

THE LAW COMMISSION

(LAW COM No 299)

ANNUAL REPORT 2005/06

The Fortieth Annual Report of the Law Commission

*Laid before Parliament by the Secretary of State
for Constitutional Affairs and Lord Chancellor pursuant to
section 3(3) of the Law Commissions Act 1965*

*Ordered by The House of Commons to be printed
14 June 2006*

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.

Commissioners: The Honourable Mr Justice Toulson, *Chairman*
Professor Hugh Beale QC, FBA
Mr Stuart Bridge
Dr Jeremy Horder
Mr Kenneth Parker QC¹

Special Consultant: Professor Martin Partington CBE

Chief Executive: Mr Steve Humphreys.

The Commission is located at Conquest House, 37-38 John Street, Theobalds Road, London, WC1N 2BQ.



The Law Commission: (from left to right) Standing: Hugh Beale, Stuart Bridge, Kenneth Parker and Steve Humphreys (Chief Executive). Seated: Jeremy Horder and Sir Roger Toulson (Chairman).

The terms of this report were agreed on 15 May 2006.

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

¹ Kenneth Parker was appointed on 3 January 2006, succeeding Professor Martin Partington as Commissioner of the Public Law team.

THE LAW COMMISSION ANNUAL REPORT 2005-06

CONTENTS

	Page
REFORMING THE LAW – 40 YEARS ON	1
PART 1: THE COMMISSION	4
Who we are	4
What we do	4
Consultation methods	5
Developing the programme of work	5
The Law Commission's role and methods	5
Equality and diversity	6
Code of best practice for Law Commissioners	6
What's in this Annual Report?	7
PART 2: A REVIEW OF 2005-06	8
Work of the Commission	8
Publications in 2005-06	8
Appointment of Commissioners	8
Targets 2006-07	8
PART 3: IMPLEMENTATION OF LAW COMMISSION REPORTS	11
Introduction	11
Action during this period	11
In summary	11
Implemented reports	12
Execution of Deeds and Documents	12
Mental Incapacity	12
Interim responses from the Government	12

Involuntary Manslaughter	12
In the Public Interest: Publication of Local Authority Reports	13
Partnership Law	13
Reports awaiting implementation	14
Aggravated, Exemplary and Restitutionary Damages	14
Corruption Offences	14
Distress for Rent	14
Fraud	15
Effective Prosecution of Multiple Offending	15
Limitation of Actions	15
Offences against the Person	16
Perpetuities and Accumulations	17
Third Parties' Rights against Insurers	17
Reports awaiting Government decisions	17
Company Security Interests	17
Damages for Personal Injury	18
The Forfeiture Rule and the Law of Succession	18
Pre-judgment Interest on Debts and Damages	19
Unfair Contract Terms	19
Reports not implemented	19
Partial Defences to Murder	20
Land, Valuation and Housing Tribunals: The Future	20
PART 4: COMMERCIAL LAW AND COMMON LAW	21
Company Security Interests	21
The Forfeiture Rule and the Law of Succession	22
Insurance Contract Law	23
Property Interests in Investment Securities	23
Illegal Transactions	24

PART 5: CRIMINAL LAW, EVIDENCE AND PROCEDURE	25
Review of Homicide	25
Assisting and Encouraging Crime	26
Judicial Review of Crown Court Decisions	27
Codification of the Criminal Law	27
PART 6: PROPERTY AND TRUST LAW	28
Cohabitation	28
Easements and Covenants	29
Termination of Tenancies for Tenant Default	29
Trustee Exemption Clauses	30
Capital and Income in Trusts: Classification and Apportionment	30
The Rights of Creditors against Trustees and Trust Funds	31
Feudal Land Law	31
PART 7: PUBLIC LAW TEAM	32
Commissioners	32
Citizen's Redress against Public Bodies	32
Housing Projects	33
Renting Homes	33
Resolving Housing Disputes	34
Housing: Ensuring Responsible Renting	35
PART 8: STATUTE LAW	36
Consolidation	36
Statute Law Revision	38
Post-Legislative Scrutiny	39
PART 9: EXTERNAL RELATIONS	40
Parliament and Ministers	40
Consultees and Stakeholders	40
Seminars, Lectures and Conferences, etc.	41

Socio-Legal Research	42
Law Commissions in the British Isles	43
International Relations	44
PART 10: STAFF AND RESOURCES	46
Recruitment and working patterns	46
Staff	46
Legal staff	46
Research assistants	47
Corporate Services Team	47
Library staff	48
APPENDIX A: THE LAW COMMISSION'S IMPLEMENTED REPORTS SINCE 1992	49
APPENDIX B: LAW COMMISSION REPORTS AWAITING IMPLEMENTATION	51
APPENDIX C: STAFF	53
APPENDIX D: THE COST OF THE COMMISSION	54

LAW COMMISSION ANNUAL REPORT 2005-06

To the Right Honourable the Lord Falconer of Thoroton, Secretary of State for Constitutional Affairs and Lord Chancellor

REFORMING THE LAW - 40 YEARS ON

‘One of the hallmarks of an advanced society is that its laws should not only be just but also that they should be kept up-to-date and be readily accessible to all who are affected by them. The state of the law today cannot be said to satisfy these requirements....’

‘...English Law should be capable of being recast in a form which is accessible intelligible and in accordance with modern needs....’¹

These two quotes are as true today as when they were written in the White Paper proposing the establishment of Law Commissions in England and Wales and Scotland, issued in January 1965. The White Paper is a model of conciseness at four pages long. It encapsulated precisely the desire of the Lord Chancellor, Gerald Gardiner, to improve the law. He felt that the repeal of huge areas of the law should not take place ‘over tea on a sunny afternoon’. He wanted a professional permanent body to be set up under the chairmanship of a High Court judge, with a remit to assess and improve the law in a coherent and structured way.

In June 1965 the Law Commissions Act 1965 received Royal Assent and Commissions in both England and Wales and Scotland came into being. Leslie Scarman was appointed the first chairman in England and Wales, and led us with such distinction that our work soon won wide respect for its quality and its contribution to the development of the law. The example has been copied widely throughout the Commonwealth, where there are now over 60 similar law reform bodies.

Today, as in 1965, our principal objective is to seek to achieve a body of law that is accessible to those who are affected by it. The task that faced our predecessors in 1965 was great, but the inexorable increase in the pace of legislation, and the increasing readiness of Government to seek legislative solutions to problems has made it much greater. In a legislative programme that is so full of priority government measures, it is increasingly difficult for our work to find the time it needs to be made into law. We continue to be told that some reports issued more than 10 years ago will be implemented ‘when parliamentary time becomes available’. This is a source of very real concern to us. Our process is thorough, involving wide consultation and careful analysis. The public money spent on enabling us to help provide the citizen with laws that are understandable and relevant to the 21st century can only be justified if the Government is able to find time to implement those proposals it accepts.

We are looking critically at the way we are working to make sure that in selecting projects for our Programme, we are giving attention to areas of the law most in need of reform and where reform will deliver real public benefit.

¹ p2 Proposals for English and Scottish Law Commissions (Cmnd 2573) HMSO 1965.

Over the last year we have met with most Government departments. We have been reassured that there is a continuing need for the work that we do. Unsurprisingly, this is particularly acute for those departments for whom we are actively working, who find the work we do useful and relevant to their plans for the future. Unfortunately, this is not always matched by a readiness to devote Parliamentary time and departmental effort to implement our proposals.

The Legislative and Regulatory Reform Bill presently before Parliament seeks, amongst other things, to provide a means to give effect to non-controversial proposals that we have made. We welcome the Government's commitment to finding a way to improve the implementation rate of our reports. We will continue to work with the Government to devise ways to give Parliamentary time to proposals that have been approved and require primary legislation. We expect to be able to report more positively in next year's annual report about the number of accepted and implemented recommendations. See Part 3 for more information.

During the course of the Law Commission's 40th year, there have been several high profile public events. We were particularly pleased with the inaugural Scarman Lecture, held on 20 February in honour of our first Chairman. The presentation was given by Justice Michael Kirby, the first Chairman of the Australian Law Commission (1975-84), and Justice of the High Court of Australia.



Justice Kirby and Sir Roger Toulson before the lecture

We have also held a three-month exhibition in the Royal Courts of Justice, which covers the History of Law Reform, and encourages people to get involved in changing the law. We sponsored the first conference of the Commonwealth Association of Law Reform Agencies (CALRAs), and held the first meeting of the Chairs and Chief Executives of the four Law Reform Commissions in the British Isles. We have led public debate on how to reform the law of homicide, and on how laws should be reviewed after implementation. We have discussed the future of insurance contract law with the British Insurance Law Association at an open seminar. We have also met with unprecedented numbers of people to assess

how to alleviate the financial hardship suffered by cohabitants or their children on the termination of their relationship by separation or death.

During the course of the past year, Sir Roger Toulson agreed to extend the tenure of his Chairmanship until July 2006 and Stuart Bridge, Commissioner for Property, Family and Trust Law agreed to stay at the Commission until July 2008. In January 2006 Kenneth Parker QC took over as Commissioner for Public Law from Professor Martin Partington CBE. Martin has stayed on as a special consultant in order to complete the major work on rented housing which we have been doing at the request of Government. It has been a uniquely demanding project and we are profoundly grateful to Martin for providing the leadership from start to finish.

The Ninth Programme is now well under way. Over the course of the next year, consultation and public discussion will begin to decide the content of the Tenth Programme of Law Reform. As part of this process we invite comments and suggestions on any area of the law from any body or member of the public.

PART 1

THE COMMISSION

Who we are

- 1.1 The Law Commission was created in 1965 for the purpose of reforming the law. The Commission is headed by five Commissioners who are appointed by the Lord Chancellor.
- 1.2 The current Commissioners are:
 - The Honourable Mr Justice Toulson, Chairman
 - Professor Hugh Beale QC, FBA, Commercial and Common Law.
 - Stuart Bridge, Property, Family and Trust Law
 - Dr Jeremy Horder, Criminal Law, Evidence and Procedure
 - Kenneth Parker QC, Public Law
- 1.3 Professor Martin Partington CBE, who was a Commissioner from January 2001 to December 2005, is Special Consultant to the Law Commission. In that capacity, he undertakes the role of Commissioner in relation to housing law reform projects.
- 1.4 The Commissioners and Special Consultant are supported by the Chief Executive, Steve Humphreys, members of the Government Legal Service, Parliamentary Counsel (who draft the Bills to reform and consolidate the law), and some 15 research assistants (mostly recently qualified law graduates), as well as a librarian and a corporate services team. Details of the members of each legal team and the work they do is covered in Parts 4 - 8.

What we do

- 1.5 The Law Commission's main task is to review areas of the law and to make recommendations for change. The Commission seeks to ensure that the law is as simple, accessible, fair, modern and cost-effective as possible. A number of specific types of reform are covered by the Law Commissions Act 1965:
 - codification
 - removal of anomalies
 - repeal of obsolete and unnecessary enactments
 - consolidation
 - the simplification and modernisation of the law

Consultation methods

- 1.6 During the 40th anniversary year of the Law Commission we have taken forward a number of plans to expand the way we consult, and the range of people we engage and involve in our work. We have introduced a new website which meets all accessibility requirements, and enables any interested party to access the information in a form that is relevant and useful to them. Consideration has been given to each publication about who wants to read it and what level of detail they require. We have widened our consultation pool and talked to those who read our papers about what we can do to improve their experiences in dealing with the Law Commission. We have started to produce Overviews to accompany our longer consultation papers, which are designed for the lay reader. We hope these will enable a broader range of responses from those directly affected by the area of law being considered.
- 1.7 We hope to continue to develop new and innovative ways of consulting and dealing with a wide range of people over the forthcoming year.

Developing the programme of work

- 1.8 In January 2005, we submitted our Ninth Programme of Law Reform to the Lord Chancellor.¹ It came into effect on 1 April 2005 and runs for three years. Parts 4-8 provide updates on the progress of the programme. In 2007 we will begin preliminary consultation on the contents of the Tenth Programme of Law Reform, which will be presented to the Government in January and begin on 1 April 2008.
- 1.9 Decisions about whether to include a particular subject in a programme of reform are based on the importance of the issues it will cover, the availability of resources in terms of both expertise and funding, and whether the project is suitable to be dealt with by the Commission.
- 1.10 As part of our aim to “take and keep under review *all* the law”, we are currently carrying out a Strategic Review of the work of the Commission. It is important that our efforts are directed towards areas of the law that most need reform, where change will deliver real benefits to the people, businesses, organisations and institutions to which that law applies. We have met with senior officials in every Government department to identify areas where the Commission might usefully undertake work. The outcome of these discussions will inform decisions about projects to be included in the Tenth Programme of Law Reform.

