

THE LAW COMMISSION
THIRTY-THIRD ANNUAL REPORT 1998
Modern Law for Modern Needs

*Laid before Parliament by the Lord High Chancellor
pursuant to section 3(3) of the Law Commissions Act 1965*

*Ordered by The House of Commons to be printed
15 June 1999*

LAW COM No 258

HC 434

THE LAW COMMISSION

The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are: The Honourable Mr Justice Carnwath CVO, *Chairman* ◦
 Professor Andrew Burrows
 Miss Diana Faber
 Mr Charles Harpum
 Mr Stephen Silber QC

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

◦ During the period covered by this report, the Chairman of the Law Commission was The Honourable Mrs Justice Arden DBE.

	<i>Page</i>		<i>Page</i>
FOREWORD BY THE CHAIRMAN			1
PART I: OVERVIEW OF THE YEAR			2
Introduction	2	Human rights	14
Publications in 1998	2	Company law	14
Implementation of recommendations	2	Programmes of law reform	14
(a) In 1998	3	Summary of work in 1998	15
(b) More generally	3	Summary of work for 1999	15
(c) The Government's intentions	10	Tributes	15
Modernisation of Parliamentary procedures	11	New Chairman	15
The impact of Law Commission reports	12	Major targets for 1998	16
Codification of criminal law	13	Major targets for 1999	18
<hr/>			
PART II: COMMON LAW	19	PART V: PROPERTY AND TRUST LAW	32
Damages	19	Land registration	32
Limitation of actions	20	Termination of tenancies	33
Illegal transactions	21	Home-sharers' property rights	33
<hr/>			
PART III: COMPANY AND COMMERCIAL LAW	22	Perpetuities and accumulations	34
Partnership law	22	Trustees' powers and duties	35
Third Parties (Rights Against Insurers) Act 1930	22	Trust formalities	35
Execution of deeds and documents by bodies		<hr/>	
corporate	23	PART VI: STATUTE LAW	36
Electronic commerce	23	Consolidation	36
Company directors: regulating conflicts of interest		Statute Law Revision	37
and formulating a statement of duties	24	<hr/>	
<hr/>			
PART IV: CRIMINAL LAW AND EVIDENCE	25	PART VII: EXTERNAL RELATIONS	39
Corruption	25	PART VIII: STAFF AND RESOURCES	43
Misuse of public office	26	APPENDICES	
Consents to prosecution	27	A: Law Commission's role and methods	46
Fraud	28	B: The Law Commission's implemented	
Trade secrets	29	reports since 1985	48
Evidence of previous misconduct	29	C: Law Commission law reform reports	
Bail in criminal proceedings	29	awaiting implementation	50
Consent as a defence	30	D: Law reform reports: numbers	
Assisting and encouraging crime	30	published and implemented	51
Double jeopardy	30	E: Visitors from overseas	52
Codification	30	F: Staff and contact points	54
Consolidation of the sentencing statutes	31	G: The cost of the Commission	55

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

THE LAW COMMISSION

THIRTY-THIRD ANNUAL REPORT 1998

Modern Law for Modern Needs

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

I have the honour to present, on behalf of the Law Commission, our 33rd Annual Report for the year 1998.

This covers work carried out under the Chairmanship of my immediate predecessor, Mrs Justice Arden, whom I succeeded on 1st February this year. I would like to pay tribute to her legacy. I believe that the standing of the Commission has never been higher. This report shows the variety and importance of the work done under her leadership over the last year, including 11 major publications on law reform.

Implementation continues to be a problem. Successive Chairmen have emphasised the cost to the country of defective and out-dated laws. Historically some 70% of our reports have led to legislation. 1998 saw the enactment of the 100th Law Commission reform bill, but it was the only such Act in the year. With your support, two more reports are the subject of Bills before Parliament at present, but there remains a considerable backlog.

The present Government has made clear its commitment to the modernisation of all aspects of the legal system. Your own White Paper on Modernising Justice emphasised the Government's intention "to keep the law up-to-date, relevant and useable", and cited our recent proposals (in conjunction with the Land Registry) for the modernisation of the land registration system, paving the way for electronic conveyancing. We look forward to working with the Government to make good that pledge.

Another prime candidate for early legislative action must be our 1993 recommendations for reform of the Offences against the Person Act 1861. Over 80,000 cases a year are dealt with under these provisions, described by the 1993 Commission as "the criminal law's main armoury against violent crime". The present law is universally regarded as seriously defective. Our recommendations were widely welcomed in 1993, and there have been repeated calls for implementation from senior judges and academics. Yet, six years on from the publication of our proposals, and some half a million cases later, the 1861 Act is still on the statute book.

Happily, 1998 saw a step forward, with the publication of a Home Office Consultation Paper, broadly accepting our proposals. A formal Government response to our 1996 report on Involuntary Manslaughter, also widely welcomed at the time, is still awaited. Implementation of these recommendations would be an important step on the way to codification of the criminal law. A commitment to legislation before the new Millennium would ensure that the Courts are not left fighting 21st Century crime with 19th Century weapons.

My predecessor has left a very strong and loyal team at the Commission. I am privileged to have the opportunity to work with them. I also look forward to continuing the good relationships that have been enjoyed with the officers of your own and other Departments of Government.

