



Ministry of
JUSTICE

Report on the implementation of Law Commission proposals

January 2013

Report on the implementation of Law Commission proposals

Presented to Parliament pursuant to section 3A of the
Law Commissions Act 1965 as amended by section 1 of
the Law Commission Act 2009

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Report on the implementation of Law Commission proposals

Introduction

I am pleased to present this report which relates to the implementation of Law Commission proposals. This is the third annual report to be presented following the passing of the Law Commission Act 2009.

The Law Commission Act 2009, which came into force on 12 January 2010, amends the Law Commissions Act 1965 to place a duty on the Lord Chancellor to report to Parliament each year on the extent to which Law Commission proposals have been implemented by the Government. This report covers the period 12 January 2012 to 11 January 2013.

It is still a challenging time for the Government: we continuously have to take very difficult decisions to reduce the budget deficit and stimulate economic growth at a time of reduced departmental resources. The Government continues to hold the excellent work of the Law Commission in very high regard and remains committed to law reform. However, the Government's current focus is on dealing with the severe economic situation, which has unfortunately meant that very worthwhile but less immediately pressing law reform projects have, in some cases, been delayed.

This report demonstrates that progress is being made to implement the recommendations of the Law Commission. In particular, the new House of Lords procedure for Law Commission Bills is proving to be effective in implementing uncontroversial changes. The Consumer Insurance (Disclosure and Representations) Act received Royal Assent in March 2012 and the Trusts (Capital and Income) Bill completed its passage through Parliament on 7 January 2013, both of which followed the new procedure. I expect the procedure to be used to implement more of the Commission's recommendations in the future.

The Right Honourable Chris Grayling MP
Lord Chancellor

January 2013

Scope of the report

1. Section 3A of the Law Commissions Act 1965, as inserted by section 1 of the Law Commission Act 2009, places a duty on the Lord Chancellor to report to Parliament each year on the extent to which Law Commission proposals have been implemented by the Government.
2. This is the third annual report to be published by the Government under the Act. The report covers the period 12 January 2012 to 11 January 2013.
3. As stipulated by the Act, the report covers Law Commission proposals that have been implemented by the Government during the year, proposals that have not been implemented, including plans for implementation, and decisions taken not to implement proposals.
4. The report covers only the reports of the Law Commission of England and Wales, although it notes when these reports were done jointly with the Scottish Law Commission.
5. The report addresses Law Commission proposals that are for HM Government to implement. Some proposals are for the Welsh Government to implement in respect of Wales; these are noted in the report.

Proposals that have been implemented

6. Considerable progress has been made by the Government in taking forward many of the Law Commission's recommendations during the reporting period, and this is described more fully in the next section of the report. However, it has unfortunately not been possible to complete the implementation of any of the Commission's reports since the previous report to Parliament.
7. We are, however, confident that the implementation of some reports will be completed in the near future.

Proposals that have not yet been implemented

Third Parties – Rights against Insurers¹

8. The Third Parties (Rights against Insurers) Act 2010 implements with some modifications the proposals contained within the joint Law Commission and Scottish Law Commission report on this issue. When implemented, the Act will replace legislation from 1930, streamlining and improving the procedures under which a person with a claim against an insolvent but insured wrongdoer can claim against the insurer. Most importantly, the new Act will allow the claimant to proceed against the insurer directly without first establishing the liability of the insolvent person.
9. Implementation of the Act has been delayed by work on other priorities, but we have continued to work towards commencement. As part of this work the Government has been working closely with the Law Commission and has provisionally concluded that some rules of court will be necessary; that the Act requires amendment to cover all forms of administration; and that the Act should be extended to the newly introduced Debt Relief Orders in Northern Ireland and that a number of relatively recent special insolvency regimes should be included. Most of these changes will require primary legislation. In view of this it is unlikely that the Act will be commenced until 2014.

Partnership Law²

10. This report was a joint Law Commission and Scottish Law Commission report on the law relating to partnerships, including the law specifically relating to limited partnerships. The report recommended weaving together the law on general and limited partnerships. Under the current law, a partnership in England and Wales is not a legal entity separate from its members. There is therefore no separate legal person that can enter contracts and hold property; and a partnership is automatically dissolved on any change of partner (although the remaining partners can agree to continue in partnership).
11. Reforms were recommended to the law specifically relating to limited partnerships, which are widely used for venture capital funds. A general partner manages the business, while the limited partner is not involved in management and has limited liability. The recommendations sought to clarify and modernise the law on limited partnerships, which has been little changed since its introduction in 1907.

¹ Third-Parties – Rights against Insurers (LC 272) (31.07.2001).