The Law Commission’s role and methods

- 1.11 Increasingly projects start with the production of a scoping or discussion paper. The aim of this is to consider how extensive the project should be, find out the key issues as seen by others, and identify interested parties. At an early stage it is useful to establish a core group of interested individuals and organisations to advise and support the work.

¹ Pub. March 2005. Law Com No 293.

- 1.12 Where the scope has been agreed in advance, the project will start by consulting many of the acknowledged experts and interested parties in the area. Often an Advisory Group is established to meet and discuss the key concerns and potential solutions. A consultation paper is then produced to describe the present law and its shortcomings and set out provisional proposals for reform. Responses are analysed and considered very carefully.
- 1.13 The Commission's final recommendations are set out in a report, which often contains a Bill drafted by Parliamentary Counsel, where the implementation of any recommendations would 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 agrees to do so. After publication of a report the Commission and members of Parliamentary Counsel who worked on the draft Bill often give further assistance to Government Ministers and departments.
- 1.14 The work of the Commission 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 of the European Convention on Human Rights and of relevant European law. We act in consultation with the Scottish Law Commission, and work jointly with our Scottish colleagues on a number of projects.
- 1.15 The Commission also has the task of consolidating statute law, substituting one Act, or a small group of Acts, for statutory provisions found in many different Acts. In addition, the Commission proposes the repeal of statutes which are obsolete or unnecessary. See Part 8 for more details on statute law reform, consolidation and proposals for the process by which laws might be reviewed following implementation (post-legislative scrutiny).

Equality and diversity

- 1.16 The Commission is committed to consulting fully with those likely to be affected by its proposals, including different groups within society, and to assessing the impact of its proposed policies and removing or mitigating any adverse effect on particular groups within society wherever possible. The Commission's full Equality and Diversity Action Statement may be seen on our website at http://www.lawcom.gov.uk/docs/Equality_Statement.pdf

Code of best practice for Law Commissioners

- 1.17 In accordance with Government policy for all non-departmental public bodies, there is a written code for Law Commissioners, agreed with the Department for Constitutional Affairs. 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.

What's in this Annual Report?

- 1.18 Part 2 reviews 2005-06, and looks at the targets for publication of reports and consultation papers the Law Commission has set for the period 2006-07. Part 3 looks at the progress that has been made in getting the Government to accept and implement the recommendations made in our reports. Parts 4-8 cover the work of each law team in the Law Commission over the course of the year. Part 9 looks at our relations with external agencies, and Part 10 relates to the Commission's staffing and resources.

PART 2

A REVIEW OF 2005-06

WORK OF THE COMMISSION

Publications in 2005-06

2.1 Reports:

- The Forfeiture Rule and the Law of Succession, 27 July 2005 (LC295)
- Company Security Interests, 31 August 2005 (LC296)

2.2 Consultation Papers:

- A New Homicide Law for England and Wales?, 20 December 2005 (LCCP177)
- Post-Legislative Scrutiny, 31 January 2006 (LCCP178)

2.3 Discussion/ Issues/ Scoping Papers:

- Insurance Contract Law, 18 January 2006

2.4 Electronic versions of the publications listed above can be accessed from the Law Commission website: www.lawcom.gov.uk/publications

Appointment of Commissioners

2.5 In the period covered by the Annual Report, Sir Roger Toulson agreed to extend his appointment as Chairman until July 2006. In this time he hopes to see the Commission complete the Strategic Review (see paragraph 1.10), finalise its recommendations to Parliament on the structure of the law of homicide, and report on proposals to introduce a formal system for Parliament to review laws after they have been implemented.

2.6 Stuart Bridge was re-appointed by the Lord Chancellor for a further two years. As Commissioner for Property, Family and Trust Law, Stuart will be working towards making recommendations to Parliament on the law as it affects cohabiting couples. He is also hoping to oversee publication of a consultation paper on easements, and to complete the reviews on Trustee Exemption Clauses and Termination of Tenancies before his departure in July 2008.

2.7 In January 2006, we were very pleased to welcome Kenneth Parker QC, who took over as Commissioner for Public Law. He succeeds Professor Martin Partington CBE, who has agreed to stay on as a Special Consultant to complete the housing projects (see Part 7). These projects have involved a huge amount of public consultation, and will result in the creation of a wholly new tenure regime.

Targets 2006-07

2.8 Table 2.1 summarises our main targets for the year 2005-06 and how we met those targets.

Table 2.1

TARGET	OUTCOME
To complete Reports on:	
Assisting and Encouraging Crime	Split into two parts. See paras 5.7-5.11.
Company Security Interests	Published August 2005 (LC296).
Forfeiture and Succession	Published July 2005 (LC295).
Illegal Transactions	Work deferred to complete the Company Security Interests Report (LC296). See para 4.14.
Renting Homes	Published May 2006 (LC298).
Termination of Tenancies	Expected to be published in the second half of 2006. See paras 6.8-6.10.
Trustee Exemption Clauses	Expected to be published in Summer 2006. See paras 6.11-6.13.
To complete Consultation Papers on:	
Codification of the General Principles of Criminal Law	Work deferred in order to transfer resources to the review on homicide. See para 5.15.
Easements and Land Obligations	The consultation date was deferred for twelve months to allow further scoping work to be done. See paras 6.4-6.7.
Judicial Review of Decisions of the Crown Court	We expect to publish in the second half of 2006. See paras 5.12-5.14.
Resolving Housing Disputes	An issues paper was published April 2006.
To begin the following projects:	
Cohabitation	Commenced. See paras 6.1-6.3.
Ensuring Responsible Renting	Commenced. See paras 7.11-7.13.
Feudal Land Law	Deferred. See para 6.19.
Homicide	Commenced. See paras 5.1-5.6.
Insurance Contract Law	Commenced. See paras 4.8-4.10.
Post Legislative Scrutiny	Commenced. See paras 8.20-8.23.
Property Interests in Investment Securities	Commenced. See paras 4.11-4.13.
Citizen's Redress Against Public Bodies	Commenced. See paras 7.2-7.5.

2.9 Table 2.2 summarises our major targets for 2006-07.

Table 2.2

We expect to publish the following reports:
Our final recommendations on Assisting and Encouraging Crime
Illegal Transactions
Law of Homicide
Post-Legislative Scrutiny
Termination of Tenancies
Trustee Exemption Clauses
We expect to publish the following consultation papers:
Cohabitation
Easements and Land Obligations
Ensuring Responsible Housing
Investment Securities in Property Interests
Judicial Review of Decisions of the Crown Court
Resolving Housing Disputes
We expect to publish the following scoping papers:
Citizen's Redress Against Public Bodies
We expect to commence the following projects:
Feudal Land Law
We expect to publish the following consolidations:
Parliamentary Costs
The most up to date projected publication dates for all projects are available from the Law Commission website: http://www.lawcom.gov.uk

PART 3

IMPLEMENTATION OF LAW COMMISSION REPORTS

INTRODUCTION

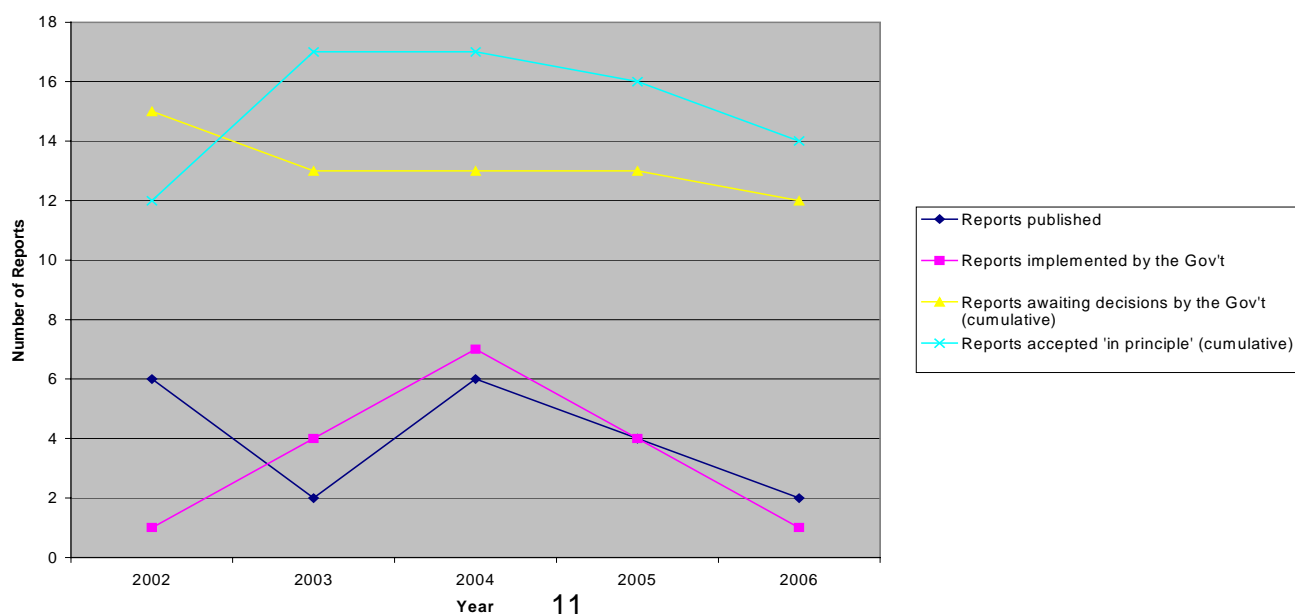
- 3.1 The Law Commission is responsible for a range of publications, including reports, consultation papers, discussion papers, scoping studies, and advice to Government. A law reform project is normally concluded by publication of a final report offering recommendations to the Government. Occasionally, a report may not recommend any change to the existing law. However, in the majority of cases, a report will make a number of recommendations for changing the law, and will append a draft Bill to give effect to those recommendations. The report will be laid before Parliament, and Government will decide whether, and if so how, to implement the recommendations.
- 3.2 Recommendations may be implemented by primary legislation (an Act of Parliament) or by secondary legislation (a Statutory Instrument). The Regulatory Reform Act 2001 enables Government to introduce secondary legislation, in the form of a Regulatory Reform Order (RRO), where its purpose is to reform legislation which imposes burdens affecting persons in the carrying out of any activity. It is also sometimes possible for recommendations to be implemented by the courts.
- 3.3 This Part together with Appendix B record the implementation status of Law Commission reports. They do not deal with consolidation or statute law revision reports.

ACTION DURING THIS PERIOD

In Summary

- 3.4 Between 1 April 2005 and the end of March 2006 the Law Commission published 2 law reform reports. In the same period, recommendations from 1 Law Commission report was enacted by Parliament.

3.1 Success of Law Commission Reports



3.5 In March 2006:

- (1) 14 law reform reports that have been accepted by the Government still await implementation
- (2) 12 other reports still await decisions by the Government¹

3.6 Diagram 3.1 above gives a five-year overview of the number of Law Commission reports submitted to the Government; the number agreed by the Government, but where legislation has not been introduced; the number awaiting a decision by the Government; and the number implemented by legislation or through court decisions.

Implemented Reports

EXECUTION OF DEEDS AND DOCUMENTS

3.7 This is our first report to be implemented through a Regulatory Reform Order. The report, published in 1998, aimed to simplify the formal requirements for deeds and company documents.² It was implemented through The Regulatory Reform (Execution of Deeds and Documents) Order 2005 in the last reporting period and came into force in September 2005.

MENTAL INCAPACITY

3.8 The Mental Capacity Act 2005 was enacted in April 2005. The Act implements the majority of the recommendations in the Commission's 1995 report and draft Bill on this topic.³ The Commission assisted with the passage of the Bill through Parliament. We expect the Act to come into force in April 2007.

Interim responses from the Government

INVOLUNTARY MANSLAUGHTER

- 3.9 In 1996 the Law Commission published a report⁴ and draft Bill which recommended the replacement of the common law offence with statutory offences of "reckless killing" and "killing by gross recklessness", together with a new offence of corporate killing. The Home Office published a draft Corporate Manslaughter Bill on 23 March 2005. The Bill proposed a new criminal offence of corporate manslaughter that would apply if the way in which an organisation's activities were managed or organised by its "senior managers" caused a person's death and amounted to a gross breach of a duty to take reasonable care for the safety of the deceased.
- 3.10 These proposals were considered by the House of Commons Home Affairs and Works and Pensions Sub-Committees. In December 2005 the Committees published a report criticising the proposed "senior manager" test and advising a return to the Law Commission's more general approach of 'management failure'. The Chairman for the joint inquiry, John Denham MP said:

¹ For details of all reports that have not received a decision from the Government, or where a decision has been made but the report has not been implemented, see Appendix B.

² The Execution of Deeds and Documents by or on behalf of Bodies Corporate (1998) Law Com No 258.

³ Mental Incapacity (1995) Law Com No 231.

⁴ Legislating the Criminal Code: Involuntary Manslaughter (1996), Law Com No 237.