Sir Robert Carnwath
CHAIRMAN

PART I

OVERVIEW OF THE YEAR

Introduction

- 1.1 This Part of this report gives a general overview of our work and concerns in 1998. The remainder of the report gives details in each area of the Commission's work during the year. Our general role and methods are summarised in Appendix A.
- 1.2 While much of the law of England and Wales is of high quality, there is a real need to ensure that other areas of law are as simple, fair, modern and cost-effective as possible. Those are the general aims which we have for our law reform work. We seek to achieve those aims by our methods, which concentrate on systematic law reform: careful selection of projects, following consultation – including with Government departments; close study; comparison with the law in other countries; thorough consultation; and a final report which incorporates a draft Bill.
- 1.3 One hundred of our law reform reports have now been enacted, in full or in part.¹ While we are pleased that successive Governments and Parliaments have decided to act on our advice in this way, there are some 18 of our completed reports on which we are awaiting the Government's decision.² We of course recognise that it is for Government to establish its legislative priorities. We will continue to explore with Government how we can improve progress on implementation of these important reforms.

Publications in 1998

- 1.4 During 1998, there were 11 law reform publications which we issued or approved for issue, as well as the Statute Law Repeals report and the Chronological Table of Private Acts. Six were final reports and five were consultation documents. We set out details in Parts II-V below. The reports included those on land registration, where we are proposing a complete updating and replacement of the Land Registration Act 1925, and on the criminal law of corruption, where we recommended replacing the current chaotic law with four modern offences and filling some serious gaps in the law. The consultation documents included those on limitation of actions, in which we proposed a new regime of limitation periods to replace the current law, which is unnecessarily complex, uncertain, unfair and expensive; and on the duties of company directors, which is concerned with regulating conflicts of interests and formulating a statement of duties.

Implementation of recommendations

- 1.5 In this section we refer to the Law Commission reports which are being implemented in 1998. We then describe the current position on those of our reports which were published before 1998 and which are awaiting the Government's decisions about implementation.

¹ See para 1.8 below.

² See Appendix C.

(a) In 1998

- 1.6 In 1998, as in 1997, there was only one new law reform statute which drew on a Law Commission report, namely the Late Payment of Commercial Debts (Interest) Act 1998, implementing recommendations made in our report of 1978.³ Other new statutory provisions in 1998 which emanated from the Law Commission were the Statute Law (Repeals) Act, the Family Homes and Domestic Violence (Northern Ireland) Order⁴ and two Consolidation Acts, the Petroleum Act and the Audit Commission Act.
- 1.7 However, it became clear at the beginning of the 1998/99 Parliamentary Session that more Bills would be introduced into Parliament incorporating provisions which we had recommended. First, the Contracts (Rights of Third Parties) Bill and the Trustee Delegation Bill were introduced into Parliament in December. Next, our consultation paper on medical and other expenses, in our work on damages, included questions about whether the National Health Service should have the right to recover from defendants the cost of treating injuries caused by a legal wrong.⁵ The Road Traffic (National Health Service Charges) Bill is currently before Parliament.⁶ The Bill provides for recoupment by the NHS of the costs of caring for road accident victims whose injuries were caused by a legal wrong, generally from the wrongdoer's insurer. Finally, the Government has said that it intends the Financial Services and Markets Bill, when introduced into Parliament, in effect to implement provisions on the lines of those in our report on fiduciary duties.⁷ The work which we had done on consolidation of financial services legislation has also proved valuable in the structure and drafting of the Bill.

(b) More generally

- 1.8 The one hundredth Law Commission law reform report to be implemented was enacted by Parliament in 1998. The average over the life of the Commission has been about 70%. We set out on the following page a table showing the rate of implementation of our reports. At Appendix D there is a table showing the number of law reform reports published and implemented each year since we were established.

³ Law of Contract: Report on Interest (Law Com No 88).

⁴ SI 1998 No 1071. The Minister introduced the Order in the House of Lords by saying that the Order gave effect to the main recommendations contained in the Commission's Report (Family Law: Domestic Violence and Occupation of the Family Home (1992) Law Com No 207) which had already been implemented in the Family Law Act 1996: *Hansard* (HL) 7 April 1998, vol 588, col 741.

⁵ Damages for Personal Injury: Medical, Nursing and Other Expenses (1996) Consultation Paper No 144.

⁶ It received Royal Assent on 10 March 1999.

⁷ Fiduciary Duties and Regulatory Rules(1998) Law Com No 153. The Government's intention was indicated in para 5.11 of "Financial Services and Markets Bill: A Consultation Document", published in July 1998, H M Treasury.

**LAW COMMISSION REPORTS:
PUBLICATION AND IMPLEMENTATION
AS AT THE END OF 1998**

	IMPLEMENTABLE REPORTS PUBLISHED	REPORTS IMPLEMENTED ⁸	RATE OF IMPLEMENTATION OF REPORTS
LAW REFORM	144	100	69.4%
CONSOLIDATION	42	42 ⁹	100%
STATUTE LAW REVISION	17	17	100%
TOTAL	203 ¹⁰	159	78.3%

1.9 At the beginning of 1998 there were 22 Law Commission reports awaiting decisions by the Government. Following discussions with us, the Lord Chancellor's Department (LCD) told us in October 1997 that they would enable Ministers to respond by Easter 1998 to all our outstanding and unimplemented reports in areas for which LCD had the lead responsibility for the legislation – unless otherwise agreed between the Commission and LCD in respect of particular reports. LCD specifically assigned one of the lawyers in the Department to carry out this task.

