



THE LAW COMMISSION

(LAW COM No 280)

ANNUAL REPORT 2002/03

The Thirty-seventh Annual Report of the Law Commission

*Presented to the Parliament of the United Kingdom by the Lord High Chancellor
by Command of Her Majesty
August 2003*

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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 Toulson, *Chairman*
Professor Hugh Beale QC
Mr Stuart Bridge
Professor Martin Partington CBE
Judge Alan Wilkie QC

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

The text of this report is available on the Internet at: <http://www.lawcom.gov.uk>

THE LAW COMMISSION
ANNUAL REPORT 2002/03

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To the Right Honourable the Lord Falconer of Thoroton, Lord High Chancellor of Great Britain

It is a privilege to have succeeded Sir Robert Carnwath as Chairman of this organisation, which not only has a high reputation for the calibre of its work but also enjoys good morale. These qualities were endorsed by John Halliday in his Quinquennial Review, and it is the aim of the Law Commissioners to seek to maintain and enhance them.



The statutory duty of the Law Commission is to keep the law under review with a view to its systematic development and reform and, generally, its simplification and modernisation.

In recent years there has been a huge and increasing volume of legislation, significant parts of which are complex and have been amended or replaced within a relatively short time by further legislation. There are many reasons for this, but the role of the Law Commission is to promote law reform which is clear, simple and will stand the test of time.

This task requires careful selection of projects, thorough analysis and detailed consultation. We are extremely grateful to all those who have contributed in any way to the consultation process which is so essential to the quality of our work.

One of our major current projects is on Renting Homes. Because the subject affects a third of the population, we have carried out an exceptionally varied consultation process (described in Part VI) with encouraging results. It would not be logistically or financially possible to carry out a consultation exercise on such a scale for every project, but we are continually examining the most effective ways of trying to reach the constituencies likely to be affected by law reform proposals.

The Law Commission has for many years advocated codification of the criminal law. We were therefore encouraged that in its July 2002 White Paper "Justice for All" (Cm 5563) the Government repeated its intention to codify the criminal law.

The Halliday Report recommended that the main focus of the Law Commission's work should be on delivering proposals for law reform that will result in public benefit. This must be so. Part of our work is, and should continue to be, directed to the repeal of obsolete provisions and to the consolidation of statutes in order to keep the statute book up to date and accessible. But the main focus of our work is, and will continue to be, on areas of law which are unclear or unsatisfactory and in need of simplification and reform, not for the sake of tidiness, but because of the way in which the law affects members of the public in their work and in their private lives. For example, two areas which we are presently tackling are Unfair Contract Terms legislation, where there are separate domestic and EC regulations; and the law of Easements, which is a sometimes obscure but important branch of property law including matters such as rights of way.

The number of projects which we can effectively carry on at any one time is limited. I look forward to working with the Ministerial Committee in order that a healthy balance is maintained between the Government's legislative priorities for law reform and our broader duty.

I am very grateful for the warm welcome and help which I have received within the Commission, from Ministers and officers within your department, and from many others outside and inside government, during my introductory period as Chairman.

A handwritten signature in blue ink that reads "Roger Toulson". The signature is written in a cursive, slightly slanted style.

ROGER TOULSON, CHAIRMAN

PART I

SUMMARY

The period covered by this report was eventful for the Law Commission in various ways. Some examples are:

- A new Chairman was welcomed to the Commission.
- We issued 16 publications, covering a wide range of subjects and including 10 consultation papers.
- We started five new law reform projects.
- Five of our past law reform reports have been accepted by the Government, in full or in part – and four are in the Criminal Justice Bill which was introduced into Parliament towards the end of 2002.
- There has been a full external review of the Commission.

PART II

SOME FEATURES

- 2.1 The Commission's main task is to review areas of law and to make recommendations for change. In our law reform work we seek to ensure that the law is as simple, fair, modern and cost-effective as possible. We believe that this will be of real benefit to a very large number and variety of people. 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. A summary of our role and methods appears at Appendix A.

THIS REPORT

- 2.2 This Part picks out some key features of this period. Following Part III, about progress in implementing our past reports, we summarise our main work during the period.
- 2.3 Exceptionally, this report covers a period of 15 months, from January 2002 to March 2003. We have also included some important action since then. We held this report back, so that we could report the outcome of our quinquennial review.¹ We have also decided to change the period covered each year by our Annual Report, following a recommendation by the quinquennial review. It will in future cover the financial year, rather than the calendar year – which has been our previous practice.

TARGETS FOR 2002 AND 2003/04

- 2.4 The table at the end of this Part summarises the major targets we had for 2002, with the outcomes. A summary of our main targets for 2003/04 follows it.

OUR PUBLICATIONS IN 2002/03

- 2.5 During January 2002 to March 2003 we issued 16 publications. These included two law reform reports and 10 consultation papers. We also produced four other publications.

The law reform reports were on:-

Fraud

Effective Prosecution of Multiple Offending.

The consultation documents² were on:-

Renting Homes – 1: Status and Security

– 2: Co-occupation, Transfer and Succession

¹ See paras 2.8 - 2.11 below.

² We also completed a consultation document on Non-Accidental Death or Serious Injury to Children, which was published in April 2003.

Land, Valuation and Housing Tribunals

Towards a Compulsory Purchase Code:(1) Compensation
(2) Procedure

Unfair Terms in Contracts (A Joint Paper with the Scottish Law Commission)

Registration of Security Interests: Company Charges and Property other than Land

Trustee Exemption Clauses

Publication of Local Authority Reports

Compound Interest.

We also issued:-

a discussion paper on Sharing Homes

a scoping study on Aspects of Defamation Procedure

the result of a preliminary investigation into Defamation and the Internet
our Annual Report for 2001.

More detail can be found in the Parts below. The publications appear in full and in summary on our website, <http://www.lawcom.gov.uk>.

NEW LAW REFORM WORK

2.6 During the period³ the Government asked us to undertake reviews of the following five substantial areas of law⁴:-

Non-Accidental Death or Serious Injury to Children

Compulsory Purchase: Procedure

Land, Valuation and Housing Tribunals

Registration of Security Interests: Company Charges and Property other than Land

Effective Prosecution of Multiple Offending.

IMPLEMENTATION OF LAW COMMISSION WORK

2.7 Five of our past reports⁵ have been accepted by the Government in full or in part, and four are included in the current Criminal Justice Bill.

³ The Government also subsequently asked us to review Partial Defences to Murder, and Forfeiture and Intestacy.

⁴ See also at paras 4.10 - 4.12 below about two preliminary studies in aspects of the law of defamation.

⁵ In May 2003 the Government announced its intention to enact part of another report in the Criminal Justice Bill: see para 5.5 below.

QUINQUENNIAL REVIEW

- 2.8 The Law Commission, like all other Non-Departmental Public Bodies (NDPBs), is required⁶ to undergo a regular review every five years (QQR) in order to ensure that its functions meet current requirements. We received our latest review in 2002/03. It focused on the role of the Law Commission in the wider process of law reform. It included an examination of the scope of the Law Commission's work, its working relationships with Government departments and others, and the process by which Law Commission recommendations for legislation are considered and implemented by Government.
- 2.9 It is standard practice for a QQR to include consideration of whether there is a continuing need for the functions carried out by the NDPB (ie whether it should be abolished) and whether the functions would be better carried out other than by an NDPB (eg whether they should be privatised). This QQR did not cover either of these issues; in other words, the continued existence of the Law Commission as an advisory NDPB was not in question. In addition, it was agreed that this QQR should go wider than the Law Commission itself. Therefore, when he announced plans for it, the Lord Chancellor said "The Law Commission is a highly respected and expert body, with a fine record of producing well-argued recommendations for law reform. This Review is a timely opportunity to assess the effectiveness of the overall process of law reform, from an initial proposal for review to the implementation of legislation, as well as the important role the Law Commission itself plays in that process."
- 2.10 The QQR was conducted by John Halliday CB, who had recently retired as a senior official in the Home Office. It began in summer 2002 and concluded in March 2003. The Lord Chancellor welcomed the thrust of the recommendations in the report, which was published in May 2003.
- 2.11 The QQR was an intensive and detailed exploration of the Law Commission and of the law reform process in general. It lasted some nine months. We were pleased to note that the Commission received considerable commendation by the Review.⁷ It praised the high quality of the Commission's work while making a number of recommendations aimed at further improving the effectiveness both of the Commission and of the overall law reform process. Its recommendations were for action by a number of organisations. In particular, just over a third of the recommendations were for the Commission alone and about a quarter were for the Commission and the Lord Chancellor's Department.⁸ Almost half were substantially for continuing previous initiatives, or action which had already been taken or started. Many were mainly of a rather detailed nature, generally about

⁶ Quinquennial reviews are being replaced by "a more flexible cycle of end-to-end reviews, focusing on the effectiveness of business processes involved in achieving specific outcomes", following recommendations in July 2002 from the Government's Agency Policy Review – *Hansard* (HC) 4 February 2003, vol 309, col 9WS.

⁷ The opening sentence of the report (which can be seen at www.dca.gov.uk) said "The Law Commission's contribution to improvements in the law is held in high esteem by the wide variety of its stakeholders who were consulted during this Review."

⁸ LCD was renamed the Department for Constitutional Affairs, in June 2003.

processes. A significant number would add to the Commission's workload, and would therefore need additional staff and resources.

EQUALITY AND DIVERSITY

- 2.12 The Law Commission serves a diverse society, that is a society of people of different races, cultures and religions etc. We recognise, respect and value that diversity and strive in all we do to serve the interests of people from all sections of society. During this period we reformulated and updated the Equality and Diversity Action Plan which we had devised in 2000, and published it as a new Action Statement on our website. The Commission is committed to reviewing progress in this vital area and to reporting further in its annual reports.

THE CHAIRMAN

- 2.13 Our new Chairman, Sir Roger Toulson, a Judge of the Queen's Bench Division of the High Court, took up his appointment in July 2002. Mr Justice Toulson is the Law Commission's tenth Chairman. He succeeded Lord Justice Carnwath.

TRIBUTES

- 2.14 Lord Justice Carnwath was our Chairman from February 1999 until July 2002, having been elevated to the Court of Appeal in January 2002. He contributed personally to many areas of Law Commission work, taking the lead in areas such as Damages under the Human Rights Act, Partnership Law and Compulsory Purchase. Indeed, he still continues to assist us as a consultant in our work on Compulsory Purchase. He maintained the Commission's high standards, as demonstrated by the law reform reports published during his time: for example, Land Registration, Limitation of Actions and Trustee Powers. Under his leadership, the Commission undertook important new areas of work eg housing law, compulsory purchase and further work on codification of criminal law. In addition, two new Programmes of Law Reform were started. Four new Commissioners were selected and took up appointment during his term. He was also full of initiative: for example, he was largely responsible for our successful conference "Law Reform: Catching the Eye of Government".

- 2.15 We were delighted for two of our Commissioners:-

Professor Hugh Beale was appointed Queen's Counsel honoris causa; and

Professor Martin Partington was awarded the CBE for services to the administration of justice.

In addition, a former Commissioner, Professor Jack Beatson QC was appointed a High Court Judge.

- 2.16 Professor Sir John Smith, CBE, QC, FBA, died in February 2003, aged 81. Sir John Smith was the leading academic criminal lawyer of his generation. Obituaries have rightly been fulsome in their praise. He was of the greatest assistance to the Law Commission for many years, frequently giving us advice. However, in the words of The Times, "By far his most ambitious project,

undertaken with others for the Law Commission, was to produce a criminal code for England and Wales.” We hope that his enthusiasm for, and work towards, a criminal code will bear fruit from the new impetus towards it.⁹

- 2.17 We also record with sadness the deaths in 2002 of Claud Bicknell OBE (a Law Commissioner from 1970 to 1974), of Sir Derek Hodgson (a Law Commissioner from 1971 to 1976) and of Hume Boggis-Rolfe CB, CBE (the first Secretary of the Commission, from 1965 to 1968).

CODE OF BEST PRACTICE FOR LAW COMMISSIONERS

- 2.18 In accordance with Government policy for all non-departmental bodies, we have a written code for Law Commissioners, agreed with the Lord Chancellor’s Department. It incorporates the Seven Principles of Public Life and covers matters like the role and responsibilities of Commissioners. Copies are available from the Law Commission.



THE CHAIRMAN, OTHER COMMISSIONERS AND THE SECRETARY/CHIEF EXECUTIVE

(Clockwise from the top left: Michael Sayers (Secretary/Chief Executive), Stuart Bridge, Martin Partington, Alan Wilkie, Sir Roger Toulson (Chairman) and Hugh Beale)

⁹ See para 5.1 below.