The new Bill must be introduced this year, but it must take into account our recommendations if relatives of victims are not to feel cheated of justice in the future.

- 3.11 In March 2006 the Government published its response to the joint report of the Home Affairs and Works and Pensions Committees.⁵ The Government said that it welcomed the Committees' strong support for a statutory offence of corporate manslaughter, adding that it intended to legislate without delay as soon as Parliamentary time allows. The Government also said that it appreciated the concerns that the "senior management" test had given rise to, and that it accepted that "a new test should be brought forward that better captures the essence of corporate liability". The new test would retain the key element of management failure but "would be aimed at failures in the management overall of a particular activity".

IN THE PUBLIC INTEREST: PUBLICATION OF LOCAL AUTHORITY REPORTS

- 3.12 Our report "In the Public Interest: Publication of Local Authority Inquiry Reports" was published in July 2004.⁶ It recommended that local authorities should have available to them a new defence in defamation where the allegedly defamatory statement is contained in the report of a local authority inquiry, provided that the inquiry was itself fair. It also recommended a new statutory power for local authorities to conduct inquiries, which would include a procedure for an application to be made to the High Court to compel a recalcitrant witness. The Government was expected to deliver its response on the proposals in early 2005. We have still not heard from the Department for Communities and Local Government (the successor to the Office of the Deputy Prime Minister).

PARTNERSHIP LAW

- 3.13 Our joint report with the Scottish Law Commission on Partnership Law was published in November 2003.⁷ It recommended that a new Partnerships Act should be enacted, under which partnerships in England and Wales would become legal entities. This would reflect the reality of their role in the commercial life of Britain, and bring together the law of partnership across England, Wales and Scotland.
- 3.14 The Department of Trade and Industry (DTI) issued a consultation paper as part of its regulatory impact assessment of our proposals in May 2004. We await the Government's conclusions.

⁵ Cm 6755.

⁶ (2004) Law Com No 289.

⁷ (2003) Law Com No 283, Scot Law Com No 192.

Reports awaiting implementation

- 3.15 It is a source of increasing concern that despite the Government accepting our recommendations, in some cases over a decade ago, it has not proved possible for Parliamentary time to be found to bring forward the necessary legislation. We hope that the Regulatory and Legislative Reform Bill, if enacted, will enable some of the non-contentious proposals which have been accepted to be implemented. However, the lack of commitment to find Parliamentary time to implement accepted recommendations costs significant amounts of public money. More importantly, the individuals and businesses that Government accepts would benefit from our suggested reforms are denied those changes. The affected areas of law remain archaic, uncertain, unduly complex or simply unfair. We report below on the current position on some of our reports awaiting implementation

AGGRAVATED, EXEMPLARY AND RESTITUTIONARY DAMAGES

- 3.16 We published a report in 1997.⁸ In November 1999 the Department for Constitutional Affairs (DCA) said that it accepted our recommendations on aggravated and restitutionary damages, though not those on exemplary damages, and would legislate when a suitable opportunity arose. We understand that in view of the length of time that has elapsed DCA intends to reconsider the recommendations on aggravated and restitutionary damages in its consultation on our other damages reports (see paras 3.34-36).

CORRUPTION OFFENCES

- 3.17 In 1998 the Law Commission published a report⁹ and draft Bill which recommended the creation of four new offences to replace those in the Prevention of Corruption Acts 1889-1916. In 2000 the Government consulted on the Law Commission's proposals and in 2003 presented a draft Corruption Bill, based on the Commission's work, for Pre-Legislative Scrutiny (PLS). The Joint Committee which gave the Bill its PLS recommended abandoning the Commission's scheme of reform. It proposed an alternative scheme which the Government rejected. The Government issued a Consultation Paper in December 2005 in an effort to build a new consensus. The opportunity to comment closed on 1 March 2006.

DISTRESS FOR RENT

- 3.18 The Commission's report on this subject was published in 1991.¹⁰ It recommended the abolition of distress for unpaid rent for both commercial and residential tenancies.

⁸ (1997) Law Com No 247.

⁹ Legislating the Criminal Code: Corruption, Law Com No 248.

¹⁰ Landlord and Tenant: Distress for Rent (1991) Law Com No 194.

- 3.19 In March 2003, the Lord Chancellor's Department published a White Paper as part of its Enforcement Review.¹¹ This confirmed the Government's acceptance of the Commission's recommendations to abolish distress for rent as it concerns residential tenancies, but proposed its reform rather than abolition in commercial cases. A Bill will be introduced when Parliamentary time allows.

FRAUD

- 3.20 In July 2002 the Law Commission published a report and draft Bill on the law of Fraud.¹² We recommended the introduction of a single general offence of fraud that could be committed in one of three ways to replace the current patchwork of offences. We believe that a single clearly defined 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.
- 3.21 We also recommended that the common law offence of conspiracy to defraud should be abolished and that there should be 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.
- 3.22 A Fraud Bill was introduced in the House of Lords in May 2005 which included a provision creating a new offence of non-corporate fraudulent trading. Amongst other things, the Bill proposes that the existing eight deception offences in the Theft Acts should be replaced with a general offence of fraud. It will produce a clear and robust framework which is flexible enough to deal with increasingly sophisticated kinds of fraud. However, the Bill contains no provision for abolishing the offence of conspiracy to defraud.

EFFECTIVE PROSECUTION OF MULTIPLE OFFENDING

- 3.23 The Fraud Bill also addresses a recommendation from our report on The Effective Prosecution of Multiple Offending.¹³ This was that the offence of fraudulent trading by companies contrary to section 458 of the Companies Act 1985 should be extended to non-corporate fraudulent traders, irrespective of whether they are in any relationship such as a partnership.
- 3.24 We are pleased to note that another recommendation regarding the introduction of a two-stage trial process in certain multiple offending cases has been legislated for in the Domestic Violence Crime and Victims Act. However a commencement date has not yet been set.

LIMITATION OF ACTIONS

- 3.25 In 2001 we published a report and draft Bill on Limitation of Actions, in which we recommended replacing the many complex rules by 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", preventing claims brought more than 10 years after the relevant events took place.

¹¹ Effective Enforcement Cm 5744. This followed a consultation exercise in May 2001 (Distress for Rent, Enforcement Review Consultation Paper No 5).

¹² Fraud, Law Com No 276.

¹³ (2002) Law Com No 277.

- 3.26 In personal injury cases, we recommended that the court should have a broad discretion to allow late claims at any stage. We thought this was particularly important in sex abuse cases where, at present, adults must bring claims within six years, and those abused as children must bring claims before their 24th birthday. Victims may often take longer to recover sufficiently from the trauma to consider bringing proceedings. During the year, another case arose which illustrates the potential use of such a discretion.¹⁴ The victim of an attempted rape was advised that it would be pointless to try to bring an action against her attacker because he had no money. When he was released on parole, the attacker won the lottery. His victim attempted to recover compensation against him for the attempted rape that had taken place 17 years earlier, but failed because of the fixed 6-year limitation period. We believe that this is excessively rigid, and that the courts should have the discretion to allow late claims. The Court of Appeal expressed its dismay that our report had not been implemented,¹⁵ as it has done on a previous occasion.¹⁶
- 3.27 In July 2002 the DCA accepted our recommendations in principle, saying it “would give further consideration to some aspects of the report, with a view to introducing legislation when an opportunity arises”.¹⁷ We receive many enquiries about whether there has been any more progress on implementing this report, and hope that legislative time will be found soon.

OFFENCES AGAINST THE PERSON

- 3.28 Twelve years ago the Law Commission published a report and draft Bill recommending an overhaul of the current legislation, which dates back to Offences Against the Person Act 1861.¹⁸ In 1997 the Home Office partially accepted these recommendations in principle. In 1998 the Home Office published a consultation paper¹⁹ setting out their initial proposals for reforming the law in this area, based on the Commission’s report. More recently, the Court of Appeal has referred to the “need for radical reform” of section 20 of the 1861 Act.²⁰
- 3.29 One of the report’s recommendations, namely that common assault should be an arrestable offence, has been implemented by the Domestic Violence Crime and Victims Act 2004. The Government has said that it plans to legislate on the other recommendations that it has accepted in principle when Parliamentary time allows.

¹⁴ See, for example, *The Guardian* and *The Times*, 13 February 2006.

¹⁵ *A v Hoare* [2006] EWCA Civ 395, paras 5 to 6.

¹⁶ *KR v Bryn Alyn Community Ltd* [2003] EWCA Civ 85 at para 100.

¹⁷ *Hansard* (HL), 16 July 2002, col 127.

¹⁸ *Legislating the Criminal Code: Offences Against the Person and General Principles* (1993), Law Com No 218.

¹⁹ *Violence: Reforming the Offences against the Person Act 1861*.

²⁰ *Cort* [2003] 3 WLR 1300, 1304.

PERPETUITIES AND ACCUMULATIONS

- 3.30 The Government announced its acceptance of the Commission's report on this topic in an answer to a Parliamentary Question in March 2001. However, Parliamentary time has not yet been found for it. We were disappointed to learn that despite a peer being willing to take the Bill through as a Private Peer's Bill, the Government was unable to find time in the Parliamentary timetable in this session. We have noted the possibility that the recommendations might be suitable for enactment by means of an order under the Legislative and Regulatory Reform Bill.

THIRD PARTIES' RIGHTS AGAINST INSURERS

- 3.31 In 2002, we published a report jointly with the Scottish Law Commission to strengthen the rights of claimants to seek a remedy against their defendant's insurer where the defendant was in financial difficulties.²¹ In July 2002 DCA accepted our recommendations in principle. Then in September 2002 it issued a consultation paper proposing to implement our report by way of Regulatory Reform Order (RRO).²² In February 2004 DCA published an analysis of responses, which reported that the Law Officers had advised that only certain recommendations could be carried out by way of an RRO. The others did not fall within the scope of the Regulatory Reform Act 2001.²³ We hope that a slot on the legislative programme will be found soon.

Reports awaiting Government decisions

- 3.32 In February 2005, the Ministerial Committee agreed that Government Departments should be in a position to say how they are going to respond within six months of receiving recommendations from the Law Commission. If, after two and a half years, the Department has still not reached any conclusions, the Committee will stop pursuing them. As stated above, we are currently awaiting a response from the Government on 13 of our reports.

COMPANY SECURITY INTERESTS

- 3.33 In August 2005 we published a final report and draft legislation on Company Security Interests recommending major reforms.²⁴ The DTI is currently considering whether to introduce an amendment to the Company Law Reform Bill now going through Parliament, to take a power that would enable the Secretary of State to make regulations to implement a reduced version of our scheme. We understand that the DTI intends to circulate draft regulations for consultation over the summer recess. We await the Government's decision with interest.

²¹ (2002) Law Com No 272, Scot Law Com No 184.

²² Lord Chancellor's Department, *Third Parties – Rights against Insurers: A Consultation Paper on the implementation of the joint Law Commission and Scottish Law Commission Report by way of a Regulatory Reform Order*, September 2002.

²³ Department for Constitutional Affairs, *Analysis of Responses to the Consultation Paper, Third Parties – Rights against Insurers* February 2004. For a short summary of which proposals could be implemented by RRO, see last year's Annual Report, pp 12-13.

²⁴ Company Security Interests (2005), Law Com No 296.

DAMAGES FOR PERSONAL INJURY

- 3.34 During the late 1990s we carried out a major review of damages, which resulted in reports on Liability for Psychiatric Illness,²⁵ Damages for Non-Pecuniary Loss,²⁶ Damages for Medical, Nursing and Other Expenses²⁷ and Claims for Wrongful Death.²⁸
- 3.35 Some of our recommendations have been implemented. In February 2000, the Court of Appeal increased the level of awards for non-pecuniary loss in cases of severe injury.²⁹ In April 2002, the Lord Chancellor's Department increased the level of bereavement damages from £7,500 to £10,000. The Government has also made provision to extend the recovery of National Health Service costs from road traffic accidents to all personal injury claims.³⁰
- 3.36 On the remaining recommendations however, we still await a decision. In November 1999, the Government announced that it would undertake a comprehensive assessment of their individual and aggregate effects. In 2004, we were told that a consultation paper would be issued shortly. The current position is that DCA has indicated that a consultation paper will be published in summer 2006. It is extremely disappointing that after six years the Government has not been able to proceed even to the stage of issuing a consultation paper on whether to implement our proposals.

THE FORFEITURE RULE AND THE LAW OF SUCCESSION

- 3.37 In July 2005 we published a final report and draft Bill to solve problems with both intestacy and wills. We recommended that where a person forfeits the inheritance of property because they kill the person from whom they would inherit, the property should be distributed as if the killer had died. The effect is that property will normally pass to the next in line, such as the grandchildren. Our recommendations would also apply where the heir voluntarily disclaims the property.
- 3.38 We were expecting an interim response from the DCA in early 2006, but have not yet heard anything.