1.10 We are most grateful to LCD that as a result Government decisions have been made on so many of those outstanding reports. The outcome was announced in two answers to Parliamentary Questions.¹¹ The Government announced that it would bring forward legislation on contracts for the benefit of third parties, on

⁸ In this table a report is counted as implemented if (a) it is implemented in full or in part and (b) it is implemented by legislation, generally by Act of Parliament. Occasionally reports are in effect implemented by decisions of the courts; but they are not included in the table.

⁹ The number of consolidation Acts is very much larger, many having emanated from the Law Commission without the need for a formal report.

¹⁰ A few of our reports have not included draft legislation and were not intended for direct implementation. There have been 13 such reports on law reform, and one on statute law revision, bringing the number of those reports published at the end of 1998 to 157 and 18 respectively.

¹¹ Written Answer, *Hansard* (HC) 19 March 1998, vol 308, col 709; and Written Answer, *Hansard* (HL) 29 July 1998, vol 592, cols 201 - 202.

trustee delegation and on the first part of the report on restitution for mistake of law.¹² The Government rejected six reports. Our report on breach of confidence¹³ was not accepted because developing case law since its publication had clarified the scope and extent of the breach of confidence action, as confirmed by the European Commission of Human Rights. The Government decided not to implement the report on positive and restrictive covenants¹⁴ but asked the Law Commission to consider, in the context of our other priorities, how future developments in property law might affect the recommendations in that report. Our recommendations on liability for chancel repairs¹⁵ were rejected on the basis that, although the liability can cause hardship, it is often reflected in the sale price and is enforced in relatively few cases, and any scheme to bring the liability to an end might encourage enforcement where it still exists. Although continuing the liability carried the risk of breaching the European Convention on Human Rights, so would its abolition. Our report on land mortgages¹⁶ and the remainder of our report on overreaching¹⁷ were not accepted as the proposals had not been sufficiently supported but the Government invited us to reconsider our proposals on land mortgages when our current work on land registration is finished. The report on contributory negligence as a defence in contract¹⁸ was thought to have been overtaken by the developing case law.

- 1.11 In addition, the Home Secretary announced¹⁹ that the Government had accepted all the recommendations in our report on hearsay.²⁰ Our recommendations included: defining hearsay; continuing an exclusionary hearsay rule, with specific exceptions; making it much easier for the evidence of frightened witnesses and victims to be adduced; and removing a major obstacle to the use of computer evidence.
- 1.12 We await decisions on the remaining reports outstanding from before 1998. During the year the Law Commission has kept a close watch on the progress of the Government's consideration of those reports and wherever possible has assisted Government departments to come to a conclusion on the reports' recommendations. Appendix B lists the Law Commission reports implemented since 1985. The list of Law Commission reports awaiting implementation is at Appendix C. We can report particular progress as follows.

¹² See para 1.27 below.

¹³ (1981) Law Com No 110.

¹⁴ Transfer of Land - the Law of Positive and Restrictive Covenants (1984) Law Com No 127.

¹⁵ (1985) Law Com No 152.

¹⁶ (1991) Law Com No 204.

¹⁷ Transfer of Land: Overreaching: Beneficiaries in Occupation (1989) Law Com No 188.

¹⁸ (1993) Law Com No 219.

¹⁹ Written Answer, *Hansard* (HC) 17 December 1998, vol 595, col 184.

²⁰ Evidence in Criminal Proceedings: Hearsay and Related Topics (1997) Law Com No 245.

(1) Offences Against the Person

- 1.13 1998 marks the fifth anniversary of our report on offences against the person.²¹ In July 1997 the Home Secretary accepted in principle our recommendations for reform of the offences. The Home Office published a draft Bill and a Consultation Paper in February 1998²² setting out the Home Office's initial proposals for reforming the law in this area, based on our report. The consultation period closed in May. We believe that implementation of these proposals is long overdue.

(2) Involuntary Manslaughter

- 1.14 We published our report on involuntary manslaughter²³ in 1996. It recommended a new offence of corporate killing and the replacement of the present offence of involuntary manslaughter by two new offences, namely "reckless killing" and "killing by gross carelessness". A departmental working group has recently been considering the issues. We believe that this is an extremely valuable report, which could be taken forward by Government together with our report on offences against the person.²⁴ Their implementation would be a very useful step towards codification of the criminal law.²⁵

(3) Shareholder Remedies

- 1.15 Our report, prepared in consultation with the Scottish Law Commission, was published in October 1997.²⁶ In November 1998 the Department of Trade and Industry published a consultative document²⁷ in which they announced that they and the Lord Chancellor's Department provisionally supported the majority of the Law Commission's recommendations. They did, however, express some reservations (on which they sought consultees' views) on the addition of winding up as a remedy for unfair prejudice under section 459 of the Companies Act and on the Law Commission's provisional recommendation to apply the 'core' limitation regime to section 459 proceedings.²⁸

(4) Mental Incapacity

- 1.16 Our report on mental incapacity²⁹ was published in 1995, following several years of study and consultation, including four consultation papers. The report is of ever-growing importance in our society with, among other features, its increasing proportion of elderly people. The report contained recommendations for a single comprehensive piece of legislation to provide for the personal welfare, health care and financial affairs of people who lack mental capacity.

