations.

Codification of the Criminal Law

- 1.30 This country is one of the very few that does not have a criminal code. We have long worked for the introduction of a code. During the year we continued to have useful discussions with officials in the Home Office on the possible form and timetable for introducing a code, and we have received strong indications of support in principle from Ministers. However, there is still little sign of the necessary political commitment to find legislative time for criminal reform for

⁶ We were encouraged during the year by the Lord Chancellor saying in the House of Lords “I yield to no one in my desire to find fast-track means of ensuring that Law Commission reports which are truly non-controversial are put on the statute book as speedily as possible”: *Hansard*, 10 November 1999, vol 606, col 1362.

individual measures, let alone a complete Code. There is still no final Government decision on our 1993 recommendations on Offences against the Person, which the Government has accepted in principle. Even our much-needed proposals on Criminal Hearsay, which were accepted fully by Government at the end of 1998, have not yet found a place in the legislative timetable. The one ray of light is the forthcoming legislation (under the Consolidation Act procedure) to consolidate the statutory provisions relating to sentencing powers.

- 1.31 A valuable impetus to the case for Codification was given by a Conference held by the Statute Law Society in October, under the Chairmanship of Lord Slynn. The speakers included judges, academics and practitioners. Of particular significance was the paper given by David Calvert-Smith QC, Director of Public Prosecutions, calling for a Code covering all four areas of substantive law, evidence, procedure and sentencing. He saw such a Code as of enormous potential benefit, not only to the national prosecution service, but also in making the law accessible to the general public through the Internet.
- 1.32 In an important article in the June Criminal Law Review (“Criminal Law at the Cross-roads”), Mrs Justice Arden, the previous Chairman, set the project in its human rights context, and outlined a possible framework. The Editor commented in August:

... we are surely entitled to follow up Mrs Justice Arden’s powerful presentation of the case for codification with a simple question. Is the Home Office persuaded of the need for a criminal code? If not, we and the Law Commission should be told, and we should be told the reasons why not. If it is, we are also entitled to ask when and how codification is going to be achieved. These fundamental questions are too important to be ducked any longer.

We too await the answer.

Human Rights

- 1.33 As anticipated last year, we have been increasingly involved in preparations for the Human Rights Act 1998, which will come into effect in October 2000. We continue to take account of the European Convention on Human Rights in all our studies. For example, the recommendations in our consultation paper on double jeopardy were strongly influenced by Article 4 of the 7th Protocol, which gives effect to the principle in Europe. Two projects are specifically directed to the application of the Convention in this country. We have issued a consultation paper on the law of bail and the Human Rights Act (paragraphs 4.5 - 4.8 below). We are also conducting a review with the Scottish Law Commission of the caselaw of the European Court of Human Rights in relation to the award of monetary compensation under the Convention: paragraphs 2.14 - 2.15 below.

Programme of Law Reform

- 1.34 Our ongoing and future planned law reform projects are set out in the Seventh Programme of Law Reform which was approved by the Lord Chancellor and published in June 1999 (Law Com No 259). It is a two year rolling programme.

Summary of Work in 1999 and 2000

- 1.35 The table at the end of Part I summarises the major targets we had for our publications in 1999, with the outcome. A summary of our main planned publications for 2000 follows it.

Commissioners

- 1.36 A new Chairman of the Law Commission took up post in February.⁷ Two other Commissioners, Professor Andrew Burrows and Stephen Silber QC, left us in September and December respectively. Two new Commissioners, Professor Hugh Beale and Judge Alan Wilkie QC, have been appointed from January 2000.
- 1.37 Andrew Burrows was appointed a Law Commissioner in 1994, when an Oxford law lecturer and Professor-Elect at University College, London. His special interest was in common law, for which he had particular responsibility at the Commission. His expertise and commitment were outstanding, both in leading in his own field and in contributing to the Commission's other law reform work. Among his many achievements for us, our ground-breaking work on damages was completed this year: of the six reports we have published in the series, all save the first were published while he was a Commissioner. It was also fitting that another piece of his and our work has now been enacted as the Contracts (Rights of Third Parties) Act 1999. Upon the expiry of his appointment as a Commissioner, he took up the Norton Rose Chair in Commercial Law at Oxford University.
- 1.38 Stephen Silber came to us in 1994 after a busy practice at the Bar. Besides his important contribution to the Commission's other law reform work, he has been especially responsible for our work on criminal law and evidence. This is a particularly high profile post, involving a wide range of interested parties - with whom he built up strong relations. Our work in this field has been particularly productive during his appointment, with the publication of approaching 20 consultation papers or reports. He left us to take up appointment to the High Court Bench.
- 1.39 Hugh Beale has been Professor of Law at Warwick University for over 10 years and is the General Editor of Chitty on Contracts. He will be the Commissioner in charge of our work on common law. Alan Wilkie started his career as a law lecturer. He practised at the Bar until he was appointed a Circuit Judge in 1997. He will be leading our work on criminal law and evidence.

Code of Best Practice for Law Commissioners

- 1.40 In accordance with Government policy for all non-departmental public bodies, including the Law Commission, we have agreed with the Lord Chancellor's Department a written code for Law Commissioners. It follows the Seven Principles of Public Life, as set out originally by the Nolan Committee. It covers

⁷ Mrs Justice Arden left the Law Commission in January 1999 at the end of her term as Chairman. We paid tribute to her in our last annual report, where we also welcomed Sir Robert Carnwath CVO who became Chairman on 1 February. "Law Reform - the Shape of Change", an article she wrote towards the end of her term, appeared in the Judicial Studies Board Journal, Issue 6.

such matters as the role and responsibilities of Commissioners. Copies of the code are available from the Law Commission.

Staff

- 1.41 We pay tribute to the Commission's staff in Part VIII of this report.

MAJOR TARGETS FOR 1999

PUBLICATIONS

To complete consultation papers on:

- fraud
- home-sharers' property rights
- bail
- double jeopardy
- illegal transactions
- partnership*
- trust formalities

To complete reports on:

- land registration
- Part X of the Companies Act 1985*
- trustees' powers and duties*
- limitation periods
- damages
 - for non-pecuniary loss in personal injury cases
 - for medical, nursing and other expenses; collateral benefits
 - in personal injury cases
 - wrongful death

To publish:

- our Seventh Programme of Law Reform
- our Annual Report for 1998
- Consolidation Bills/Reports: Armed Forces*
Sentencing*^o
- Chronological Table of Private and Personal Acts*

- * with the Scottish Law Commission
- ^o to be published in 1999 or early in 2000

ALL TARGETS ARE SUBJECT TO AVAILABILITY OF RESOURCES

- Published in April 1999
- Delayed: see para 5.3
- Published in December 1999
- Published in October 1999
- Published in January 1999
- Delayed: see para 3.1
- Delayed: see para 5.12

- Delayed: see para 5.2
- Published in September 1999
- Published in July 1999
- Delayed: see para 2.11

- Published in April 1999
- Published in November 1999

- Published in November 1999

- Published in June 1999
- Published in June 1999
- Delayed: see para 6.9
- Published in March 2000
- Published in March 1999

MAJOR TARGETS FOR 2000

PUBLICATIONS

To complete reports on:

- land registration
- termination of tenancies¹
- Third Parties (Rights against Insurers) Act 1930*
- limitation periods¹
- damages under section 8 of the Human Rights Act 1998*
- fraud¹
- consent as a defence²

To complete consultation papers on:

- electronic commerce
- partnership*
- prosecution appeals in criminal cases
- home-sharers' property rights

To publish:

- our Annual Report for 1999
- Consolidation Bill/Report: Sentencing powers³
Criminal appeals
European Parliamentary elections

* with the Scottish Law Commission.

¹ to be published in 2000 or early in 2001.

² this would be completion of the project in so far as it relates to capacity and validity: see para 4.12.

³ with the Scottish Law Commission in some small respects.

Each of the above topics is described in more detail elsewhere in this report, generally with a more specific timetable.

All targets are subject to availability of resources.

PART II

COMMON LAW

TEAM MEMBERS¹

Government Legal Service

Mr J Bacon (*Team Manager*)
Mrs H Hall, Ms N S Pittam

Research Assistants

Mr C Daly, Miss F E Frost,
Mr M C Holt

PROFESSOR ANDREW BURROWS² **(Commissioner)**

DAMAGES

- 2.1 With the publication of three reports this year, we have completed our work on damages. These three reports follow the publication of our Report on Structured Settlements and Interim and Provisional Damages in 1994,³ our Report on Aggravated, Exemplary and Restitutionary Damages in 1997,⁴ and our Report on Liability for Psychiatric Illness in 1998.⁵

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

- 2.2 We published our Report on Damages for Personal Injury: Non-Pecuniary Loss⁶ in April. This report considers two aspects of the law of damages for personal injury. First, we considered whether damages awarded for the non-financial consequences of injury are at the appropriate level. Secondly, we considered what role juries should play in the assessment of damages generally.
- 2.3 Damages awarded for non-pecuniary loss are based on a tariff of conventional awards which has been developed by the judiciary. We conclude that the current awards for serious injury (over £3,000) are too low and recommend that they should be increased by a figure between 50% to 100%. For injuries that would

¹ As at the end of 1999.