² Partnership Law (LC 283) (18.11.2003).

12. In 2006, the then-Government announced after consultation that it would not implement the Law Commission's recommendations in relation to general partnerships, but that it did intend (broadly speaking) to implement those specifically relating to limited partnerships. The Legislative Reform (Limited Partnerships) Order 2009, which implements two of those recommendations, came into force on 1 October 2009. The Government plans to address the remaining recommendations as and when resources and priorities allow.

Unfair Terms in Contracts³

13. The present law on unfair contract terms is covered by two pieces of UK legislation which are confusing and contain inconsistent and overlapping provisions.
14. This report, which was a joint Law Commission and Scottish Law Commission report, was accepted in principle by the previous Government in 2006. Implementation of the Commissions' recommendations was put on hold pending negotiation of the draft EU Consumer Rights Directive but the scope of the Directive reduced in 2011 and unfair contract terms were no longer included when the Directive was adopted in late 2011. The Government asked the Law Commission to review this report so that the recommendations could be taken forward as part of the consumer law reform programme, which will create a Consumer Bill of Rights.
15. The Law Commissions published an issues paper for consultation, which closed on 25 October 2012. Through the issues paper, the Law Commissions made some new proposals about how the price and main subject matter exemptions under the Unfair Terms in Consumer Contracts Regulations should be interpreted, and reviewed the recommendations in the original 2005 report. The Commissions' final report will be sent to Government by the end of March 2013 and the Government's response will be published in May.

Company Security Interests⁴

16. Companies often grant charges and other security interests over their assets to secure loans. This project looked at how such security interests should be registered. It also considered how to resolve conflicts between different secured lenders and between lenders and borrowers.
17. A power to amend the scheme for registration of charges, which could be used to implement some of the Law Commission's recommendations contained within this report, was included in the Companies Act 2006. During 2011–2012, the Government continued detailed discussions with stakeholders over their proposed revisions to the current scheme as

³ Unfair Terms in Contracts (LC 292) (24.02.2005).

⁴ Company Security Interests (LC 296) (07.07.2005).

announced in December 2010. These revisions will provide a single UK-wide scheme that applies to all companies incorporated under the Companies Act 2006 or its predecessors. Electronic filing will be possible. The revised scheme for registration of charges is likely to come into force in April 2013.

Termination of Tenancies⁵

18. This report examined the means whereby a landlord can take back a property let to a tenant because the tenant has not complied with his or her obligations under the lease. This is an issue of great 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.
19. The Government has discussed the proposals with a number of stakeholders and is continuing discussions with the Commission about this report. No final decision has been taken.

Renting Homes: The Final Report⁶

20. The Law Commission's Renting Homes report and draft bill were published in 2006. While a decision was taken not to implement the reforms in England, the Welsh Government has indicated in its Homes for Wales White Paper published in May 2012, that it wishes to model closely its own proposals for reform on the Renting Homes report. In view of developments since 2006, the Welsh Government has asked the Commission to review and update the Renting Homes report. This update report will be published at the end of March 2013.
21. Implementation of the Renting Homes proposals will entail repealing much of the existing housing legislation applicable to Wales and replacing it with a much simpler legal framework where only two forms of occupation contract exist: secure contracts, modelled on the local authority secure tenancy and standard contracts, modelled on the current assured shorthold tenancy. Model contracts, which are compliant with the requirements of the new legislation, will be provided by the Welsh Government. Existing tenancy agreements would be converted into one of these new occupation contracts. A White Paper outlining the Welsh Government's proposals is currently being developed and due to be published late 2013.

⁵ Termination of Tenancies (LC 303) (31.10.2006).

⁶ Renting Homes (LC 297) (05.05.2006).

Capital and Income in Trusts: Classification and Apportionment⁷

22. This report examined the complicated rules governing the treatment of trust receipts and outgoings as capital or income. It considered the extent to which trustees who have to distinguish between income and capital in managing their trusts should be able to invest on a “total return” basis i.e. balancing overall risk and return rather than having to produce receipts in a particular form.
23. The Government has accepted the proposals contained in this report and, following the response to the Ministry of Justice consultation,⁸ has agreed certain modifications to the proposals with the Commission. The Trusts (Capital and Income) Bill was re-introduced into the House of Lords at the start of the 2012–2013 session of Parliament. It completed its passage through Parliament on 7 January 2013 and Royal Assent is expected before the end of the Session.