²⁵ (1998) Law Com No 249.

²⁶ (1999) Law Com No 257.

²⁷ Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits, (1999) Law Com No 262.

²⁸ (1999) Law Com No 263.

²⁹ *Heil v Rankin* [2000] 3 WLR 117.

³⁰ This was raised in Law Com No 262. The Department of Health produced a consultation paper in September 2002 (The recovery of NHS costs in cases involving personal injury compensation) and published a summary of the outcome in September 2003. Provision for the extension is included in the Health and Social Care (Community Health and Standards) Act 2003, s 150.

PRE-JUDGMENT INTEREST ON DEBTS AND DAMAGES

- 3.39 Our report was published in February 2004.³¹ It recommended giving the courts more guidance on interest rates, by specifying a rate each year, set at 1 per cent above base rate. We also thought that the courts should have the power to award compound interest in appropriate circumstances. We received an interim response from the Government in August 2004, but have not yet heard whether our recommendations will be accepted.

UNFAIR CONTRACT TERMS

- 3.40 The present law on unfair contract terms is unacceptably confusing. It is covered by two pieces of legislation, containing inconsistent and overlapping provisions. In February 2005 we published a report and draft Bill jointly with the Scottish Law Commission.³² The draft Bill rewrites both laws as a single regime, in a way that is much more accessible to consumer and business advisers. The report also recommended improving protection for the smallest and most vulnerable businesses, employing nine or fewer staff.
- 3.41 We expect to receive an official response from the DTI in the near future stating whether this report has been accepted in principle.

Reports not implemented

- 3.42 The Law Commission was invited to review the law on Compulsory Purchase Orders by the Department of Environment, Transport and the Regions (DETR, subsequently ODPM and now the Department for Communities and Local Government) and the Lord Chancellor's Department (now DCA) following a recommendation to the DETR from an Advisory Group. The Advisory Group described the law on compulsory purchase compensation and procedure as "an unwieldy and lumbering creature".
- 3.43 The Law Commission published its report on Compulsory Purchase (Compensation) in December 2003³³ and its final report on Compulsory Purchase (Procedure) in December 2004.³⁴
- 3.44 In December 2005 ODPM issued a formal response to the Commission's recommendations. Government accepted that it would like to have a single simple compulsory purchase code expressed in modern English but considered that finding legislative time in order to achieve such an objective needed to be balanced against its many other priorities. The response went on to state that in view of certain changes "providing immediate and tangible improvements" having been introduced in the Planning and Compulsory Purchase Act 2004 so recently, "implementing the Law Commission's proposals is not a practicable proposition for the foreseeable future".

³¹ Pre-Judgment Interest on Debts and Damages (2004), Law Com 287.

³² (2005) Law Com No 292, Scot Law Com No 199.

³³ Towards a Compulsory Purchase Code: (1) Compensation (2003) Law Com No 286.

³⁴ Towards a Compulsory Purchase Code: (2) Procedure (2004) Law Com No 291.

- 3.45 Government recognised in its response that the complexities of the existing legislation "have contributed nonetheless to the reluctance of many authorities to make full and effective use of their compulsory purchase powers to facilitate land assembly for regeneration and major infrastructure projects". In the circumstances, the Commission is disappointed that the recommendations made in the course of its important three year project should not be given greater legislative priority.

PARTIAL DEFENCES TO MURDER

- 3.46 In August 2004 the Commission published its report on Partial Defences to Murder,³⁵ which recommended that the law on provocation should be retained, but in a narrowed form. We proposed that provocation could be pleaded by those who either had a justified sense of being seriously wronged, or feared serious violence towards them or another, provided that a person of ordinary tolerance and self restraint in the circumstances might have reacted in the same or a similar way. Consequently, we did not recommend that there should be a specific partial defence to murder based on the excessive use of force in self-defence.
- 3.47 In July 2005 the then Home Secretary announced a comprehensive review of the law of murder. This has superseded the recommendations on Partial Defences to Murder. See para 5.1 for further information on the wider review.

LAND, VALUATION AND HOUSING TRIBUNALS: THE FUTURE

- 3.48 In last year's report we omitted to mention that following the Government's White Paper *Transforming Public Services: Complaints, Redress and Tribunals* (Cm 6243) published in July 2004, our recommendations for reform³⁶ of the Land Valuation and Housing Tribunals have been superseded by the wider plans for reform in this area.

³⁵ (2004) Law Com No 290.

³⁶ (2004) Law Com No 281.

PART 4

COMMERCIAL LAW AND COMMON LAW



Professor Hugh Beale
Commissioner

TEAM MEMBERS¹

Government Legal Service

Tamara Goriely (*Team Manager*)
Geoffrey Davies, Peter Tyldesley

Research Assistants

Inewari Diете-Spiff, Laura Giachardi,
Christopher Kelly, Natalie Moore,
Saira Paruk, Adam Sher

Company security interests

- 4.1 The current system for registering company charges is cumbersome, slow and expensive. In August 2005 we published a final report and draft legislation recommending major reforms.² These would replace the present paper-based system with a new on-line process to register charges cheaply and instantaneously. They would also provide simpler and clearer rules to determine “priority” disputes between competing interests over the same property.
- 4.2 Under the recommended scheme:
- (1) When registering a charge, lenders need only send brief particulars in a simple, electronic format. They will no longer need to submit lengthy charge documents; and Companies House staff will no longer need to check them or issue certificates of registration.
 - (2) The present 21-day time limit will be removed and it will be possible to register in advance of the transaction. The time limit causes considerable inconvenience, as each year Companies House rejects around 3,000 late applications. Instead, priority between charges will be by date of filing, giving lenders an incentive to register quickly.
 - (3) The criminal sanction requiring companies to send information will be abolished.
 - (4) The list of registrable charges will be updated to reflect contemporary practice. We start from the basis that a charge should be registered unless it is specifically exempt.
 - (5) The rights of buyers will be clarified. For example, buyers will not be bound by unregistered charges unless they know about them.

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

² Company Security Interests (2005), Law Com No 296.

- 4.3 The report also recommends extending the scheme to sales of receivables, such as factoring. At present, a factor can only be sure of its priority if it writes to each account debtor. Under our scheme, it can secure its position more cheaply and easily by registering with Companies House.
- 4.4 Finally, the report clarifies the rules on charges over investment securities and other forms of financial collateral.
- 4.5 The final report followed a consultative report in August 2004,³ and a consultation paper in July 2002.⁴ These earlier documents had considered extending the scheme beyond “traditional security” (such as mortgages and charges) to “quasi-security”, such as leases, hire purchase and the sales of receivables. This proved controversial. We have been persuaded that such a major reform should only be considered in a context of a broader review, looking at what happens when someone buys property in good faith to discover that the seller did not own it, or that it was subject to a security interest. If the government accepts our recommendations on companies, we intend to return to the problems posed by “quasi-securities” in the context of this wider review. We will also consider whether the scheme should be extended to apply to security interests given by unincorporated businesses.

The forfeiture rule and the law of succession

- 4.6 In July 2005 we published a final report and draft Bill to solve a problem that arose in the case of *Re DWS (deceased)* [2001] Ch 568. The claimant’s two grandparents had been murdered by their only son (the claimant’s father). The grandparents died intestate, and the question was who should inherit their estate. The son was disqualified from inheriting under the “forfeiture rule”, by which a murderer cannot inherit from his victims. The court found that the grandchild could not inherit either, because under intestacy law, grandchildren can only inherit once their parents are dead. So the property went to more distant relatives.
- 4.7 Our Bill applies to both intestacy and wills. It provides that where a person forfeits property it should be distributed as if that person had died. The effect is that property will normally pass to the next in line, such as the grandchildren. Our recommendations would also apply where the heir voluntarily disclaims the property. We were expecting an interim report from the Government in early 2006, but have not heard anything as yet.

³ Company Security Interests: A Consultative Report (2004), Consultation Paper No 176.

⁴ Registration of Security Interests: Company Charges and Property other than Land (2002), Consultation Paper No 164.

Insurance contract law

- 4.8 This year we initiated a joint project with the Scottish Law Commission to review insurance contract law. The law relating to insurance contracts has long been criticised for its obscurity and potential to cause unfairness to policyholders. In several areas it no longer accords with good business practice. Some of these problems have been addressed by codes of practice, regulation and the Financial Ombudsman Service. However, these measures are not a complete response to inadequacies in the underlying law, while the need to consider such a wide range of sources makes the law even more inaccessible.
- 4.9 In 1980, the Law Commission called for reform of the law on non-disclosure and breach of warranty. The recommendations were not implemented and, following a report from the British Insurance Law Association, we decided that these issues should be looked at again.
- 4.10 In January 2006 the two Law Commissions published a scoping study asking whether there are any other areas of law we need to consider. We have been encouraged to receive over 100 responses, many of which contained detailed discussions of the problems with the current law. There seems to be considerable support for a major review of this area.

Property interests in investment securities

- 4.11 In December 2005 we formally launched a review of the law on indirectly held securities, that is, securities such as stocks and bonds that are held by the investor through an intermediary such as a bank rather than directly from the issuer. This is now a very common way of holding securities, but English law has lagged behind market developments. While the basic law is sound, some gaps and uncertainties have arisen. This project aims to modernise and clarify the law to keep pace with changes in market practice and to ensure that it provides predictable solutions to the possible risks that market participants bear.
- 4.12 The EU Commission is currently considering a legal framework to deal with intermediated securities that can apply to the differing legal structures in all the Member States. The Law Commission's initial focus will be to develop a clear set of principles that address shared legal concerns in a way that is compatible with different legal frameworks within the EU. This work will assist the Treasury in ensuring that any European legislation meets Britain's needs.
- 4.13 In March, we held a successful seminar to consider the principal objectives that a common framework should seek to achieve. We will be holding further seminars during the remainder of 2006 to discuss other issues that affect the holding, transfer and pledging of intermediated securities. We intend to publish a consultation paper in early 2007.

Illegal transactions

- 4.14 We deferred work on illegal transactions until the Company Security Interest report was published. Now that project is completed, we are continuing to review the law of illegal transactions, looking at the effect of illegality on claims in contract and trusts. The law on illegality has been criticised for being complex, uncertain, arbitrary and, on occasion, unjust. The legal landscape in which it operates has also been transformed by the Proceeds of Crime Act 2002 and subsequent developments, which have extended the state's powers to recover property associated with illegality. We intend to publish a report in 2006.

PART 5

CRIMINAL LAW, EVIDENCE AND PROCEDURE



Dr Jeremy Horder
Commissioner

TEAM MEMBERS¹

Government Legal Service

David Hughes (*Team Manager*)
Janet Cowdrey, Raymond Emson
Elizabeth Finlason, Simon Tabbush
Clare Wade

Research Assistants

Christopher Draycott, Jeremy Easton
Elizabeth Emery, Laura McGowan
Claire Murray, Keren Murray

Review of homicide

- 5.1 In August 2004, the Commission published a report² which concluded that the law of murder in England and Wales “is a mess”. The report recommended that there should be a general review of the law of murder, including the application of the mandatory life sentence. In July 2005 the Government announced that there would be a two-stage review of the law of murder. In the first stage the Law Commission will build on its previous work on the partial defences to murder, analyse the whole of the current law of murder, and make recommendations for reform. The Commission’s recommendations will feed into the second stage, in which the Government will conduct a review of the wider policy issues. In announcing the review, the Government stressed that it was committed to the continuing existence of the mandatory life sentence.
- 5.2 The Commission published a consultation paper on 20 December 2005.³ In preparing it, the Commission was able to take account of a survey of public opinion conducted by Professor Barry Mitchell and of comparative law papers that had been prepared by distinguished jurists.
- 5.3 The Commission concluded that the current structure of the law of homicide is unsatisfactory because each of the two general homicide offences upon which it is based – murder and manslaughter – are too broad in scope. Instead, the paper provisionally proposed that there should be a graduated structure of general homicide offences:
- first degree murder (mandatory life sentence),
 - second degree murder (discretionary life sentence), and

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

² Partial Defences to Murder, Law Com No 290.

³ A New Homicide Act for England and Wales? Consultation Paper No 177. In addition, the Commission also published a shorter paper: A New Homicide Act for England and Wales? An Overview, Consultation Paper No 177 (Overview).

- manslaughter (fixed term of years maximum sentence).

The three offences should be supplemented by specific homicide offences, for example assisting suicide and infanticide.