²¹ Offences Against the Person: General Principles (1993) Law Com No 218.

²² "Violence: Reforming the Offences Against the Person Act 1861".

²³ Law Com No 237.

²⁴ See para 1.13 above.

²⁵ See para 1.33 below.

²⁶ Shareholder Remedies (1997) Law Com No 246.

²⁷ URN 98/994.

²⁸ Limitation of Actions (1998) Law Com No 151. See para 2.5 below.

²⁹ Mental Incapacity (1995) Law Com No 231.

- 1.17 We have outlined in previous annual reports³⁰ the steps which the previous Government took in the years following publication of our report. In December 1997 the current Government published a Green Paper³¹ inviting comments on a wide range of questions relating to mental incapacity. Most of the consultation paper was based on our report. The consultation period closed on 31 March 1998. The Government received responses from 246 organisations and 4,104 individuals.³² We await hearing further developments.
- 1.18 Meanwhile, following the Scottish Law Commission's report on Incapable Adults,³³ which is parallel with our own report, the Government has announced³⁴ that it accepts the need for reform of the existing legislation in Scotland. As the announcement stated, the Government agreed with many of the Scottish Law Commission's recommendations, proposed to modify a small number of them, and had not yet made any decisions on others such as those about medical treatment and research and advance statements.

(5) Judicial Review

- 1.19 We published our report on Judicial Review and Statutory Appeals³⁵ in 1994. Most of our recommendations await acceptance and implementation by Government. Many of them could be introduced by subordinate legislation or by Practice Direction. However, some of the recommendations have been accepted. First, the Housing Act 1996 implemented the recommendation that there be a right of appeal in homelessness cases. In addition, the Government's White Paper "Modernising Justice"³⁶ states that the Government intend to change the law so that the powers of the High Court to deal with appeals by way of case stated from the Crown Court are specifically reflected in statute, implementing another of our recommendations.³⁷

(6) Repairing Obligations

- 1.20 Our report on repairing liabilities in leases made four main recommendations to modernise and clarify the law.³⁸ The previous Government announced their acceptance of three out of the four main recommendations in our report, while

³⁰ Eg, our Annual Report for 1996, Law Com No 244, para 6.12.

³¹ "Who Decides? Making Decisions on Behalf of Mentally Incapacitated Adults".

³² Written Answer, *Hansard* (HL) 3 June 1998, vol 590, col 35.

³³ (1995) Scot Law Com No 151.

³⁴ Written Answer, *Hansard* (HC) 16 December 1998, vol 322, col 514; and Written Answer, *Hansard* (HL) 16 December 1998, vol 595, col 154.

³⁵ Law Com No 226.

³⁶ "Modernising Justice - The Government's Plans for Reforming Legal Services and the Courts" (December 1998) Cm 4155.

³⁷ The Lord Chancellor has now established a full review of the High Court 'Crown Office List', to cover the recommendations in our report and in chapter 18 of Lord Woolf's report "Access to Justice" (1996), and also the Rules, procedures, jurisdiction, organisation and work of the Crown Office List: Written Answer, *Hansard* (HL) 22 March 1999, vol 598, col 124; and Written Answer, *Hansard* (HC) 22 March 1999, vol 328, col 121.

³⁸ Responsibility for State and Condition of Property (1996) Law Com No 238.

wishing to explore further the fourth. The present Government have not yet committed themselves to the three main recommendations that the previous Government had accepted. One of those three - that landlords should be able to obtain a decree of specific performance of a repairing obligation in a lease against a tenant - has been judicially implemented in *Rainbow Estates Ltd v Tokenhold Ltd*,³⁹ albeit in a rather more restrictive form than we had proposed. In 1998 the Department of the Environment, Transport and the Regions issued a consultation paper⁴⁰ seeking views on proposals and options for change to the housing fitness standard, which was the subject of one of the four. The Department's examination of changes in the way in which housing fitness is determined is not as such connected with the recommendations that we made in our report to the effect that there should be implied into leases of dwelling houses granted for seven years or less an obligation on the landlord to ensure that they were fit for human habitation. We understand that when the Department's examination is completed (which is expected to be by August 1999), it will consider our recommendations as one of a number of possible options for reform.

(7) Distress for Rent

- 1.21 We published our report on Distress for Rent⁴¹ in 1991. We recommended abolition of the remedy of distress in respect of arrears of rent and envisaged reformed court procedures making other remedies effective. In March 1998 the Lord Chancellor announced a review of enforcement of civil judgements.⁴² The recommendations in our report will be considered in the context of that review, which is planned to last for two years.