MAJOR TARGETS FOR 2002

TARGET	OUTCOME
<p>To complete reports on:</p> <ul style="list-style-type: none"> • fraud offences • the effective prosecution of multiple offending¹ <p>To complete consultation papers on:</p> <ul style="list-style-type: none"> • unfair contract terms* • compound interest • publication of local authority reports • renting homes – 1: status and security • renting homes – 2: co-occupation, transfer and succession • trustee exemption clauses • non-accidental injury to children² • land, valuation and housing tribunals¹ • registration of security interests: company charges etc¹ <p>To complete:</p> <ul style="list-style-type: none"> • compulsory purchase: (1) compensation: consultative report • compulsory purchase: (2) procedure: consultative report¹ • property rights of those who share homes³ • scoping study on perceived abuses of defamation procedures⁴ • defamation and the internet: a preliminary study^{1,4} • consolidation of legislation on Parliamentary and local government elections* • consolidation of legislation on European Parliamentary elections¹ • Annual Report for 2001 <p>ALL TARGETS WERE SUBJECT TO AVAILABILITY OF RESOURCES</p>	<ul style="list-style-type: none"> • published in July 2002 • published in October 2002 • published in August 2002 • published in September 2002 • published in April 2002 • published in April 2002 • published in September 2002 • published in January 2003 • published in April 2003 • published in December 2002 • published in July 2002 • published in July 2002 • published in December 2002 • published in July 2002 • published in May 2002 • published in December 2002 • delayed: see para 8.6 • enacted in July 2002 • published in March 2002

* jointly with the Scottish Law Commission

¹ This additional work was completed, beyond the targets set out in our Annual Report for 2001

² We were requested early in 2002 to undertake this work. Our target was to complete a consultation paper in 2002 or in early 2003.

³ Our target had been to complete a consultation paper; in fact we published a discussion paper and concluded the review.

⁴ We were requested early in 2002 to undertake this work.

MAJOR TARGETS FOR 2003/04^o

To complete reports on:

- non-accidental death and injury to children
- housing law – tenure
- compulsory purchase
- land, valuation and housing tribunals
- partnership – general and limited*
- publication of local authority reports
- compound interest
- unfair contract terms

To complete consultation papers on:

- partial defences to murder
- termination of tenancies
- forfeiture and intestacy

To complete:

- statute law repeal report and legislation*
- consolidation of legislation on Parliamentary and local government elections*
- consolidation of legislation on wireless telegraphy

^o to March 2004

* jointly with the Scottish Law Commission

Each of the above topics is described in more detail elsewhere in this report.

ALL TARGETS ARE SUBJECT TO AVAILABILITY OF RESOURCES

PART III

IMPLEMENTATION OF LAW COMMISSION REPORTS

INTRODUCTION

3.1 Most of the Commission's law reform reports include recommendations for changing the law. The most frequent method of implementing those recommendations is

- By Act of Parliament, if the Government and Parliament accept the recommendations.

However, a small but significant number of our reports:-

- Do not call for legislation at all, for example because they do not recommend any change in the law or because they are intended as advice or guidance rather than as vehicles for law reform;
- Are in effect implemented by the courts;
- Could possibly be implemented by Statutory Instrument; or
- Are scoping studies.

This Part sets out the position on implementation,¹ referring first to action taken during January 2002 to March 2003 inclusive and then to the overall position.

ACTION DURING THIS PERIOD

Summary

3.2 At the beginning of 2002:

- (i) Twelve of our reports had been accepted by the Government, in full or in part, and legislation had yet to be introduced and
- (ii) Fifteen other reports of ours awaited decisions by the Government.

3.3 At the end of March 2003:

- (i) Four of our law reform reports are being enacted in Parliament;²
- (ii) Seventeen of our reports had been accepted by the Government during or before the year, in full or in part, and legislation had yet to be introduced, and
- (iii) Thirteen other reports of ours awaited decisions by the Government.

¹ We are here referring to implementation of our work on law reform, rather than on consolidation or on statute law revision. The European Parliamentary Elections Bill, one of our consolidations, was enacted in July 2002.

² See para 3.4 below.

(A) IMPLEMENTATION

- 3.4 The major implementation³ in the period will be by the Government's legislation in the Criminal Justice Bill, which was introduced in Parliament in November 2002. The Bill would implement four of our reports,⁴ fully or partly. However, we first refer to a quite different report of ours, the only one to receive Royal Assent during the period apart from the consolidation of legislation relating to European Parliamentary elections.

Land Registration

- 3.5 The Land Registration Act 2002, which implements the draft Bill in our report⁵ was passed in February 2002. It will be brought into force in October 2003. It has been described as "potentially more far-reaching than the great property reforms made by the 1925 property legislation".⁶
- 3.6 The land registration system underpins the property market in England and Wales. Nineteen million titles, worth about £200 billion, are registered in England and Wales, out of an estimated 23 million. The previous legislation, which largely dates from 1925, was widely acknowledged as out of date, confusing and complex.
- 3.7 The Act will initiate the creation of a legal framework in which it will be possible to transfer and create interests in registered land by electronic means ("electronic conveyancing") and to investigate title on-line. When the system of electronic conveyancing is fully operative, the transfer and creation of many interests in land will only be effective when registered. The distinct steps of transfer (or creation) and registration will occur contemporaneously, so overcoming the difficulties currently encountered because of the "registration gap" between the date of completion and the date of registration. The register will become conclusive of the priority of most expressly created interests in registered land.
- 3.8 Among the changes which the Act will make are:-
- The rules governing first registration;
 - Enhancement of the protection given to the interests of third parties in registered land; and
 - Radical changes to the acquisition of title by adverse possession where that title is registered.

³ For implementation in this period of a proposal in one of our Consultation Papers, about the 20 partner limit, see para 4.13 below.

⁴ See paras 3.9 - 3.12 below. In May 2003 the Government announced its intention to enact part of another report in the Criminal Justice Bill: see para 5.5 below.

⁵ Land Registration for the Twenty-First Century: A Conveyancing Revolution (2001) Law Com No 271; joint with HM Land Registry.

⁶ Stephen Marks, "The Land Registration Act", (2002) 152 NLJ 492.

Double Jeopardy and Prosecution Appeals

- 3.9 In March 2001 we published a report on both these issues.⁷ They arose from separate references⁸ from the Home Secretary but, for convenience, we published a single report. Our recommendation in relation to double jeopardy was to the effect that it ought to be possible for there to be a retrial in cases of murder following the acquittal of the defendant where there was reliable and compelling new evidence. With regard to prosecution appeals we recommended that the prosecution should be able to appeal against an acquittal which results directly from any ruling made by a judge at any stage prior to the conclusion of the prosecution case and a ruling at the close of the prosecution's case that there is no evidence of the alleged offence.⁹ The current Criminal Justice Bill includes provisions on both double jeopardy and prosecution appeals which in effect reproduce the scheme of our recommendations, although the legislation on each goes far beyond what we recommended.

Bail and the Human Rights Act 1998

- 3.10 In June 2001 we published a report on this topic.¹⁰ We made three recommendations. The current Criminal Justice Bill incorporates all three of our recommendations.

Hearsay in Criminal Proceedings

- 3.11 In 1997 we published a report and draft Bill in which we made recommendations for the reform of the law governing the admissibility of hearsay evidence in criminal proceedings and certain related issues.¹¹ The recommendations which we made have, with some amendments, been incorporated into the current Criminal Justice Bill.

Evidence of Bad Character in Criminal Proceedings

- 3.12 In October 2001 we published a report and draft Bill on the admissibility in criminal proceedings of evidence of bad character, including previous convictions.¹² We recommended that, with certain exceptions, evidence of the bad character of any person should be admissible only with the leave of the court, and that such leave should only be granted in certain defined circumstances. In the case of a defendant's bad character, the court should normally¹³ grant leave only if it is satisfied that the interests of justice required the evidence to be admitted notwithstanding any risk of prejudice. The current Criminal Justice Bill substantially reproduces our recommendations in relation to persons other than

⁷ Double Jeopardy and Prosecution Appeals, Law Com No 267.

⁸ In, respectively, July 1999 and May 2000.

⁹ Under the first limb of *Galbraith* [1981] 1 WLR 1039.

¹⁰ Bail and the Human Rights Act 1998, Law Com No 269.

¹¹ Evidence in Criminal Proceedings: Hearsay and Related Topics, Law Com No 245.

¹² Evidence of Bad Character in Criminal Proceedings, Law Com No 273.

¹³ Except where it is another defendant who seeks to adduce the evidence.

the defendant. With regard to the latter, while the Government's proposed scheme reflects the approach we took in our report, the provisions contained in the Bill go substantially beyond what we recommended and differ in significant respects.

Business Tenancies

- 3.13 In July 2002 the Office of the Deputy Prime Minister (formerly DTLR, the Department for Transport, Local Government and Regions) laid before Parliament a draft Regulatory Reform Order¹⁴ for the implementation of a package of reforms substantially based on our report.¹⁵ The draft Order is currently going through Parliamentary scrutiny stages.¹⁶

(B) GOVERNMENT DECISIONS ON OUR REPORTS

Limitation of Actions

- 3.14 In July 2002 the Government announced that it accepted in principle the recommendations in our report and draft Bill on Limitations of Actions.¹⁷ These would replace the present complex rules with a single "core regime". Most claimants would have three years to bring an action, starting when they knew, or ought reasonably to have known, the relevant facts. Except in personal injury claims, defendants would be protected by a "long-stop" limitation period of ten years, starting when the relevant events took place. The Government also said that "it would give further consideration to some aspects of the report, with a view to introducing legislation when an opportunity arises".¹⁸ The Court of Appeal has¹⁹ referred to some of the recommendations in our report, particularly commending our recommendations regarding claims for personal injuries, including those of child abuse, saying "Early statutory implementation of [the recommendation] would obviate much arid and highly wasteful litigation turning on a distinction of no apparent principle or other merit". We also note that during this period the Law Reform Advisory Committee for Northern Ireland published its own report on limitation of actions: their recommendations are broadly in line with ours.

¹⁴ See para 3.50 below.

¹⁵ Law Com No 208 (Landlord and Tenant: Business Tenancies – A Periodic Review of the Landlord and Tenant Act 1954 Part II).

¹⁶ The Government has given its response to the reports from the Committee of each House on the draft Order, at *Hansard* (HL) 24 February 2003, vol 645, col WA 5 and *Hansard* (HC) 24 February 2003, vol 400, 1WS.

¹⁷ (2001) Law Com No 270.

¹⁸ *Hansard* (HL) 16 July 2002, vol 637, col WA 127.

¹⁹ *K R and others v Bryn Alyn Community (Holdings) Ltd* [2003] EWC Civ 85 at paras 18, 95, 96 and 100.

Binding Over

- 3.15 Our report on Binding Over was published in 1994.²⁰ Its sole recommendation was that the statutory and common law powers to bind over to keep the peace and to be of good behaviour should be abolished.
- 3.16 In March 2003 the Home Office published a consultation paper.²¹ It expressed the view that bind overs play an important role in many cases and, for that reason, the Home Office was not persuaded to accept the Law Commission's recommendation. The consultation paper, however, did propose changes to the law which reflected criticisms we made in our report.
- 3.17 We had criticised the fact that binding over orders were frequently couched in language which was too vague and imprecise to enable the subject of the order to know what they were to do or avoid doing. In reflecting this criticism the consultation paper proposed that an individual should be bound over to do, or refrain from doing, specific activities or that the behaviour should be specified. This proposal meets the substance of our concern in this respect.
- 3.18 A further criticism made in our report concerned the standard of proof. There was no clarity as to whether it was the criminal or the civil standard of proof which was applicable. We concluded that, because an order can result in a deprivation of liberty or the imposition of restrictions on future conduct, the standard of proof should be the criminal one of proof beyond reasonable doubt. The consultation paper accepted that the criminal standard of proof is more appropriate.
- 3.19 A further concern which we highlighted in our report was that in many cases complainants and witnesses were the subject of an order without adequate notice or without being given sufficient time to prepare representations. The consultation paper acknowledged that provision should be made for adequate notice and adequate time for preparation and proper representation where required.
- 3.20 In addition, the consultation paper in substance accepted our arguments in relation to proceedings for breach of a binding over order.
- 3.21 The consultation paper, while not accepting the Law Commission's recommendation to abolish the jurisdiction, addressed the substance of the criticisms made in our report.

Third Parties' Rights against Insurers

- 3.22 We published our report and draft Bill in July 2001 (Law Com No 272). In July 2002 the Government announced its acceptance of the recommendations and its intention to issue a consultation paper on implementing them by way of an Order under the Regulatory Reform Act 2001. They issued it in September 2002.²²

²⁰ Binding Over, Law Com No 222.

²¹ Bind Overs: A Power for the 21st Century.

²² See para 3.50 below.

- 3.23 The Third Parties (Rights against Insurers) Act 1930 provides victims (“third parties”) of negligent or wrongful acts, committed by insured people (individuals or companies) in specified financial difficulties, with rights to the proceeds of the wrongdoer’s insurance. In its absence the assets would be available for distribution to the insured’s creditors generally.
- 3.24 Although the 1930 Act remains valuable to third parties, it has long been recognised that it is seriously flawed. We recommended, jointly with the Scottish Law Commission, that the 1930 Act should be replaced by a new Act. It would provide a new streamlined procedure to avoid wasteful litigation and giving third parties earlier access to information about the insurance policy, together with quicker, cheaper and more effective mechanisms.

