



Ministry
of Justice

Report on the implementation of Law Commission recommendations

July 2018

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Report on the implementation of Law Commission recommendations

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

July 2018



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Any enquiries regarding this publication should be sent to us at Karen.Finlay@Justice.gov.uk

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Introduction

I am pleased to present this report on the implementation of Law Commission recommendations.

It is the seventh annual report to be presented following the passing of the Law Commission Act 2009. This Act places the Lord Chancellor under a duty to report to Parliament on the extent to which the Law Commission's recommendations have been implemented by the Government. A report was not published last year, so this document covers the implementation status of Law Commission reports during the period of 12 January 2017 to the publication date.

During this time a large and varied number of individual Law Commission reform projects have either been, or are in the process of being implemented, whether commissioned as part of their official programmes of reform, or undertaken as individual referrals from other Departments. This has included four new statutes based on Law Commission recommendations – Part 5 of the Enterprise Act 2016, Part 6 of the Policing and Crime Act 2017, the Intellectual Property (Unjustified Threats) Act 2017, and Part 2 of the Digital Economy Act 2017.

A particular achievement during the period covered by this report, was the successful launch of the Law Commission's 13th programme of law reform in December 2017. Record numbers – over 1300 responses covering 220 individual suggestions – were received to the 13th programme consultation, which serves to demonstrate the high regard in which the Commission's work is still held. This will set the agenda for the majority of new work they will undertake over the next three to four years, together with a number of recent additional commissions for individual projects from across Government.

The Right Honourable David Gauke MP

Lord Chancellor

Scope of the report

1. Section 3A of the Law Commissions Act 1965, as amended by section 1 of the Law Commission Act 2009, places a duty on the Lord Chancellor to report to Parliament on the extent to which Law Commission recommendations have been implemented by the Government.
2. This is the seventh annual report to be published by the Government under the Law Commission Act 2009. The report covers the period 12 January 2017 to 11 January 2018 but has also been updated to reflect implementation progress between January 2018 and the publication date.
3. As provided for under the Law Commission Act 2009, the report covers Law Commission recommendations that have been implemented by the Government during this period; recommendations that have not yet been implemented, including plans for implementation, and decisions taken not to implement recommendations.
4. The scope of the report is in relation to the Law Commission in England and Wales. However, the report notes where projects have been conducted jointly with the Scottish Law Commission and Northern Ireland Law Commission. The report deals primarily with Law Commission recommendations that are for HM Government to implement. A separate report is produced for those recommendations implemented by the Welsh Government, so those are not detailed in this report.

Recommendations that have been implemented

Insurance Contract Law: Business Disclosure, Warranties and Insurers' Remedies for Fraudulent Claims and Late Payment¹

5. The majority of the Law Commission's recommendations in the 2014 report on insurance contract law were included in the Insurance Act 2015, a special procedure bill which received Royal Assent on 12 March 2015. The key provisions of the 2015 Act came into force on 12 August 2016.
6. The 2014 report also included recommendations on damages for late payment of insurance claims and these were implemented through the Enterprise Act 2016, which received Royal Assent on 5 May 2016. Sections 28–30 make amendments to the Insurance Act 2015, providing that insurers must pay valid claims within a reasonable time. These changes came into effect on 4 May 2017.

Electronic Communications Code²

7. The Electronic Communications Code is the statutory regime that governs relationships between landowners and communications operators when placing communications infrastructure on public and private land. This project focused on private property rights between landowners and electronic communications operators. It did not consider planning law.
8. In February 2013, the Law Commission provided a series of recommendations which formed the basis of a revised Electronic Communications Code. The proposed changes to the Code would set out the legal position in clear terms, provide the clarity that the current Code lacks, and provide an efficient forum for dispute resolution.
9. The Department for Digital Culture Media and Sport announced in December 2014 that they would reform the Code based on the Law Commission's recommendations, and prepared legislation which was tabled as an amendment to the Infrastructure Bill 2014–15 on the 8th January 2015. However, DCMS received representations raising technical issues on the draft Electronic Communications Code. In order to consider them further, the Government decided to withdraw the revised Code and conduct a consultation instead.
10. The Government published details of its revised proposals for a new Electronic Communications Code on 17 May 2016. The proposed reforms remained broadly aligned with the Law Commission's recommendations, with some key exceptions. In particular the Government decided to adopt a different basis for the valuation of Code rights and to confer automatic rights to upgrade and share apparatus. The decision to introduce more ambitious reforms in these areas was reached following further consultation with stakeholders and the consideration of independent economic analysis, commissioned by Government. The Government's proposals for reform of the Electronic Communications Code were included in the Digital Economy Bill which

¹ Insurance Contract Law: Business Disclosure, Warranties, Insurers' Remedies for Fraudulent Claims and Late Payment (LC353) (17.07.2014)

² Electronic Communications Code (LC 336) (28.02.2013)

received Royal Assent on 27 April 2017. The reformed Code came into force on 28 December 2017.