(8) Restitution

- 1.22 We published our report⁴³ in 1994. The Government announced that the second part of this report was undergoing further consideration in the light of recent substantial changes in the personal taxation system.⁴⁴ The Government accepted the first part of this report, which recommended abolition of the mistake of law bar to restitution.⁴⁵ However, in October 1998 the House of Lords in *Kleinwort Benson Ltd v Lincoln City Council*⁴⁶ brought about the same central reform, so obviating the need for the central element of our proposed legislation.

³⁹ [1998] 3 WLR 980.

⁴⁰ "Housing Fitness Standard".

⁴¹ Law Com No 194.

⁴² Written Answer, *Hansard* (HL) 25 March 1998, vol 587, col 243.

⁴³ Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments (1994) Law Com No 227.

⁴⁴ Written Answer, *Hansard* (HL) 29 July 1998, vol 592, cols 201 - 202.

⁴⁵ Written Answer, *Hansard* (HC) 19 March 1998, vol 308, col 709; see para 1.8 above.

⁴⁶ [1998] 3 WLR 1095.

(9) Structured Settlements

- 1.23 As part of our review of the remedy of damages,⁴⁷ in 1994 we published our report on structured settlements.⁴⁸ That report has largely been enacted, mainly in the Damages Act 1996 but also in the Civil Evidence Act 1995 and by amendment of the Income and Corporation Taxes Act 1988. Under section 1 of the 1996 Act, when the courts determine the return to be expected from the investment of a lump sum award of damages for pecuniary loss for personal injury, they would take account of such rate of return as may be determined by the Lord Chancellor.⁴⁹ However, the power to determine the rate of return has not as yet been used. The House of Lords found in *Wells v Wells*⁵⁰ that the rate of return on Index Linked Government Stocks should be used in the calculation of future pecuniary loss, as we had recommended in our report. The court held that 3% should be the guideline rate for the time being, subject to a different rate being specified under section 1 of the 1996 Act. Since the decision of the House of Lords, the Lord Chancellor and the Secretary of State for Scotland have been consulting the Government Actuary and the Treasury, as required by section 1, before any exercise of their power to prescribe a new rate.⁵¹

(10) Offences of Fraud and Dishonesty with a Foreign Element

- 1.24 Part I of the Criminal Justice Act 1993 implemented our report on jurisdiction over offences of fraud and dishonesty with a foreign element⁵² and provided a rational and comprehensive scheme to give the courts of England and Wales jurisdiction over cases of international fraud that had a connection with this country but were not necessarily completed here. We are very pleased to note that, following expressions of concern by the courts and ourselves over many years, the legislation is being brought into operation from June 1999.⁵³

(11) Joint and Several Liability

- 1.25 In 1995 the Commission's Common Law Team, at the request of the Lord Chancellor's Department and the Department of Trade and Industry, completed a feasibility investigation into possible reform of joint and several liability. The study was published as a consultation paper by the Department of Trade and Industry.⁵⁴ This paper has been the focus of widespread public debate, and has been of particular interest and concern to the accountancy profession. In September 1998 the Secretary of State for Trade and Industry published a draft Limited Liability

⁴⁷ See also para 2.1 below.

⁴⁸ Structured Settlements and Interim and Provisional Damages (Law Com No 224).

⁴⁹ Or the Secretary of State for Scotland, with regard to Scotland.

⁵⁰ *Wells v Wells*, *Page and Sheerness Steel Co* [1998] 3 WLR 329.

⁵¹ Written Answer, *Hansard* (HC) 19 October 1998, vol 317, cols 940-941.

⁵² (1989) Law Com No 180.

⁵³ A Commencement Order was made on 19 April 1999. Provision for similar jurisdiction is being made for Northern Ireland. Similar jurisdiction already exists in the common law in Scotland. Written Answer, *Hansard* (HC) 21 April 1999, vol 329, col 583.

⁵⁴ Department of Trade and Industry Consultation Document, *Feasibility Investigation of Joint and Several Liability by the Common Law Team of the Law Commission*, HMSO, 1996.

Partnership Bill and announced a package of measures regarding both regulation of the accountancy profession and concerns about the professional liability of accountants. In the course of his announcement he said he accepted the major views of our Team's study⁵⁵ and the Government had decided that fundamental reform of the general law on joint and several liability was not justified.

(c) The Government's intentions

- 1.26 In the course of the debate on the Queen's Speech in the House of Lords, Lord Wilberforce, a former Law Lord, urged the Government to take action to implement Law Commission reports: -

"There are already a number of excellent Law Commission reports which are all ready and crying out for legislation. ... I shall not weary your Lordships with a list, but shall single out one - I refer to that relating to offences against the person⁵⁶ - which has been outstanding since 1993, and as to which there is a draft Bill which has received favourable consultation. The existing law is out of date, confused and wrong, giving rise to a great many unnecessary prosecutions and so even attracting a money dimension. That is just one example. There are many others of equal merit.