(C) CURRENT POSITION OF SOME OF OUR REPORTS AWAITING IMPLEMENTATION

- 3.25 At the end of March 2003 there were some 30 reports which awaited implementation. They are shown in the list at Appendix C. Some have been accepted at some time by the Government and await legislative opportunities. Some await decision by the Government. We can report as follows.

(i) Offences against the Person

- 3.26 It was ten years ago that we published our report²³ and draft Bill recommending an extremely important overhaul of the current legislation, which dates back to 1861. In 1998 the Home Office published a consultation paper (“Violence: Reforming the Offences against the Person Act 1861”) setting out their initial proposals for reforming the law in this area, based on our report. We continue to press for implementation.

(ii) Involuntary Manslaughter

- 3.27 In 1996 we published a report and draft Bill on Involuntary Manslaughter²⁴ in which we recommended the replacement of the existing common law offence with statutory offences of “reckless killing” and “killing by gross carelessness”, together with a new offence of corporate killing. We regard this as of considerable importance. The number of fatal incidents arising each year from work activities has now risen to 400; research indicates that there is likely to be cause for an investigation that might lead to a prosecution in about half those incidents. In the past 10 years, 3000 workers and 1000 members of the public have died but only 11 companies have been prosecuted for corporate manslaughter and only four of those prosecutions have been successful.

²³ Legislating the Criminal Code: Offences against the Person and General Principles (1993) Law Com No 218.

²⁴ Legislating the Criminal Code: Involuntary Manslaughter, Law Com No 237.

3.28 In May 2000 the Home Office published a consultation paper²⁵ containing proposals which were based upon our recommendations but diverged from them in certain respects. The Government has frequently said that it would legislate on corporate manslaughter as soon as Parliamentary time allowed,²⁶ and would publish final proposals for the reform of the law on involuntary manslaughter as soon as it had completed consideration of the responses to the consultation exercise.

(iii) Corruption Offences

3.29 In 1998 we published a report²⁷ and draft Bill in which we recommended the creation of four new offences to replace those in the Prevention of Corruption Acts 1889-1916. In June 2000 the Home Office published its own proposals in a White Paper.²⁸ It accepted nearly all our recommendations while taking them further in some respects. In March 2003 the Government published its own draft Bill (Cm 5777), which would include giving broad effect to our recommendations.

(iv) Consent as a Defence in the Criminal Law

3.30 We concluded our work on Consent as a Defence²⁹ when we produced a special paper on Consent in Sex Offences. It was later published in the Government's consultative document on sex offences.³⁰ This was part of the Government's Sex Offences Review. Our paper made a number of recommendations on consent.

3.31 The Government published a White Paper in November 2002,³¹ containing its proposals for reforming the law on sex offences and strengthening protection against sex offenders. The proposals are now being considered by Parliament during the passage of the Sexual Offences Bill. The Government's review and White Paper were far wider than our review, which itself extended beyond sexual offences. However, a number of recommendations in our paper were taken forward in the White Paper, such as the effect of deception on consent, mental incapacity to consent, and an irrebuttable presumption that a child below a certain age does not have the capacity to consent.

²⁵ Reforming the Law on Involuntary Manslaughter: the Government's Proposals.

²⁶ For example: *Hansard* (HC) 6 February 2003, vol 399, col 429W. A later Answer said that the Government intended to legislate to ensure that companies are liable for manslaughter where a death had occurred due to gross negligence by the organisation as a whole. The legislation will be targeted at companies, not individual directors. The Government will announce further details before the end of 2003: *Hansard* (HC) 3 June 2003, vol 406, col 138W.

²⁷ Legislating the Criminal Code: Corruption, Law Com No 248.

²⁸ Raising Standards and Upholding Integrity: The Prevention of Corruption (Cm 4759).

²⁹ Annual Report for 2001, para 5.16.

³⁰ Setting the Boundaries: Reforming the Law on Sex Offences, vol 2, Appendix C (2000).

³¹ Protecting the Public (Cm 5668).

(v) Mental Incapacity

3.32 There continues to be a serious and growing need for a single, comprehensive piece of legislation to provide for the personal welfare, healthcare and financial affairs of those who lack mental capacity. There is currently a real gap in the law for the ordinary needs of a significant and ever-increasing number of people. For example, it is estimated that:-

670,000 people in the UK suffer from Alzheimer's disease and other forms of dementia, and

there will be a 66% increase in that number between 1998 and 2031.

3.33 We published our report and draft Bill as long ago as 1995 (Law Com No 231). Most of our recommendations have been applauded by most of those who have commented on them. In 1997 the Government published a Green Paper.³² In 1999 the Government published its plans to reform the law in this area.³³ That Policy Statement clearly accepted the majority of our recommendations, even although the Government did not wholly follow all of them: for example, the Government omitted any proposals on advance statements about healthcare, sometimes described as living wills or advance directives. They also made no commitment to take forward our recommendations for public law protection for vulnerable people.

3.34 The Government has said that it recognises the need for a fundamental reform of mental incapacity law and that it is committed to reforming mental incapacity law when Parliamentary time allows. If practicable, it would publish draft legislation in advance of the Bill's introduction in Parliament, and would use the draft Bill prepared by us in 1995.³⁴ The Government in fact published its draft Mental Incapacity Bill in June 2003.

(vi) Company Law

3.35 We have published reports on:-

Directors' Duties³⁵ and

Shareholder Remedies.³⁶

³² Who Decides? Making Decisions on Behalf of Mentally Incapacitated Adults (Cm 3803).

³³ Making Decisions (Cm 4465). The Scottish Parliament enacted new legislation in 2000, following recommendations made by the Scottish Law Commission a little after our own report.

³⁴ *Hansard* (HL) 18 December 2002, vol 642, col 771.

³⁵ Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties (1999) Law Com No 261; Scot Law Com No 173.

³⁶ (1997) Law Com No 246.

- 3.36 The Government published its White Paper “Modernising Company Law”³⁷ in July 2002. It contained its initial response to the Company Law Review’s Final Report and outlined its proposals for legislation to reform company law. As part of the White Paper, the Government published a draft of part of its proposed legislation to reform company law.
- 3.37 It is reasonably clear that in making these proposals the Government broadly accepted³⁸ the recommendations in our report on Directors’ Duties and may well accept in part the recommendations in our report on Shareholder Remedies.
- 3.38 The White Paper also referred to our consultation paper on Registration of Security Interests,³⁹ hoping that our work will lead to new legislation.

(vii) Execution of Deeds and Documents

- 3.39 In July 1999 the Government announced that it accepted all the recommendations in our report and draft Bill (1998, Law Com No 253), which would remove a number of unresolved difficulties and inconsistencies in the current law. We receive a significant number of enquiries as to progress on implementation. The Government issued a consultation paper in September 2002 about implementing the recommendations by using the procedure under the Regulatory Reform Act 2001.⁴⁰

(viii) Perpetuities and Accumulations

- 3.40 The Government’s acceptance of our report⁴¹ was announced in answer to a parliamentary question in March 2001. In September 2002 the Lord Chancellor’s Department published a consultation paper on the partial implementation of the report by way of a Regulatory Reform Order.⁴² The proposal was to implement just the part of our report which recommended the abolition of statutory restrictions on the accumulation of income arising from property held in trust.

(ix) Damages for Personal Injury

- 3.41 Our 1999 report, *Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits*,⁴³ primarily recommended reversing the decision of the House of Lords on gratuitous services in *Hunt v Severs* ([1994] 2AC 250). Government decisions are awaited on those recommendations, as on those in our reports on Claims for Wrongful Death, on Liability for Psychiatric Illness and on

³⁷ Cm 5553.

³⁸ Paras 3.2 - 3.7.

³⁹ See paras 4.1 - 4.3 below.

⁴⁰ See para 3.50 below.

⁴¹ The Rules Against Perpetuities and Excessive Accumulations Law Com No 251 (HC 579) 1998.

⁴² See para 3.50 below.

⁴³ Law Com No 262.

Non-Pecuniary Loss.⁴⁴ The Government had hoped in 1999 that they would be able to make final decisions early in 2000.

3.42 Our report about *Hunt v Severs* also observed that, subject to a cost-benefit analysis, there were no legal reasons why the National Health Service should not have the right to recover its costs from tortfeasors and other wrong-doers. In September 2002, the Department of Health produced a consultation paper that followed our report by recommending extending cost recovery from road traffic accidents to all personal injury claims.⁴⁵ They estimated this would raise £220 million a year, more than twice the current figure. Provision for this extension is in the Health and Social Care Bill, currently passing through Parliament.

(x) Distress for Rent

3.43 In 1991 we published our report on this subject.⁴⁶ It recommended the abolition of distress for unpaid rent for both commercial and residential leases. As part of the Lord Chancellor's ongoing reform of the civil justice system and the Civil Enforcement Review, his Department is currently reviewing the remedy of distress for rent. The Enforcement Review started in 1998 and has progressed in phases.

3.44 In May 2001 LCD issued a consultation paper⁴⁷ which included a summary⁴⁸ of our report. That paper stated that, as regards residential leases, it was the Government's view that - even with additional safeguards in place - the self-help remedy of distress should not be available for recovery of unpaid rent. In effect, the Government therefore provisionally accepted that part of our 1991 report.

3.45 The situation was less clear with commercial leases. LCD's consultation paper noted that the majority of responses made to the Law Commission supported the retention of the remedy but also noted that the majority of those who responded were landlords or landlords groups. LCD's consultation paper therefore sought views on whether distress for rent should be abolished for these leases too. There was substantial support expressed for the retention of distress.⁴⁹

3.46 In March 2003 the Government published a White Paper⁵⁰ on improved methods of recovery for civil court debt and commercial rent and a single regulatory

⁴⁴ Law Com Nos 263 (1999), 249 (1998) and 257 (1999).

⁴⁵ The Recovery of NHS costs in cases involving personal injury compensation (2002), Department of Health.

⁴⁶ Landlord and Tenant: Distress for Rent, Law Com No 194.

⁴⁷ Distress for Rent, Enforcement Review Consultation Paper No 5.

⁴⁸ Chapter 2.

⁴⁹ The responses were published in the report CP (R) 13/01 Distress for Rent, published in May 2002.

⁵⁰ Effective Enforcement (Cm 5744).

regime for warrant enforcement agents. It confirmed the Government's position for residential leases.⁵¹ It also concluded that enforcement action should continue to be available with regard to commercial properties only, under a modified system. This would be undertaken by enforcement agents who in turn would be licensed under the new proposals.

GENERAL

(1) Implementation by Act of Parliament

3.47 About two-thirds of our law reform reports have been implemented by Parliament, in full or in part.⁵² A list of reports implemented since 1985 appears at Appendix B. All our reports on consolidation and statute law revision have been implemented.

(2) Implementation by Statutory Instrument

3.48 Over the years Law Commission recommendations have mainly been implemented by Acts of Parliament. That is likely to remain the single most frequent method of implementation. However, the recommendations in some of our reports, which deal with more detailed or technical areas of law, may lend themselves to implementation by subordinate legislation.

3.49 Regulatory Reform Orders are a prominent form of such legislation. We have referred in previous annual reports⁵³ to the Regulatory Reform Act 2001 (RRA). The Act basically confers a power to make provision by Order to reform legislation which has imposed burdens - with a view, for example, to reducing those burdens or removing inconsistencies and anomalies. We have considered the extent to which the RRA may assist the implementation of Law Commission legislation and we shall work with Government to apply the RRA whenever appropriate. However, for a number of reasons we believe that the RRA's application to Law Commission legislation may be limited.⁵⁴

3.50 Government departments have sought to progress implementation by RRO of all or part of four of our reports during this period:-

Business Tenancies⁵⁵

Third Parties' Rights against Insurers⁵⁶

Execution of Deeds and Documents⁵⁷

⁵¹ See para 3.44 above. Chapter 2, section 2, para 207.

⁵² That proportion would be even higher were it not for the virtually inevitable gap between publication of our report and implementation by Parliament.

⁵³ Annual Report for 2000 at Foreword and paras 1.61 - 1.63; and Annual Report for 2001 at paras 2.15 - 2.16.

⁵⁴ We summarised the reasons at para 2.16 of our Annual Report for 2001.

⁵⁵ See para 3.13 above.

⁵⁶ See para 3.22 above.

⁵⁷ See para 3.39 above.