² Until the end of September 1999. His successor is Professor Hugh Beale: see para 1.39 above.

³ Law Com No 224. The recommendations in this Report have been implemented, particularly in the Damages Act 1996.

⁴ Law Com No 247.

⁵ Law Com No 249.

⁶ Law Com No 257.

currently be in the range of £2,001 to £3,000, we recommend a series a tapered increases of less than 50%. In reaching our conclusions, we had regard not only to the views expressed by consultees but also to the public perception of what would be fair levels of compensation for non-pecuniary loss.⁷ Further, we recommend that these increases would be best achieved by the higher courts exercising their powers to issue guidelines in a case or series of cases. However, if the increases recommended are not achieved within a reasonable time (for example, three years), legislation should be introduced to implement our recommendations. The Government has made it clear that it will not itself consider this report as it concerns an area of the law which is in the courts' independent sphere, where the courts can take such account, if any, of the Commission's views as they choose and where the Government have no plans to legislate: Written Answer, *Hansard* (HC) 9 November 1999, vol 337, col 502W. At the time of writing, the Court of Appeal (sitting as a five judge court headed by the Master of the Rolls) is hearing eight joined appeals for the purpose of considering the Law Commission's recommendations as to the levels of damages for non-pecuniary loss.

- 2.4 In respect of the role of juries, we recommend legislation to reduce the role of juries in the assessment of damages. This would confine jury assessment of damages to compensatory damages (other than for personal injury) in defamation cases. Our recommendation is aimed at ensuring that damages awards are consistent and predictable.

(b) Damages for personal injury: medical, nursing and other expenses; collateral benefits

- 2.5 In November we published our Report on Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits⁸ which makes recommendations in relation to a number of different aspects of the law on damages in personal injury cases.
- 2.6 In respect of the law on gratuitous services, we recommend legislation to clarify and amend the general position (through the imposition of a personal obligation on the claimant to account to the carer for past but not future services) and to reverse the decision of the House of Lords in *Hunt v Severs*⁹ in respect of its denial of the recovery of damages for gratuitous services where those services have been provided by the tortfeasor. On the issue of NHS recoupment, we have confirmed our provisional view that the NHS should be given the right to recoup the costs of treatment provided to personal injury victims from the legal wrongdoer (subject to a cost-benefit analysis pointing to the contrary).

⁷ Empirical research was carried out for the Law Commission by the Office of National Statistics on the public perception of what levels of damages for non-pecuniary loss should be. This involved over 3500 face to face interviews with members of the public representing a broad spectrum of the population across Great Britain.

⁸ Law Com No 262. This report brings together our conclusions following two consultation papers, Damages for Personal Injury: Medical, Nursing and Other Expenses (1996) Consultation Paper No 144 and Damages for Personal Injury: Collateral Benefits (1997) Consultation Paper No 147.

⁹ [1994] 2 AC 350.

2.7 The second part of this report deals with the treatment of various benefits received by a victim of personal injury in the assessment of damages. Examples of the types of benefits that a victim might receive are the proceeds of an insurance policy, social security benefits, sick pay or disablement pensions. We recommend no change to the law on whether such benefits should be deducted or ignored in the assessment of damages. A factor in arriving at our conclusions was the lack of consensus among consultees on the appropriate means of reform. Nevertheless, we hope that our careful review of this area will assist with the continued development of the common law.¹ The Government are undertaking a comprehensive assessment of the individual and aggregate effect of the recommendations in this and two related reports: see paragraph 1.21 above.

(c) Claims for wrongful death

2.8 Our final report in the damages series, Claims for Wrongful Death,² was also published in November. This report makes a number of recommendations to improve the Fatal Accidents Act 1976, which deals with the recovery of compensation in respect of death caused by the fault of another.

2.9 One of the main recommendations is that the current statutory list of those who can claim for financial losses resulting from death should be extended to include anyone who was wholly or partly being maintained by the deceased. In respect of bereavement damages, which are awarded for the distress caused by a wrongful death, we recommend that the award should be raised from £7,500 to £10,000 and index-linked, although not more than £30,000 should be awarded in respect of a single death. Under the current legislation only a spouse or parent is entitled to claim bereavement damages, but we have concluded that in addition a child, a long-term cohabitee, a fiancé(e) or a sibling should be able to claim. Our reforms are aimed at bringing the law in this area into line with the values of modern society, and making the law fairer and more certain. This is another report where the Government are undertaking a comprehensive assessment of the effect of our recommendations: see paragraph 1.21 above.

LIMITATION OF ACTIONS

2.10 Following the completion of our analysis of the responses we have received to our consultation paper, we have formulated our final policy and are working on the preparation of the draft Bill which will accompany our final report. As proposed in our consultation paper, this will replace the current multiplicity of limitation periods applicable under the Limitation Act 1980 with a simplified limitations regime. The central elements of this regime will be as follows:

¹ In our Report on Claims for Wrongful Death we make recommendations to bring the law on collateral benefits in wrongful death cases into line with personal injury cases. However, collateral benefits have developed differently in the fatal accidents context due to the statutory basis, and we have recommended legislative reform of collateral benefits for fatal accidents claims in order to achieve consistency with the approach taken in personal injury.

² Law Com No 263.

- An initial limitation period of three years running from the date when the claimant knows, or ought reasonably to know, that he or she has a cause of action; and
- A long-stop limitation period of ten years (other than for personal injury claims) starting from the date of accrual of the cause of action or, if earlier, the date of the act or omission which gives rise to the claim.

2.11 We have been unable to publish the final report in 1999, as we had hoped, partly because of the unavailability of parliamentary counsel to prepare the draft Bill. However, we hope that, subject to the availability of resources, our report will be published by about the end of 2000.

ILLEGAL TRANSACTIONS

2.12 Following the publication of our Consultation Paper, *Illegal Transactions: The Effect of Illegality on Contracts and Trusts*,¹² in January 1999, we have received helpful responses on this difficult subject. Our main provisional proposal was that the complex and technical rules in this area should be replaced by a discretion for the courts to decide whether to enforce an illegal transaction, to recognise that property rights have been transferred or created under it, or to allow benefits conferred under it to be recovered. We also provisionally proposed a set of structuring factors to which the courts should refer in exercising this discretion.

2.13 We are now in the process of analysing the responses before making our final recommendations. Consultees have expressed broad agreement that the present law in this area is unsatisfactory, but there is less consensus on how best to proceed. The current rules are said to be overly complex and can result in injustice. However, concerns have been expressed over the uncertainty inherent in any discretion. The views of consultees will prove invaluable as we move towards a final policy on this subject.

SECTION 8 OF THE HUMAN RIGHTS ACT 1998

2.14 The Commission has begun work on a new project, jointly with the Scottish Law Commission, which will consider the power to award damages under section 8 of the Human Rights Act 1998. Section 8(3) provides that a court should not make an award of damages unless, taking into account all the circumstances of a given case, such damages are “necessary to afford just satisfaction”. Further, in deciding whether to award damages and the quantum of damages, section 8(4) requires the court to take into account the principles applied by the European Court of Human Rights in awarding compensation under Article 41 of the Convention. This project will provide a comprehensive review of the case law of the European Court of Human Rights and from this review will aim to derive principles that should govern the application of section 8 to decisions to make an award and guidelines as to the level of any award to be made.

2.15 The aim is to assist the courts, practitioners and public bodies in developing their approach to the issue of damages under the Human Rights Act 1998. As the Act

¹² Consultation Paper No 154.

comes into force in October 2000, we hope to publish our report during the summer so that it can be used in judicial training in preparation for the implementation of the Act.

PART III

COMPANY AND COMMERCIAL LAW

TEAM MEMBERS¹

Government Legal Service

Mr I Walker (*Team Manager*)

Mr W Mitchell, Mr H Boileau

Research Assistants

Miss C R Lloyd, Mr A G C McKay,

Mr J R Selby

MISS DIANA FABER

(Commissioner)

COMMERCIAL LAW

Partnership law

- 3.1 Together with the Scottish Law Commission we are in the process of completing the consultation paper on the law on general partnerships. We are considering how the law should be developed so as to meet the needs of modern business. The impact of partnerships on the economy is often underestimated: for example, there are almost as many partnerships in the UK, nearly 700,000, as there are companies. We intend to publish the consultation paper in the first half of 2000.² The pressure of other work, both on the Scottish Law Commission and on ourselves, prevented us doing so in 1999. We are being assisted in the project by a consultant, Mr R C I'Anson Banks, a leading practitioner in partnership law and the current editor of the most authoritative English textbook, *Lindley & Banks on Partnership*.

Electronic commerce

- 3.2 Following discussions with the Department of Trade and Industry and the Lord Chancellor's Department, certain aspects of electronic commerce have been included in the Law Commission's Seventh Programme of Law Reform.
- 3.3 We are conducting an examination of the current law and of proposals for domestic and international law reform with a view to assisting the development of

¹ As at the end of 1999.