Of course, the answer may be, "No legislative time", but that easy answer simply will not do. If the present system does not provide enough legislative time, we must change the system to ensure that it does. In this House we already have an excellent procedure for handling comparatively simple and non-controversial measures which has worked well. I refer to the Select Committee procedure. However, I respectfully urge the Government most urgently to consider selecting and adapting that procedure to deal with major matters.⁵⁷ Do not let law reform be forgotten. It should be cherished. It is well within a programme of modernisation. It is well worth finding time for, and well within the capacity and ambition of the Government. I urge the Government to take it seriously."⁵⁸

- 1.27 The Lord Chancellor responded:

"I want to give [Lord Wilberforce] some comfort on Law Commission bills. I expect to bring forward two more reform Bills this Session: a privity of contract Bill and a trustee delegation Bill. But for a decision of your Lordships' House in its judicial capacity which put the law to rights, I would also have been bringing forward a Law Commission Bill in relation to mistake in contract. I can assure the noble and learned Lord of my strong support for the work of the Law Commission in getting its Bills onto the statute book."⁵⁹

⁵⁵ DTI Press Notice P/98/699.

⁵⁶ See para 1.13 above.

⁵⁷ See paras 1.29-1.30 below.

⁵⁸ *Hansard* (HL) 25 November 1998, vol 595, cols 86-88.

⁵⁹ *Hansard* (HL) 25 November 1998, vol 595, col 126.

- 1.28 In the course of the Government's White Paper "Modernising Justice - the Government's Plans for Reforming Legal Services and the Courts", the Government stated that they would achieve their aims by, among other matters, reforming the law, to make it clearer and fairer.⁶⁰ The Government White Paper says on the subject of law reform:-

"Clear, up-to-date law allows legal transactions to be completed, and legal disputes to be resolved more effectively, by ensuring that people are aware of their rights and responsibilities from the beginning. The Government intends to keep the law up-to-date, relevant and useable. To take one current example, we are carefully considering recently published proposals to modernise the law governing land registration, which dates from 1925⁶¹. These would streamline the system for transferring land, and establish clear principles to underpin it."⁶²

Law reform is concerned with modernising existing law. It is also necessary to ensure that, where the law on a particular subject has become fragmented as a result of piecemeal amendment over the years, it is brought together from time to time into a single piece of coherent legislation. Also, law which has become obsolete or redundant needs to be removed from the statute book. Otherwise, the statute book can become unclear, distracting users and possibly adding to legal costs. The Government recognises the importance of the consolidation and revision of the statute law, and will pursue this as part of our overall programme of modernisation."

Modernisation of Parliamentary procedures

- 1.29 The Select Committee on Modernisation of the House of Commons continued its work during 1998. It is of great importance to the Law Commission that delays in implementing Law Commission reports are reduced by, for example, changes to Parliamentary procedures. One aspect is that the amount of time taken by Law Commission Bills on the floor of the House should be kept to the minimum. The Law Commission intends to press for further procedural reform in the longer term for law reform Bills to facilitate Parliamentary scrutiny of law reform Bills.
- 1.30 The Law Commission hopes that the future work of this Select Committee will help achieve this, and it has made submissions and representations to the Committee for this purpose, and our Chairman met the President of the Council to discuss it. The Committee's recommendations on the carry-over of public bills could benefit Law Commission bills. During the debate on approval of the Committee's third and fourth reports, the Leader of the House foreshadowed mechanisms to assist with demands for debates on the floor of the House on issues that get squeezed; this could include Law Commission bills.⁶³ Other comments made during the course of this debate demonstrate an awareness of the problems

⁶⁰ Cm 4155 (December 1998) para 1.11.

⁶¹ *Land Registration for the 21st Century. A Consultative Document*, Law Com No. 254, Law Commission & HM Land Registry, September 1998.

⁶² See paras 5.1 - 5.4 below.

⁶³ *Hansard* (HC) 4 June 1998, vol 313, col 592.

for Law Commission bills, and an appreciation of the value of its reports.⁶⁴ Another report by the Select Committee⁶⁵ invited comments from Members on the idea of a “Main Committee”, possibly adapted from the provisions for such a committee in the Australian House of Representatives. This would in effect be a second or parallel Chamber, established partly to enable the House to deal more effectively with legislation, by enabling non-controversial legislation to be discussed at greater length - if referred to it by the House following co-operation between those concerned - while freeing the Chamber for longer debates on more controversial issues.⁶⁶

The impact of Law Commission reports

- 1.31 As the Lord Chancellor has said in Parliament, all Law Commission reports play a valuable role in the clarification and development of the law.⁶⁷ In two House of Lords decisions there has been detailed reference to Law Commission reports.⁶⁸ The central element of the legislation, which had been foreshadowed to implement a Law Commission report,⁶⁹ proved no longer necessary following the decision of the House of Lords in *Kleinwort Benson Ltd v Lincoln City Council & Ors*.⁷⁰ The case involved the application of the law of restitution to various interest rate swap transactions. The Law Commission’s consultation paper and subsequent report were frequently referred to in their Lordships’ speeches.
- 1.32 In a case about whether police officers at the Hillsborough tragedy could recover damages for psychiatric injury,⁷¹ Lord Griffiths, Lord Goff and Lord Hoffmann referred to the Law Commission report on Liability for Psychiatric Illness.⁷² In particular, Lord Goff (dissenting) said that he had been much assisted by the report in writing his opinion.

⁶⁴ Andrew Stunell MP said in relation to unimplemented Law Commission reports: “*on the whole, the stuff is not controversial, but it would improve the lives of our constituents.*” *Hansard* (HC) 4 June 1998, vol 313, col 584.