- 5.4 First degree murder would be confined to unlawful killings committed with an intention to kill. Where a partial defence applied (such as provocation, diminished responsibility or duress) the unlawful killing would be classed as second degree murder. Second degree murder would also comprise all unlawful killings committed with an intention to cause serious harm and all unlawful killings committed with a reckless indifference to causing death.
- 5.5 Manslaughter would consist of unlawful killings caused by acts of gross negligence and unlawful killings caused by a criminal act that was intended to cause physical harm or by a criminal act foreseen as involving a risk of causing physical harm.
- 5.6 Following publication of the consultation paper, the Commission's Chairman and Criminal Law Team have held a series of meetings, seminars and road-shows with members of the judiciary, criminal justice practitioners, academics, psychiatrists, those who work with victims' families, groups promoting the interests of women, human rights organisations and parliamentarians. The Commission's recommendations will be contained in a report to be published in Autumn 2006.

Assisting and encouraging crime

- 5.7 The Commission had considered in the past⁴ the scope and structure of the law relating to the liability of those who assist and encourage others to commit offences. That law was and remains complicated, uncertain and anomalous. It also raises important and difficult policy issues.
- 5.8 The Commission's intention was to publish a consultative report and draft Bill in Summer 2005. However, the Commission subsequently decided that it would be preferable to issue two reports, each accompanied by a draft Bill. One would be devoted to *inchoate* liability for assisting or encouraging the commission of an offence while the other would consider *secondary* liability for assisting or encouraging the commission of an offence.
- 5.9 At common law, whether a person (D) incurs secondary liability for assisting or encouraging another person (P) to commit an offence depends on whether P goes on to commit the offence. If P does so, D is secondarily liable and is guilty of the offence that P commits.
- 5.10 However, if P, for whatever reason, does not commit the offence, D may be inchoately liable provided that he or she *encouraged* P to commit the offence. D is guilty of the common law inchoate offence of incitement. By contrast, if D *assisted* P to commit an offence that P subsequently does not commit, D incurs no criminal liability at common law.

⁴ Assisting and Encouraging Crime (1993) Consultation Paper No 131.

- 5.11 The Commission will shortly be publishing a report and draft Bill on inchoate liability for assisting or encouraging offences. The Commission hopes to publish its report and draft Bill on secondary liability for assisting or encouraging another person to commit an offence in Autumn 2006.

Judicial review of crown court decisions

- 5.12 Decisions of the Crown Court are only amenable to Judicial Review if they are not “matters relating to trial on indictment”.⁵ The rationale for the exclusion is easily identifiable. Judicial Review should not be a means of delaying trials and clogging up the criminal justice process. The problem has been in locating the boundary of the exclusion. The expression “matters relating to trial on indictment” has proved to be a fertile source of argument giving rise on numerous occasions to lengthy, time-wasting and expensive litigation.
- 5.13 The Commission has been considering how the High Court’s criminal jurisdiction over the Crown Court might be simplified and, if appropriate, modified together with the implications for the High Court’s criminal jurisdiction over magistrates’ courts and courts martial.
- 5.14 In July 2005, the Criminal Law Team issued a scoping paper setting out a number of discussion issues on which it invited comment. Following consideration of the responses, the Commission intends to publish a consultation paper in the second half of 2006 to be followed by a final report in the first half of 2007.

Codification of the criminal law

- 5.15 This project consists of reviewing and revising Part 1 of the Criminal Code of 1989.⁶ In our annual report 2004/2005, we said that it was our intention during 2005/2006 to publish discrete consultation papers on some of the seven tranches that make up Part 1. Unfortunately, the resources that have had to be committed to the review of murder has resulted in limited progress on this project.
- 5.16 Currently, our work in this area is focused on intoxication, corporate criminal liability, the use of defensive force and the preliminary offences of attempt.

⁵ Supreme Court Act 1981, s 29(3).

⁶ Criminal Law: A Criminal Code for England and Wales, Law Com No 177.

PART 6

PROPERTY, FAMILY AND TRUST LAW



Stuart Bridge
Commissioner

TEAM MEMBERS¹

Lawyers

Matthew Jolley (*Team Manager*)
Judith Cairns, Julia Jarzabkowski,
Jo Miles, Cheryl Morris

Research Assistants

Michael Ashdown, Emily Duckworth,
Wendy Mathers, Daniel Robinson,
Stella Rozanski, Joel Wolchover

Cohabitation

- 6.1 In August the Law Commission began an important new project on cohabitation. The study focuses on the financial hardship suffered by cohabitants or their children on the termination of their relationship by separation or death. Its scope is restricted to opposite-sex and same-sex couples in clearly defined relationships.²
- 6.2 Particular attention is being given to:
- (1) Whether cohabitants should have access to remedies against one another when they separate such as periodical payments, lump sums and property transfers and, if so, the circumstances in which those remedies should be available.
 - (2) A review of the operation of existing remedies providing capital awards for the benefit of children under Schedule 1 to the Children Act 1989.
 - (3) Intestate succession and family provision on death under the Inheritance (Provision for Family and Dependants) Act 1975.
 - (4) Whether contracts between cohabitants, setting out how they will share their property in the event of the relationship ending, should be legally enforceable, and, if so, in what circumstances.
- 6.3 The project team has held preliminary discussions with many of the groups particularly interested in this area and expects to publish a formal consultation paper on 31 May 2006. The Commission intends to report to Government with its final recommendations in August 2007.

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

² See LC293 for an outline of the types of relationship that are and are not being considered. See also LC293 for a list of issues that are specifically excluded from the review.

Easements and covenants

- 6.4 The law of easements,³ analogous rights and covenants is of practical importance to a large number of landowners. Recent Land Registry figures⁴ suggest that at least 65% of freehold titles are subject to one or more easements and 79% are subject to one or more restrictive covenants. It is estimated that 99% of leasehold registrations will be subject to both kinds of right.
- 6.5 Easements and covenants can be fundamental to the enjoyment of one's property. For example, many landowners depend on easements in order to obtain access to their property, for support or for drainage rights. The relevant law has never been subject to a comprehensive review, and many aspects are now outdated and a cause of difficulty.
- 6.6 The Commission is therefore examining easements and analogous private law rights with a view to their reform and rationalisation. This work will involve a reconsideration of earlier Law Commission work on land obligations.⁵ The aim is to produce a coherent scheme of land obligations and easements which is compatible with both the commonhold system and the system of registration introduced by the Land Registration Act 2002.
- 6.7 The Commission is nearing the end of an initial review of this difficult and extensive area of the law, and hopes to publish a preliminary consultation paper before the end of 2006.

Termination of tenancies for tenant default

- 6.8 This project examines the means whereby a landlord can terminate a tenancy⁶ because the tenant has not complied with their obligations. This is an issue of practical importance for many landlords and tenants of residential and commercial properties. The current law is difficult to use and littered with pitfalls for both the lay person and the unwary practitioner.
- 6.9 The Law Commission outlined provisional proposals for reform in a consultation paper published in January 2004.⁷ These proposals were based on earlier Law Commission work in this area and take account of the introduction of the Civil Procedure Rules, the Human Rights Act 1998 and recent developments in case law.

³ An easement is a right enjoyed by one landowner over the land of another. A positive easement involves a landowner going on to or making use of something in or on a neighbour's land. A negative easement is essentially a right to receive something (such as light or support) from the land of another without obstruction or interference.

⁴ The actual number of freehold titles subject to one or more easements is likely to be much higher than 65% because this figure relates only to expressly granted easements and does not take into account easements not recorded on the register such as those arising by prescription or implication.

⁵ Including *Transfer of Land: The Law of Positive and Restrictive Covenants* (1984), Law Com No 127.

⁶ The provisional proposals apply to all tenancies except those short residential tenancies that were considered in the *Report on Renting Homes* (2003) Law Com No 284.

⁷ *Termination of Tenancies for Tenant Default* (2004) Law Com No 174.

- 6.10 The consultation paper attracted interest and comment from practitioners, academics and groups representing both landlords and tenants. The helpful comments and suggestions made by consultees have been taken into account in formulating final policy recommendations. The Commission expects to publish a final report outlining these recommendations accompanied by a draft bill in the second half of 2006.

Trustee exemption clauses

- 6.11 A trustee exemption clause is a clause in a trust instrument which excludes or restricts a trustee's liability for breach of trust, either by expressly excluding liability or by modifying the trustee's powers and duties. Case law has established that such clauses are able to relieve the trustee from liability for anything except dishonest conduct. As a result, there is no effective sanction to deter trustees from acting negligently to the detriment of the beneficiaries.⁸
- 6.12 The Commission published a consultation paper⁹ on trustee exemption clauses in January 2003, which set out a range of options for reform. The paper invited the views of consultees on these options and on the economic implications of any regulation of trustee exemption clauses. 118 consultation responses were received, including a detailed paper from a Working Group of the Financial Markets Law Committee on the impact of the provisional proposals on trusts in financial markets.
- 6.13 The Commission issued a press notice on 14 December 2005 indicating that discussions were taking place with professional regulatory bodies and trust organisations about a non-statutory approach to the regulation of trustee exemption clauses. We will present a final report to Government setting out recommendations in the second half of 2007.

Capital and income in trusts: classification and apportionment

- 6.14 The current law on the classification of trust receipts and outgoings as income or capital is complex and can give rise to surprising results.¹⁰ The complicated rules which oblige trustees to apportion between income and capital in order to keep a fair balance between different beneficiaries are also widely acknowledged to be unsatisfactory. They are technical, rigid and outdated, often causing more difficulties in practice than they solve. As a result their application is often expressly excluded in modern trust instruments.¹¹

⁸ A state of affairs that has been widely criticised, for example, by Lord Goodhart in the House of Lords during the Second Reading of the Trustee Bill in 2000, and by the independent Trust Law Committee in their consultation paper on the subject.

⁹ Trustee Exemption Clauses (2003), Law Com No 171.

¹⁰ For example, where shares in a new company are issued to the shareholders of an existing company on what is known as an "indirect" demerger, those shares will be treated for trust purposes as capital. Where the demerger is "direct" the shares received will be treated as income in the trustee's hands.

¹¹ In cases where the rules still apply (generally older trusts and home-made will trusts) the rules are either ignored or require the trustee to undertake complex calculations which are unlikely to have been envisaged by the settlor when setting up the trust.

- 6.15 The distinction between trust income and capital receipts is also an important issue for charities. Many charitable trusts have permanent capital endowments which cannot be used to further the charity's objects; only the income generated can be used and there is generally no power to convert capital into income. This may inhibit performance of the charity's objects and encourage investment practices which concentrate on the form of receipts rather than on maximising overall return.
- 6.16 The Commission published a consultation paper on this subject in July 2004.¹² It provisionally proposed new, simpler rules for the classification of corporate receipts by trustee-shareholders, a new power to allocate investment returns and trust expenses as income or capital (in place of the existing rules of apportionment) and the clarification of the mechanism by which trustees of permanently endowed charities may invest on a "total return".
- 6.17 Work on this project has been suspended pending completion of the Commission's work on trustee exemption clauses and will recommence on publication of the trustee exemption clauses final report.

The rights of creditors against trustees and trust funds

- 6.18 Details of the Commission's third trust law project can be found in last year's Annual Report. The Commission will commence this project on the completion of its other trusts work.

Feudal land law

- 6.19 A description of the Feudal Land Law project was given in last year's Annual Report. Work on this project will begin when resources allow.

¹² Capital and Income in Trusts: Classification and Apportionment (2004), Consultation Paper 175.

PART 7

PUBLIC LAW TEAM



Kenneth Parker QC
Commissioner

TEAM MEMBERS¹

Lawyers

Richard Percival (*Team Manager*)
Tola Amodu, Helen Carr, Eleanor Cawte,
Charlotte Crilly, Elizabeth Saunders

Visiting Academic Consultants

Professor David Cowan, Alex Marsh

Research Assistants

Mike Atkins, Daniel Bovensiepen,
Ed Kirton-Darling, Regan Morris,
Doug Rhodes, Richard Turney

Commissioners

- 7.1 Kenneth Parker QC became the Commissioner for the Public Law Team at the beginning of 2006. Although Martin Partington's term of office as Commissioner ended on 31 December 2005, he has agreed to stay on as a special consultant to undertake the Commissioner's role in relation to the team's continuing housing projects.

Citizen's redress against public bodies

- 7.2 As a result of the consultations leading up to the publication of the Ninth Programme of Law Reform, problems with the incidence of monetary remedies against public bodies were drawn to the Law Commission's attention. The argument is that there are gaps in the availability of compensation where a public body has wrongfully caused loss to a citizen. Compensation is available where governmental action breaches human rights or European Union law, and public bodies' liability in negligence has been significantly extended. However, no monetary compensation is available where a public body has acted in a way that is unlawful in public law, and has caused loss to the citizen.
- 7.3 We published a discussion paper in October 2004, followed by a seminar in November 2004. Most of those attending the seminar thought that the concentration on monetary remedies was too narrow. The feeling was that it was necessary to consider what kind of remedies against public bodies people wanted, and how these remedial mechanisms could improve public services. The importance of taking account of the resource implications of the liability of public bodies was also emphasised.