Consumer Remedies for Faulty Goods⁹

24. This report, which was a joint Law Commission and Scottish Law Commission report, recommended ways to simplify the law on the remedies available to consumers who buy goods which “do not conform to contract”. This area of law is particularly complex. Currently, UK consumers have a right to a full refund, provided they act within “a reasonable time”. However, how long the right to reject lasts is unclear. The report proposes to clarify this by setting a normal 30 day period within which consumers may obtain a full refund. The report also recommends a number of other amendments to clarify when a consumer may pursue a refund outside this 30 day period, what proportion of the original cost should be reimbursed and with whom the burden of proof should lie.
25. The Government is currently working to develop a new Consumer Bill of Rights and is considering which of the Law Commissions’ proposals will be included in this Bill. The Department for Business Innovation and Skills recently carried out a public consultation on these proposals which closed on 5 October 2012 and intends to put out a Government response by spring 2013.

⁷ Capital and Income in Trusts: Classification and Apportionment (LC 315) (06.05.2009).

⁸ Trusts (Capital and Income) Bill response to Consultation (CP(R) 07/10) published 17 January 2011.

⁹ Consumer Remedies for Faulty Goods (LC 317) (04.11.2009).

Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation¹⁰

26. This joint Law Commission and Scottish Law Commission report addresses the issue of what a consumer must tell an insurer before taking out insurance. Under the current law, consumers are required to volunteer information about anything which might be material to a “prudent insurer”. A failure to do so allows the insurer to treat the insurance contract as if it never existed and refuse all claims under the policy, which may be regarded as overly harsh.
27. The Consumer Insurance (Disclosure and Representations) Bill, which takes forward the recommendations contained in this report, received Royal Assent in March 2012 and the provisions in the Bill are due to be commenced from 6 April 2013.

Administrative Redress: Public Bodies and the Citizen¹¹

28. This project was intended to review the law on redress for substandard administrative action by public bodies, with the aim of balancing fairness for citizens and appropriate protection for public funds and the bodies that manage them. However, following an initial consultation, the Commission produced a report stating that, in the light of responses to the consultation paper, it could not continue to develop proposals on the availability of compensation on judicial review and reform of the tort liability of public authorities. The project would, however, continue in relation to reform of the public sector ombudsmen, and a report has now been published finalising that project (see paragraphs 39 to 41 below). The report also made recommendations in relation to the reporting by public authorities of the costs of compensation.
29. The Government is considering the feasibility of the Law Commission’s proposals on reporting compensation and associated litigation costs as part of future initiatives on improving the publication of public bodies’ data in open and standardised formats. The Government has begun preliminary work on a pilot study on reporting compensation and associated litigation costs. This will include an assessment of what is reported, and how and where departments might present the data (e.g. as part of annual reports and accounts, or another annual publication).

¹⁰ Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (LC 319) (15.12.2009).

¹¹ Administrative Redress: Public Bodies and the Citizen (LC322) (26.05.2010).

The High Court's Jurisdiction in relation to Criminal Proceedings¹²

30. The report, which was undertaken pursuant to a reference by the Government, considered the various ways in which decisions made in relation to cases in the Crown Court may be challenged in the High Court. The current system is confusing and has produced anomalies.
31. The Government is still considering the recommendations of the report, which raises many difficult and, in some cases, sensitive issues of principle. Work has had to give way, for substantial periods, to other pressing business for the Ministry of Justice. The Government will respond to the Law Commission as soon as practicable.

Expert Evidence in Criminal Proceedings¹³

32. The central recommendation of this report is that there should be a new statutory reliability test of expert evidence in criminal proceedings. The statutory test would provide that expert opinion evidence is admissible only if it is sufficiently reliable to be admitted.
33. The Government has liaised with the Law Commission and with interested stakeholders, and is now considering its response.

Adult Social Care¹⁴

34. The report recommends a unified legal framework for the provision of adult social care services to those in need of care and support such as disabled people, older people and carers. The reforms would introduce a single statute for adult social care in England and in Wales. Much legislation would be replaced including the National Assistance Act 1948, the Chronically Sick and Disabled Persons Act 1970 and NHS and Community Care Act 1990. The new statute would set out a single duty to assess, an eligibility framework for service provision and requirements to safeguard adults from abuse and neglect.
35. The Government warmly welcomed the publication of the Law Commission's report, *Adult Social Care*, on 11 May 2011. The Government's formal response to the report was published in July 2012, alongside the White Paper *Caring for Our Future* and a draft Bill. The Bill would implement the vast majority of the Commission's proposals.
36. The consultation on the draft Bill finished on 31 October 2012 and pre-legislative scrutiny is underway. The Government is committed to legislating at the earliest opportunity to enshrine these reforms into the law.

¹² The High Court's Jurisdiction in relation to Criminal Proceedings (LC324) (27.07.2010).

¹³ Expert Evidence in Criminal Proceedings (LC325) (22.03.2011).