⁶⁵ The Parliamentary Calendar: Initial Proposals (1998/99) HC 60, which was approved by the House on 16 December 1998.

⁶⁶ The Select Committee’s Second Report, on Sittings of the House in Westminster Hall, proposes that there should be an experiment with such a parallel Chamber, sitting in the Grand Committee Room off Westminster Hall, in the 1999/2000 Parliamentary Session. The business envisaged includes: debates on Green Papers and on consultative documents issued by bodies such as the Law Commission; and Second Reading of non-controversial Government Bills, although that may not be appropriate during the experimental period and would not be intended to expand the Government’s legislative programme (1998/99) HC 194, 13 April 1999, paras 12, 15, 31 and 33.

⁶⁷ Written Answer, *Hansard* (HL) 19 March 1998, vol 587, col 214.

⁶⁸ As we go to press, we have seen the judgment of the Privy Council in *Air Jamaica Ltd v Charlton*, (28 April 1999) which accepts our analysis of how the rule against perpetuities applies to pension trusts. See para 5.9 below and our report, *The Rules Against Perpetuities and Excessive Accumulations*, (1998) Law Com No 251, para 3.53.

⁶⁹ The first part of *Restitution: Mistakes of Law: and Ultra Vires Public Authority Receipts and Payments* (1994) Law Com No 227.

⁷⁰ [1998] 3 WLR 1095. See para 1.22 above.

⁷¹ *White & Ors v Chief Constable of South Yorkshire Police & Ors* [1998] 3 WLR 1509.

⁷² Law Com No 249.

Codification of criminal law

- 1.33 This country is one of the very few countries that does not have a criminal code. All our continental neighbours and most members of the Commonwealth have criminal codes, which set out clearly and comprehensively circumstances in which crimes can be committed. The Law Commission has been charged with a duty to keep the law under review “with a view to its systematic development and reform, including in particular the codification of [the] law”.⁷³
- 1.34 We were delighted that Lord Bingham of Cornhill, the Lord Chief Justice, made a powerful and cogent call for the implementation of a code of criminal law.⁷⁴ He summarised the arguments in favour of codification as being three-fold. First it would bring clarity and accessibility to the law. Secondly it would bring coherence to criminal law.⁷⁵ Thirdly he said that a code would bring greater certainty to the law. This is particularly important as article 6 of the European Convention on Human Rights, as applied, requires criminal offences to be defined with reasonable precision.
- 1.35 A case reported in 1998 provides a good example of the cost to the public of uncertainty in the criminal law. In *Ireland*,⁷⁶ the House of Lords had to decide whether the appellant – by making a large number of telephone calls to three women and remaining silent when they answered – had committed the offence of assault occasioning actual bodily harm contrary to section 47 of the Offences against the Person Act 1861. The Court of Appeal⁷⁷ and the House of Lords⁷⁸ dismissed the appeals, holding that the making of silent telephone calls causing psychiatric injury was capable of constituting assault under section 47. Lord Steyn⁷⁹ referred to the offence proposed by this Commission, that “a person is guilty of an offence if he intentionally and recklessly causes injury to another”.⁸⁰ He added that “this simple and readily comprehensible provision would eliminate the problems inherent in section 47”.⁸¹

⁷³ Law Commissions Act 1965, s 3(1).

⁷⁴ Speech at Dinner for Judges at Mansion House on 22 July 1998, extracts of which are reproduced in [1998] Crim LR 694.

⁷⁵ The Lord Chief Justice adopted the words of Professor Sir John Smith QC that the criminal law

“.. is incoherent and inconsistent. State almost any general principle and you find one or more leading cases which contradict it. It is littered with distinctions which have no bases and reason but a mere historical accident. I am in favour of codification of the criminal law because I see no other way of reducing a chaotic system to order, of eliminating irrational distinctions and making the law reasonably comprehensible, accessible and certain. These are all practical objects. Irrational distinctions mean injustice. A is treated differently from B where there is no rational ground for treating him differently; and this is not justice”.

⁷⁶ [1998] AC 147.

⁷⁷ [1997] QB 114.

⁷⁸ [1998] AC 147.

⁷⁹ At p 162.

⁸⁰ Clause 4 of the Bill attached to *Legislating the Criminal Code: Offences Against the Person and General Principles* (Law Commission No 218): see para 1.13 above.

⁸¹ [1998] AC 147 at 162G with whom the remaining Law Lords agreed.

Human rights

- 1.36 The Law Commission welcomes the enactment of the Human Rights Act 1998. Reference has been made to the European Convention on Human Rights in relevant Law Commission reports for some years now. The Law Commission hopes to play an active role in assisting with the reform of English law where it is found to conflict with the Convention. The Hardwicke Lecture by the Chairman of the Law Commission referred to the enactment of the Human Rights Act 1998 and its impact on codification of the criminal law. We refer below to a particular project which we have recently started, on bail in criminal cases in the light of the Convention.⁸²

Company law

- 1.37 The Government has launched a wide-ranging review of company law. The Department of Trade and Industry published an initial Consultation Paper.⁸³ As part of its considerations, it referred to:

our report on shareholder remedies, which contributes to the discussion of “civil sanctions”, one of the issues in the DTI’s review;⁸⁴

our joint work with the Scottish Law Commission on the law relating to directors’ duties;⁸⁵ and

the review of partnership law which we are conducting jointly with the Scottish Law Commission and which will inform the DTI’s review of company law.⁸⁶

Mrs Justice Arden has been a member of the Steering Group of the DTI’s Company Law Review.⁸⁷ Miss Diana Faber served on the Small Firms Sub-Group of the Review.