Charity Law: Social Investment by Charities³

11. The Government is committed to growing the market for social investment; this is the use of repayable capital to enable the growth of organisations that deliver a social impact as well as a financial return to investors. Charities themselves can make use of social investment to further their charitable mission and thereby maximise their impact. In the past, there has been some confusion around this point, so Government asked the Law Commission to consider the relevant law. The Law Commission published its findings and recommendations in September 2014.
12. The Law Commission recommended that a new statutory power should be created conferring on charity trustees the power to make social investments. Several attendant duties were also recommended. Legislation to this effect was passed by Parliament as part of the Charities (Protection and Social Investment) Act 2016. The Law Commission also recommended that the relevant guidance provided by the Charity Commission (CC14) be updated to reflect the change in law, as well as amending its guidance on the mechanisms for releasing permanent endowment. The Charity Commission has updated its guidance to reflect the change in law.
13. The Law Commission recommended that HM Treasury amends legislation concerning approved charitable investments and loans to reflect the recommended statutory power of social investment. It also recommended that HMRC makes similar changes to their guidance pending the changes in legislation noted above.
14. HMRC considered the existing guidance at the time that the Law Commission made their original recommendation, but following discussions with stakeholders decided that the existing guidance provided charities with sufficient information to be able to interpret the rules. Since then they have monitored the situation and have received no representations to suggest that the guidance is inadequate. They will keep this guidance under review but unless it becomes clear that charities do not understand the rules they have no plans to make any changes.
15. The Law Commission also recommended that HM Treasury introduce a procedure by which charities can obtain prior clearance from HMRC as to the tax treatment of a proposed social investment. This recommendation was rejected because it was considered unlikely that it would deliver sufficient cost benefit overall.

Patents Trademarks and Design Rights: Unjustified Threats^{4,5}

16. Patents, trademarks and designs are valuable intellectual property rights and a vital foundation of economic growth. These rights ensure that innovation is rewarded and encouraged. The law provides a means by which they can be effectively enforced; through legal proceedings for infringement. However, making unjustified threats to sue a competitor or their customers for infringement can have unfair and harmful

³ Charity Law: Social Investment by Charities (CP 216) (24.09.14)

⁴ Patents Trademarks and Design Rights: Unjustified Threats (LC 360) (12.10.15)

⁵ Patents Trademarks and Design Rights: Unjustified Threats (LC 346) (15.04.14)

effects on legitimate business activities.⁶ Intellectual property law therefore has long-standing provisions which protect certain businesses from being harmed by unjustified threats.

17. The previous statutory provisions had been criticised for not working as well as they should. Following their work to review and consult, the Law Commission published an initial response report (LC 346). This was followed by a final Report (LC360) with draft Bill text. The government accepted the Law Commission's recommendations for change. Support for the bill by stakeholders was confirmed by the Intellectual Property Office and in January 2016 the government announced the intention to implement the recommended reforms with primary legislation.
18. The Intellectual Property (Unjustified Threats) Bill was introduced into the House of Lords in May 2016 using the Commission's special Parliamentary procedure for uncontroversial reform and received Royal Assent on 27 April 2017. It came into force on 1 October 2017.

Firearms Law: Reforms to Address Pressing Problems⁷

19. In its report published in December 2015, the Law Commission made a number of recommendations to address perceived weaknesses in the law governing the possession and acquisition of firearms and to maximize public safety and improve the clarity of the law. The Home Secretary broadly accepted many of the Law Commission's recommendations and a number of legislative changes were introduced under the Policing and Crime Act 2017 which received Royal Assent on 31 January 2017.
20. The Act also covered the following measures which commenced on 2 May 2017.
 - Section 125 – Firearms act 1968: meaning of “firearms” and “component part” and an exception for airsoft guns;
 - Section 127 – possession of articles for conversion of imitation firearms;
 - Section 128 – controls on defectively deactivated weapons;
 - Section 129 – controls on ammunition which expand on impact;
 - Section 130 – authorised lending and possession of firearms for hunting etc.

⁶ Unjustified threats can also be referred to as groundless threats, the terms are interchangeable.

⁷ Firearms Law: Reforms to Address Pressing Problems (LC363) (16.12.2015)

Recommendations that have not yet been implemented

(i) Recommendations in the process of implementation

Public Services Ombudsman⁸

21. The Law Commission's 2011 report focuses on five ombudsmen; the Parliamentary Commissioner; the Health Service Ombudsman; the Local Government Ombudsman; the Public Services Ombudsman for Wales; and the Housing Ombudsman.
22. The report makes a series of recommendations aimed at improving access to the public services ombudsmen, ensuring that they have the freedom to continue their valuable work and improving their independence and accountability. The report's key recommendation for a wider review has now taken place, which in turn has led to legislative reform to enable the creation of a single Public Service Ombudsman.
23. The Government published the draft Public Service Ombudsman Bill on 5 December 2016. If implemented, the draft Bill would abolish the present Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman and create a new organisation with strengthened governance and accountability. It would improve access to the Ombudsman's services by allowing for all complaints to be made with or without the help of a representative and in a variety of formats to meet the digital age. The draft Bill was published to open it up for pre-legislative scrutiny. The Communities & Local Government Committee conducted a one-off session on 6 March 2017, and the Government welcomes this type of examination. The Government remains committed to the measures set out in the draft Bill, which will be brought forward as and when a legislative opportunity arises.

Fiduciary Duties of Investment Intermediaries⁹

24. The Law Commission published its report on fiduciary duties of investment intermediaries in July 2014. The report explained the nature of fiduciary duties and other duties to act in the best interests of savers, and clarified how far those who invest on behalf of others may take account of factors such as social and environmental impacts and ethical standards. The report concludes that legislation on this issue is not required.
25. The Government published its response to the Law Commission in October 2014, welcoming the findings and the Law Commission's clear guidance that trustees should not focus exclusively on maximising short-term goals. The Commission's report also made a number of specific recommendations to Government departments, and to the Financial Conduct Authority (FCA) and the Pensions Regulator (TPR), aimed at embedding its findings in relevant regulations and guidance, and addressing other issues identified in the course of the review. Some recommendations have been implemented already, but additionally, the BEIS Corporate Governance Reform green paper invited views on whether retail investors

⁸ Public Service Ombudsman (LC 329) (14.07.11)

⁹ Fiduciary Duties of Investment Intermediaries (LC 350) (01.07.2014)

should have greater access to voting and information rights held by investment intermediaries. The green paper consultation closed on 17th February 2017 and the Government's response was published in August 2017. The response set out nine headline proposals for reform across the three specific aspects of corporate governance consulted on: executive pay; strengthening the employee, customer and supplier voice; and corporate governance in large privately held businesses. These are currently being taken forward.