² We propose to deal in a separate paper with the law on limited partnerships, currently contained in the Limited Partnerships Act 1907. Our terms of reference do not extend to a consideration of the new proposals for limited liability partnerships.

domestic proposals and making recommendations for additional reforms necessary to facilitate electronic commerce.

- 3.4 We are focusing our work on the sale and carriage of goods (both domestically and internationally) and on associated banking and insurance transactions.
- 3.5 We expect to have formulated our main proposals by about mid-2000. We are being assisted in this project by Dr Joanna Benjamin and Hugh Piggott, directors of the Centre for Law Reform, in relation to the banking aspects and by Christopher Nicholl, a barrister and senior lecturer in commercial law at the University of Auckland, in relation to the insurance aspects. In July Mrs Justice Arden, our former Chairman, gave a speech on the new challenges which electronic commerce gives for contract, tort and criminal law.³

Third Parties (Rights Against Insurers) Act 1930

- 3.6 The 1930 Act provides victims of negligent or wrongful acts (“third parties” under the Act) committed by individuals or companies who become insolvent⁴ with rights against the proceeds of insurance taken out by the wrongdoer.
- 3.7 Although it remains useful, a number of serious defects have become apparent in the 1930 Act. Together with the Scottish Law Commission, we are examining ways in which the law can be reformed to improve its usefulness to third parties, while taking account of the practical significance of the Act to insolvency and insurance practitioners. The Company Law Review currently under way at the Department of Trade and Industry touches on some of the same areas of law and we have worked together with them to ensure the two projects complement one another.
- 3.8 We plan to publish our final report in the first half of 2000, and are likely to consider whether the 1930 Act should be replaced by a new Act giving victims a quicker, cheaper and more effective mechanism for gaining access to insurance proceeds.

COMPANY LAW

Company directors: regulating conflicts of interests and formulating a statement of duties

- 3.9 We have completed our work, jointly with the Scottish Law Commission, about the case for a statutory statement of the duties owed by directors to their company under the general law and about Part X of the Companies Act 1985. Part X regulates the conduct of directors which involves self-dealing and therefore may give rise to conflicts of interests. Many criticisms of its provisions have been made by company directors and others. The project was undertaken at the request of the Department of Trade and Industry. The DTI launched a wide-ranging review of company law in March 1998 and its consultation document explains how this

³ She gave her speech in Cambridge to the Canadian Institute for Advanced Legal Studies. An article based on her speech was published in (1999) 149 N L J 1685-86 and 1731-32.

⁴ The Act sets out a number of “events” one of which must take place before it can be relied on. These include the making of a bankruptcy order or a winding up order.

project contributes to the wider review.⁵ We understand that the review steering group will shortly be issuing a further consultation document on their progress, and that it will cover our report in some detail.

- 3.10 We published our report in September 1999. The report recommends a statutory statement of the principal duties owed by a company director. These include the duty to act in good faith in the interests of the company, the duty not to use the company's property, information or opportunities to make a secret profit and the duty to act independently. We also recommend using company forms and official pamphlets to publicise the duties of directors.
- 3.11 The report recommends the retention of most of the provisions of Part X in order to supplement the protection provided by the general law. In addition, we recommend substantive amendment to Part X to clarify, modernise and simplify the legislation, for example, to require further disclosure in a company's annual accounts of compensation paid to individual directors for loss of office. We also recommend that there should be a single code of civil sanctions for breach of the legislation instead of the current bewildering variety of civil sanctions.
- 3.12 The Commission are most grateful for all the help we received. First, we were assisted by Mrs Justice Arden who continued to play a leading role in the preparation of the report following the end of her Chairmanship of the Law Commission in January 1999. For much of the last year of the project we were joined by Kirsten Birkett, on secondment to us from Clifford Chance, a leading firm of City solicitors: we are most grateful to her and to them for her invaluable work. We also received enormous assistance from Professor Dan Prentice (Pembroke College, Oxford), Richard Nolan (St John's College, Cambridge) and Dr Simon Deakin (Peterhouse College, Cambridge) and Professor Alan Hughes (Sidney Sussex College, Cambridge), both of the Economic and Social Research Council's Centre for Business Research, Cambridge. We had commissioned research from the Centre on how the regulation of conflicts of interests involving directors operated in practice and the views of directors on a possible statutory statement of directors' duties. The research was kindly supported by a grant from The Centre for Business Performance at The Institute of Chartered Accountants in England and Wales and was facilitated by the Institute of Directors which provided access to its database of members.

⁵ Company Law Review Steering Group, "Modern Company Law for a Competitive Economy: The Strategic Framework" (1999).

PART IV

CRIMINAL LAW AND EVIDENCE

TEAM MEMBERS¹

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(Joint Team Managers)

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Miss M L Ahamat, Mr E W Metcalfe,

Mr T G H Smith

MR STEPHEN SILBER QC²
(Commissioner)

DOUBLE JEOPARDY

- 4.1 In July 1999 the Home Secretary asked us³ to consider the rule against double jeopardy, which states that a person acquitted or convicted of an offence cannot be prosecuted again for the same offence. Mr Ben Emmerson of Doughty Street Chambers acted as our consultant. We provisionally proposed⁴ that, subject to certain exceptions, the rule should be retained; and indeed that it should be extended, to apply where the offence charged is not the same as the one previously charged, but the charge is based on the same or substantially the same facts.
- 4.2 In deciding whether there should be an exception to the rule against double jeopardy where new evidence was discovered after acquittal, we took into account the strong and cogent arguments in favour of the rule. One is the view that

¹ As at the end of 1999.

² Until December 1999. His successor is Judge Alan Wilkie QC: see para 1.39 above.

³ This followed recommendation 38 of the Macpherson report on the Stephen Lawrence enquiry, that consideration should be given to permit prosecution after acquittal when fresh and viable evidence is presented. Our terms of reference also asked us to take account of the powers of the prosecution to reinstate criminal proceedings, and the United Kingdom's international obligations. In carrying out this project we attach great significance to Article 4(1) of the Seventh Protocol to the European Convention on Human Rights, which prevents the bringing of a second prosecution for the same offence, while noting that Article 4(2) permits the original proceedings to be reopened in certain circumstances. The United Kingdom has not yet ratified the Protocol but the Government has indicated its intention to do so: Written Answer, *Hansard* (HL) 4 March 1999, vol 597, col 201.

⁴ Double Jeopardy (1999) Consultation Paper No 156. The consultation period closed in January 2000. That month we attended the House of Commons' Home Affairs Select Committee at their invitation to discuss our consultation paper, as part of their work on the subject.

the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.⁵

Other arguments include the value of finality in the criminal process, and the need to encourage efficient investigation.

- 4.3 We nevertheless came to the provisional conclusion that, in certain very limited cases, new evidence could justify a second trial for the same offence – but only where, if convicted, the defendant would probably receive a sentence of a specified minimum severity, *and* the new evidence could not with due diligence have been adduced at the first trial, *and* there is a very high probability of the defendant being convicted at the retrial.⁶ Even if these conditions were met, under our proposals the court would quash the acquittal only if it were satisfied that in all the circumstances of the case it was in the interests of justice to do so.
- 4.4 Arising out of our work on double jeopardy, the Commission has agreed in principle to accept a reference from the Government to consider (a) whether any and, if so, what additional rights of appeal or other remedies should be available to the prosecution from adverse rulings of a judge in a trial on indictment which the prosecution may wish to overturn and which may result, or may have resulted, whether directly or indirectly, in premature termination of the trial; and (b) to what, if any, procedural restrictions such appeals would be subject. It is anticipated that a consultation paper may be published by the end of July 2000.

BAIL AND THE HUMAN RIGHTS ACT 1998

- 4.5 With the Human Rights Act 1998 coming into force in October 2000, we decided to examine the law of bail. It is a matter of great public concern if a person's right to liberty, guaranteed by Article 5 of the European Convention on Human Rights, is violated. There will also be significant financial implications, because the victim may be entitled to compensation.⁷
- 4.6 In a consultation paper published in December 1999,⁸ we identified certain statutory provisions which either *cannot* be applied in a manner compatible with the Convention, or are highly *likely* to be applied in a manner which is not compatible, and (in either case) should therefore be repealed or amended. One such provision permits bail to be refused if the offence charged is indictable and

⁵ Black J in *Green v US* 355 US 184, 2L ed 2nd p 199 at p 201.

⁶ One such case might be that of a defendant to a rape charge who puts up an alibi. Some body fluid is discovered which unquestionably comes from the rapist but is too small to permit DNA analysis at the first trial. The defendant is acquitted. Three months later a new DNA test becomes available which makes it possible to analyse much smaller quantities of biological material than had formerly been the case. This technique is used to identify the rapist's body fluid as coming from the defendant.

⁷ Human Rights Act 1998, ss 8 and 9(3).