(3) The Courts' Implementation and Use of Commission Proposals

- 3.51 Legislation should not be taken as the only measure of our success, and some of our recommendations can be implemented without legislation. In recent years the courts have increasingly given effect to our recommendations. As we have mentioned on several occasions in the recent past,⁵⁹ our reports have also had a significant effect in changing views on particular subjects and in leading to a gradual change in the law by developments through the courts or other means.
- 3.52 Our reports can also provide considerable assistance to the courts. One example is the House of Lords' decision in *Kuddus v Chief Constable of Leicestershire*,⁶⁰ which had the effect of implementing one of the recommendations in our 1997 report on Aggravated, Exemplary and Restitutionary Damages.⁶¹ Our report argued that exemplary damages should be kept, and their use widened. The House of Lords took one step down this path by abandoning the extremely technical rule in *AB v South West Water*⁶² that exemplary damages could only be granted if there was a pre-1964 precedent making them available for that particular cause of action.
- 3.53 Another example related to chancel repairs. Owners of certain pieces of land have had a liability, of mediaeval origin, to repair the chancels of some parish churches, even if they were unaware of that liability when they purchased the land. In a report in 1985⁶³ we recommended that this liability should be phased out, over a 10 year period. The Church of England supported phasing out the liability. We continued discussions with the Government over the years since our report, not least pressing that the liability contravened the European Convention on Human Rights. In the event, the Government rejected our report. This was on the basis that, although the liability can cause hardship, it is often reflected in the sale price and is enforced in relatively few cases, and any scheme to bring the liability to an end might encourage enforcement where it still existed; and, although continuing the liability carried the risk of breaching the ECHR, so would its abolition.⁶⁴

⁵⁸ See para 3.40 above.

⁵⁹ See Annual Report for 2001, at paras 3.36 - 3.39.

⁶⁰ [2002] 2 AC 122.

⁶¹ Law Com No 247. In 1999, the Government had accepted our recommendations on aggravated and restitutionary damages. The Government did not accept our views on exemplary damages but suggested that "some further judicial development of the law in this area might help clarify the issues", *Hansard* (HC), 9 November 1999, vol 337, col 502W.

⁶² [1993] QB 507.

⁶³ Liability for Chancel Repairs, Law Com No 152.

⁶⁴ Written Answer, *Hansard* (HC) 29 July 1998, vol 592, cols 201-2 W.

3.54 In *Aston Cantlow PCC v Wallbank*⁶⁵ the House of Lords in 2003 upheld chancel repair liability (of almost £100,000 in this instance). This reversed the decision of the Court of Appeal,⁶⁶ which had struck down the liability, under the Human Rights Act, effectively implementing our main recommendation.

⁶⁵ [2003] UK HL 37. The court referred extensively to our report - for example, to our description of this liability as anachronistic and capricious in its application and as highly anomalous.

⁶⁶ [2001] EWCA Civ 713.

PART IV

COMMON LAW AND COMMERCIAL LAW



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Registration of Security Interests

- 4.1 Companies frequently grant charges over their assets as security for loans. In 2001, as part of the Company Law Review by the Government, the Company Law Review Steering Group highlighted problems in the way such charges were required to be registered.² In May 2002 the Department of Trade and Industry asked us to consider reforms to the registration system, and to look more generally at the law of security and “quasi-security” over property other than land. In July 2002 we published a consultation paper, in which we provisionally proposed the introduction of a “notice-filing” system for company charges.³ This would both simplify the registration process (by requiring less information to be sent to Companies House) and clarify which creditors took priority when a company became insolvent. We considered whether such a system should include not just charges but also quasi-security interests (such as hire purchase or finance leasing agreements). The consultation paper also discussed whether the notice-filing system provisionally proposed for companies should apply more widely, to include security and quasi-security granted by partnerships and individuals.
- 4.2 We received 68 written responses, and explored the issues raised, through meetings and through public seminars we organised at Queen Mary’s College (London), Manchester University and the Society of Legal Scholars. These were

¹ Including lawyers who were at the Commission for part of the period.

² Modern Company Law For a Competitive Economy, Final Report, July 2001.

³ Registration Of Security Interests: Company Charges and Property other than Land, Consultation Paper No 164.

invaluable in formulating policy. We are also very grateful to the members of a small Advisory Group – Professor Sir Roy Goode QC, Guy Morton of Freshfields Bruckhaus Derringer, Richard Sykes QC and Philip Wood of Allen & Overy – for their assistance with this project. Louise Gullifer and Dr Sarah Worthington are consultants on this project. We were also assisted by Dr John de Lacy and Professor Gerard McCormack.

- 4.3 We plan to publish a report and draft legislation by autumn 2004.

Unfair Contract Terms

- 4.4 The validity of terms in contracts confronts both consumers and businesses on a daily basis. The law is extremely confusing. There are two overlapping pieces of legislation, using different criteria and producing different results: the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999. Businesses have complained that having to comply with two regimes is costly. Our aim is to replace both with a single piece of legislation, written in a plain, accessible way. We are also considering whether to extend the range of terms open to review in business-to-business contracts generally, and in small business contracts in particular.
- 4.5 We are working with the Scottish Law Commission to review the law. We published a joint consultation paper in August, and received 80 responses.⁴ Unusually for us, the paper included samples of a draft Bill, so consultees could comment on our efforts to make the law clearer and more accessible. We will be publishing a final report (together with draft legislation) in 2004.

Illegal Transactions

- 4.6 Partly as a result of the House of Lords' decision in *Tinsley v Milligan*⁵ it was decided to review the law concerning the effect of illegality on claims in contract or tort or under a trust. We have published two consultation papers,⁶ both proposing that the courts should have a discretion whether to disallow a claim on the ground that it arose from an illegal transaction.
- 4.7 We have been considering how far the subject requires legislation, or whether much of what we might recommend could be introduced through judicial decisions. We intend to publish a further paper on whether the existing law can be simplified and, if so, whether legislation is required.

Compound Interest

- 4.8 Where court proceedings have been started, the courts have a statutory discretion to award interest on debts or damages. However, they can only award

⁴ Unfair Terms in Contract, Law Commission Consultation Paper No 166, Scottish Law Commission Discussion Paper No 119.

⁵ [1994] 1 AC 340.

⁶ Illegal Transactions: the Effect of Illegality on Contracts and Trusts (1999) Consultation Paper No 154; The Illegality Defence in Tort (2001) Consultation Paper No 160. See para 9.7 below about a seminar on the subject.

simple interest. Although arbitrators may grant compound interest, the courts may not. This may penalise claimants in large, long-running cases (including the most serious personal injury claims) and give defendants little incentive to conclude litigation.

- 4.9 In September we published a consultation paper, that provisionally proposed that claimants should be awarded compound interest, unless there were good reasons why not.⁷ We will publish a final report in 2003.

Defamation: Perceived Abuses of Procedures and the Internet

- 4.10 In January 2002 the Lord Chancellor asked us to undertake two preliminary studies.
- 4.11 The first looked at perceived abuses of defamation procedure. Concern had been expressed that some claimants issued “gagging writs” or “gagging letters” (without the victim of the alleged defamatory statement intending to pursue the matter) to prevent discussion, when they had no real intention of pursuing litigation. We published a scoping study in May, which found no evidence of widespread use of gagging writs or letters.⁸ However, concerns were raised about the “innocent dissemination” defence under section 1 of the Defamation Act 1996. It was felt to give inadequate protection to distributors and retailers who are told that material is defamatory (in that it would make a reasonable person think less well of someone). There is no defence if they genuinely but mistakenly thought that the material was privileged or true.
- 4.12 The second was a preliminary investigation of the way that defamation law affects the internet. In December we published a paper that highlighted two concerns.⁹ The first was, again, the innocent dissemination defence, which causes particular problems for internet service providers. Secondly, it was feared that material placed in an online archive could give rise to actions many years after the original publication, when it was no longer practical to defend them.

Partnership Law

- 4.13 We have previously published, jointly with the Scottish Law Commission, a consultation paper on the law on general partnerships, currently governed by the Partnership Act 1890.¹⁰ We had also published another joint consultation paper, on reform of the Limited Partnerships Act 1907.¹¹ Both papers attracted a large

⁷ Compound Interest, Consultation Paper No 167.

⁸ Aspects of Defamation Procedure: A Scoping Study, May 2002.

⁹ Defamation and the Internet: A Preliminary Investigation, Scoping Study No 2, December 2002.

¹⁰ (2000) Consultation Paper No 159; Discussion Paper No 111. The Government has abolished the 20 partner limit for partnerships, as provisionally proposed in our consultation paper (No 159, para 5.61): Regulatory Reform (Removal of 20 Member Limit in Partnerships etc) Order 2002 (SI 2002 No 3203).

¹¹ (2001) Consultation Paper No 161; Discussion Paper No 118.

number of responses.¹² These linked areas of the law are important in rather different ways. The general partnership is, with the limited company, one of the two most widely used business vehicles in the UK, with at least 700,000 partnerships in the UK, employing nearly 3 million people. The limited partnership is by contrast relatively rare, but is nevertheless extremely important in specific fields, in particular the venture capital industry.¹³

4.14 Our task is to review the existing law and devise and recommend a modern statutory base for the 21st century. In this task we owe a particular debt of gratitude to the Scottish Law Commission who have taken an equal share in this work – and especially to Patrick Hodge QC, their lead Commissioner on the project. We have been greatly aided by the many detailed contributions we received during the formal consultation process, and also by continuing assistance from academics and practitioners in these fields, not least Roderick Banks who has assisted as a consultant. We intend to complete our review of both subjects, and publish our recommendations and draft legislation, during 2003. Our Chairman is our lead Commissioner on this project.



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¹² See para 9.7 below about a seminar on the subject.

¹³ According to the British Venture Capital Association (BVCA), in 2001 the European Venture Capital Association reported that UK independent funds (which according to the BVCA overwhelmingly consist of limited partnerships) raised 17.2 billion Euros. This compares with 3.8 billion Euros and 1.7 billion Euros raised by independent funds in France and Germany respectively and against a pan-European total of 28 billion Euros. Limited partnerships are also popular for property investment, and institutional investors such as pension funds and insurance companies.

PART V

CRIMINAL LAW



His Honour Judge Alan Wilkie QC
(Commissioner)

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Codification of the Criminal Law

- 5.1 In its White Paper “Criminal Justice: The Way Ahead”, published in February 2001,² one of the Government’s key ideas was reform and codification of the criminal law, which has long been an objective of this Commission. In its Spring 2001 manifesto the Government reaffirmed its intention to pursue a criminal code: they would “modernise and consolidate the whole criminal law system to promote public confidence and to speed up criminal proceedings”. In its July 2002 White Paper “Justice for All” (Cm 5563), the Government again stated their intention to codify the criminal law. In 2001, after discussion with the relevant Government Departments, it was agreed that we would review and revise what was said about the general principles of the criminal law in Part I of our Draft Criminal Code of 1989.³ The first two tranches of our work have been in relation to External Elements and Criminal Liability and Mental Disorder. In the course of this period we distributed draft reports on each of these topics to members of our two consultative groups. We are now engaged in analysing the responses and preparing final draft papers. In addition, we began work on four further tranches, namely Fault, Defences, Corporations/Children and Preliminary Offences. We hope to complete our report on all the tranches by the end of 2004.

¹ Including lawyers who were at the Commission for part of the period.

² Cm 5074.

³ Criminal Law: A Criminal Code for England and Wales, Law Com No 177.

Fraud

- 5.2 In July 2002 we published a report and draft Bill on the law of Fraud.⁴ This report was in response to a reference from the Home Secretary. It recommended the introduction of a single general offence of fraud. We believe that this offence would make the law more comprehensible to juries, especially in serious fraud trials, and provide a useful tool for the effective prosecution of fraud. The single, clearly defined, offence would replace the current patchwork of offences. This would dramatically simplify the law of fraud and be capable of encompassing fraud in its many unpredictable forms. This is extremely important at a time when it is estimated⁵ that the total value of fraud cases almost trebled from 2001 to 2002, from £244 million to £717 million.
- 5.3 We have also recommended an offence of obtaining services dishonestly. This is intended to be a “theft-like” offence, which would make it unlawful to “steal” services by simply helping oneself to them. It would not require proof of deception or fraud. Our consultant on this project was Professor Sir John Smith CBE QC FBA of the University of Nottingham.⁶

The Effective Prosecution of Multiple Offending

- 5.4 In October we published a report on The Effective Prosecution of Multiple Offending.⁷ Our work on Fraud highlighted the difficulties of effectively prosecuting multiple fraud offences. We recognised that those difficulties would not only impact on fraud offences and we therefore broadened the scope of our work to include other types of multiple offending.
- 5.5 We made three recommendations: the offence of “fraudulent trading” in the Companies Act 1985 should be extended to include non-corporate traders; special verdicts should be used in the Crown Court in certain cases, so that the judge can be better informed about the extent of offending when sentencing a defendant convicted of a continuous offence; and a two stage trial procedure should be introduced in the Crown Court.⁸ This is for cases of alleged repeat offending which cannot fairly be described as a continuous offence and which prior to *Kidd*⁹ could have been dealt with by way of sample counts. The first stage would be trial before judge and jury on an indictment containing sample counts. After conviction on any sample count, the second stage would follow. It would be a trial by a judge alone on any offence “linked” to the sample offence(s) of which

⁴ Fraud, Law Com No 276.