Making Land Work: Easements, Covenants and Profits à Prendre¹⁰

26. The Law Commission's 2011 report on easements, covenants and profits à prendre set out recommendations that would simplify and clarify the rules relating to the acquisition of easements by prescription (or long use of land) and implication, as well as the termination of easements by abandonment.
27. Furthermore, the reforms would give greater flexibility to developers when building estates where there would be multiple owners and users. The reforms also included a proposal to extend the jurisdiction of the Lands Chamber of the Upper Tribunal to allow for the discharge and modification of certain easements and profits.
28. The recommendations are designed to make the law relating to easements, covenants and profits à prendre fit for the needs of the twenty-first century and a modern registration system.
29. The Government announced in the Housing White Paper¹¹ published on 7 February 2017 that "The Government also intends to simplify the current restrictive covenant regime by implementing the Law Commission's recommendations for reform and will publish a draft Bill for consultation as announced in the Queen's Speech." This supplemented the earlier announcement on 18 May 2016 that the Government intended to bring forward proposals in a draft Law of Property Bill to respond to the Commission's recommendations.¹² A draft bill is now being prepared with a view to publication for consideration by interested parties in 2019.

Mental Capacity and the Deprivation of Liberty¹³

30. Deprivation of Liberty Safeguards (DoLS) were introduced in England and Wales as an amendment to the Mental Capacity Act in 2007, and came into force in 2009. DoLS provides legal safeguards for individuals who are deprived of their liberty and do not have the capacity to consent.

¹⁰ Making Land work: Easements, Covenants and Profits a Prendre (LC 327) (08.06.2011)

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590043/Fixing_our_broken_housing_market_-_housing_white_paper.pdf Annex A para 35. See also Department for Communities and Local Government, Tackling unfair practices in the leasehold market, Summary of consultation responses and Government response (December 2017), para 36, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670204/Tackling_Unfair_Practices_-_gov_response.pdf

¹² <https://www.gov.uk/government/publications/queens-speech-2016-background-briefing-notes> page 61.

¹³ Mental Capacity and Deprivation of Liberty (LC372) (13.03.17)

31. The House of Lords found that DoLS were ‘not fit for purpose’ in their post legislative scrutiny of the Mental Capacity Act in March 2014. At the same time, a decision of the UK Supreme Court had the effect of placing increasing burdens on local authorities and health practitioners administering the DoLS resulting in a greater than tenfold increase in the number of applications. As a result, the government asked the Law Commission to review mental capacity and DoLS and make recommendations for their reform.
32. In March 2017, the Law Commission published their final report and draft Bill, recommending that the DoLS be repealed and replaced urgently by a replacement scheme called Liberty Protection Safeguards. The aim of the new scheme was to improve the legal protection offered to those affected, while delivering more proportionate protection that should result in more efficient use of health resources and reduced overall costs.
33. The Government provided an interim response on 30 October 2017 and after engaging with a range of stakeholders, delivered its final response in March 2018, which was broadly supportive of the proposed Liberty Protection Safeguards model. To ensure that Liberty Protection Safeguards fit with the conditions and future direction of the health and social care sector overall, the Government will continue to work through the detail of the recommendations with stakeholders, particularly on implementation and bring forward legislation to implement the model when parliamentary time allows.

(ii) Recommendations awaiting a Government decision on implementation

The Law on Bills of Sale¹⁴

34. Bills of sale are currently governed by two Victorian Statutes, the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882. In September 2014, the Treasury asked the Law Commission to review this legislation and make recommendations for its reform.
35. The Law Commission initially consulted on the reform of the existing legislation in 2015 and its final report and recommendations to reform the Bills of Sale Acts were published in September 2016. The Law Commission concluded that reform was necessary and recommended that the Bills of Sale Acts should be repealed in their entirety and replaced with a new “Goods Mortgages Act”. The purpose of this Act would be to create a new security which can be granted over a person’s goods.
36. In response, the government published a Written Ministerial Statement on 7 February 2017. The government accepted the overarching thrust of the Law Commission’s recommendations but decided that some issues needed further reflection.
37. The government agreed to support the Law Commission in drafting primary legislation. The Law Commission consulted on draft clauses in July 2017, and published a final report with draft Bill on 24 November 2017.¹⁵

¹⁴ Bills of Sale (LC369) (12.09.2016)

¹⁵ From Bills of Sale to Goods Mortgages (LC376) (23.11.2017)

38. On 22 September 2017 the government published a consultation document alongside an updated draft of the Bill published by the Law Commission. The consultation sought views from stakeholders on whether they agreed that reform of the law in this area was required and that the draft Bill was appropriate for the special Parliamentary procedure.
39. Given the concerns raised in the consultation, the small and reducing market and the wider work on high-cost credit, the government will not introduce legislation at this point in time. The Government will continue to work with the FCA as they carry out their high-cost credit review and then further consider government action on alternatives to high-cost credit in the light of the FCA's review.