⁸ Bail and the Human Rights Act 1998, Consultation Paper No 157.

the defendant was on bail when he or she is alleged to have committed it;⁹ another, where the defendant has already been granted conditional bail and has been arrested for breach of a condition.¹⁰ A third such provision¹¹ *prohibits* the granting of bail to a defendant who has previously been convicted of an offence of homicide or rape and is now charged with another such offence, unless there are exceptional circumstances which justify it.

- 4.7 We also identified certain provisions which *can* be applied in a manner compatible with the Convention, but could usefully be supplemented with guidance on how to do this. One example is the rule that a defendant need not be granted bail if there are substantial grounds for believing that, if released, he or she would commit an offence.¹² The Strasbourg case law suggests that it would be permissible to refuse bail on this ground only if certain further requirements are satisfied – for example, that the offence which it is feared the defendant would commit is a serious one.
- 4.8 Professor Andrew Ashworth DCL FBA QC, of All Souls' College, Oxford, Vinerian Professor of English Law in the University of Oxford, acted as our consultant.

FRAUD AND DECEPTION

- 4.9 In April 1999 we published a consultation paper on offences of fraud and deception, including the possibility of creating a general fraud offence.¹³ We have received many helpful and thoughtful responses, and hope to take this project forward in 2000.

MISUSE OF TRADE SECRETS

- 4.10 We published a consultation paper in 1997 on the possibility of creating an offence of misusing a trade secret.¹⁴ We have decided to delay formulating our final recommendations on trade secrets until we have formed a view on the desirability of a general fraud offence.¹⁵ Such an offence might render a specific offence of misusing trade secrets unnecessary. We intend to return to this project as soon as resources permit.

EVIDENCE OF PREVIOUS MISCONDUCT

- 4.11 Much work has been done towards a report on this subject - which includes consideration of the circumstances in which a jury or magistrates can be told of a defendant's previous convictions. However, owing to shortage of resources, it is

⁹ Bail Act 1976, Schedule 1, Part I, para 2A.

¹⁰ Bail Act 1976, Schedule 1, Part I, para 6, and Part II, para 5.

¹¹ Criminal Justice and Public Order Act 1994, s 25, as amended.

¹² Bail Act 1976, Schedule 1, Part I, para 2(b).

¹³ Legislating the Criminal Code: Fraud and Deception, Consultation Paper No 155. We outlined our principal proposals in our annual report for 1998: Law Com No 258, paras 4.8 – 4.12.

¹⁴ Legislating the Criminal Code: Misuse of Trade Secrets, Consultation Paper No 150.

¹⁵ See para 4.9 above.

unlikely to be published before late 2000 or early 2001. Our consultant is Professor Diane Birch of the University of Nottingham.

CONSENT AS A DEFENCE

- 4.12 As we explained in our annual report for 1998, we have decided to take this project forward in conjunction with the review of sexual offences currently being undertaken by the Home Office, with whom we are in close liaison. In February 2000 the Commission agreed a policy paper on consent in sex offences, which addresses the question of what it means to consent to an act which would otherwise constitute a sexual offence, what constitutes a valid consent for this purpose, and who has the capacity to give it. This paper has been submitted to the Home Office with a view to its consideration, and possible publication, in conjunction with the Home Office's forthcoming consultation paper on sexual offences.

ASSISTING AND ENCOURAGING CRIME

- 4.13 In our consultation paper¹⁶ we considered the scope and structure of the law relating to the liability of those who assist or encourage others to commit offences. Unfortunately, resources did not permit us to make any progress on this important and difficult project in 1999. We hope to start formulating our policy when resources permit.

CONSOLIDATION OF SENTENCING STATUTES

- 4.14 We are delighted that the drafting of the consolidation has now been completed¹⁷ and that the Bill is being introduced in March 2000.

¹⁶ Assisting and Encouraging Crime (1993) Consultation Paper No 131.

¹⁷ See paras 6.5-6.6 below for details.

PART V

PROPERTY AND TRUST LAW

TEAM MEMBERS¹

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Research Assistants

Miss S A Ashworth, Mr O Radley-Gardner,

Mr R B J Williams

MR CHARLES HARPUM
(Commissioner)

LAW OF PROPERTY

Land Registration

- 5.1 This joint project with H M Land Registry — which is intended to replace in its entirety the existing legislation on land registration — is drawing towards its conclusion. Following the publication in September 1998 of our Consultative Document, *Land Registration for the Twenty-First Century*,² we received many responses of a very high quality. In the light of these, the policy for the draft Land Registration Bill was settled by Commissioners and H M Land Registry. We spent most of the year drafting Instructions for the Bill, which is the largest law reform Bill ever to be produced in the Law Commission. We were greatly assisted in this task by the excellent work of a senior lawyer from Gloucester District Land Registry, Patrick Hamilton-Eddy, who worked as part of the team at the Law Commission. We are most grateful to the Land Registry for making him available. Our legislation would modernise and simplify the present legislation and pave the way for the introduction of a wholly electronic system of conveyancing to replace the present paper-based one. It would also significantly strengthen the protection which is given to registered titles against the claims of adverse possessors.
- 5.2 This has been a major undertaking — because of the sheer scale of the task, for which there is no precedent in the Commission's history, together with the novelty of much of the work that is being done. We hope that the draft Bill and final report will be published in the autumn of 2000. It now seems likely that electronic conveyancing will be introduced in advance of the Land Registration Bill under

¹ As at the end of 1999.

² (1998) Law Com No 254. See our annual report for 1998, Law Com No 258, paras 5.1 - 5.4.

powers conferred by clause 8 of the Electronic Communications Bill that is currently before Parliament. That clause enables primary and subordinate legislation to be modified by statutory instrument in order to authorise or facilitate the use of electronic communications or storage. The wording of clause 8 was amended to ensure that it would be possible to make an order under it by which conveyancing transactions could be executed electronically in place of the existing writing requirements. It is anticipated that the Law Commission and H M Land Registry will give advice to the Lord Chancellor as to the form of such an order. However, although electronic conveyancing may be introduced in advance of the Land Registration Bill, it will not be possible to develop its potential without the fundamental reform of the system of land registration which that Bill is intended to bring about. The present legislation presupposes a paper-based system of conveyancing. It is wholly inappropriate for a system where virtually all stages of the process are conducted on line.

Property rights of home-sharers

- 5.3 This project concerns the property rights of all those who live together in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder.³ Once again, however, the publication of a consultation paper has had to be delayed. This was because of the need for the team to concentrate its efforts on other projects, particularly land registration and trustees' powers and duties, and also because one of the legal posts in the team remained vacant for much of the year. We anticipate publication during the course of 2000.

Termination of tenancies

- 5.4 Last year we reported on our continuing work in relation to a difficult area of the law — that relating to the forfeiture of leases.⁴ We gave details of the consultative document concerning the landlord's right of physical re-entry which we published in January 1998⁵ and of the work which had been done following the end of the consultation period.
- 5.5 We had hoped to publish a report together with a revised draft Termination of Tenancies Bill during 1999. Unfortunately, however, the considerable demands upon the team of parliamentary draftsmen at the Commission made this impossible, and we now hope to publish in 2000. Nevertheless, in June we announced the outcome of the consultation exercise.⁶ Consultation showed that there is overwhelming support for retaining a right of physical re-entry. In the light of this, we have concluded that, although physical re-entry is a harsh remedy, it can be both effective and justifiable in cases where tenants default on their obligations, whether by failing to pay the rent or otherwise, and where there is no

³ The project was explained more fully in our annual report for 1995, Law Com No 239, paras 6.7 - 6.12.

⁴ See our annual report for 1998, Law Com No 258, paras 5.5 and 5.6. See also Law Com Nos 142 and 221.

⁵ Termination of Tenancies by Physical Re-entry: A Consultative Document.

⁶ We issued a press notice on 30 June 1999.

real prospect of them remedying the breach. We therefore intend to take forward the proposals explained in the consultative document, as modified to take account of comments received on consultation. In this way, the remedy would be preserved for use in appropriate cases, but with safeguards to ensure the protection of the legitimate interests of tenants.

LAW OF TRUSTS

Trustees' powers and duties

- 5.6 In July we published our Report on Trustees' Powers and Duties.⁷ The report was largely based upon the provisional proposals in our consultation paper.⁸ However, as we explained last year,⁹ the scope of the project was extended to include an examination of trustees' powers of investment. To the extent that it relates to powers of investment, this is a joint report of the Law Commission and the Scottish Law Commission as the relevant law is much the same in the two jurisdictions.
- 5.7 Trusts are widely used for many purposes nowadays and large sums of money are held by trustees, including charity trustees. The business of investing funds is now very sophisticated, and trusteeship itself is an increasingly specialised task that often requires skills that the trustees may not have. In order to bridge any gap between the skills which they actually have and those which they require in order to perform their functions properly, trustees need wide powers — such as powers to delegate investment decisions to professional fund managers.
- 5.8 The approach of current legislation is to confer default powers on trustees which will apply unless either they have been excluded by the person creating the trust or other wider powers have been conferred by the trust instrument. Many modern trusts contain very wide powers of investment, delegation and other ancillary powers. But there are also many existing trusts — and particularly older charitable trusts — which do not have such powers, and have to resort to the statutory default powers. This is now a matter for concern, because the current statutory default powers of investment and delegation are woefully inadequate. In addition, there are other powers which trustees lack but which they need if they are to take full advantage of the investment vehicles that are now available, in particular the power to employ nominees. Not only do the shortcomings of the present law seriously hinder trustees in the performance of their duty to act in the best interests of the trust's beneficiaries, but they make this country a less attractive place in which to establish and administer trusts.
- 5.9 In this report the Law Commission and the Scottish Law Commission recommended that in place of the out-dated and unduly restrictive regime which now governs trustees' investment powers,¹⁰ trustees should have unrestricted

⁷ (1999) Law Com No 260; Scot Law Com No 172.