⁵ KPMG Forensic Fraud Barometer, February 2003.

⁶ See para 2.16 above.

⁷ The Effective Prosecution of Multiple Offending (2002) Law Com No 277. See at para 9.7 below about a seminar we held.

⁸ The Home Secretary announced on 20 May 2003, during the passage of the Criminal Justice Bill through Parliament (House of Commons Report stage), that he would table an amendment in the House of Lords to enact this recommendation.

⁹ [1998] 1 WLR 604.

the defendant had been convicted. The defendant would be sentenced at the conclusion of the second stage for all offences of which he had been convicted, whether at stage one or two.

Assisting and Encouraging Crime

- 5.6 The law in this area is complicated and uncertain and contains anomalies. We have been considering the scope and structure of the law relating to the liability of those who assist or encourage others to commit offences. We restarted work on this project in late 2001. We anticipate that our report will be completed in 2004.

Non-accidental Death or Injury to Children

- 5.7 This project arose from our work on criminal liability for assisting and encouraging crime. The project is concerned with non-accidental death or serious injury to children caused by their parents or carers. In the three years to 31 December 2000 no fewer than three children under 10 years were killed or suffered serious injury each week. About half were under six months old, and 83% were under two years old. Only 27% of the cases led to any conviction, of which only a small proportion were for murder, manslaughter or wounding/causing grievous bodily harm.
- 5.8 The problem which the project addresses is how to establish criminal liability more often for the full and serious offence committed. This arises in cases where it is apparent that one or both parents must have committed the crime but there is no evidence which will allow the court to identify which, so as to apportion blame. The result is often therefore only a conviction for child cruelty, if there is any conviction at all; for such a conviction the sentence cannot reflect the seriousness of the offence where death has occurred. At present the law is that a parent will be guilty of an offence where violence against his or her child is committed by another if (s)he fails to intervene by taking reasonable steps to prevent the harm where (s)he is able to do so.¹⁰ If, however, there is no evidence as to which parent or carer was responsible and no evidence to establish the presence of both parties at the scene of the assault, there may be no basis for a finding of guilt in respect of either.
- 5.9 We have been investigating, in close co-operation with the National Society for the Prevention of Cruelty to Children, whether there are any changes to the law, either substantive, evidential or procedural, which would enable the proper conviction of those guilty of violent offences (or neglect) towards children for whose care they are responsible in circumstances where, presently, the courts are obliged to acquit them. We published a consultative report in April 2003 and we expect to publish our final report in the late summer of 2003.

¹⁰ *R v Russell and Russell* (1987) 85 Cr App R 388 (CA).

Misuse of Trade Secrets

- 5.10 Following our consultation paper on the possibility of creating an offence of misusing a trade secret,¹¹ we postponed further work pending the conclusion of our work on Fraud. We have not had the opportunity to return to it since.



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¹¹ Legislating the Criminal Code: Misuse of Trade Secrets (1997) Consultation Paper No 150.

PART VI

HOUSING AND ADMINISTRATIVE JUSTICE



Professor Martin Partington CBE
(Commissioner)

TEAM MEMBERS¹

Government Legal Service

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John Cahir, Helen Carr, Charlotte Crilly,
Matthew Waddington, Tahnee Woolf,
Raymond Youngs

Research Assistants

Tim Baldwin, Neil Cobb, Lee Farrington,
Neil Martin

- 6.1 The central task of the team has remained the major housing law reform project launched in March 2001, following the publication of our scoping paper on the need for reform. In addition, work has continued on the publication of local authority reports, and towards the end of the year we started a new project - on land, valuation and housing tribunals.

Housing law reform

- 6.2 There have long been calls for thorough-going reform of housing law. In England, 5.7 million properties are rented, and nearly a third of the population live in rented accommodation. Over a quarter of the population of Wales rent.

CONSULTATION PAPERS

- 6.3 This year we published two consultation papers.² The first was published in April, and set out our provisional proposals for a radically new approach to housing tenure law. The second, published in September, dealt with the subordinate, but nevertheless important, issues of how joint tenancies (“co-occupation”), transfers and the statutory succession rules would work under our new scheme.
- 6.4 The key elements of the scheme proposed were as follows.
- (1) A “consumer” approach to housing law, emphasising the importance of an inclusive written agreement setting out the rights and obligations of

¹ Including lawyers who were at the Commission for part of the period.

² Renting Homes 1: Status and Security, Consultation Paper No 162, and Renting Homes 2: Co-occupation, Transfer and Succession, Consultation Paper No 168.

landlords and tenants/licensees (“occupiers”), including compulsory terms required by law.

- (2) A simplified scheme of tenure types, with only two forms of tenure - a Type I, with a high degree of statutory security, intended mainly (but not exclusively) for the social (council and housing association) sector; and a low security, short term Type II, which would become the standard private sector tenancy, with some limited use in social housing.
- (3) New rights for occupiers to bring newcomers into the agreement as co-occupiers, and to depart from the agreement without terminating it.
- (4) Modernised statutory succession rules.

THE CONSULTATION PROCESS

- 6.5 These proposals amounted to a major change in the way in which people rent their homes. We realised at the outset that we would need to take a broader approach to consultation than is usual for the Commission. In particular, it was important to ensure that we gained adequate access to the opinions of three hard-to-reach constituencies - tenants of social landlords, private tenants and small landlords.
- 6.6 We therefore commissioned a social researcher³ to conduct a series of focus groups with each of these three groups. To consult tenants of social landlords, we approached the Tenant Participation Advisory Service⁴ and the Tenants And Residents Organisations of England,⁵ with the result that TPAS put together a programme of meetings, focus groups and other elements (including a live internet “chat” with the Commissioner). The Office of the Deputy Prime Minister (ODPM) helpfully funded this programme, which, together with our independent focus group work, gave us valuable insights into the positions of these groups.
- 6.7 Perhaps most importantly, we encouraged others to arrange consultation events that members of the project team attended, and accepted invitations to speak at others. The result was that, during the course of the year, members of the team spoke at no less than fifty conferences, seminars, workshops and meetings, ranging from a public meeting attended by 300 private tenants to an academic seminar, and from the annual conference of the National Federation of Residential Landlords to a meeting with key housing association players arranged by the Housing Corporation.
- 6.8 The results were, first, that we received a very high number of written responses to the first consultation paper - 440. The second, despite being subsidiary to the first and more technical in nature, still attracted 75 responses. Secondly, our

³ Georgie Parry-Crook; see para 9.5 about other socio-legal research for this project.

⁴ A participation and training voluntary organisation, working with tenants of social landlords.

⁵ A national body representing tenants’ interests.

views changed in a number of important respects in the light of the discussions we engaged in and the comments we received.

ADVISORY GROUP

- 6.9 We have continued to be assisted by our Advisory Group, whose help we gratefully acknowledge (although they are not of course responsible for the contents of the papers, which do not necessarily reflect the views of their organisations). The members were as follows: Stephen Brockway (Housing Corporation), John Bryant (National Housing Federation), Russell Campbell (Shelter), John Daniels (ODPM), Paul Docker (Lord Chancellor's Department), Ian Fletcher (British Property Federation), David Fotheringham (Chartered Institute of Housing), Gary Glover (Tenants and Residents of England), Richard Grant (Scottish Executive), Stella Groves (The Law Society), Maureen Haire (National Assembly for Wales), Gareth Hardwick (National Federation of Residential Landlords, and Small Landlords Association), Andrew Heywood (Council of Mortgage Lenders), Sian James (NAW), Ken Lewis-Allagoa (LCD), Sam Lister (CIH), Phil Morgan (Tenant Participation Advisory Service), Sally Morshead (The Law Society), Chris Morter (LCD), Peter Owen (NAW), Leona Patterson (ODPM), John Tanner (LCD), Celia Tierney (Local Government Association) and Mike Wrangmore (LCD).

FUTURE PROGRESS

- 6.10 We aim to produce a report by the autumn of 2003. This will enable the ODPM to analyse the policy of the report and conduct such further consultation as they consider necessary, with a view to early implementation of what are much needed reforms.

Land, Valuation and Housing Tribunals

- 6.11 In August 2001, the Leggatt Review of Tribunals reported. Noting that "[t]here are confusing overlaps of jurisdiction between courts and tribunals, as well as between tribunals", one of its recommendations was that the Law Commission should consider these jurisdictional issues as part of "a comprehensive solution" to the structure of certain tribunals. In November 2002 the Lord Chancellor's Department referred the matter to us. The tribunals concerned are the Agricultural Land Tribunal, the Commons Commissioners, the Lands Tribunal, the Residential Property Tribunal Service Tribunals (the Leasehold Valuation Tribunal, the Rent Assessment Committees, and the Rent Tribunal) and the Valuation Tribunal. The Adjudicator to HM Land Registry was also added by agreement between the Commission and LCD.
- 6.12 In December, we published a consultation paper, which
- (1) put forward three options for reform of the tribunals -
 - (a) rationalising the current structure, with a common appeal route and some changes to the Lands Tribunal and the Residential Property Tribunal Service Tribunals,

- (b) an amalgamated tribunal, in which cases would be allocated to “streams”, which would determine the procedure to be used and the composition of the tribunal, thus to a degree retaining the current divisions within an administratively unified system, or
 - (c) a single, unified tribunal, combining the jurisdiction of all of the tribunals under consideration; and
- (2) set out possible forms of jurisdictional confusion and asked respondents to identify any real practical problems that exist.

During the consultation period, which closed in March 2003, members of the team engaged in a series of bilateral meetings with those from the tribunals.

- 6.13 In this project we have also been greatly assisted by an Advisory Group, which met for the first time shortly after the reference was received. The members are George Bartlett QC (Lands Tribunal), Steve Benton (Office of the Deputy Prime Minister), Phil Carey (ODPM), Tony Chase (Gerald Eve Property Advisers), Edward Cousins (Commons Commissioner), Chris Davies (Lord Chancellor’s Department), John Ebdon (Valuation Office), Pat Fairbairn (Council on Tribunals), Andrew Gunz (Inland Revenue), Alex Hermon (Council on Tribunals), Joe Ismail (ODPM), Nicole Johnston (LCD), Judith Marsden (Department for Environment, Food and Rural Affairs), Bryan Massen (Valuation Tribunals), James Macmillan (LCD), Siobhan McGrath (Residential Property Tribunal Service), George Newsom (Agricultural Land Tribunals), Charlotte Sewell (ODPM), David Slesoritis (ODPM), Nick Wilson (DEFRA) and Paul Wood (Valuation Tribunal). As with the Housing Law Advisory Group, the members of the Group are neither responsible for, nor necessarily endorse, the proposals made.
- 6.14 We hope to produce a report by September 2003.

Publication of Local Authority Reports

- 6.15 In February 2000 Sir Ronald Waterhouse published the results of the inquiry he chaired into abuse of children in North Wales.⁶ One of the concerns expressed in the Waterhouse Report was that in some circumstances local authorities may be unduly constrained by threat of legal action or loss of insurance cover from making public, acting on, and identifying necessary reforms in the light of the results of inquiries conducted by them, or on their behalf. In particular, it was said that the authority’s insurers feared actions for defamation if reports were published, and that publication might also amount to an admission of liability and the waiver of legal rights.
- 6.16 The Waterhouse report recommended that the Law Commission look at the legal issues surrounding the publication of local authority reports. We were asked to undertake this work following discussions between the Commission, the

⁶ “*Lost in care: Report of the Tribunal of Inquiry into the abuse of children in care in the former County Council areas of Gwynedd and Clwyd since 1974*” HC 201.

Department of the Environment, Transport and the Regions (now the Office of the Deputy Prime Minister) and the Lord Chancellor's Department.

- 6.17 If the effect of the law is to impede publication of the report of the inquiry, then there are several unwelcome results. Whatever has gone wrong will be more likely to recur if steps are not taken to prevent it. The authority which set up the inquiry could learn from the report – but, if the report is not published, other authorities and bodies which could also benefit from the report will not be prompted to improve their own practices. The facts in relation to the individual complaint ought to be put into the public domain, but if the report is not published they may not be.
- 6.18 We published a consultation paper in April 2002 in which we concluded that there are three elements to the resolution of these difficulties: an Agreement to be drawn up by the insurers and the local authorities, a Code of Practice for the conduct of local authority ad hoc inquiries, and possible legislative reform for defamation.
- 6.19 We anticipate that the Local Government Association and the Association of British Insurers will be able to build on existing work to devise an Agreement. The Society of Local Authority Chief Executives set up a Review Group which published guidance on the conduct of local authority ad hoc inquiries in December 2002.
- 6.20 We shall publish our report with recommendations for legislative reform in late 2003.