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

- 7.4 A proposal that a scoping study be undertaken to determine the parameters of a substantive law reform project to consider these issues was included in the Ninth Programme. Further thinking within the Public Law Team led to the conclusion that concentrating on the remedial consequences of actions that were unlawful in public law terms was itself too narrow. It would be impossible to properly consider the desirability of individual remedies without a clear view of the various ways in which the actions of public bodies could be held to account by citizens, and from which various remedies flowed.
- 7.5 The Commission will be publishing a scoping paper in summer 2006. The subsequent project will consider the range of claims and remedies available to the citizen to challenge unlawful action by public bodies. It will consider the remedies where a public body is found to have behaved unlawfully, the basis of remedies in negligence and in the intentional torts (where compensation does not depend on fault), and damages for breaches of human rights and of European Union law. The project will also consider the role of ombudsmen, mediation, internal review mechanisms and complaints procedures. A key element in the proposed project is the need for a sound empirical understanding of the impact of liability and remedies on resources and the practice of government. The project will ask whether litigation and compensation are good uses of public funds that could otherwise be spent on service provision. It will also be necessary to consider whether liability encourages defensive administration to the detriment of the public good, or whether it encourages good practice.

Housing projects

Renting homes

- 7.6 The project was originally commissioned by Nick Raynsford, the then Minister of Housing, in 2001. An important element in the project from the Department's point of view was that it took forward work on a "single social tenancy". Our recommendations will result in the use of an identical contract by local authorities, registered social landlords (that is, most housing associations), and indeed those private landlords² who choose it, or for whom public funding makes it a requirement, such as those providing social housing for those in need. Current legal differences which inhibit the flexible delivery of policy will be removed.
- 7.7 This will help provide essential flexibility in the rental market. It will facilitate new partnerships between local authorities, registered social landlords and private investors, contributing to greater social stability and cohesion and therefore to more sustainable communities.
- 7.8 Establishing a modernised, and stable, legal regime governing rented housing is, also a pre-condition to overcoming other problems, in particular the continuing low reputation of the private rented sector.

² Subject to a very minor difference relating to the right to exchange.

7.9 Plans to finalise the draft Bill in 2005 were defeated by continuing drafting challenges. However, the draft Bill and the final report were published shortly after the close of the reporting period for this Annual Report.³ This report marks the culmination of the principal project which Martin Partington lead during his time as a Commissioner. The Government's response is awaited.

Resolving housing disputes

7.10 Work has continued on the project on housing disputes, following the reference from DCA in 2004. In March 2006, an issues paper was published: *Housing Disputes: Proportionate Dispute Resolution*.⁴

7.11 The issues paper used the broad, socio-legal approach identified for this project by DCA.

(1) It analysed existing methods of resolving housing disputes in terms of the key concept of proportionality, and concluded that they were, or were capable of operating disproportionately.

(2) It provided an outline of an alternative system, central to which is a role with the (provisional) designation "triage plus". Triage plus providers would be the first port of call for people experiencing housing problems. Triage plus would *signpost* individuals through the system, showing them the best ways to resolve their dispute; maintain *oversight* of the system as a whole, both nationally and locally, so that the system can respond flexibly to the needs of the public; and *gather intelligence*, providing a knowledge bank in support of the other two functions.

(3) The paper identified three particular non-court techniques for managing disputes that could offer more as part of a triage plus-directed disputes system. These were first, using management responses, particularly within large public landlords to improve the "quality control" of decision making and dispute handling; secondly, ombudsmen, and thirdly, mediation.

(4) It considered whether, where a dispute needed formal adjudication, the forum for adjudication should be generalist or specialist, a court or a tribunal.

7.12 Alongside the consultation paper itself, the Law Commission also published a more detailed "further analysis", which provided fuller details of the theoretical approach adopted, and the academic literature drawn on in the development of the proposals. In addition, 18 working papers, amounting to 779 pages, were made available on the Commission's website.

³ Publication details.

⁴ Publication details.

Housing: ensuring responsible renting

- 7.13 This project was included in the Ninth Programme. However, further work has been significantly held up by the continuing priority being given to Renting Homes during 2005. Although the genesis was the recommendations for projects on harassment/unlawful eviction and anti-social behaviour in the private sector, it became clear that both were aspects of the regulation of the rented sector.
- 7.14 A seminar was held on 21 March 2006, bringing together academics and key officials and policy makers. The aim of the seminar was to bring to bear on the rented sector the considerable learning on regulation. A summary is available on the Commission's website.⁵
- 7.15 The results will be very helpful in informing the further development of the Team's thinking. A consultation paper is planned for the end of 2006.

⁵ http://www.lawcom.gov.uk/housing_renting.htm

PART 8

STATUTE LAW

TEAM MEMBERS

Consolidation

The Chairman, Sir Edward Caldwell, Francis Coleman, Louise Davies, Jessica de Mountenay, and Chris Packer.

Statute Law Revision

The Chairman, John Saunders, Jonathan Teasdale and Ruth Wilkinson.

Post-Legislative Scrutiny

The Chairman and Lydia Clapinska.

CONSOLIDATION

- 8.1 An important aspect of our work is the consolidation of statute law. 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 amendment. Usually this is done by preparing 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 operate it and to those who are affected by it.
- 8.2 Our programme of consolidation measures has over the years reduced in quantity, partly because of changes made in the 1970s to the way Parliament amends legislation. This is now routinely done by textual amendment. With modern electronic sources of legislation and existing reference material, anyone wishing to see the latest version of an Act can readily do so. The need to consolidate simply to take account of textual change has largely gone.
- 8.3 But there is still a need for consolidation, particularly in those areas where there has been a considerable amount of legislative activity. Now, when the Commission comes to consolidate the legislation on a particular subject, it tends to find that the total amount of legislation to be consolidated is large.
- 8.4 Consolidations of this kind are by their nature difficult and call for a considerable amount of work. It is not just a matter of identifying the amendments that have been made to the enactments being consolidated. Changes elsewhere in the statute book, in the law of the European Union or resulting from decisions by the courts (including the European Court of Human Rights) may need to be reflected in the consolidated text.

- 8.5 Provisions that have become obsolete need to be identified and included in the provisions to be repealed by the consolidation. The effect of devolution and the impact of the Human Rights Act 1998 need to be worked out. In some cases the law needs to be altered before a sensible consolidation can be produced. This work has to be done with meticulous accuracy so as to avoid inadvertent changes in the substance of the law. It places a serious strain on resources - both within the Law Commission and in the responsible Department. Departments are never short of pressing priorities to which they need to devote scarce resources.
- 8.6 Finally, the rate at which the statute book grows is a problem in itself. Parliament enacts several thousand pages of new primary law every year and repeals relatively little. Consolidation cannot be undertaken unless the law remains relatively settled. Several times over the past decade, legislation has been changed radically, just when a consolidation was being prepared. This has inevitably stopped the consolidation. Our attempted consolidation of the legislation on financial services is a good example of the problem. Although well advanced, the consolidation had to be abandoned when the Government introduced the totally new regulatory regime established by the Financial Services and Markets Act 2000. The work on the consolidation was wasted.
- 8.7 We have been continuing to look at establishing a consolidation programme that will run over the next few years.
- 8.8 Our consolidation of the legislation on wireless telegraphy and the management of the radio spectrum was delayed for some time by the work involved in implementing the new regulatory regime created by the Communications Act 2003. On 4 August 2004 the Department of Trade and Industry published a consultation paper with a copy of the draft Consolidation Bill annexed.
- 8.9 As a result of the consultation, the provisions concerning appeals to the Competition Appeal Tribunal about wireless telegraphy decisions are not to be consolidated. The Bill was introduced in the House of Lords on 20 April 2006.
- 8.10 A small consolidation of nineteenth century legislation about parliamentary costs is nearly ready for introduction. The final text of the consolidation was published for consultation. The consultation period ended on 31 January 2006¹. There is a considerable amount of old legislation in the statute book which is still live and so cannot be removed by a Statute Law (Repeals) Bill but which would benefit from being modernised. So, for example, further consolidations concerning game and the Ordinance Survey are under consideration.
- 8.11 Work on consolidating the legislation about the National Health Service has continued to progress well. Because of the amount of legislative activity in this area since 1997, the consolidation is difficult and the resulting legislation will inevitably be sizeable. The legislation about the National Health Service has been significantly affected by devolution to the National Assembly for Wales, which is a further complicating factor. It is expected that the consolidating legislation will be introduced in the current Parliamentary session. There will be a separate Bill relating to the health service in Wales.

¹ <http://www.dca.gov.uk/consult/parliamentarycosts/cp3305.htm>

- 8.12 After the consolidation of the legislation concerning the national health service has passed, we aim also to consolidate the legislation relating to the Health Service Commissioner for England. Work on this consolidation has begun.
- 8.13 Work has started on consolidating the legislation about private pensions. The Department for Work and Pensions has made funds available to enable the Commission to employ a freelance drafter (an experienced drafter who used to be in the Office of the Parliamentary Counsel) to undertake the consolidation. This large and extremely difficult project will take some time to complete.
- 8.14 The consolidation of the legislation about representation of the people remains suspended. Delays were caused on more than one occasion by a reorganisation of Ministerial responsibility for the subject. Work on the consolidation was finally suspended at the request of the Department for Constitutional Affairs pending the Government's decision on the Electoral Commission's report *Voting for Change*, which recommended significant changes to the law. The Government has now introduced a Bill (the Electoral Administration Bill) in response to that report, the Electoral Commission's report on the future of postal voting and its own consultation paper "Securing the Vote", published in the light of concerns raised in relation to allegations of electoral fraud in the 2005 General Election. No decision on when the consolidation may safely be revived has yet been taken.
- 8.15 This session's Charities Bill contains a power to make pre-consolidation amendments. The suggestion that there should be a consolidation of the enactments relating to charities has received widespread support in debates. The Commission is hoping to be able to embark on a consolidation in this area once the Charities Bill has been enacted.

STATUTE LAW REVISION

- 8.16 The principal purpose of statute law revision is the repeal of statutes that are obsolete or which otherwise no longer serve any useful purpose. It is to modernise the statute book and leave it clearer and shorter. This helps to save the time of lawyers and others who need to use it. The work is carried out by means of Statute Law (Repeals) Bills, which the Law Commissions publish periodically in draft in their Statute Law Revision reports. There have been 17 such Bills since 1965. All have been enacted, thereby repealing more than 2000 Acts in their entirety and achieving the partial repeal of thousands of other Acts.

- 8.17 During 2005 the Statute Law Revision team has concentrated on three main projects – the police, the armed forces and county gaols. The police repeals project included many 19th century enactments that had been superseded by changes in policing law during the 20th century, particularly in relation to police pensions. The armed forces project uncovered 30 obsolete enactments, many passed to provide pension benefits for retired service personnel and their dependants. Five of the Acts related to the Royal Naval School which was established in 1833 for the education of the children of officers in the Royal Navy and Marines. The school closed its doors in 1910. Finally, in the large county gaols project the team has reviewed nearly 50 statutes (dating back to 1700) covering the development and operation of gaols for criminal convicts, civil debtors and vagrants across 22 counties in England and Wales. Most of the institutions have long ceased to exist (some without physical trace), and all the statutes have been overtaken by more modern legislation governing today's Prison Service. London alone produced seven Acts, dating from 1766 to 1815.
- 8.18 Consultation on all these repeal proposals was carried out during 2005 or in early 2006. Other repeal projects in 2006 are likely to include turnpikes and taxes.
- 8.19 In each area of statute law revision work the team produces a consultation document inviting comments on a selection of repeal proposals. These documents are then circulated to Departments and other interested bodies and individuals. Subject to the response of consultees, repeal proposals relating to all the projects mentioned above will be included in the next Statute Law Revision report, which is planned for 2008.

POST-LEGISLATIVE SCRUTINY

- 8.20 In July 2005, we started a new project to determine the need for post-legislative scrutiny, which concerns the review of Acts of Parliament once they have been brought into force. We are concerned both at the volume of legislation that is passed by Parliament and whether it delivers the underlying policy aims. We are also concerned if new law has unintended consequences which make the law less certain and more complex.
- 8.21 There is currently no systematic practice of reviewing laws after they have been brought into force to ensure that they are working as intended. There are many issues that arise when one considers post-legislative scrutiny. The key questions include the purpose of post-legislative scrutiny, which legislation should be subject to such scrutiny, what form the scrutiny should take and by whom should it be undertaken, and perhaps most importantly, who should be responsible for making decisions about all of these issues.
- 8.22 A consultation paper was published on 31 January 2006. In the consultation paper, we consider the potential for developing a more formal system of reviewing laws and encouraging better regulation.
- 8.23 We aim to publish our final report in the Summer of 2006.

PART 9

EXTERNAL RELATIONS

9.1 The Law Commission greatly values its strong links with a variety of organisations and individuals committed to reforming the law. We are indebted to those who give feedback on our consultation papers, and who provide input and expertise at all stages of the process of making recommendations to Government.