⁸ Trustees' Powers and Duties (1997) Consultation Paper No 146.

⁹ See our annual report for 1998, Law Com No 258, para 5.11.

¹⁰ Trustees' investment powers are presently regulated by the Trustee Investments Act 1961 in the absence of express investment powers in the will or trust instrument.

powers of investment. However, in exercising the new powers, trustees would be under a duty to take proper advice and to take reasonable care.

- 5.10 The Law Commission also recommended a number of additional reforms for England and Wales, intended to facilitate more effective trust administration and in particular the more effective investment of trust funds. The issues include collective delegation by trustees (so that they can delegate to agents many of their discretions, particularly their powers to invest and manage trust property); the use of nominees and custodians; powers of insurance; and remuneration of professional trustees. We proposed that trustees should have wider powers in relation to each of these matters subject to appropriate safeguards, including a new statutory duty to take reasonable care. If our proposals are implemented, they will constitute the most significant reform of trustee law since 1925.
- 5.11 The Queen's Speech in November announced that a Bill would be introduced as part of the Government's legislative programme "to modernise the powers and duties of trustees", arising from our report. We were extremely pleased that the Government accepted our report so soon after its publication. The Trustee Bill has now been introduced into Parliament.

Trust formalities

- 5.12 Last year we reported on the work we undertook to explore the practical difficulties caused by the present law on the formalities required for the creation of trusts.¹¹ Following on from that work, we are now preparing a consultation paper. Unfortunately, however, the need to concentrate on other current projects prevented its publication before the end of the year. Nevertheless, we now anticipate that the consultation paper will be published during 2000.

¹¹ See our annual report for 1998, Law Com No 258, para 5.12.

PART VI

STATUTE LAW

TEAM MEMBERS ¹

Consolidation

The Chairman, Mr J M Sellers, Mr D Ramsey, Ms E C White, Mr G Lyne

Statute Law Revision (including Local Legislation)

The Chairman, Mr J D Saunders, Mrs E A McElhinney, Miss L A Clapinska

CONSOLIDATION

- 6.1 The Law Commission has a duty to keep under review all the law with which it is concerned, with a view to reducing the number of separate enactments and generally simplifying and modernising the law. An important aspect of this function is consolidation. The need for this arises when, over a period of time, separate statutes are enacted on the same general subject matter or particular legislation is repeatedly amended. In either case, the law can become difficult to piece together.
- 6.2 Consolidation consists of drawing together different enactments on the same subject matter to form a rational structure and of making more intelligible the cumulative effect of different layers of textual amendment. Usually this is done by means of a single statute; in the case of a large consolidation, it may be done by means of several statutes. This makes the law more comprehensible, both to those who apply it and to those affected by it.
- 6.3 If anomalies are revealed in the process of consolidation, various devices (such as amendments recommended by the Law Commission) are available to rectify them. If a change needed to rectify an anomaly is of such a nature that it ought to be made by Parliament in the normal way, a paving Bill is required or else the anomaly has to be reproduced.
- 6.4 The process of consolidation requires the support and participation of the Government department within whose responsibility the subject matter falls.
- 6.5 The main consolidation feature of the year has been the preparation of the Powers of Criminal Courts (Sentencing) Bill. This large Bill, which is of great practical significance, brings together in a single piece of legislation sentencing powers which are currently found in more than a dozen Acts. We expect the Bill to be introduced into Parliament in March 2000. The difficult and complex task of bringing a rational order to the many disparate provisions concerned has been the work of a consultant (Mrs Léonie McLaughlin, a former member of the Office of the Parliamentary Counsel) engaged by the Commission, with the assistance of Dr David Thomas QC (Hon), Editor of "Current Sentencing Practice".

¹ As at the end of 1999.

- 6.6 Our last annual report mentioned that a large number of paving amendments were included in the Crime and Disorder Act 1998. Further paving amendments were included in the Youth Justice and Criminal Evidence Act 1999 (section 67 and Schedule 5). In addition, a number of further minor additional changes in the law necessary to facilitate the consolidation are the subject of Law Commission recommendations in a short report being published at the same time as the introduction of the consolidation Bill; two recommendations are made jointly with the Scottish Law Commission.
- 6.7 Work has continued on the consolidation of the provisions relating to the functions of the criminal division of the Court of Appeal. It is hoped that it will be possible for the Bill to be enacted in the 2000/2001 Session of Parliament.
- 6.8 Work has begun on three new consolidation projects. The first is a consolidation of the legislation relating to wireless telegraphy. It is a medium sized project which will replace legislation dating back to the Wireless Telegraphy Act 1949. The other two projects are relatively small. One will tidy up the law relating to European Parliamentary elections in the wake of the amending legislation in 1999. The other will bring together various enactments relating to the breeding and sale of dogs.
- 6.9 Mention was made in our last annual report of the fact that the prospects for the armed forces consolidation (the work on which was then well advanced) were affected by the need for amending legislation to be introduced first. An amending Bill is at present before Parliament. The proximity of the next quinquennial Armed Forces Bill (due in the 2000/2001 Session) means that progress with the consolidation will not be possible until after that Bill has been enacted. Progress is then likely to depend on whether the Government decides to move to a tri-service discipline Act, rather than retaining a separate Act for each of the armed forces, which is the basis on which the consolidation proceeds.

STATUTE LAW REVISION

- 6.10 The principal purpose of statute law revision is to repeal statutes that are obsolete or which otherwise no longer serve any useful purpose, so modernising the statute book and leaving it clearer and shorter. This helps to save the time of lawyers and others who need to use it. Our work is carried out by means of Statute Law (Repeals) Bills which we publish periodically in our Statute Law Revision reports. There have been 16 such Bills since 1965. All have been enacted, so repealing more than 2000 Acts in their entirety and achieving partial repeals in thousands of other Acts. Where appropriate, our work on statute law revision is conducted jointly with the Scottish Law Commission. The work includes local and private Acts as well as public general Acts although, following a reduction in the resources available to the team during the past year, we do not anticipate being able to undertake any substantial work on local or private Acts for the foreseeable future.
- 6.11 Our last report on statute law revision was published in 1998 jointly with the Scottish Law Commission, resulting in the Statute Law (Repeals) Act 1998 which came into force in November 1998. Work on our next Statute Law Revision report is now under way. The first topic is a sizeable ecclesiastical law project, the work on which is nearing completion following consultation with the Church of England, the Church in Wales and the Church Commissioners. Other topics over

the next year are likely to include a selection of obsolete or spent enactments relating to agriculture and companies.

- 6.12 During the past year we have made contact with the legal heads of most Government Departments inviting suggestions for repeal candidates for our next report. Departments are often aware of enactments that are obsolete or spent. These can come to light when Departments are preparing their Bills for the next Parliamentary Session or while a Bill is actually before Parliament. Because of pressure of Parliamentary time or for technical reasons, it is not always possible for Departments to take the opportunity of their current Bill to repeal these obsolete or spent enactments. As a result of our discussions this year, Departments were able to suggest a number of enactments that appear suitable for repeal. We hope to be able to include these in our next report and to establish closer links with Departments so as to raise the profile of the statute law revision work that we undertake.

PART VII

EXTERNAL RELATIONS

Parliament, Ministers and Government Departments

- 7.1 The Chairman and other Commissioners have regular contact and meetings with a number of Ministers and senior officials. This is especially the case with Government departments which have the leading responsibility for the law which we are reviewing. For example, during the year the Chairman met the Lord Chancellor, the Attorney General, the Solicitor General, the Home Secretary, the President of the Council (Mrs Margaret Beckett MP) and other Ministers. We were also pleased to receive visits from Mr Keith Vaz and Mr David Lock, in their roles as Parliamentary Secretaries in the Lord Chancellor's Department. More generally, there is contact with: the Lord Chancellor, the Parliamentary Secretary and officials in the Lord Chancellor's Department; the Home Secretary and officials in the Home Office; officials in the Department of Trade and Industry and in the Department of the Environment, Transport and the Regions. Miss Faber has served on the Small Firms Sub-Group of the Company Law Review which the Government launched in 1998.