Rights to Light¹⁶

40. A right to light is an easement that gives a landowner the right to receive light through defined apertures in buildings on his or her land. The owner of land that is burdened by the right cannot substantially interfere with it – for example by erecting a building in a way that blocks the light – without the consent of the benefiting owner. The right may enable landowners to prevent construction that would interfere with their rights or, in some circumstances, to have a building demolished.
41. The Law Commission undertook a project on rights to light because of concerns about a lack of clarity and certainty in the current law, and because of the potential for rights to light disputes to be a major cause of delay and expense during land development.
42. The final report was published in December 2014. The Government has been carefully considering the report. There are no immediate plans to implement the recommendations as a result of other legislative priorities, but the position will be kept under review.

Data Sharing between Public Bodies¹⁷

43. The Law Commission completed their scoping report on data sharing between public bodies in July 2014 and found that there are both unnecessary obstacles to useful and legitimate data sharing and a lack of a clear and principled approach to proper safeguards for privacy. The report concluded that some of the obstacles stem from the law and some from other sources, such as institutional attitudes, incentives and disincentives, and made three key recommendations: (i) A full law reform project should be carried out to map, modernise, simplify and clarify the statutory provisions that permit and control data sharing. The project should consider how best to create a principled and clear legal structure for data sharing to meet the needs of society. (ii) The scope of the review should be extended beyond data sharing between public bodies to the disclosure of information by or from public bodies or other organisations carrying out publicly funded functions. (iii) The project should be conducted on a tripartite basis by the Law Commission of England and Wales, the Scottish Law Commission and the Northern Ireland Law Commission.

¹⁶ Rights to Light (LC356) (04.12.14)

¹⁷ Data Sharing between Public Bodies (LC 351) (11.07.14)

44. The Government welcomed the publication of the Law Commission scoping report on data sharing between public bodies and sent an interim response on 24 December 2014, which noted the usefulness of the scoping report and its resonance with the Government's work in the open policy making space. The open policy making process and subsequent public consultation has now concluded identifying a number of priority areas to be taken forward in the Digital Economy Bill, which received Royal Assent on 27 April 2017. Non-legal barriers will continue to be addressed through the work of the data policy team in DCMS, including the development of the recently announced National Data Strategy. The Government will continue to engage with representatives from the Law Commission to see where further work could be undertaken.

Marriage Law¹⁸

45. The Government in 2014 consulted on whether the law should be changed to allow non-religious belief organisations, including humanists, to conduct legal marriages. They concluded that there were broader implications for marriage law and asked the Law Commission whether it would conduct a review of the law on marriage ceremonies. The Law Commission undertook a preliminary scoping study and reported in December 2015. In September 2017, the Government concluded that then was not the right time to develop options for reform, but did not rule out the option of further work and would keep this under review.

Matrimonial Property, Needs and Agreements¹⁹

46. The Law Commission published its final report on Matrimonial Property, Needs and Agreements in February 2014. The report makes recommendations to clarify the law of financial needs on divorce or dissolution of a civil partnership which would ensure that the law is applied consistently by the courts and reinforces judicial best practice. In addition, it investigates whether an aid to calculation of spousal support could be devised. Finally, it recommends the introduction of qualifying nuptial agreements in England and Wales which would be enforceable contracts, with a number of related provisions and safeguards, enabling couples to make binding arrangements for the financial consequences of divorce or dissolution.
47. The Government has accepted and acted on the recommendation for guidance. The Family Justice Council developed financial guidance for separating couples and unrepresented litigants, which it published in September 2015, followed by publication of guidance for the judiciary on financial needs in June 2016. This was followed by a second edition published in April 2018.
48. The Government is considering the Law Commission's recommendations on a financial tool for separating couples and on qualifying nuptial agreements as part of a wider consideration of family law and will respond in due course.

¹⁸ Marriage Law – a scoping paper (17.12.2015)

¹⁹ Matrimonial Property, Needs and Agreements (LC 343) (27.02.2014)

Financial Remedies and Inheritance Rights for Cohabitants²⁰

49. The Law Commission published its report “Cohabitation: The Financial Consequences of Relationship Breakdown” in July 2007. This report recommended the creation of a statutory scheme giving financial remedies to qualifying cohabiting partners against each other on relationship breakdown.
50. The Law Commission's report “Intestacy and Family Provision Claims on Death” published in December 2011, also included recommendations relating to cohabiting partners. In particular, that report recommended giving qualifying cohabitants the same entitlement as a spouse or civil partner on intestacy and giving cohabiting partners more rights under the Inheritance (Provision for Family and Dependants) Act 1975.
51. The Government announced in September 2011 that it did not intend to take forward the recommendations in the Law Commission's 2007 report in that current Parliament (2010–2015) because of major reforms already planned for the family justice system, which were delivered in 2014. In March 2013, the Government made a similar announcement regarding the cohabitation related recommendations in the 2011 report. The Government will be considering the Commission's recommendations as part of a wider consideration of family law.