THE HOUSING/ADMINISTRATIVE JUSTICE AND COMPULSORY PURCHASE TEAMS

PART VII

PROPERTY AND TRUST LAW



Stuart Bridge
(Commissioner)

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Government Legal Service

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Research Assistants

Amy Goymour, Ben Griffiths,

Zoë Leventhal, Katherine McCormick

Sharing Homes

- 7.1 The Law Commission concluded its review of the law as it relates to the property rights of those who share homes. We published a discussion paper (Law Com No 278) in July 2002.²
- 7.2 In this project, the Law Commission had attempted to devise a scheme for the ascertainment and quantification of rights in the shared home which would apply whenever the parties had failed to make express legally enforceable arrangements. The aim was to recommend a scheme that would operate fairly and evenly across the diversity of domestic circumstances – not only to married and unmarried couples, but also to friends, to relatives, and to all others sharing a home outside commercial relationships such as landlord and tenant or lodger. It was however concluded that this was not possible, and that the common law, by adopting a broader approach to the valuation of shares in the home, had greater potential to apply to the wide range of relationships than any statutory scheme.
- 7.3 Our discussion paper encouraged those who are living together to investigate the legal consequences of doing so and to make express written arrangements clearly setting out their intentions. Where property is purchased jointly, the parties will be required to stipulate their beneficial entitlements by HM Land Registry. It is therefore particularly important, where the home has been purchased by one party before the other party comes to live with them, that consideration is given to the parties' respective rights and obligations.

¹ Including lawyers who were at the Commission for part of the period.

² See para 9.7 below about a seminar we held with the Law Society.

- 7.4 While recognising that marriage is a status deserving special treatment, the Law Commission concluded by recommending that further consideration be given to the adoption, necessarily by legislation, of new legal approaches to personal relationships outside marriage. These may include the formal registration of civil partnerships or the conferment of a discretionary power on the courts to adjust the legal rights and obligations of individuals, who have been living together for a defined period or in defined circumstances, on the breakdown of their relationship. Although outside the scope of the Sharing Homes project itself, the Law Commission would be prepared, if asked, to contribute to any further work in this wider area which is appropriate given its role as a body concerned with law reform.³

Termination of Tenancies

- 7.5 This project is concerned with the means whereby a landlord can terminate a lease where the tenant has broken his or her obligations. We have recently reviewed the progress of our work on this project and are currently revising provisional proposals to take into account the implementation of the Civil Procedure Rules, the Human Rights Act 1998 and recent developments in the case law. We intend to publish a short consultation paper in autumn 2003.

Easements and Analogous Rights and Land Obligations

- 7.6 This area of law affects many landowners. However, the law of easements has never been subject to a comprehensive review, and many aspects of the law are now outdated and a cause of difficulty. The most recent edition of the leading practitioners' work, *Gale on Easements*, supported the need for reform identified by the Law Commission:-

If one stands back from the detail, however, it cannot be denied that there is much that is unsatisfactory about the law of easements. In essence, easements can sometimes be acquired too easily (light and support by prescription, any easement by mistake under section 62 of the Law of Property Act 1925), are too difficult to detect (because they are overriding interests and not required to be entered on the register) and are impossible to get rid of or to modify (there being in this jurisdiction no equivalent to section 84 of the Law of Property Act 1925 which enables the discharge or modification of restrictive covenants). And there is the Prescription Act.

- 7.7 We have started conducting a full review of the current law. Consideration is being given to the Law Commission's earlier work in this and related areas with a view to producing a coherent scheme of land obligations. We hope to publish a consultation paper in the summer of 2004. We have a very helpful Advisory Group to assist us. It includes Professor David Clarke (Bristol University), Professor Elizabeth Cooke (Reading University), Michael Croker (HM Land Registry), Philip Freedman (Mishcon de Reya), Jonathon Gaunt QC and Paul

³ In June 2003 the Government published a Consultation Paper: "Civil Partnerships: a framework for the legal recognition of same-sex couples".

Morgan QC (both of Falcon Chambers), Emma Slessenger (Dechert) and Louise Tee (Cambridge University).

Compulsory Purchase

- 7.8 The Department for Transport, Local Government and the Regions – now the Office of the Deputy Prime Minister (ODPM) and formerly the Department of Environment, Transport and the Regions (DETR) - and the Lord Chancellor’s Department asked us to review the law relating to compulsory purchase compensation and procedure. This followed a recommendation by an Advisory Group to the DETR, describing the law here as “an unwieldy and lumbering creature”.
- 7.9 The Commission decided to prepare separate consultation papers on the component topics. We published our first consultative report⁴ in July 2002. In the latter part of 2002 we undertook an appraisal and analysis of the valuable consultation responses received from professional bodies, public authorities and privatised utilities, and individuals. That work will inform a second stage of the project.
- 7.10 We published our second consultative report⁵ in December 2002 and consultation ended in February 2003. Again, the Commission has benefited greatly from the informal help freely given to it by organisations and individuals who have specialist and practical knowledge in the field.
- 7.11 The Commission intends to complete its final report in late 2003 and hopes that in due course Parliamentary time can be found for consolidating legislation to sweep away the multiplicity of statutory provisions in this field (some of which may be further amended following our work) and to create a unified Compensation Code.
- 7.12 In addition to the work on our final report, we have been working with the ODPM to develop proposals arising out of their policy statement.
- 7.13 Lord Justice Carnwath had immediate responsibility for this work when he was Chairman of the Law Commission. We are also most grateful for his considerable assistance as a consultant on the project since then.

Trust Law

- 7.14 During the passage through Parliament of the Trustee Act 2000, it became apparent that there was pressure for possible further reform of the law in this area. The Lord Chancellor later referred three areas of trust law to us. We published a consultation paper on Trustee Exemption Clauses in January 2003. We are very grateful to the Society of Trusts and Estates Practitioners for their assistance in the subsequent consultation exercise, and to the Trust Law

⁴ Towards a Compulsory Purchase Code: (1) Compensation, Consultation Paper No 165.

⁵ Towards a Compulsory Purchase Code: (2) Procedure, Consultation Paper No 169.

Committee for their assistance.⁶ Work is also continuing on the two further projects, about the Rules of Apportionment and the Rights of Creditors against Trust Funds.



THE PROPERTY AND TRUST LAW TEAM

⁶ See para 9.5 below about socio-legal research for this project.

PART VIII

STATUTE LAW

TEAM MEMBERS

*Consolidation*¹

The Chairman, Edward Caldwell, Helen Caldwell, Mark Hudson, Catherine O’Riordan, Douglas Ramsay, Bernadette Walsh

Statute Law Revision

The Chairman, John Saunders, Elizabeth McElhinney, Jennifer Platt

CONSOLIDATION

- 8.1 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 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.
- 8.2 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. However, in the case of a large consolidation, it may be done by means of several statutes. The aim is to make the statutory law more comprehensible, both to those who have to apply it and to those who are affected by it.
- 8.3 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, provision in a paving Bill will be required or else the anomaly will have to be reproduced.
- 8.4 The process of consolidation requires the support and participation of the government department or departments within whose responsibility the subject matter falls.
- 8.5 A consolidation of the law relating to European Parliamentary elections was enacted in July 2002.
- 8.6 The Commission’s work on consolidating the law relating to Parliamentary and local government elections has, however, been severely delayed by a number of factors. Shortly after the General Election in 2001 departmental responsibility for

¹ Including Parliamentary Counsel who were at the Commission for part of the period.

the subject was transferred from the Home Office to the Department of Transport, Local Government and the Regions. That was followed by a further transfer of responsibility to the Lord Chancellor's Department.² It has, understandably, taken the department some time to absorb its new responsibilities but it is now in a position to assist with the consolidation.

- 8.7 Work on the consolidation has re-started but it is difficult to forecast when it will be completed. An additional problem has arisen because the subject matter of local government elections in Scotland is devolved, except in relation to matters concerning the franchise at local government elections in Scotland, which are reserved under section B3 of Schedule 5 to the Scotland Act 1998. We are in ongoing discussions with Scottish Executive officials on the extent to which the consolidation will cover matters relating to local government elections in Scotland.
- 8.8 Work on the Wireless Telegraphy Bill has continued to be delayed by the recently enacted Communications Act 2003 which makes significant changes in the law about wireless telegraphy. Although the government's legislation in this area has delayed the consolidation, it has given the Law Commission an opportunity to suggest changes in the law to deal with problems that have come to light during work on the consolidation.
- 8.9 It is proving much more difficult than in the past for the Law Commission to organise a smooth-running consolidation programme. As a general rule, the areas of the statute book which are most in need of consolidation are those in which there is constant legislative activity. A department that is about to seek approval for future legislation, or that has been given a place for a Bill in the government's current legislative programme, is unlikely to support a proposed consolidation of legislation on the subject concerned. Even if it wished to help, it would be unlikely to have the resources to do so.
- 8.10 The growth in the amount of legislation about a particular subject contributes to the difficulties facing the Law Commission. In some areas the sheer size of the body of statutory law makes consolidation difficult to organise. Large consolidations require substantial resources.

STATUTE LAW REVISION

- 8.11 Statute law revision is the process of removing legislation from the statute book if it no longer has any practical utility or is obsolete. The work helps to modernise the statute book, leaving it clearer and shorter, and is an integral part of the general process of statute law reform. Our vehicle for repealing legislation is the Statute Law (Repeals) Bill. We have drafted 16 such Bills since 1965. All have been enacted and have repealed more than 2000 Acts in their entirety and have achieved the partial repeal of thousands of other Acts.
- 8.12 During 2002 we completed work on two large projects. The first of these examined local government law. Although local government law is comparatively

² Much later, in June 2003, LCD was renamed the Department for Constitutional Affairs.

new (going back perhaps 125 years), a large body of complex law has arisen dealing with such aspects of local government as the powers and duties of local authorities, finance and administration. Our examination uncovered section 69 of the Local Government Act 1888, the surviving provisions of which were designed to finance the emigration to the colonies of unemployed adults and pauper children. Another now obsolete enactment is the Compensation of Displaced Officers (War Service) Act 1945 which compensated public servants for loss of employment rights arising from their war service during the Second World War.

- 8.13 Our other large project completed during 2002 involved identifying unnecessary references to obsolete statutory bodies. The statute book is littered with such references and we have used our computerised databases to track down a large number of statutory provisions that either established or abolished corporations, advisory and executive councils, committees and institutions that no longer serve any useful purpose. The obsolete bodies range alphabetically from the Accountant General of the Navy to the White Fish Authority. Other examples include the National Land Fund and the Patriotic Fund Commission.
- 8.14 Work in hand at present includes a study of road traffic law. This reviews the nineteenth century Hackney Carriage legislation and then works forward towards the end of that century as horses gave way to motor vehicles. All the relevant road traffic and transport enactments of the twentieth century are also examined with particular emphasis on public transport in London. Another project that we are currently working on involves an examination of the various enactments concerning public finance and related matters. Both these projects seem likely to produce a large number of statutory provisions suitable for repeal.



THE STATUTE LAW REVISION TEAM AT WORK RESEARCHING TRANSPORT LEGISLATION

- 8.15 In all our work we produce a consultation document inviting comments on a selection of repeals in each area. These documents are then circulated to Departments and other interested bodies and individuals. Subject to the response that we receive, we hope to include repeals relating to all the projects mentioned above in our next Statute Law Revision report.
- 8.16 Much of our work on statute law revision is conducted jointly with the Scottish Law Commission. In March 2002 members of our statute law revision team joined colleagues at the Scottish Law Commission for a meeting in Edinburgh to prepare the ground for the publication of the next Statute Law Revision report around the end of 2003. The establishment of the Scottish Parliament will alter the way that the statute law revision recommendations of the two Commissions are presented and implemented. It is hoped that the next Statute Law (Repeals) Bill – giving effect to the recommendations of both Commissions – will be introduced during the 2003/04 Parliamentary Session.
- 8.17 Because our Statute Law (Repeals) Acts extend throughout the United Kingdom and the Isle of Man, we liaise regularly on our proposals not only with the Scottish Law Commission but also with the authorities in Wales (the Office of the Secretary of State for Wales and the Counsel General to the National Assembly for Wales) and with the authorities in Northern Ireland and in the Isle of Man. We much appreciate their help and support in considering and responding to our proposals.

PART IX

EXTERNAL RELATIONS

- 9.1 At the Law Commission we regard it as very important that we have strong links with as wide as possible a range of organisations and individuals who have a concern for, or expertise in, the reform of the law. The following are some of our notable external contacts in this period.

Parliament, Ministers and Government Departments

- 9.2 We have continued to enjoy close links with the Lord Chancellor's Department,¹ our "sponsor" department. The Chairman has met the Lord Chancellor in the course of the period. Jonathan Spencer (an LCD Director-General) and Paul Jenkins (Director-General of LCD's Legal and International Group) visited the Commission. Regular meetings have also been held with the Head of LCD's Civil Law Development Division, Andrew Frazer.