Consultation and Consultants

- 7.2 Our contacts with many bodies and individuals outside the Commission are invaluable to us. Their assistance to us is an essential part of our work and we are, as ever, most grateful to those who help us in this way. We undertake formal consultation through our published consultation papers and less formal consultation in writing or face to face through the various stages of a project. Consultation helps us assess the difficulties with the current law and the options for reform.
- 7.3 Quite separately, we engage experts in specific fields of law to assist us as consultants when the need arises. Projects on which we have been assisted in this way this year include sentencing consolidation, partnership, electronic commerce, double jeopardy, bail, previous misconduct, and fraud and deception.

Socio-Legal Research

- 7.4 It is frequently very helpful to our law reform projects if we can gain information and insights from relevant socio-legal, economic or empirical research. This assists us to form our conclusions on the basis of evidence from a wide variety of standpoints. We use existing research results or seek the funding for new research. For example, the results of research which we commissioned were of great assistance in our work on non-pecuniary loss in personal injury cases and on company directors' duties, described respectively in Parts II and III above. We also have a number of other links with the socio-legal community. For example, the Socio-Legal Studies Association is represented at our annual meeting with the Society of Public Teachers of Law, and the Secretary of the Commission is a member of the Socio-Legal Research Users Forum.

Relations with Law Reform and Other Bodies Elsewhere

- 7.5 We have considerable contact with law reform bodies in other countries. We have frequent and good working relations with the Scottish Law Commission, and are conducting some projects jointly with them. We also have very useful contacts with the Law Reform Advisory Committee for Northern Ireland.
- 7.6 Discussions with visitors from overseas are of great interest and assistance to us. We were pleased to welcome the visitors listed in Appendix D. In addition, our Chairman attended the Commonwealth Law Conference in Kuala Lumpur in September. He gave an address at a special day for law reform agencies there and met representatives of several law reform agencies from other Commonwealth countries.

Other Contacts

- 7.7 As with those mentioned above, we also continue to have invaluable contacts with the Bar, the Law Society and the Society of Public Teachers of Law. We have an annual meeting with each of them and have frequent contact with many of their committees and members. We also have contact with the judiciary at several levels; like many other bodies and individuals, they too give us considerable assistance.
- 7.8 Among the talks given by the Commission are the following. The Chairman gave a paper at the Commonwealth Law Conference on "Human Rights brought home". He also gave the Garner Lecture to the UK Environmental Law Association on "Law, Politics and the Environment". Together with Mr Silber, the Chairman spoke at a conference organised by the Statute Law Society on Consolidation of the Criminal Law. Mr Silber gave a talk to the Magistrates' Association. He led a session at the annual conference of the Society of Public Teachers of Law on the Law Commission's consultation paper on Fraud and Deception. Together with the Chairman, he presented a paper at a conference on capacity to consent, organised by the Home Office as part of its review of sexual offences, attended also by Mrs Finlason. Mr Parry, joint manager of the Criminal Law team, addressed the annual conference of the Institution of Occupational Safety and Health on the Commission's recommendations on corporate manslaughter.
- 7.9 Mr Harpum gave the Blundell Memorial Lecture at Middle Temple Hall, London on "Human Rights: The Property Law Dimension". He spoke to the Society for Advanced Legal Studies (Institute of Advanced Legal Studies, London) on "Does Feudalism have a Role in the Land Law of the 21st Century?" He presented a paper on "Developments in H M Land Registry" at the H M Land Registry International Conference of Land Registrars, "Land Registration for the Twenty-First Century" in Gatwick, and a paper on "Land Registration for the Twenty-First Century" at H M Land Registry's Conference "Shaping the Future". At the 1999 Annual Conferences of the Society of Trust and Estate Practitioners at Bristol, Leeds and London he gave a paper on "Trustee Reform".

Publications

- 7.10 We mainly publish consultation papers and reports about law reform matters, together with reports on statute law revision and consolidation reports. While we

continue to publish in traditional hard copy format,¹ over the past three years we have also made our publications available electronically on the Internet. In addition, for over twelve years we have published a bulletin entitled “Law under Review”. This gives details of a range of Government or Government-sponsored law reform projects, including our own, and also a list of our reports which are awaiting implementation. The bulletin is available on our Internet website,² free of charge, and is published three times a year. The latest edition summarises nearly 150 projects. We also have available, on request, a list of the publications we have issued since 1965, which briefly sets out the reports which resulted from consultation papers, and the enacted legislation which resulted from reports. An extract from the list, showing implemented reports since 1985, is reproduced at Appendix B to this report.

¹ We are grateful to the Stationery Office for all their assistance in publishing our work.

² Our website address is given in Appendix E below.

PART VIII

STAFF AND RESOURCES

Staff

- 8.1 The Commissioners acknowledge the enthusiastic and dedicated service of all the legal and administrative staff. As usual, a number of staff left the Commission during the year and we express our particular thanks to them. The names of all the staff in post at the end of 1999 are set out at the beginning of Parts II to VI above or in Appendix E.

(a) Legal Staff

- 8.2 The Commission's core legal staff are part of the Government Legal Service, barristers and solicitors drawn from a wide variety of professional backgrounds who are generally recruited as a result of open competition following public advertisement. An unprecedented number of new legal staff, six in all, were recruited in a short time in the autumn to replace some of those who had moved on in the previous year or two as part of their natural career development. We welcome them all to their positions at the Commission.
- 8.3 Those who left us in 1999, following various periods at the Commission, were:

Ms E M Barmes
Miss R Ellis
Ms F R Lloyd
Ms A Moore-Williams
Mr A M Rowland¹
Mr A C Scott

From time to time others join us for particular purposes. We express our appreciation elsewhere (paragraphs 3.12 and 5.1) for a senior Land Registry lawyer who worked for us this year, and a lawyer seconded from a firm of City solicitors.

- 8.4 The Office of the Parliamentary Counsel seconds to the Commission a team of draftsmen who prepare the draft Bills attached to our law reform reports and who undertake the consolidation of existing legislation. The team's advice and skill, under the leadership of John Sellers, are greatly appreciated. Partly because of the amount of Government legislation needing drafting, they have been under particular pressures of work this year, so that some of our Bills could not be drafted as early as we had hoped (paras 2.11 and 5.5). Those who left us in 1999 were:

Dr H J Caldwell
Miss B A Waplington
Ms C D Wynter

¹ We referred in more detail to his work at the Commission for over 20 years in para 8.4 of our annual report for 1998, Law Com No 258.

(b) Research Assistants

- 8.5 To assist the teams with research and ancillary matters, up to 15 well-qualified graduates are recruited annually. They generally spend a year here before moving on to the next stage of their legal training; many of our former research assistants are now enjoying notable success in their chosen careers. The Commission values the insight, enthusiasm and creativity they provide, and recognises the important contribution they make to its work. We express our thanks to the research assistants who left us in 1999, to work in Chambers, firms of solicitors and elsewhere.

(c) Administrative, Technical and Support Staff

- 8.6 The Commission also recognises and is grateful for the contribution made by the non-legal staff, in many cases with the assistance of the Lord Chancellor's Department, for their provision of all the services required to enable it to function effectively. These include accommodation, finance, human resources, information technology, publishing, records management, secretarial assistance and security.

Resources

(a) Library

- 8.7 Our library has continued to provide an information service in support of the legal work of the Commission. We make use of a number of other libraries in our work and particular thanks are due this year to the libraries of the Institute of Advanced Legal Studies, the Supreme Court and the Lord Chancellor's Department. The Law Commission library makes full use of the Internet and other electronic services and databases in its work, as well as traditional printed sources.

(b) Information Technology

- 8.8 A great deal of work has been done in preparation for replacing our computer system. The Commission's Internet site has continued to expand during this year. Each month it receives some 3,000 hits on the home page and 6,000 on the other pages. We intend to redesign our site in the near future.

(c) Finance

- 8.9 The cost of the Commission is summarised in Appendix F. The Government's funding of the Commission is of course limited, as for any public body. The financial year 1999/2000 is the fifth successive year in which we have not received any increase in the funds allocated to us by the Lord Chancellor's Department, our sponsoring department. We have of course still had to meet pay rises and other rising costs. We managed to stay within budget this year, despite the constraints, by a number of means: for example, a number of staff posts have been vacant for significant periods (resulting in delays to our work); and we have secured some contributions from other Government departments etc to help fund particular pieces of work – for which we are most grateful. We also benefit greatly from the many individuals and organisations who contribute to our work without payment, particularly those who respond to our consultations.

(Signed) ROBERT CARNWATH, *Chairman*
HUGH BEALE
DIANA FABER
CHARLES HARPUM
ALAN WILKIE

MICHAEL SAYERS, *Secretary*
29 February 2000

APPENDIX A

THE LAW COMMISSION'S ROLE AND METHODS

The Law Commission has now been in operation for 34 years. It was established by the Law Commissions Act 1965 to review the law of England and Wales with a view to its systematic development and reform. A number of specific types of reform were mentioned:

- ◆ codification
- ◆ removal of anomalies
- ◆ repeal of obsolete and unnecessary enactments
- ◆ consolidation
- ◆ generally the simplification and modernisation of the law.