Enforcement of Family Financial Orders²¹

52. The Law Commission published its report on enforcement of family financial orders in December 2016, following concerns raised by practitioners that the legal routes and procedures for enforcing payment of financial orders made by the family court were unnecessarily complex. The Law Commission has recommended a range of reforms designed to make the enforcement of family financial orders more effective, more accessible and fairer.
53. Most family financial orders are based on meeting the day-to-day expenses of the former spouse or civil partner and any dependent children, and so significant hardship can arise where money is not paid. The Commission has found that non-payment is a significant problem and estimates that £15–20m due under family financial orders may go unpaid each year (these figures do not account for those individuals who are not being paid what they are owed but who do not take enforcement action). The Commission has also noted that the State picks up the bill for non-payment through increased claims for benefits and tax credits, and that the inability effectively to enforce orders for payment made by the court undermines confidence in the family justice system.
54. The Commission reports a number of key problems with the existing law, including its complexity; a lack of information available to the court about the debtor's assets; some of the debtor's assets being beyond current enforcement powers; and a lack of means to apply pressure to debtors who can pay the money due, but will not do so.
55. The Government is concerned that the complexity of the current enforcement system can be exploited by debtors who seek to avoid meeting their financial obligations. The Government agrees that the report provides a firm basis on which to consider the full

²⁰ Cohabitation: The Financial Consequences of Relationship Breakdown (LC 307) (03.07.2007)

²¹ Enforcement of Family Financial Orders (LC370) (15 12.2016)

extent of this problem and the ways to tackle it through a range of suggested measures.

56. The report recommends the consolidation of all procedural rules dealing with the enforcement of family financial orders; the creation of a “route map” for enforcement proceedings, in the form of an Enforcement Practice Direction; and the provision of comprehensive guidance for litigants in person.
57. The report recommends changes to the enforcement procedure to ensure early disclosure of the financial circumstances of the debtor so that an appropriate method of enforcement can be selected, with provision for the court to obtain information from certain third parties (Government departments and private bodies). It recommends reforms to bring more of the debtor’s assets within the scope of enforcement proceedings, including funds the debtor holds in a joint bank account. The report also recommends that it should be possible to enforce payments against funds held in a pension by way of orders that are already used in a family law context (pension sharing and pension attachment orders).
58. While the court already has the ability to imprison those who choose not to pay family financial orders but have the means to do so, this order is often not desirable in practice and can be difficult to obtain. The report therefore recommends the introduction of a power for the court to remove, for up to 12 months, driving licences and passports from those who can pay, but are refusing to do so. Such orders would only be imposed where the court is satisfied that the debtor has the ability to pay what is due at the time of the order, and that it is in the interests of justice to make the order.
59. The Government provided an interim response to the recommendations on 2 August 2017. A full response will be provided in the context of the Government’s broader thinking on the family justice system.

Wildlife Law: Final Report²²

60. On 11 February 2014, the Law Commission published its first report on Wildlife Law: Control of Invasive Non-native Species. This project was part of a wider project on wildlife law brought forward at the request of Defra and the Welsh Government to be included in the Law Commission’s 11th Programme of law reform. Some of the recommendations contained in that report were introduced in the Infrastructure Act 2015.
61. On 10 November 2015, the Law Commission published its final Wildlife Law report and accompanying draft Bill. The Government issued its response on 22 November 2016, explaining that exit from the EU provides an opportunity to re-examine the regulatory framework as a whole, so that it meets future needs including any international obligations. The Government will therefore be considering the implications of EU Exit on wildlife policy before deciding whether and how to implement further Law Commission’s recommendations.

²² Wildlife Law: Final report (LC 362) (10.11.2015)

Conservation Covenants²³

62. The Law Commission report (with an accompanying draft Bill) published on 24 June 2014, proposed introducing a new statutory scheme of conservation covenants. A conservation covenant is a voluntary agreement between a landowner and responsible body (charity, public body or local/central Government) to do or not do something on the land for a conservation purpose. This might be, for example, an agreement to maintain woodland and allow public access to it, or to refrain from using certain pesticides on native vegetation. These agreements are long lasting and can continue after the landowner has parted with the land, ensuring that its conservation value is protected for the public benefit.
63. Conservation covenants are used in many other jurisdictions, but do not exist in the law of England and Wales. Instead, landowners and responsible bodies are relying on complex and expensive legal workarounds, or the limited number of existing statutory provisions that enable certain covenants to be enforced by specified bodies (for example, the National Trust). Under the scheme a conservation covenant would be formed by the agreement of two parties; be able to contain both restrictive and positive obligations; and be capable of binding the landowners' successors in title.
64. The Government issued its response to this report in early 2016 indicating support for the concept and is now considering how best to take this forward as part of the 25 Year Environment Plan, which was published 11 January 2018.

Reforming the Law on Taxis and Private Hire Services²⁴

65. The law that governs how the taxi and private hire trades operate is old, inconsistent and struggling to deal with internet-driven changes in passenger behaviour. The Law Commission published its report on 23 May 2014, recommending reforms that would make the law clearer for those working in the taxi and private hire trades and their passengers.
66. The Commission's report recognises the value to passenger choice of the two-tier system of private hire vehicles – which must be pre-booked, and taxis – which can use ranks or ply for immediate hire. It makes recommendations to retain and reinforce the distinction. Passenger safety is at the forefront of the Commission's reforms. It is recommending that standards be set nationally for public safety, accessibility and environmental impact. For the first time, passengers of taxis and private hire vehicles could confidently expect consistent levels of safety and quality wherever they travel.
67. In the absence of a dedicated Taxi Bill in the final session of the last Parliament, two taxi and private hire measures were included in the Deregulation Bill which received Royal Assent in March 2015. Following this, a Private Members' Bill, the Licensing of Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Bill was introduced in July 2017. The Bill, which is more limited in scope than that originally proposed by the Law Commission, began its second reading in February 2018, but the debate was interrupted and is not due to resume again until October.