¹⁴ Adult Social Care (LC326) (11.05.2011).

37. Following extensive consultation, the Welsh Government has announced its intention to introduce in early 2013 a Social Services and Well-Being (Wales) Bill for scrutiny by the National Assembly for Wales. The bill largely implements the Commission's recommendations in relation to adults.

Making Land Work: Easements, Covenants and Profits à Prendre¹⁵

38. The report makes recommendations to modernise and simplify the law relating to three interests in land – easements, covenants and profits à prendre. These interests are essential for the effective and efficient use of land. The recommendations remove anomalies, inconsistencies and complications in the current law, saving time and money by making it more accessible and easier to use for those who rely on these interests most: homeowners, businesses, mortgage lenders and those involved in the conveyancing process. The recommendations also give new legal tools to landowners to enable them to manage better their relationships with neighbours, and to realise better the potential of their properties.

39. The Government's consideration of this Report has been delayed by work on other priorities. Nonetheless, we have met with a number of stakeholders to discuss the recommendations in the report and are preparing our response to the Law Commission.

Public Services Ombudsmen¹⁶

40. The report arose from the Law Commission's earlier project on administrative redress of substandard administrative action by public bodies (see para 28 and 29 above), and makes a number of recommendations in relation to the operation of the public services ombudsmen.

41. Recommendations relating to the Public Services Ombudsman for Wales, who investigates complaints against devolved services, fall to the Welsh Government for consideration.

42. Ombudsmen operate across a diverse field and the Government is grateful to the Commission for its work in developing these proposals. The Government will respond to the report recommendations shortly.

¹⁵ Making Land Work: Easements, Covenants and Profits à Prendre (LC327) (08.06.2011).

¹⁶ Public Services Ombudsmen (LC329) (14.07.2011).

The Statute Law (Repeals)¹⁷

43. The Statute Law (Repeals) report identified for repeal over 800 whole Acts and parts of 50 other Acts, covering a wide range of statute law that is obsolete or no longer of any practical use. The 19th Statute Law Repeals Bill will implement the recommendations of this joint report by the Law Commission and Scottish Law Commission published on 4 April 2012.
44. The last Statute Law (Repeals) Act was enacted in 2008. The current Bill was introduced by the Government on 10 October 2012 and is the largest Statute Law Repeals Bill produced by both Law Commissions on a rolling programme. The Joint Committee Stage of the Bill was completed on 21 November without any amendments.
45. A Legislative Consent Motion was passed by the Scottish Parliament in respect of the Bill on 27 November 2012. The Bill completed its passage through Parliament on 7 January 2013 and Royal Assent is expected before the end of the Parliamentary session.

Intestacy and Family Provision Claims on Death¹⁸

46. This report examined two important aspects of the law of inheritance: the “intestacy rules” that determine the distribution of property in the tens of thousands of cases each year where someone dies without a will; and the legislation which allows certain bereaved family members and dependants to apply to the court for “family provision”. This report made a number of recommendations to update the entitlements of spouses and other family members. Complex and costly “life interests” would no longer be imposed; a simpler form of sharing would be substituted where there are children. Further recommendations would remove unnecessary obstacles to valid claims for family provision and modify the powers of trustees. The report also addressed the situation where one member of an unmarried couple dies without a will. It concluded that in some circumstances a surviving partner should inherit.
47. The Government is considering the Commission’s recommendations carefully and aims to provide a full response by spring 2013.

¹⁷ The Statute Law (Repeals) SLR01/11.

¹⁸ Intestacy and Family Provision Claims on Death (LC331) (14.12.2011).

Contempt of Court

48. The Law Commission launched its review of the law governing contempt of court during 2012 with the aim of reporting in spring 2014. A well-publicised case in spring 2012 highlighted the historic common law offence of scandalising the court, one of the forms of contempt being considered by the review. An amendment to the Crime and Courts Bill to abolish the offence was tabled in summer and withdrawn on the basis that the Government would consider and consult on the proposal. The Law Commission brought forward that element of its review, launching a consultation and publishing a summary of the results recommending abolition in autumn. A full report for the Government on scandalising the court was published on 19 December 2012.

49. An amendment to abolish the offence of scandalising the court was tabled in the House of Lords in December 2012 with Government support and the Bill has now progressed to Report Stage in the House of Commons. The Law Commission's thorough analysis of the law, consultation showing wide support for the abolition and report recommendation was a major factor in the Government's decision to support abolition of the offence of scandalising the court. This provision in the Bill is expected to commence in two months after Royal Assent.

Decisions taken not to implement

50. The Government has taken no decisions not to implement a Law Commission report during this reporting period.



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