Law reform projects may be included in a programme of work submitted to the Lord Chancellor, or be referred to the Commission usually by a Government department. The current programme of work is the Sixth Programme, approved in 1995. The Commission initiates or accepts a law reform project according to its assessment of the relevant considerations, the most significant of which are the importance of the issues, the availability of resources in terms of both expertise and funding and the suitability of the issues to be dealt with by the Commission. The Commission's general aims for law reform are to make the law simpler, fairer, more modern and cheaper to use.

The Commission's work is based on thorough research and analysis of case law, legislation, academic and other writing, law reports and other relevant sources of information both in the United Kingdom and overseas. It takes full account both of the European Convention on Human Rights and of other European law. It acts in consultation with the Scottish Law Commission. It normally publishes a consultation paper inviting views before it finalises its recommendations. The consultation paper describes the present law and its shortcomings and sets out possible options for reform. The views expressed in response by consultees are analysed and considered very carefully.

The Commission's final recommendations are set out in a report which contains a draft Bill where the recommendations involve primary legislation. 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 a Private Member or Peer does so. After publication of a report the Commission often gives further assistance to Government Ministers and departments, so as to ensure that the best value is obtained from the effort and resources devoted to the project by the Commission and others.

The Commission also has the task of consolidating statute law, substituting one Act, or a small group of Acts, for all the existing statutory provisions in several different Acts. In addition, the Commission prepares legislation to repeal statutes which are obsolete or unnecessary.

APPENDIX B

THE LAW COMMISSION'S IMPLEMENTED REPORTS SINCE 1985

Publications which have been laid before Parliament under section 3(2) of the Law Commissions Act 1965 and publications which have been presented to Parliament as Command Papers, excluding reports on consolidation, showing implementation. The date shows the year in which the report was published. Those marked + are the result of a reference under section 3(1)(e) of the Act.

Law Com No	Title	Implementing Legislation
1985		
138+	Family Law: Conflicts of Jurisdiction Affecting the Custody of Children (Joint Report - Scot Law Com No 91) (Cmnd 9419)	Family Law Act 1986 (c 55), Part I.
141	Codification of the Law of Landlord and Tenant: Covenants Restricting Dispositions, Alterations and Change of User (HC 278)	In part by Landlord and Tenant Act 1988 (c 26).
146	Private International Law: Polygamous Marriages. Capacity to Contract a Polygamous Marriage and Related Issues (Joint Report - Scot Law Com No 96) (Cmnd 9595)	Private International Law (Miscellaneous Provisions) 1995 (c 42).
147	Criminal Law: Report on Poison-Pen Letters (HC 519)	Malicious Communications Act 1988 (c 27).
148	Property Law: Second Report on Land Registration: Inspection of the Register (HC 551)	Land Registration Act 1988 (c 3).
150	Statute Law Revision: Twelfth Report (Joint Report - Scot Law Com No 99) (Cmnd 9648)	Statute Law (Repeals) Act 1986 (c 12); Patents, Designs and Marks Act 1986 (c 39).
151+	Rights of Access to Neighbouring Land (Cmnd 9692)	Access to Neighbouring Land Act 1992 (c 23).
1986		
157	Family Law: Illegitimacy (Second Report) (Cmnd 9913)	Family Law Reform Act 1987 (c 42).
1987		
160	Sale and Supply of Goods (Joint Report - Scot Law Com No 104) (Cm 137)	Sale and Supply of Goods Act 1994 (c 35)
161	Leasehold Conveyancing (HC 360)	Landlord and Tenant Act 1988 (c 26).
163	Deeds and Escrows (HC 1)	Law of Property (Miscellaneous Provisions) Act 1989 (c 34).
164	Transfer of Land: Formalities for Contracts for Sale etc of Land (HC 2)	Law of Property. (Miscellaneous Provisions) Act 1989 (c 34).
165	Private International Law: Choice of Law Rules in Marriage (Joint Report - Scot Law Com No 105) (HC 3).	Foreign Marriage (Amendment) Act 1988 (c 44).
166	Transfer of Land: The Rule in <i>Bain v Fothergill</i> (Cm 192)	Law of Property (Miscellaneous Provisions) Act 1989 (c 34).
1988		
172	Family Law: Review of Child Law: Guardianship and Custody (HC 594)	Children Act 1989 (c 41).
174	Landlord and Tenant Law: Privity of Contract and Estate (HC 8)	Landlord and Tenant (Covenants) Act 1995 (c 30).
1989		
179	Statute Law Revision: Thirteenth Report (Joint Report - Scot Law Com No 117) (Cm 671)	Statute Law (Repeals) Act 1989 (c 43).
180	Criminal Law: Jurisdiction over Offences of Fraud and Dishonesty with a Foreign Element (HC 318)	Criminal Justice Act 1993 (c 36) Part I.
181	Transfer of Land: Trusts of Land (HC 391)	Trusts of Land and Appointment of Trustees Act 1996 (c 47)
184	Property Law: Title on Death (Cm 777)	Law of Property (Miscellaneous Provisions) Act 1994 (c 36)

186	Criminal Law: Computer Misuse (Cm 819)	Computer Misuse Act 1990 (c 18).
187	Family Law: Distribution on Intestacy (HC 60)	Law Reform (Succession) Act 1995 (c 41).
188	Transfer of Land: Overreaching: Beneficiaries in Occupation (HC 61)	Trusts of Land and Appointment of Trustees Act 1996 (c 47).
	1990	
192	Family Law: The Ground for Divorce (HC 636)	Family Law Act 1996 (c 27).
193	Private International Law: Choice of Law in Tort and Delict (Joint Report - Scot Law Com No 129) (HC 65)	Private International Law (Miscellaneous Provisions) Act 1995 (c 42).
	1991	
196	Rights of Suit in Respect of Carriage of Goods by Sea (Joint Report - Scot Law Com No 130) (HC 250)	Carriage of Goods by Sea Act 1992 (c 50).
199	Transfer of Land: Implied Covenants for Title (HC 437)	Law of Property (Miscellaneous Provisions) Act 1994 (c 36)
202+	Criminal Law: Corroboration of Evidence in Criminal Trials (Cm 1620)	Criminal Justice and Public Order Act 1994 (c 33).
	1992	
205	Criminal Law: Rape within Marriage (HC 167)	Criminal Justice and Public Order Act 1994 (c 33).
207	Family Law: Domestic Violence and Occupation of the Family Home (HC 1)	Family Law Act 1996 (c 27).
	1993	
211	Statute Law Revision: Fourteenth Report (Joint Report - Scot Law Com No 140) (Cm 2176)	Statute Law (Repeals) Act 1993 (c 50).
215	Sale of Goods Forming Part of a Bulk (Joint Report - Scot Law Com No 145) (HC 807)	Sale of Goods (Amendment) Act 1995 (c 28).
216	The Hearsay Rule in Civil Proceedings (Cm 2321)	Civil Evidence Act 1995 (c 38).
217	Family Law: The Effect of Divorce on Wills	Law Reform (Succession) Act 1995 (c 41).
	1994	
220	The Law of Trusts: Delegation by Individual Trustees (HC 110)	Trustee Delegation Act 1999 (c 15).
224	Structured Settlements and Interim and Provisional Damages (Cm 2646)	Finance Act 1995 (c 4) - in part; Civil Evidence Act 1995 (c 38) - in part; Damages Act 1996 (c 48) - in part.
226	Administrative Law: Judicial Review and Statutory Appeals	In part by Housing Act 1996 (c 52).
228	Criminal Law: Conspiracy to Defraud (HC 11)	Theft (Amendment) Act 1996 (c 62).
	1995	
230	Legislating the Criminal Code: The Year and a Day Rule in Homicide (HC 183)	Law Reform (Year and a Day Rule) Act 1996 (c 19).
233	Statute Law Revision: Fifteenth Report (Joint Report - Scot Law Com No 150) (Cm 2784)	Statute Law (Repeals) Act 1995 (c 44).
235	Transfer of Land: Land Registration (jointly with H M Land Registry) (Cm 2950)	Land Registration Act 1997 (c 2).
	1996	
242	Privity of Contract: Contracts for the Benefit of Third Parties (Cm 3329)	Contracts (Rights of Third Parties) Act 1999 (c 31).
243 62).	Offences of Dishonesty: Money Transfers (HC 690)	Theft (Amendment) Act 1996 (c 62).
	1998	
252	Statute Law Revision: Sixteenth Report (Joint Report - Scot Law Com No 166) (Cm 3939)	Statute Law (Repeals) Act 1998 (c 43).

APPENDIX C

LAW COMMISSION LAW REFORM REPORTS AWAITING IMPLEMENTATION

Of all the Law Commission's 162 law reform reports, the 23 listed below remain outstanding.¹ Seven of these, marked*, have been expressly accepted by the Government in full or in part, subject to Parliamentary time being available.