²³ Conservation Covenants (LC 349) (24.06.2014)

²⁴ Taxis and Private Hire Services (LC 347) (23.05.2014)

Regulation of Health and Social Care Professionals²⁵

68. The Law Commission published its final report (with a draft Bill) on the 2 April 2014 about the regulation of health care professionals and, in England only, the regulation of social workers. This was a joint project with the Scottish and Northern Ireland Law Commissions. The report sets out recommendations for a new single legal framework for the regulation of health care professionals and aims to introduce a consistent legal framework which will better enable the regulators to uphold their duty to protect the public, for example, the conduct of fitness to practise hearings.
69. The Commission's recommendations envisage improvements across professional regulation including robust governance structures for regulatory bodies, enabling innovation in education and leaner processes enabling the regulatory bodies to take swifter action to ensure public protection.
70. The Government published its response on 29 January 2015, noting the need for further work on refining the Law Commission's recommendations to achieve the priorities of better regulation, autonomy and cost-effectiveness while maintaining a clear focus on public protection. The Government has already taken measures so that people can continue to be confident they are receiving high quality care. It made improvements to the way doctors, nurses and midwives are investigated when there are concerns about their ability to treat patients safely.
71. On 31 October 2017, the Government published a consultation paper on reforming regulation, which built on the Commission's report and closed at the end of January 2018. The responses are currently being analysed and will be published in due course.

Hate Crime²⁶

72. This project was referred to the Law Commission by the Ministry of Justice. The terms of reference asked the Commission to look at extending the aggravated offences in the Crime and Disorder Act 1998 to apply to all five protected characteristics (race, religion, disability, sexual orientation and transgender identity); and at the case for extending the stirring up of hatred offences under the Public Order Act 1986 to apply to all five protected characteristics. The Commission also examined the current "enhanced sentencing" regime applicable to cases where hostility is established, as this already applies to all five characteristics and involves similar elements to the aggravated offences.
73. The Commission published their report on 28 May 2014. The report recommends that the Sentencing Council produce guidance on the approach to sentencing hostility-based offending and that every time the enhanced sentencing provisions under section 145 and 146 of the Criminal Justice Act 2003 are applied, this should be recorded on the offender's Police National Computer (PNC) record.

²⁵ Regulation of Healthcare Professionals: Regulation of Social Care Professionals in England (LC 345) (02.04.2014)

²⁶ Hate Crime: Should the Current Offences be Extended (LC 348) (28.05.14)

74. The Commission also recommends a full-scale review of the operation of the aggravated offences under the Crime and Disorder Act 1998 and the enhanced sentencing provisions to establish whether they should be retained, amended, extended to cover hostility based on other characteristics or repealed. The Commission believes that such a review is the most valuable reform option.

In the event that the Government decides not to carry out a review, the Commission recommends that the aggravated offences be extended to cover hostility based on disability, sexual orientation and transgender identity. The Government will consider this report and other evidence as part of the Hate Crime Action Plan refresh.. ***Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency***²⁷

75. The Law Commission published its final report on Public Nuisance and Outraging Public Decency on 25 June 2015. Public nuisance traditionally dealt with environmental nuisance such as noise, smells and obstruction, but its focus has shifted to more general forms of public misbehaviour, bringing a wider range of potential offenders into its scope. Outraging public decency is a related offence which criminalises behaviour or displays which are lewd, obscene or disgusting and take place in public. In line with the model favoured by consultees, the report recommends retaining the offences and restating them in statute largely in their existing form, but adding a mental element of intention or recklessness to both.
76. This project is part of a small series of simplification projects originally proposed in the Commission's Tenth Programme of Law Reform and follows on from the first project in that series on "Simplification of Criminal Law: Kidnapping and Related Offences", in which the Commission recommended reforms to the common law offences of kidnapping and false imprisonment and the statutory offence of child abduction. This series of projects aims to clarify the structure and modernise the language of criminal law, and make it more consistent and accessible. The Government is considering this report and will respond in due course.

Unfitness to plead²⁸

77. The law relating to unfitness to plead addresses what should happen when a defendant who faces criminal prosecution is unable to engage with the process because of his or her mental or physical condition. The law aims to balance the rights of the vulnerable defendant with the interests of those affected by an alleged offence and the need to protect the public. However, the current law in this area is outdated, inconsistently applied and can lead to unfairness.
78. After a wide-ranging consultation conducted in winter 2010/11,²⁹ the Commission published an analysis of responses³⁰ and an issues paper in 2013³¹ and their final report and draft Bill in January 2016.³²

²⁷ Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency (LC 358) (25.06.2015)

²⁸ Unfitness to Plead (LC364) (31.10.16)

²⁹ (2010) LCCP197

³⁰ <http://www.lawcom.gov.uk/project/unfitness-to-plead/>

³¹ <http://www.lawcom.gov.uk/project/unfitness-to-plead/>

³² (2016) LC364 (two volumes)

79. The Commission's recommendations aim to modernise the law, making it fair, effective and accessible. They include: the streamlining of the clinical assessment process for defendants with participation difficulties; a new legal test which will accurately identify those who are unable to participate effectively in their trial; a reformed alternative hearing where all aspects of the allegation will be fairly scrutinised; providing the court more robust and effective options for dealing with defendants who lack capacity for trial; and a statutory scheme for addressing unfitness to plead in the magistrates' and youth courts.
80. The Government provided an interim response on 22 February 2016, acknowledging the Commission's work and noting that a substantive response would be provided later. The Government is considering the report's recommendations and will respond to these in due course.