- 9.3 The Commissioners and staff have significant contact with a number of Ministers and officials in other Government Departments. During this period we had meetings and other contact in particular with Lord Goldsmith (the Attorney-General); Lord Williams of Mostyn, QC, (Leader of the House of Lords), Lord Falconer (then Minister of State for Criminal Justice, Sentencing and Law Reform); Lord Rooker (then Minister of State for Housing); Michael Wills (then Parliamentary Under Secretary of State for the Criminal Justice System). We have also dealt with: the Home Office; the Cabinet Office; the Office of the Deputy Prime Minister; the Department of Trade and Industry; the Department for Transport; the Inland Revenue; the Land Registry; and the Department for the Environment, Food and Rural Affairs. There has also been considerable contact with the Welsh Assembly Government, as the executive arm of the National Assembly for Wales.

Consultation and consultants

- 9.4 We have continued to consult at key stages of our law reform work. The most prominent form this takes is our consultation papers, which almost always precede our final reports. Feedback comes from many quarters but we are especially keen to obtain the opinions of those with particular interest or expertise in the subject of a project. We also consult widely at various stages of our work in a whole range of ways, including on a more informal basis. Just one example of this is shown by our work on housing law.² We would like to express our gratitude to everyone who contributes in all these ways. In addition, we frequently engage experts in particular areas of law to help us as consultants. We are extremely grateful to them. Among those during this period have been Professor Ian Dennis, Sir Roy Beldam and Mr Justice Mitchell on the Criminal Codification project, Georgie Parry-Crooke on Renting Homes, Professor Sir

¹ LCD was renamed the Department for Constitutional Affairs in June 2003.

² See paras 6.5 - 6.8 above.

John Smith on Fraud and Deception³ and Roderick Banks on Partnership Law. We have referred above to Lord Justice Carnwath's consultancy for us in our work on compulsory purchase. We are also very grateful to the members of our Advisory Groups on our work on:-

Registration of Security Interests⁴

Housing Law⁵

Land, Valuation and Housing Tribunals⁶ and

Easements.⁷

Socio-legal research

- 9.5 Socio-legal, economic and empirical research is of great benefit in some of our law reform projects. It can provide sound evidence on which to base our conclusions, whether we use existing research or commission new research. For example, socio-legal research carried out by Dr Alison Dunn at the University of Newcastle upon Tyne greatly informed our work on Trustee Exemption Clauses; and, likewise, research by Professor Stefan Szymanski on Housing Law. We also held an internal seminar on socio-legal research, to help all our legal staff.
- 9.6 We also have strong links with the socio-legal community. For example, several Commissioners or staff usually take part in the annual conference of the Socio-Legal Studies Association (SLSA); and the Commission continues to be represented on the Socio-Legal Research Users' Forum, which is chaired by Professor Partington.

Seminars, conferences and lectures

- 9.7 We arranged or participated in the following events: a seminar on Partnership Law, at the Institute of Advanced Legal Studies; a seminar – which included the Crown Prosecution Service, Serious Fraud Office, Home Office, judiciary, police, academics and the legal profession – on the Effective Prosecution of Multiple Offences; a Joint Law Society and Law Commission seminar on proposals for Reform of the Law affecting Cohabitees; a seminar reviewing Trust Law, held by the Scottish Law Commission in Edinburgh; a Society of Legal Scholars seminar on Illegality; and a seminar at the Young Solicitors' Group Annual Conference about working for the Government Legal Service (Christina Hughes). Other seminars and meetings, about the Registration of Security Interests and about Housing Law, are summarised above.⁸
- 9.8 The lectures and talks given included the following. Our former Chairman, Lord Justice Carnwath, gave the keynote speech at the launch of the Compulsory Purchase Association. He spoke at a Property Bar Association meeting and at a

³ See para 2.16 above.

⁴ Para 4.2 above.

⁵ Para 6.9 above.

⁶ Para 6.13 above.

⁷ Para 7.7 above.

⁸ Paras 4.2 and 6.7.

Planning Law Conference. He lectured to the Wales Public Law and Human Rights Association. He also broadcast on Radio 4 “Unreliable Evidence”.

- 9.9 Our current Chairman, as a newcomer to the Law Commission, shared his reflections on law reform in an address for the Bar Law Reform Committee. He also gave lectures to the Society for Advanced Legal Studies and to the Personal Injury Bar Association.
- 9.10 Stuart Bridge, Commissioner for the Property and Trust Law Team, spoke on: “The Property Rights of Those Who Share Homes” (at the Fourth Biennial Conference of the Centre for Property Law at the University of Reading); “The Law Commission and the Reform of the Law of Succession” (at Hogarth Chambers Seminar “Live Issues in the Law of Death”, Royal College of Surgeons); “Mental Incapacity – the Law Commission’s View” (at a Joint Conference of the Law Society and the Royal College of Psychiatrists); and “Setting Aside Mortgagees: Has the Law Gone Too Far?” (one of the 27th series of Blundell Lectures, Middle Temple Hall).
- 9.11 Professor Hugh Beale lectured on: “Harmonisation of European Contract Law” at the Hungarian Academy of Sciences in Budapest; “Teaching European Contract Law” at the UK National Committee on Comparative Law; and “The Law Commission Consultation Paper on Unfair Terms in Contracts” at Allen & Overy.
- 9.12 Other Commissioners, the Secretary and other legal staff gave a number of addresses to a wide variety of audiences.

International co-operation

- 9.13 We continue to have regular contact with law reform bodies elsewhere. Our close contacts with the Scottish Law Commission have been sustained, and we have worked on several joint projects. We refer above⁹ to their very special contribution to our joint work on Partnership Law. Lord Eassie (the new Chairman of the Scottish Law Commission) and Jane McLeod (their Secretary) paid us a visit. Also, during the period, Commissioners, the Secretary and a number of other legal staff had meetings with their Scottish Law Commission counterparts.
- 9.14 We also have helpful contact with the Law Reform Advisory Committee for Northern Ireland and their Chairman, Mr Justice Paul Girvan, visited us. In connection with the forthcoming establishment of a Northern Ireland Law Commission, we received visits from the Director of Law Reform in Northern Ireland and from a number of other officials from Northern Ireland.
- 9.15 A significant number of distinguished visitors came from overseas, as shown at Appendix D. All these discussions are of considerable interest and benefit to us.
- 9.16 Professor Beale is a member of the Steering Committee of the Study Group on a European Code. He is also a member and organiser of an Anglo-Hungarian Joint Academic Research Project on reform of the Hungarian Civil Code.

⁹ Para 4.14.

- 9.17 The Secretary accepted a long standing invitation to visit the Indonesian National Law Commission, on the way to attending the Australasian Law Reform Agencies Conference in Darwin.
- 9.18 We very much welcome the establishment of the Commonwealth Association of Law Reform Agencies (“CALRAs”). This took place at a day conference for Law Reform Agencies (“LRAs”), which was arranged for LRA representatives, including our Chairman and Secretary, who were among those attending the Commonwealth Law Conference in Melbourne, Australia, in April 2003. A steering committee had been established in recent years to form the Association. Our Secretary was co-convenor of the steering committee, with the Chief Justice of Victoria, Australia.
- 9.19 All Commonwealth Law Ministers and all Commonwealth LRAs were approached in advance of the day conference. The establishment of the Association received widespread support, including from the Commonwealth Secretariat.
- 9.20 There are over 60 permanent LRAs across the world. The great majority of them are in the Commonwealth. There is great variety between them, as is right and proper when one considers the great variety of countries and states which they serve. There is no reason for them to follow exactly the same pattern or to operate exactly alike. However, they can usefully learn from each other’s experience. There is scope for taking past co-operation further, using the wealth of experience that such bodies have – so as both to improve law reform itself and to reduce unnecessary duplication of effort.



THE LAW COMMISSION WITH THE CHAIRMAN AND SECRETARY OF THE SCOTTISH LAW COMMISSION

Other contacts

- 9.21 We continue to have important contacts with the Bar and The Law Society, the Society of Legal Scholars (SLS, formerly the Society of Public Teachers of Law), the Socio-Legal Studies Association (SLSA) and the Association of Law Teachers and with several of the committees and members of these organisations. The SLS's annual conference in September 2002 had Law Reform as its theme. We are extremely grateful to the SLS, its President (Professor Richard Card) and Committee for making Law Reform the focus of this important annual conference. Besides the general theme, there were plenary sessions on: Judicial Law Reform; From Research to Results: the Road to Law Reform; Law Reform Processes in the United Kingdom and Ireland; and Codification of the Criminal Law. Our Commissioners gave the main address or participated in each of these sessions.
- 9.22 We also have very helpful contacts with the judiciary at many levels. Commissioners contribute to the work of the Judicial Studies Board and speak at their seminars.
- 9.23 Professor Partington continues to be a member of the Civil Justice Council and chairs its ADR Sub-Committee. He was appointed Expert Consultant to the Taskforce on the Employment Tribunal System (which reported in July 2002).
- 9.24 In addition, Commissioners or our lawyers have had useful meetings or other contacts with: the Trust Law Committee; a Society of Local Authority Chief Executives Review Group; the Independent Housing Ombudsman; the Almshouses Association; the Transport & General Workers' Union; the National Farmers' Union; the Country Landowners' Association; and the National Union of Students.

Publishing and the Internet

- 9.25 Most of our publications deal with law reform projects, and they are either consultation papers or reports. We also publish reports about consolidation or statute law revision, and new programmes of law reform. In addition, this year we published, for example, a scoping study into aspects of defamation procedure and a discussion paper on the property rights of those who share homes.
- 9.26 We continue to publish in traditional hard copy format,¹⁰ while at the same time also making all our publications available electronically on the Internet.¹¹ Our website contains the full text of all the consultation papers and reports we have issued since March 1997, together with executive summaries of most of them. Some earlier publications have also been added. Resources do not allow us at present to archive the rest of our catalogue of previous publications.

¹⁰ We are grateful to TSO (The Stationery Office) for their assistance in publishing our consultation papers and reports.

¹¹ Our website address is <http://www.lawcom.gov.uk>.

- 9.27 Our website contains details of all our current law reform projects, and other useful information about the Commission. Each team has its own page, which sets out the work that is currently under way, and which provides links to all the relevant publications.
- 9.28 Our website also includes a bulletin entitled “Law under Review”, which contains details of a range of Government or Government-sponsored law reform projects, including our own. It also gives a list of our reports which are awaiting implementation. The bulletin is published three times a year and is available free of charge. The latest edition summarises about 150 current projects.
- 9.29 A list, showing our implemented reports since 1985, is reproduced at Appendix B to this report. A full list, including all publications issued since 1965, is available on request, without charge.

PART X

STAFF AND RESOURCES

Staff

10.1 The Commissioners continue to appreciate the dedication and expertise of all the Commission's staff. In the usual way, a number of those staff moved on to develop their careers in different areas during the period; we are grateful for their work and for their contribution to the team effort. The names of all the staff are set out at the beginning of Parts IV to VIII above, or in Appendix E.

(a) Legal Staff

10.2 The main legal staff are barristers or solicitors from a wide variety of professional backgrounds, including private practice, the public service and academia. Generally they are recruited by means of public advertisement. We welcome all who have started work here in the course of the year, some to tackle new projects and some to carry forward the groundwork of their predecessors. Lawyers who left the Commission from January 2002 to March 2003, after various periods of service, were Elaine Brown, John Cahir, Helen Hall, Nasrin Khan, Mary Macdonald, Jacques Parry, Flora Page, Hannah Swain, Ian Walker, Leigh White and Tahnee Woolf.

10.3 The draftsmen who prepare the draft Bills attached to our law reform reports, and who also undertake the consolidation of existing legislation, are seconded to the Law Commission from the Office of the Parliamentary Counsel. We would particularly like to express our thanks to those who left us during the period, for all their expertise and hard work, not least Dr Helen Caldwell, who led the team. Since October 2002 the team has been led by Sir Edward Caldwell, who succeeded his wife. Douglas Ramsay's secondment ended and he was succeeded by Catherine O'Riordan.¹

(b) Research Assistants

10.4 A dozen or more well-qualified graduates are recruited annually to assist us with research, drafting and creative thinking. They generally spend a year at the Commission before moving on to the next stage of their legal training and career. For many former Research Assistants, their work at the Commission has been a stepping stone to a highly successful career. The Commission recognises the very important contribution they make, not least through their enthusiastic commitment to the work of law reform. We would like to express our gratitude to the Research Assistants who left us during the period of this report. They were:

Carol Aitken	Mark Baumohl	Kathleen Donnelly
Martha Grekos	Daniel Hubbard	Claire Macmillen
Shareena Nobeen	Lucy-May Owen	Michelle Powell

¹ Cathryn Swain, a freelance draftsman, has since started drafting for us.

Alice Ripley
Alison Williams

Nathalie Stewart
Sarah Venn

Gurion Taussig

We wish them well as they develop their careers in firms of solicitors, chambers and elsewhere.

(c) Corporate Service Team

- 10.5 The Commission also regards itself as fortunate to have the services of its small Corporate Service Team of non-legal staff. These staff enable the Commission to run effectively and smoothly. The services they provide include accommodation, health and safety, human resources, information technology, publishing (including electronic publishing), records management, resource accounting, secretarial assistance and security. Six of the Team (Jane Coulson, John Edwards, Vicky Smith, Despina Spanou, Loraine Williams and Edna Menta) moved on to new areas of work during the period, with the Commission's best wishes for their success. The Corporate Service Team are, in turn, very grateful for the assistance they receive from colleagues in the Lord Chancellor's Department.