9.2 In our published reports, consultations, issues and discussion papers we list the assistance and support we receive from a wide range of people. It would not be possible to list everybody that provides guidance or feeds in views here. In addition to our published work, the Law Commission plays a wide role in the national and international business of law reform. In particular we have worked with:

PARLIAMENT AND MINISTERS

9.3 The Department for Constitutional Affairs (DCA) is our sponsor Department.

9.4 The Chairman and Commissioners have met with a number of Ministers during the reporting year to further development of projects. These include:

- The Lord Chancellor, the Right Hon. Lord Falconer of Thoroton.
- The Home Secretary, the Right Hon. Charles Clarke MP.
- The Attorney-General, the Right Hon. The Lord Goldsmith QC.
- The Right Hon. Geoff Hoon MP, Leader of the House of Commons.
- The Right Hon. Baroness Amos, Leader of the House of Lords.
- Fiona McTaggart MP, Parliamentary Under-Secretary at the Home Office.
- Baroness Andrew, Parliamentary Under-Secretary at ODPM.

9.5 We also met with the following Parliamentary Bodies:

- Bar Parliamentary Group.
- Liaison Committee of the House of Commons.
- Chairmen of Committees of the House of Lords.

CONSULTEES AND STAKEHOLDERS

9.6 We receive help from a broad range of people who are thanked in the respective consultations and reports issued by the Law Commission. During the course of this year, we were particularly grateful to a number of academics and the judiciary who provided input. Many practitioners and legal associations working in specialist and general fields have given time and support to further our awareness of various areas of work.

- 9.7 On the homicide project, we were particularly supported by a number of victims groups, representatives of the police and the Director of Public Prosecutions. We have worked with industry representatives and groups on a number of projects. The housing projects have relied on representatives of several tribunals, tenants, landlords and Ombudsmen organisations feeding in thoughts and experiences.

SEMINARS, LECTURES AND CONFERENCES, ETC

- 9.8 Members of the Law Commission are frequently invited to attend and speak at seminars and conferences. While we cannot fulfil every request, we try to be as involved as possible in expanding general knowledge about law reform, and engaging people in the processes by which the law is improved. The Chairman has taken part in a variety of events. These include:

- Addressed the 50th Anniversary Commonwealth Law Conference.
- Spoke at ALRAESA 2005 (Association of Law Reform Agencies of Eastern and Southern Africa) in Entebbe.
- Gave the Human Rights lecture to SOAS, the Association of Young Chinese Lawyers.
- Gave a closing lecture at the EU/China Legal and Judicial Conference in Beijing.
- Participated in a panel discussion on the Radio 4 programme Unreliable Evidence where the topic discussed was criminal liability for the transmission of sexual diseases.
- Gave a lecture to Harvard University Law School on self-incrimination.
- The Chairman and John Saunders, head of the Statute Law Revision team, attended the annual meeting of the Lord Chancellor's Advisory Committee on Statute Law in the House of Lords.

- 9.9 Hugh Beale has taken part in the following lectures, conferences and seminars:

- Professor Beale is a member of the Joint Network of Excellence that is funded by the European Commission's Sixth Framework Programme to produce a draft Common Frame of Reference (CFR). This may be adopted by the Commission and other European Union institutions to provide agreed terminology and concepts for revising the existing European Directives on consumer contracts and possibly other Directives, and for drafting any future European legislation on contracts or other fields of private law. It might also form the basis of an "Optional Instrument" that (under proposals made by the Commission for Revision of the Rome Convention on the law applicable to contractual obligations) parties could adopt in place of a national law.
- Hugh has been playing an active role in preparing the draft CFR and in presenting it for discussion at meetings of stakeholders organised by the European Commission. During the year he has given numerous lectures on the project, including at the Universities of Dundee, Durham and Tartu (Estonia) and the Hungarian Ministry of Justice in Budapest. He also spoke at the London Conference on European Contract Law: Better Lawmaking through the Common Frame of Reference, hosted by the British Presidency.

- Hugh spoke at a conference held at the University of Paris (on reform of the French Civil Code).
 - In May 2005 Hugh was awarded an Honorary Doctorate of Law by the University of Antwerp.
- 9.10 Dr Jeremy Horder attended a conference on French Criminal Law held at Grays Inn; a training seminar organised by the Judicial Studies Board; meetings of the Criminal Justice Council; meetings of the Judicial Studies Board Criminal Committee and met representatives of the Sentencing Guidelines Secretariat.
- 9.11 Stuart Bridge gave a lecture on Reforming the Law of Easements to the Property Bar Association.
- 9.12 In January 2006 Professor Martin Partington was appointed to the DCA Taskforce on Public Legal Education, to which the Commission's work on Renting Homes and Housing Disputes is particularly relevant.
- 9.13 Stuart Bridge is now a member of the Civil Justice Committee of the Judicial Studies Board (JSB), and he attended a training seminar for judges in the specialist jurisdictions, organised by the JSB, as an observer.
- 9.14 Both Martin Partington and Sir Edward Caldwell contributed chapters to a book on law reform produced for the Australian Law Reform Commission 30th Anniversary. Martin also wrote an academic piece on the relationship between Law Reform and Access to Justice that was published in the *Winder Yearbook of Access to Justice* (a leading Canadian journal).
- 9.15 A paper by Stuart Bridge on *The Contribution of the Law Commission to the Reform of Commercial Leases* was presented by Julia Jarzabkowski and Joel Wolchover at a conference on Landlord and Tenant Law at New College, Oxford.

SOCIO-LEGAL RESEARCH

- 9.16 The Commission often uses socio-legal, economic and empirical research to ensure that our recommendations to Government are thoroughly considered with sound evidence. Where possible we use existing research, but where funds permit, we sometimes commission external researchers.
- 9.17 The Cohabitation project has commissioned and sponsored research from several sources. Lynda Clarke (Centre for Population Studies, London School of Hygiene and Tropical Medicine) has been commissioned to provide data from the Office of National Statistics Longitudinal Study, a 1% sample of the population which links all Censuses from 1971 to 2001 with vital registration data. We have also supported research by Prof. Anne Barlow and Dr Carole Burgoyne (University of Exeter), investigating the impact of the Department for Constitutional Affairs' Living Together Campaign, and work being conducted in the next round of the British Social Attitudes Survey, with Alison Park. We are also supporting a student-conducted public opinion survey run by Prof Gillian Douglas (University of Cardiff) and Cathy Williams (University of Sheffield) relating to remedies for spouses and cohabitants on the death of one partner.

- 9.18 In connection with the Commission's review of the law of murder, the Commission had the great benefit of two pieces of socio-legal research. Professor Barry Mitchell of Coventry University conducted a public survey on mandatory sentencing in cases of criminal homicide. The aim of the survey was to determine whether there appears to be any evidence of the lively support amongst members of the public for the mandatory sentencing of persons convicted of unlawful homicide. The results of Professor Mitchell's research can be found in Appendix A of the Commission's consultation paper "A New Homicide Act for England and Wales?"
- 9.19 The Commission commissioned Professor Ronnie Mackay of De Montfort University to undertake an empirical study of convictions for infanticide in the period 1989-2002. We expect to be able to publish the results of Professor Mackay's research as an appendix to our final report.
- 9.20 We are very grateful to both Professor Mitchell and Professor Mackay for the invaluable contributions to the Commission's review of the law of homicide.
- 9.21 The public law team has sought to access socio-legal learning by seconding leading socio-legal scholars as visiting academic consultants. Since, respectively, February 2005 and January 2006, Professor Dave Cowan and Alex Marsh have devoted two days a week each to the team's projects.
- 9.22 The public law team also received a report by Caroline Hunter and Judy Nixon of Sheffield Hallam University on Australian Tenancy Tribunals which will be published together with background material on the Housing Disputes project.

LAW COMMISSIONS IN THE BRITISH ISLES

- 9.23 We work closely with the Scottish Law Commission (SLC) on various projects. Over the course of the year, we have collaborated on insurance contract law. We have been greatly assisted in our work on cohabitation by discussions with the SLC. We remain in regular contact with the SLC concerning the two Commissions' trust law work.
- 9.24 Much of the Law Commission's work on statute law revision is conducted jointly with the Scottish Law Commission and many of the repeal candidates contained in Statute Law Revision Reports extend to Scotland. Indeed because Statute Law (Repeals) Acts extend throughout the United Kingdom and the Isle of Man, the Law Commission liaises regularly on its repeal 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. Their help and support in considering and responding to the repeal proposals is much appreciated.

- 9.25 We were pleased to host the first meeting of the Chairs and Chief Executives of the four Law Commissions in the British Isles on 20 February 2006. Attendees included the Law Commission's Chairman, Sir Roger Toulson and Chief Executive, Steve Humphreys; the Scottish Law Commission's Chairman Lord Eassie and Chief Executive, Michael Lugton; the Law Reform Commission of Ireland's President, Mrs Justice Catherine McGuinness and Commissioner Patricia Rickard-Clarke; and the Law Reform Advisory Committee for Northern Ireland's Chairman, Mr Justice Declan Morgan and Secretary, Clare Irvine.

INTERNATIONAL RELATIONS

- 9.26 We have continued to receive international guests at the Law Commission, and to visit colleagues around the world. Among the guests we have received or met are:

- William Gibson, Legal Services in the European Commission.
- Alan Holloway, Secretary of the Sierra Leone Law Reform Commission.
- Shandy Liu Wing-man, who was on secondment to Parliamentary Counsel's office from the Government of Hong Kong.
- The Honourable Mr Justice Bahati, The Honourable Mr Justice Mwesiumo, and The Honourable William Mdundo, Chairman and Commissioners from the Law Reform Commission of Tanzania.
- Alipate Qetaki, Chairman of the Law Reform Commission of Fiji.
- A group of students from Penn State University-Harrisburg, USA.
- Five Study Fellows taking part in the Chevening Fellowship Programme in Bradford and Birmingham University: Mandefrot Fenta, Director of the Ethiopian National Justice System Reform Programme; Sicelo Dlamini, Head of the Ministry of Justice and Constitutional Affairs in Swaziland; Altangerel Taivankhuu from the Ministry of Justice and Home Affairs in Mongolia; and Federico Talavera from the Department of the Secretary of the Interior in Mexico.
- Catherine Munyao from the Law Reform Commission of Kenya.
- Warren Young, Acting President of the New Zealand Law Commission and the Right Honourable Sir Geoffrey Palmer, the new President.
- Professor Eva Ryrstedt, University of Lund, Sweden.
- Professor Paul Robinson, Northwestern University, USA.
- Jenny Rudolf of the Tasmania Law Reform Institute.
- Professor Karen H Rothenberg, Professor of Law, University of Maryland.
- David Lyons, Chairman of the Jersey Law Commission.
- Ahmad Fairuz B Zainol Abidin, Deputy Public Prosecutor, Attorney Generals' Chambers, Malaysia.

- We were visited by the Commonwealth Secretariat led by Mr Roger Rose, the Programme Director. The group consisted of Mrs Charmaine Rosan, Crown Counsel in the British Virgin Islands Government; Mrs Nor Bee Ariffin, Deputy Parliamentary Draftsman, Attorney General's Chambers in Malaysia; Mr Terence Arnold, Solicitor General of New Zealand, Crown Law Office in New Zealand; Mr Emmanuel Giyomatala, Assistant Legislative Counsel, Office of the Legislative Counsel in Papua New Guinea; and Mr Danie Maree, Legal Support Specialist, Department of Public Service and Administration in South Africa.