Simplification of the Criminal Law: Kidnapping and Related Offences³³

81. The Law Commission published its final report on kidnapping and related offences on 20 November 2014.
82. The report recommended the creation of two distinct statutory offences to replace the existing common law ones, namely:
- that false imprisonment be replaced with a new statutory offence of unlawful detention (a label which the Law Commission believes better captures the nature of the offence). The elements of the new offence would closely follow the existing common law; and
 - that a new statutory kidnapping offence be created. This would be somewhat narrower and more focussed than the existing common law offence and would have a clearer relationship with the offence of unlawful detention.
83. The report also recommends changes to the offences under sections 1 and 2 of the Child Abduction Act 1984. These seek to:
- increase of the maximum sentences for these offences from 7 to 14 years' imprisonment, in order to avoid what has been seen as an undesirable inconsistency between the most serious instances of these offences and kidnapping offences of a comparable level of seriousness, and;
 - that the offence under section 1 be extended to cover cases of wrongful retention of a child abroad, in breach of the permission given by another parent (or other connected person) or the court. This extension would close a gap in the law highlighted in the case of *R (Nicolaou) v Redbridge Magistrates' Court*.
84. The Government has been considering the feasibility of the Law Commission's recommendations and aims to issue an interim response to the report in due course.

³³ Simplification of the Criminal Law: Kidnapping and Related Offences (LC 355) (20.11.2014)

Offences Against the Person – Modernising the Law on Violence³⁴

85. The Law Commission published its report “Reform of offences against the person” on 3 November 2015, following a scoping exercise the Government had asked the Commission to undertake as part of its 11th Programme of reform. The report also draws on earlier work that the Law Commission and others had done in this area since the 1980s, which had resulted in a draft Bill in 1998 to reform the Offences Against the Person Act 1861 (the 1861 Act). The draft Bill was never taken forward due to other Government priorities at that time.
86. The report covers most of the extant offences in the 1861 Act, the common law offences of assault and battery and the offence of assaulting a constable (s. 89(1) Police Act 1996). The report has been informed by the detailed consultation carried out by the Commission between November 2014 and February 2015 and recommends that updated legislation is needed to tackle violent offences more effectively and make better use of court time.
87. Recommendations contained in the report include:
- the replacement of the in-scope offences in the Offences Against the Person Act 1861 with a modern statute, containing for instance a clear system of offences of injury,
 - the creation of a new offence of “aggravated assault” to bridge the gap between common assault and the more serious offence of actual bodily harm (ABH), as a summary offence with a maximum sentence of 12 months. The Commission’s best estimate of the gross savings from this recommendation on its own is around £12.47million per annum; and
 - the extension of the offence of ‘threats to kill’ to include ‘threats to cause serious injury’ and ‘threats to rape’.
88. The Government has considered the report and will provide an interim response to the Law Commission’s recommendations in due course.

Contempt of Court (2): Court Reporting³⁵

89. On 26 March 2014, the Law Commission published its second report on the review of the law of contempt of court. The report recommends that a new online service be established to help journalists and publishers reporting criminal trials discover whether reporting restrictions are in force and, if so, why.
90. The report recommends that all court reporting postponement orders be posted on a single publicly accessible website. A further restricted service would also be available where, for a charge, registered users could find out the detail of the reporting restriction and could sign up for automated email alerts of new orders. This would reduce the risk of contempt for publishers, from large media organisations to individual bloggers, and enable them to comply with the court’s restrictions or report proceedings to the public with confidence.

³⁴ Offences against the person – modernising the law on violence (LC 361) (03.11.2015)

³⁵ Contempt of Court (2): Court Reporting (LC344) (25.03.2014)

91. The Government supports proposals encouraging transparency and openness in the Criminal Justice system, and welcomes these recommendations. It will consider how an online reporting restriction database could be taken forward as existing technology is replaced and updated, and expects to respond formally after the implementation of the Criminal Justice System Common Platform.

The High Court's Jurisdiction in relation to Criminal Proceedings³⁶

92. The Law Commission published a report and draft bill on 27 July 2010.³⁷ The report makes recommendations clarifying the limits on the availability of judicial review of decisions in a trial on indictment to ensure it is barred from the time the case goes to the Crown Court for trial to the end of the trial, with the exception of where the judge refuses bail.
93. The Government provided an interim response on 13 March 2015, noting it was considering the Commission's recommendations and this work continues.³⁸

Criminal Records Disclosure³⁹

94. In July 2016, the Commission was asked by the Home Office to review one specific aspect of criminal records disclosure known as "filtering". Filtering provides a framework that sets out when certain old and minor convictions will not be included on Disclosure and Barring Service standard and enhanced checks.
95. On 1 February 2017, the Commission published its report. Within the terms of reference for this project, the report included a recommendation that a statutory instrument should set out a single, itemised list of non-filterable offences in the future. The Government is considering the Commission's recommendations. Additionally, the Commission recommended a wider review of the disclosure regime.

Consumer Prepayments for Retailer Insolvency⁴⁰

96. In September 2014, the then Department for Business, Innovation and Skills (BIS) asked the Law Commission to consider whether greater protection is needed for consumers who lose deposits or gift vouchers when retailers or other service providers become insolvent.
97. When a retailer becomes insolvent, the law imposes a strict hierarchy of creditors to be paid out of any remaining assets. Consumers, who are classed as unsecured creditors, are very near the bottom of the list and frequently receive nothing. In some cases, the administrator may decide to honour consumer prepayments and gift vouchers, though they are under no obligation to do so. Consumers are often unaware of the legal situation, and in some cases, conflicting information from administrators further confuses the situation.

³⁶ High Court's Jurisdiction in Criminal Proceedings (LC324) (27.07.2010)

³⁷ (2010) LC324

³⁸ Report on the Implementation of Law Commission Proposals, Ministry of Justice (2015), paragraph 99.