THE CORPORATE SERVICE TEAM

(d) Recruitment and Working Patterns

- 10.6 The work of law reform and revision undertaken by the Commission is of great interest worldwide to many who would like to participate in introducing improvements. Would-be staff frequently offer their services, but the Commission also takes great pains to recruit, retain and develop suitable staff from as wide a background as possible. When posts are open to non-civil servants, vacancies are advertised on the Commission's website with brochures and application forms available there for down-loading. In addition to a range of recruitment activities and arrangements (for example, we welcome loans,

secondments and short-term appointments), we have a wide variety of work/life balance arrangements in place where possible, such as home-working. The Commission's staff are committed to ensuring that equality and diversity issues are taken fully into account in personnel matters; and each member of staff receives diversity training. Our lawyers have also received training on the relevant provisions of the Race Relations (Amendment) Act 2000.

(e) Investors in People

- 10.7 In 1998 the Lord Chancellor's Department and associated offices such as the Law Commission were awarded accreditation as an Investor in People (IiP). Since then they have continued to meet the requirements of the IiP National Standard and a further review will take place in 2003. This will involve a thorough assessment of the effectiveness of staff induction, training and appraisal, as well as planning and communication.

Resources

(a) Library

- 10.8 Our library service continues to provide a vital information service in support of the legal work of the Commission. We make use, reciprocally, of a number of other libraries in our work and particular thanks are due to the libraries of the Supreme Court, the Lord Chancellor's Department, and the Institute of Advanced Legal Studies. Our library makes full use of the Internet and other electronic services and databases; where possible, these are also made available via each individual desktop PC. In addition, a large collection of printed sources is available for research. Our library staff also provide training and advice in all areas of legal information research.

(b) Finance

- 10.9 The cost of the Commission for the period January 2002 to March 2003 is summarised in Appendix F. The Commission received a small increase in the funds allocated to it by the Lord Chancellor's Department (our "sponsoring" department) for the financial year 2002/03. We have again secured contributions from other Government departments to help fund particular pieces of work which we could not otherwise have undertaken – for which we are most grateful. We would, as always, like to thank the many individuals and organisations who contribute to our work without payment – not least those who respond to our consultations.

(Signed) ROGER TOULSON, *Chairman*
HUGH BEALE
STUART BRIDGE
MARTIN PARTINGTON
ALAN WILKIE

MICHAEL SAYERS, *Secretary/Chief Executive*
21 July 2003

APPENDIX A

(Para 2.1)

THE LAW COMMISSION'S ROLE AND METHODS

The Law Commission has now been in operation for 37 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 Eighth Programme, approved in 2001. 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

(Paras 3.47 and 9.29)

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 (2nd 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).

Law Com No	Title	Implementing Legislation
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)	In part by Finance Act 1995 (c 4); Civil Evidence Act 1995 (c 38); and Damages Act 1996 (c 48).
226	Administrative Law: Judicial Review and Statutory Appeals (HC 669)	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	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).
1999		
260	Trustees' Powers and Duties (Joint Report - Scot Law Com No 166) (HC 538/SE 2)	Trustee Act 2000 (c 29).
2001		
271	Land Registration for the Twenty-First Century (Joint Report with HM Land Registry) (HC 114)	Land Registration Act 2002 (c 9).

APPENDIX C

(Para 3.25)

LAW COMMISSION LAW REFORM REPORTS AWAITING IMPLEMENTATION

Of all the Law Commission's 170 law reform reports, the 30 listed below remain outstanding. Seventeen of these, marked *, have been accepted by the Government in full or in part, subject to Parliamentary time being available.

Year	Law Com No	Title
1991	194	Distress for Rent ¹
1992	208	* Business Tenancies: Landlord and Tenant Act 1954, Part II ²
1993	218	* Offences against the Person and General Principles ³
1994	222	Binding Over ⁴
	226	Judicial Review and Statutory Appeals
	227	Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments ⁵
1995	229	Intoxication and Criminal Liability
	231	* Mental Incapacity ⁶
1996	237	* Involuntary Manslaughter ⁷
	238	Landlord and Tenant: Responsibility for State and Condition of Property
1997	245	* Evidence in Criminal Proceedings: Hearsay and Related Topics ⁸
	246	Shareholder Remedies ⁹
	247	* Aggravated, Exemplary and Restitutionary Damages ¹⁰
1998	248	* Corruption Offences ¹¹
	249	Liability for Psychiatric Illness ¹²
	251	* The Rules Against Perpetuities and Excessive Accumulations ¹³
	253	* The Execution of Deeds and Documents by or on behalf of Bodies Corporate ¹⁴
	255	* Consents to Prosecution
1999	257	Damages for Personal Injury: Non-Pecuniary Loss ¹⁵
	261	* Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties ¹⁶
	262	Damages for Personal Injury: Medical, Nursing and other Expenses; Collateral Benefits ¹⁷

¹ See paras 3.43-3.46 above.

² See para 3.13 above.

³ See para 3.26 above.

⁴ See paras 3.15-3.21 above.

⁵ Part of this report was implemented by the House of Lords in the case of *Kleinwort Benson v Lincoln City Council* [1999] 2AC 349; another part is outstanding: see our Eighth Programme of Law Reform at para 2.13, and our Annual Report for 1998 at para 1.22.

⁶ See paras 3.32-3.34 above.

⁷ See paras 3.27-3.28 above.

⁸ See para 3.11 above.

⁹ See paras 3.35-3.37 above.

¹⁰ See para 3.52 above.

¹¹ See para 3.29 above.

¹² See para 3.41 above.

¹³ See para 3.40 above.

¹⁴ See para 3.39 above.

¹⁵ Much of this report was dealt with by the Court of Appeal in early 2000 in *Heil v Rankin*: see para 3.41 above.

¹⁶ See paras 3.35-3.37 above.

¹⁷ See paras 3.41-3.42 above.

APPENDIX C

LAW COMMISSION LAW REFORM REPORTS AWAITING IMPLEMENTATION [CONTINUED]

<i>Year</i>	<i>Law Com No</i>	<i>Title</i>
1999	263	Claims for Wrongful Death ¹⁸
2001	267	* Double Jeopardy and Prosecution Appeals ¹⁹
	269	* Bail and the Human Rights Act 1998 ²⁰
	270	* Limitation of Actions ²¹
	271	* Land Registration for the 21st Century: A Conveyancing Revolution ²²
	272	* Third Parties – Rights against Insurers ²³
	273	* Evidence of Bad Character in Criminal Proceedings ²⁴
2002	276	Fraud ²⁵
	277	The Effective Prosecution of Multiple Offending ²⁶

¹⁸ See para 3.41 above.

¹⁹ See para 3.9 above.

²⁰ See para 3.10 above.

²¹ See para 3.14 above.

²² See paras 3.5-3.8 above.

²³ See paras 3.22-3.24 above.

²⁴ See para 3.12 above.

²⁵ See paras 5.2-5.3 above.

²⁶ See paras 5.4-5.5 above.

APPENDIX D

VISITORS FROM OVERSEAS

(Para 9.15)

Among the visitors to the Law Commission during the period covered by this report were:

- Australia* Justice Roslyn Atkinson (Chair, Queensland Law Reform Commission)
The Hon Dianne Hadden (Member of the Legislative Council, Victoria)
Mr Ronald Heinrich (President-elect, Law Council of Australia)
Professor Marcia Neave (Chairperson, Victorian Law Reform Commission)
Mr David Weisbrot (President, Australian Law Reform Commission)
- Bangladesh* Justice Mohammad Fazlul Karim (Supreme Court, Appellate Division)
Mr Kazi Habibul Awal (Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs)
Mr Sikder Maqbul Huq (Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs)
Mr Ikteder Ahmed (Secretary, Bangladesh Law Commission)
- British Virgin Islands* Mr Francis Wilson (Attorney General's Chambers)
- Canada* Mr Gavin Murphy (International Co-operation Group, Department of Justice)
- Egypt* Dr Mohammad Fathi Naguib (Chief Justice, Supreme Constitutional Court)
Justice Adel Omar Sherif (Chief Commissioner, Supreme Constitutional Court)
- Ethiopia* Mr Harka Haroye (Minister of Justice)
- Guyana* Ms Desiree Bernard (Chancellor, Judiciary Co-operative)
- Jersey* David Moon (Chairman, Law Commission)
David Lyons (Law Commissioner)
- Lesotho* Mr S P Sakoane (Counsel and Secretary, Law Reform Commission)
- Namibia* Mr Utoni Daniel Nujoma (Chair, Law Reform and Development Commission)
Mr Willem J Potgieter (Secretary, Law Reform and Development Commission)
- New Zealand* Hon Justice J Bruce Robertson (President, New Zealand Law Reform Commission)
- Spain* Sr José Luis Palma (senior lawyer, Council of State)
Sr Jesus Avezuela Carcel (member, Council of State)

DELEGATIONS: Bangladesh (judges)
Bulgaria
China (three delegations)
Commonwealth lawyers
Poland

APPENDIX E

STAFF

(Para 10.1)

(AS AT THE END OF MARCH 2003)

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

In addition, the Law Commission's Corporate Service Team comprises:

Secretary/Chief Executive

Mr M W Sayers

Assistant Secretary/Chief Executive and Budget Manager

Mr C K Porter

Planning, Policy and Personnel

Miss C J Smith

Personnel/Recruitment/Resource Accounting

Miss J A Griffiths

Printing, Publishing and Website

Mr D R Leighton
Editor and Web Manager

Facilities and Registry

Ms A L Peries
Facilities Manager

Library Services

Mr K Tree
Librarian

Mr M Hallissey
Assistant Librarian

Miss V Smith
Library Trainee

Secretarial Support

Miss C P Cawe
Mrs H C McFarlane

Miss A J Meager
Ms J R Samuel

Mr T D Cronin
Registry

Ms E Menta¹
Registry

Ms F Hammond²
Registry

Miss R Mabbs
Office Keeper

Mrs A Menditta
Messenger

Chairman's Support

Ms N Hajazi
Clerk

Miss T Stubbing
Research Assistant

¹ until January 2003

² from February 2003

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>

Email addresses

- General email address (except for library services): secretary@lawcommission.gsi.gov.uk
- Library email address: library@lawcommission.gsi.gov.uk
- The law reform teams and the statute law revision team have individual email addresses, which can be found on the team pages of the Commission's website

APPENDIX F

(Para 10.9)

THE COST OF THE COMMISSION

The Commission's resources are mainly 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 charges,¹ salaries, superannuation and LCD headquarters' overheads¹) is not determined by the Commission. Because of the change in the period covered by this report, **the figures given cover the 15 months from January 2002 to March 2003 inclusive**. The figures for 2001 cover just 12 months. They cannot therefore be related to those in Supply Estimates and Appropriation Accounts.

	2002/2003		2001	
	£000	£000	£000	£000
Accommodation charges ²	1,362.3		846.0	
LCD Headquarters' overheads ³	<u>1,176.3</u>		<u>1,197.2</u>	
		2,538.6		2,043.2
Salaries and pensions of Commissioners ⁴	534.7		423.7	
Salaries of legal staff ⁴ and secondees and payments to consultants	2,323.9 ⁵		1,577.3	
Salaries of non-legal staff ⁴	<u>430.3</u>		<u>346.0</u>	
		3,288.9		2,247.0
Printing and publishing; supply of information technology; office equipment and books	314.3		283.9	
Utilities (inc telecommunications) and postage	49.9		42.7	
Travel and subsistence	15.7		7.9	
Miscellaneous (inc recruitment); fees & services ⁶	60.3		14.4	
Entertainment	<u>4.4</u>		<u>2.9</u>	
		<u>444.6</u>		<u>351.8</u>
TOTAL		<u><u>6,272.1</u></u>		<u><u>4,642.0</u></u>

1 The way the Department charges out all centrally incurred costs was reviewed during 2002/2003 and is now based entirely on apportionment.

2 The figure for 2002/03 includes all centrally incurred costs (e.g. capital, depreciation charges, ground rent, rates, furniture, cleaning, security, and all works supplied by the Lord Chancellor's Department).

3 The decrease in the figure for 2002/03 is solely due to the recent change in the methodology of apportionment of the Lord Chancellor's Department's overheads to the Law Commission.

4 These figures include ERNIC and Superannuation. The Law Commissioners are full-time. The Chairman's salary is that of a High Court Judge, and Judge Alan Wilkie's salary is that of a Circuit Judge. The salary of each of the other Commissioners was £98,988 pa from April 2002, and £103,829 from April 2003.

5 The increase in the 2002/03 figure is almost wholly due to additional staff, secondees and consultants employed to undertake new projects requested by government, besides the additional 3 months covered by the figures.

6 These figures include the cost of recruiting lawyers.