PART 10

STAFF AND RESOURCES

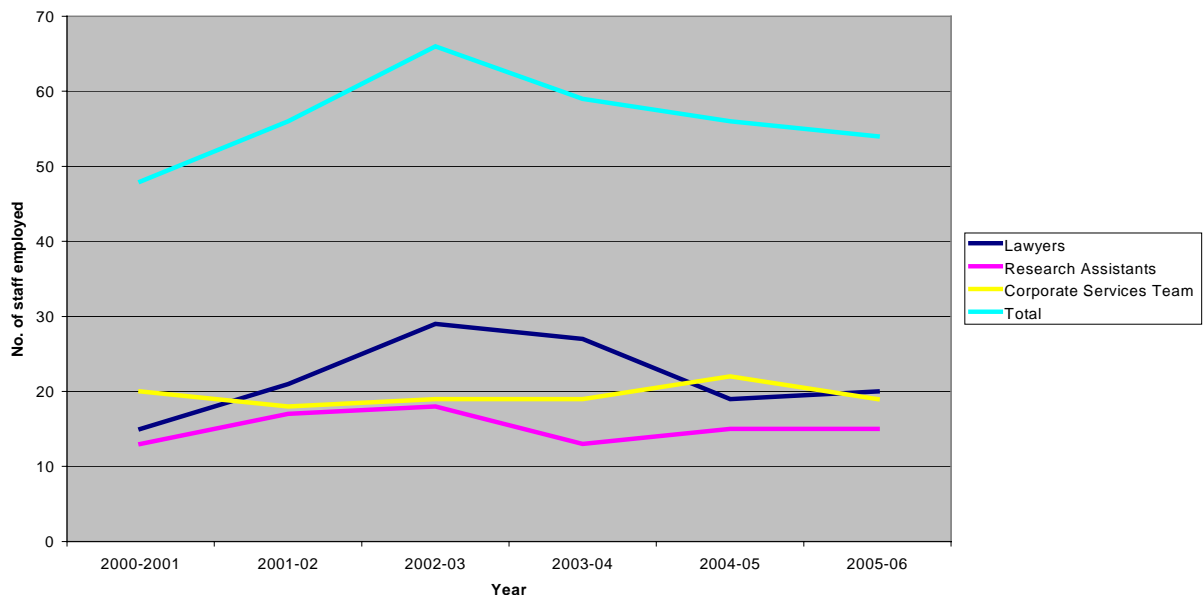
RECRUITMENT AND WORKING PATTERNS

- 10.1 The Commission prides itself on recruiting and retaining the highest calibre of staff to work on its varied and challenging projects. The low level of staff turnover is one indication that staff enjoy their work and the atmosphere at the Commission. When posts are open to non-civil servants, for example the annual Research Assistant recruitment, vacancies are advertised on the Commission's website with brochures, recruitment criteria, guidance and application forms available for downloading and returning on-line.
- 10.2 There are a wide variety of work/life balance arrangements in place, such as home-working and working compressed hours. In addition, permanent appointments, loans, secondments and short-term appointments are also welcomed.

STAFF

- 10.3 The Commissioners very much appreciate the dedication and expertise of all the staff at the Law Commission. During the period of this Report several members of staff moved on for the sake of career development in the usual way. The Commissioners are grateful for their contribution to the work of the Commission. See Diag 10.1 for further information on changing staffing levels.

Diag. 10.1: Staffing levels at the Law Commission



Legal staff

- 10.4 The Commission's lawyers are barristers or solicitors from a wide range of professional backgrounds, including academia, private practice and public service. They are recruited usually through public advertisements.

- 10.5 This year the Commission welcomed Tola Amodu, Lydia Clapinska, Janet Cowdray, Geoff Davies, Alex Marsh, Joanna Miles, Cheryl Morris and Peter Tyldesley and said goodbye to Elizabeth Finlason and Helen Carr. The names of all current legal staff are set out at the beginning of Parts 4 to 8 above.
- 10.6 Parliamentary Draftsmen who prepare the draft Bills attached to the 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. The Commission is very grateful to them for all their expertise and hard work.

Research assistants

- 10.7 Each year a dozen or so well qualified graduates are recruited to assist with research, drafting and creative thinking. They generally spend a year or two at the Commission before moving on to further their legal training and career. The selection process is extremely thorough and the Commission aims to attract a diverse range of candidates at university law fairs and through contact with careers advisers, as well as through advertisements in various newspapers and journals. For many Research Assistants, working at the Commission has been a rung on the ladder to an extremely successful career. The Commission recognises the contribution they make, not least through their enthusiastic commitment to the work of law reform and their lively participation in debate.

Corporate Services Team

- 10.8 The Commission has continued to benefit from the experience, expertise and commitment of its small Corporate Services Team (CST) of administrative staff. The CST is responsible for accommodation, communications, health and safety, human resources, information technology, programme management, publishing, records management, resource accounting, secretarial assistance and security. These support services help the Commission to function effectively and smoothly.
- 10.9 Phil Golding, Head of Corporate Services, moved to a post in DCA in September 2005 and was replaced by Ann Achow. Three staff retired; Christina Cawe in the autumn, Reta Mabbs in March and Audrey Menditta in April. Jessica Litten, the Communications Manager, took a career break and was succeeded by Correna Callender in April 2006. Kumarpal Soni and Yasmin Rahman joined the Facilities and Records Management Team in April 2006.
- 10.10 The CST values the help available to them from colleagues in the DCA, in particular from the Civil Law and Justice Division and the Human Resources Directorate. The CST is also grateful to the Facilities and Departmental Security Division and DCA's Health and Safety Branch.

Library staff

- 10.11 The Library service continues to provide a vital information service in support of the legal work of the Commission. The Law Commission makes use, reciprocally, of a number of other libraries and particular thanks are due to the libraries of the Supreme Court, the Department for Constitutional Affairs, and the Institute of Advanced Legal Studies. In addition, a large collection of printed sources is available for research. Library staff also provide training and advice in all areas of legal information research. In co-operation with DCA, the Library also provides a one-year library trainee programme for graduates intending to pursue a professional library and information studies course.
- 10.12 The 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. The internet is also being used to make available old Law Commission Reports and Consultation Papers via the British and Irish Legal Information Institute (www.bailii.org/). This is an ongoing process and we hope to make the remaining papers available during the course of the next year. In the meantime, all papers are available electronically from the Communications team.
- 10.13 The Law Commission library staff are employed by the Library Information Service (LIS), which provides the judiciary and staff in the DCA, HMCS, and associated offices with the information resources and publications needed to carry out their work.

(Signed) SIR ROGER TOULSON, *Chairman*
HUGH BEALE
STUART BRIDGE
JEREMY HORDER
KENNETH PARKER

STEVE HUMPHREYS, *Chief Executive*

15 May 2006

APPENDIX A

THE LAW COMMISSION'S IMPLEMENTED REPORTS SINCE 1992

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, showing implementation, excluding reports on consolidation. The date shows the year in which the report was published.

Law Com No	Title	Implementing Legislation
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)
208	Landlord and Tenant: Business Tenancies: A Periodic Review of the Landlord and Tenant Act 1954 Part II (HC 224)	Regulatory Reform (Business Tenancies) (England and Wales) Order 2003
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)
227	Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments (Cm 2731)	Part implemented by House of Lords in <i>Kleinwort Benson v Lincoln City Council</i> [1999] 2AC 349.
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)
231	Mental Incapacity (HC 189)	Mental Capacity Act 2005 (c 9)
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 HM 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)
		1997	
245	Evidence in Criminal Proceedings: Hearsay and Related Topics (Cm 3670)		Criminal Justice Act 2003 (c 44)
		1998	
252	Statute Law Revision: Sixteenth Report (Joint Report - Scot Law Com No 166) (Cm 3939)		Statute Law (Repeals) Act 1998 (c 43)
253*	The Execution of Deeds and Documents by or on behalf of Bodies Corporate (Cm 4026)		Regulatory Reform (Execution of Deeds and Documents) Order 2005
		1999	
260	Trustees' Powers and Duties (Joint Report - Scot Law Com No 166) (HC 538/SE 2)		Trustee Act 2000 (c 29)
		2000	
264	Powers of the Criminal Courts (Sentencing) Bill (Joint Report – Scot Law Com No 175) (Cm 4626)		Powers of Criminal Courts (Sentencing) Act 2000 (c 6)
		2001	
267	Double Jeopardy and Prosecution Appeals (Cm 5048)		Criminal Justice Act 2003 (c 44)
269	Bail and the Human Rights Act 1998 (HC 7)		Criminal Justice Act 2003 (c 44)
271	Land Registration for the Twenty-First Century (Joint Report with HM Land Registry) (HC 114)		Land Registration Act 2002 (c 9)
273	Evidence of Bad Character in Criminal Proceedings (Cm 5257)		Criminal Justice Act 2003 (c 44)
		2002	
277*	The Effective Prosecution of Multiple Offending (Cm 5609)		Domestic Violence, Crime and Victims Act 2004 (c 28)
		2003	
279*	Children: Their Non-Accidental Death or Serious Injury (Criminal Trials) - A Consultative Report (HC 650)		Domestic Violence, Crime and Victims Act 2004 (c 28)
282*	Children: Their Non-Accidental Death or Serious Injury (Criminal Trials) (HC 1054)		Domestic Violence, Crime and Victims Act 2004 (c 28)
285*	Statute Law Revision: Seventeenth Report: Draft Statute Law (Repeals) Bill (Joint Report – Scot Law Com No 193) (Cm 6070)		Statute Law (Repeals) Act 2004 (c 14)

APPENDIX B

LAW COMMISSION REPORTS AWAITING IMPLEMENTATION

B.1 Of all the Law Commission's 177 law reform reports, the 26 listed below remain outstanding. 14 of these marked * have been accepted by the Government in full or in part, subject to Parliamentary time being made available by the relevant Government department. We await a decision from the Government on 12 further reports.

<i>Year</i>	<i>Law Com No</i>	<i>Title</i>
1991	194	* Distress for Rent
1993	218	* Offences against the Person and General Principles
1994	222	* Binding Over
	226	* Judicial Review and Statutory Appeals
1995	229	Intoxication and Criminal Liability
1996	237	* Involuntary Manslaughter
	238	Landlord and Tenant: Responsibility for State and Condition of Property
1997	246	* Shareholder Remedies
	247	* Aggravated, Exemplary and Restitutionary Accumulations
1998	248	* Corruption Offences
	249	Liability for Psychiatric Illness
	251	* The Rules Against Perpetuities and Excessive Accumulations
	255	* Consents to Prosecution
1999	257	Damages for Personal Injury: Non-Pecuniary Loss
	261	* Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties
	262	Damages for Personal Injury: Medical, Nursing and other Expenses; Collateral Benefits
	263	Claims for Wrongful Death
2001	270	* Limitation of Actions
	272	* Third Parties – Rights Against Insurers
2002	276	* Fraud
2003	283	Partnership Law
2004	287	Pre-Judgement Interest on Debts and Damages

<i>Year</i>	<i>Law Com No</i>	<i>Title</i>
2004	289	In the Public Interest: Publication of Local Authority Inquiry Reports
2005	292	Unfair Terms in Contracts
	295	The Forfeiture Rule and the Law of Succession
	296	Company Security Interests

APPENDIX C

STAFF

The names of the Commission's legal staff are set out in Parts 4-8. The Corporate Services Team comprises:

Chief Executive Steve Humphreys	Head of Corporate Services and Budget Manager Ann Achow	
Policy and Personnel Officer/Training Co-ordinator Barbara Wallen	Programme Management and Resources Officer Jacqueline Griffiths	IT Manager Chris Porter
Communications Manager Jessica Litten ¹	Editor and Web Manager Dan Leighton	
Facilities Manager Anthea Peries	Facilities and Records Officer Terry Cronin	Facilities and Records Assistant Nicole Diaby
Office Keeper Reta Mabbs ²	Messenger Audrey Menditta ³	Front Desk Security Edward Bailey
Secretarial Support Carmen McFarlane Anne Piper	Alison Meager Jackie Samuel	
Librarian Keith Tree	Assistant Librarian Michael Hallissey	Library Trainee Lorraine Cowburn
Chairman's Clerk John Peck		

Contact Numbers

- General enquiries: 020 7453 1200
- General fax number: 020 7453 1297
- Website address: www.lawcom.gov.uk

Email addresses:

- General enquiries: chief.executive@lawcommission.gsi.gov.uk
- Library: library@lawcommission.gsi.gov.uk
- Communications Team: communications@lawcommission.gsi.gov.uk

¹ Correna Callender from 19 April 2006.

² Retired 31 March 2006. Yasmin Rahman joined us on 2 May 2006.

³ Retired 5 May 2006. Kumarpal Soni joined us on 24 April 2006.

APPENDIX D

THE COST OF THE COMMISSION

- D.1 The Commission's resources are mainly made available through the Department for Constitutional Affairs (DCA) in accordance with section 5 of the Law Commissions Act 1965.
- D.2 Contributions from Whitehall Departments are on occasion received by the Commission to cover resources it requires in order to undertake a particular Law Reform Project. These figures are not included here.

	2003/2004		2004/2005		2005/2006	
	(April/March)		(April/March)		(April/March)	
	£000	£000	£000	£000	£000	£000
Commissioner salaries (including ERNIC)	346.8		386.8		*613.0	
Staff salaries**	2564.4		2672.3		2664.5	
		2911.2		3058.3		3277.5
Printing and publishing; supply of information technology; office equipment and books	69.8		73.4		93.0	
Utilities (inc. telecommunications) and postage	166.4		128.9		137.8	
Rent for accommodation	470.4		470.4		560.0	
Travel and subsistence	25.8		14.2		27.4	
Other administrative costs (inc. recruitment; fees and services)	89.9		82.8		79.9	
Entertainment	5.5		6.0		4.8	
		827.8		775.7		902.9
TOTAL		3739.0		3834.0		4180.4

* For the first time this figure includes pension payments to former Commissioners.

** Includes ERNIC, research, consultants, staff (inc. provision of security) and secondees.