<i>Year</i>	<i>No</i>	
1991	194	Distress for Rent
1992	208	Business Tenancies: Landlord and Tenant Act 1954, Part II
1993	218	* Legislating the Criminal Code: Offences against the Person and General Principles ²
1994	222	Binding Over
	226	Judicial Review and Statutory Appeals ³
1995	229	Intoxication and Criminal Liability
	231	* Mental Incapacity ⁴
	236	Fiduciary Duties and Regulatory Rules ⁵
1996	237	Involuntary Manslaughter ⁶
	238	Landlord and Tenant: Responsibility for State and Condition of Property ⁷
1997	245	* Evidence in Criminal Proceedings: Hearsay and Related Topics
	246	Shareholder Remedies
	247	* Aggravated, Exemplary and Restitutionary Damages ⁸
1998	248	Legislating the Criminal Code: Corruption ⁹
	249	Liability for Psychiatric Illness ¹⁰
	251	The Rules Against Perpetuities and Excessive Accumulations
	253	* The Execution of Deeds and Documents by or on behalf of Bodies Corporate ¹¹
	255	* Consents to Prosecution ¹²
1999	257	Damages for Personal Injury: Non-Pecuniary Loss ¹³
	260	* Trustees' Powers and Duties ¹⁴
	261	Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties ¹⁵
	262	Damages for Personal Injury: Medical, Nursing and other Expenses; Collateral Benefits ¹⁶
	263	Claims for Wrongful Death ¹⁷

¹ Of those, one was passing through Parliament at the end of 2000: the Trustee Bill: see para 5.11 above.

² See para 1.12 above.

³ Two small parts of this report have been accepted: see para 1.24 above.

⁴ See paras 1.15-1.17 above.

⁵ See para 1.23 above.

⁶ See para 1.13 above.

⁷ See para 1.25 above.

⁸ See para 1.8 above.

⁹ See para 1.14 above.

¹⁰ See para 1.21 above.

¹¹ See para 1.7 above.

¹² See para 1.9 above.

¹³ See paras 2.2-2.4 above.

¹⁴ See para 1.6 above.

¹⁵ See paras 3.9-3.12 above.

¹⁶ See paras 2.5-2.7 above.

¹⁷ See paras 2.8-2.9 above.

APPENDIX D

VISITORS FROM OVERSEAS

Among the visitors to the Law Commission during 1999 were:

<i>Bangladesh</i>	Mr A K M Istiaq Hussain (Deputy Secretary, Administration, Ministry of Law, Justice and Parliamentary Affairs) Mr Huq (Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs) Mr Majunder (Deputy Secretary, Ministry of Law, Justice and Parliamentary Affairs) Mr Mohammed Shahjahan (Bangladesh Law Commission)
<i>Belize</i>	Mr Godfrey Smith (Chief of Staff to the Prime Minister)
<i>Bulgaria</i>	Members from the Judicial Reform Initiative
<i>Canada</i>	Mr Bernard Starkman (Senior Counsel, Ministry of Justice)
<i>Ethiopia</i>	Mr Mandefrot Belay Dr Fassil Nahom Mr Mesfin Uqbayohannes
<i>Fiji</i>	Mr Justice Scott (Law Commissioner)
<i>Georgia</i>	Judge Chantladze
<i>Japan</i>	Justice Kazutomo Ijima
<i>Romania</i>	Judge Chirita

A DELEGATION FROM THE PEOPLE'S REPUBLIC OF CHINA

Mr Wang Lixian (Director-General, Judicial Assistance and Foreign Affairs Department, Ministry of Justice)
Mr Lu Yunquan (Director-General, Bureau of Justice, Jiangsu Province)
Mr Liu Hainian (Researcher, China Judicial Research Institute, China Academy of Social Sciences)
Mr Yan Junxing (Deputy Director, Judicial Research Institute, Ministry of Justice)
Dr Zheng Qiang (Secretary-General, Public Law Centre, Law Institute, China Academy of Social Sciences)
Ms Shi Jinlan (Judicial Assistance and Foreign Affairs, Ministry of Justice)

A DELEGATION FROM FINLAND

Members of the Committee of Legal Policy, Association of Finnish Lawyers

Seppo Kemppinen
Ms Paivi Korpiola
Judge Olli Kyrö
Judge Risto Tikka
Kaijus Errasti
Tapani Tiilikainen
Professor Mika Hemmo
Ms Kristiina Mattila
Janne Aer
Juha Viertola

APPENDIX D

VISITORS FROM OVERSEAS [CONTINUED]

A DELEGATION FROM THE FACULTY OF LAW, STOCKHOLM UNIVERSITY, SWEDEN

Leaders

Jan Kleineman (Professor of Private Law)

Peter Melz (Professor of Tax Law)

Ms Mirka Ylinen (Senior Administrative Officer)

Doctoral students

Ms Annika Blekemo

Dan Eklöf

Ulrik von Essen

Ms Erika Lunell

Max Lyles

Ms Lena Sandström

Ms Gabriella Sebardt

Ms Patricia Shaughnessy

Ms Teresa Simon

Ms Katinka Svanberg

Ms Britt-Marie Svensson

Richard Wessman

APPENDIX E

STAFF

(AS AT THE END OF 1999)

The names of the Commission's legal staff are set out, by their teams, at the head of Parts II-VI.

In addition, the Law Commission Secretariat comprises:

Secretary

Mr M W Sayers

Assistant Secretary

Mr C K Porter

Policy and Planning

Mrs S J Samuel

Personnel and Recruitment

Miss L A Collet
Personnel Officer

Computer Systems and IT Support

Mr G Ellis
Systems Manager
Mrs N L Spence
Local Computer Officer

Accommodation, Registry and Accounts

Ms A L Peries
Accommodation Officer
Mr T D Cronin
Registry
Miss J A Griffiths
Registry and Accounts
Miss R Mabbs
Office Keeper
Mr J M Davies
Messenger
Mrs P J Wickers
Messenger

Library Services

Mrs J King
Librarian
Mrs V Price
Assistant Librarian
Ms C Harris
Library Trainee

Publishing

Mr D R Leighton
Editor

Chairman's Support

Mr J Edwards
Clerk
Miss L V Busch
Research Assistant

Secretarial Support

Miss C P Cawe
Ms J Coulson
Mrs H C McFarlane
Miss A J Meager
Ms J R Samuel
Mrs J Sharma

CONTACT POINTS:

- ◆ The general enquiry telephone number is: 020-7453-1220
- ◆ The general fax number is: 020-7453-1297
- ◆ The Law Commission's website address is: <http://www.lawcom.gov.uk>

E-mail addresses^o

- General e-mail address (except for library services): secretary.lawcomm@gtnet.gov.uk
- Library e-mail address: library.lawcomm@gtnet.gov.uk
- Common law team: common.lawcomm@gtnet.gov.uk
- Company and commercial law team: company.lawcomm@gtnet.gov.uk
- Criminal law team: criminal.lawcomm@gtnet.gov.uk
- Property and trust law team: property.lawcomm@gtnet.gov.uk
- Statute law revision team: slr.lawcomm@gtnet.gov.uk

^o When the Commission's computer system is replaced during 2000, as mentioned in para 8.8 above, additional e-mail addresses will become available. However, the addresses shown above will continue in use for the foreseeable future.

APPENDIX F

THE COST OF THE COMMISSION

The Commission's resources are made available through the Lord Chancellor's Department in accordance with section 5 of the Law Commissions Act 1965. The cost of most items (in particular accommodation, salaries, superannuation and Headquarters' overheads) is not determined by the Commission. The figures given are those for a calendar year and cannot be related to those in Supply Estimates and Appropriation Accounts.

	1999		1998	
	£000	£000	£000	£000
Accommodation charges ¹	952.5		853.1	
Headquarters' overheads ²	<u>799.2</u>		<u>400.4</u>	
		1,751.7		1,253.5
Salaries and pensions of Commissioners ³	504.0		518.8	
Salaries of legal staff ³ and secondees and payments to consultants ³	1,360.6 ⁴		1,502.1	
Salaries of non-legal staff ³	<u>411.7⁵</u>		<u>380.9</u>	
		2,276.3		2,401.8
Printing and publishing; supply of information technology; office equipment and books	249.2		282.9	
Telephone and postage	28.1		28.8	
Travel and subsistence	9.7		6.1	
Miscellaneous (including recruitment)	15.1 ⁶		6.4	
Entertainment	<u>1.0</u>		<u>1.1</u>	
		303.1		325.3
TOTAL	<u>4,331.1</u>		<u>3,980.6</u>	

1 This figure includes a component relating to ground rent, rates, utilities (gas, water etc) and all works supplied by the Lord Chancellor's Department. There has been a (substantial) rent increase this year.

2 This is the portion of the total cost of the Lord Chancellor's Department Headquarters attributed to the Law Commission. In previous years this has been notionally attributed to offices such as the Law Commission in proportion to the number of staff paid as established staff. There has been a (substantial) increase in the 'corporate' overhead this year.

3 These salaries include ERNIC and Superannuation.

4 The reduction in salaries is almost entirely due to the vacancies in legal staff posts.

5 This figure includes the cost of permanent IT staff.

6 This figure includes the recruitment campaigns for six lawyers.