³⁹ Criminal records disclosure: Non-Filterable Offences (LC371) (01.02.17)

⁴⁰ Consumer Prepayments on Retailer Insolvency (LC368) (14.07.2016)

98. On 13 July 2016, the Law Commission published their report on this project. Following recent high-profile retailer insolvencies which highlighted the lack of protection for consumers making these kinds of payments, the report sets out five recommendations which would improve consumers' position on insolvency:
- Regulating Christmas and similar savings schemes, which pose a particular risk to vulnerable consumers.
 - Introducing a general power for Government to require prepayment protection in sectors which pose a particular risk to consumers.
 - Giving consumers more information about obtaining a refund through their debit or credit card issuer.
 - Making a limited change to the insolvency hierarchy, to give a preference to the most vulnerable category of prepaying consumers.
 - Making changes to the rules on when consumers acquire ownership of goods.
99. The Government has been working closely with stakeholders making progress on some of the Law Commission's recommendations e.g. those regarding chargeback. The Government will publish its full response to the Law Commission's report in due course.

Termination of Tenancies for Tenant Default⁴¹

100. The Law Commission published this report in 2006. It contains recommendations to reform the means by which a landlord can terminate a fixed term commercial or residential tenancy where the tenant has not complied with his or her obligations.
101. This is an important issue for many landlords and tenants of residential and commercial properties. With regard to commercial tenancies, the current law is difficult to use, especially for the lay person and the unwary practitioner. It does not support negotiated settlement and provides little protection for mortgagees and chargees.
102. Unfortunately, due to work on other government priorities, consideration of the proposals has not been able to progress over the last year. Work will resume as soon as is practicable, so that a decision can be made in due course.

Event fees in retirement properties (Transfer of Title and Change of Occupancy Fees in Leaseholds)⁴²

103. Following an Office of Fair Trading investigation in 2013 which found that transfer, or event fees charged in retirement property leases may be unfair, in 2014 the then Department for Communities and Local Government (DCLG) asked the Law Commission to investigate and make recommendations for change.
104. The Law Commission published their final report on 31 March 2017, which recommended that event fees should be regulated with the introduction of a new code of practice approved by the Secretary of State for Communities and Local Government. The code of practice should be supported by an amendment to the

⁴¹ Termination of Tenancies for Tenant Default (LC303) (31.10.17)

⁴² Event Fees in Retirement Properties (LC373) (31.03.17)

Consumer Rights Act 2015 so that it can be enforced by consumers and where there is a breach of the code of practice, the Commission recommends that in most cases the event fee should not be payable.

105. The Government sent an interim response in November 2017, thanking the Commission for the report which fits with one of DCLG's key priorities to increase the supply of housing and the Housing White paper objective of improving consumer choice and fairness for leaseholders. The recommendations also fit with the Government's wider objective of better outcomes for older consumers.

106. The Government will continue to consider the report and recommendations in detail and will provide a full response in due course.

Pension Funds and Social Investment⁴³

107. In November 2016, the Government asked the Law Commission to look at how far pension funds may or should consider issues of social impact when making investment decisions. The Law Commission's report, published in June 2017, built on the work done in their previous report on Fiduciary duties of Investment Intermediaries. It found there are no substantive regulatory barriers to making social impact investment by pension funds. Most of the barriers are in fact structural and behavioural, but these could be helped by clearer legislation and guidance.

108. The Government published a response to the report in June 2018 which set out the areas in which it is considering taking action. Alongside this Government published a consultation on proposals to clarify legislation around:

- pension scheme trustees' consideration of broader financial risks and opportunities
- pension scheme trustees' ability to consider members' concerns
- the role of engagement alongside voting as an important aspect of stewardship of pension scheme assets

109. A number of the Commission's other proposals are the responsibility of regulators, so the Government is working with the relevant parties in their consideration of how to take these forward.

Technical Issues in Charity Law⁴⁴

110. This project on selected issues in charity law originated from the Commission's Eleventh Programme of law reform. The wider charities project was divided into two parts. The first was taken forward in the linked ***Social investment by Charities*** project, which reported in 2014. The majority of the recommendations for reform in that report were included in the Charities (Protection and Social Investment) Act 2016, which received Royal Assent on 16 March 2016.

⁴³ Pension Funds and Social Investment (LC374) (23.06.17)

⁴⁴ Charity Law: Technical Issues in Charity Law (LC375) (14.09.17)

111. The other part of the Commission's charities project examined a range of technical legal issues. The work was designed to support and equip the charities sector by ensuring the legal framework in which it operates is fair, modern, simple and cost effective. The Commission published a consultation on these issues in March 2015, which was followed by a supplementary consultation focusing on changing charities' purposes and trust corporation status in September 2016. The Commission's final report and draft Bill was published a year later in September 2017. The Government is currently considering the report and will respond in due course.

Decisions taken not to implement

*Level Crossings*⁴⁵

112. The Law Commission completed their joint report with the Scottish Law Commission on 25 September 2013. The report included a draft Bill and regulations. It sought to improve the law governing some 8000 level crossings in Great Britain, looking to streamline the closure procedure to close some in the public interest, modernise safety regulation, impose a duty to consider the convenience of all users, clarify the law and remove outdated provisions.
113. The Government provided a response to the report in October 2014, accepting both the case for reform and the majority of the Commissions' recommendations, but laid out a timetable for further consideration with stakeholders before reaching a detailed conclusion. In May 2018, the Department concluded that reform is needed but stated that the best way to achieve this is through administrative changes rather than legislative reform. These changes are very much in the spirit of the Law Commission's recommendations.

⁴⁵ Level Crossings (LC339/SLC234) 25.09.13

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