Programmes of law reform

- 1.38 Most of our law reform projects were set out in the Sixth Programme of Law Reform, which was approved by the then Lord Chancellor in 1995. As intended, this covered most of our law reform work until the end of 1998.
- 1.39 During late 1997 and 1998 we consulted on what projects we might undertake in our Seventh Programme. We drafted the new Programme and, following necessarily lengthy discussions with the Lord Chancellor’s Department, it has now

⁸² See para 4.16 below.

⁸³ Modern Company Law for a Competitive Economy (DTI, March 1998). There has been a further consultation document, “The Strategic Framework”, issued by the Company Law Review’s Steering Group in February 1999. It refers to our work on partnership law and directors’ duties at para 5.2.10 and chapter 7 respectively.

⁸⁴ Para 6.3 of the 1998 Consultation Paper; see also para 1.15 above.

⁸⁵ Para 3.7 of the 1998 Consultation Paper; see also paras 3.12-3.16 below.

⁸⁶ Para 5.7 of the 1998 Consultation Paper; see also paras 3.1-3.2 below.

⁸⁷ See para 1.43 below.

been approved by the Lord Chancellor. It is being published at the same time as this annual report.

Summary of work in 1998

- 1.40 The table at the end of Part I summarises the major targets we had for our work in 1998, with the outcome.

Summary of work for 1999

- 1.41 A summary of our main planned publications for 1999 appears at the end of this overview. Naturally, publications only form part of our work.

Tributes

Mrs Justice Arden

- 1.42 Dame Mary Arden left the Law Commission in January 1999 at the end of her term of office, having been its Chairman since January 1996.⁸⁸
- 1.43 Her Chairmanship was marked by her enormous energy, and great enthusiasm for and commitment to law reform and the Law Commission. She also brought to the Commission her very considerable expertise in company law⁸⁹ and in other fields of law. She carried forward important improvements in the presentation of our reports. It was a very productive period for the Commission, with 35 reports or consultation papers.

Staff

- 1.44 We pay tribute to the Commission's staff later in this report.⁹⁰

New Chairman

- 1.45 The Lord Chancellor appointed Sir Robert Carnwath CVO, a Judge of the Chancery Division of the High Court, as the ninth Chairman of the Law Commission.⁹¹ His fellow Commissioners are very pleased to welcome him as the Chairman.

⁸⁸ "I should like to take this opportunity to pay tribute to the chairman of the Law Commission for her extremely good and distinguished work during her period of office", said Lord Wilberforce, a former Law Lord, during the debate on the Queen's Speech in urging the Government to take action to implement Law Commission reports and in particular to introduce a criminal code: see para 1.26 above. *Hansard* (HL) 25 November 1998, vol 595, cols 86 - 88.

⁸⁹ She has generously agreed to assist the Commission in our work with the Scottish Law Commission on directors' duties: see para 3.15 below. She also continues as a member of the Steering Group of the DTI's Company Law Review: see para 1.36 above.

⁹⁰ Paras 8.1 - 8.8.

⁹¹ Mr Justice Carnwath succeeded Mrs Justice Arden on 1 February 1999.

MAJOR TARGETS FOR 1998

PUBLICATIONS

To complete consultation papers on:

- limitation periods
- land registration
- peaceable re-entry
- partnership*
- Part X of the Companies Act 1985*
- illegal transactions
- third parties' rights against insurers*

To complete reports on:

- corruption
- liability for psychiatric illness
- evidence of previous misconduct
- perpetuities and accumulations
- trustees' powers and duties
- execution of deeds and documents by bodies corporate

We also published a report on consents to prosecution

To publish:

- Statute Law (Repeals) Bill*
- our Seventh Programme of Law Reform
- Consolidation Bills/Reports: Armed Forces*
Audit Commission
- our Annual Report

* with the Scottish Law Commission

WORK TOWARDS LONGER-TERM AIMS

To take advantage of any appropriate opportunity to:

- seek streamlined Parliamentary procedures for Law Commission Bills
- press for criminal law to be codified
- promote good relations between the Law Commission and Government Departments, other law reform bodies, professional bodies and others
- increase awareness of the Law Commission's work
- press for implementation of the Law Commission's unimplemented reports

ALL TARGETS ARE SUBJECT TO AVAILABILITY OF RESOURCES

- Published in January 1998
- Published in September 1998
- Published in January 1998
- Delayed: see para 3.2
- Published in September 1998
- Completed in November 1998; published in January 1999
- Published in January 1998

- Published in March 1998
- Published in March 1998
- Delayed: see para 4.14
- Published in March 1998
- Delayed: see para 5.11
- Published in August 1998

- Published in May 1998
- Delayed: see para 1.39
- Delayed: see para 6.6
- Published in January 1998
- Published in March 1998

Work has been done: see paras 1.29 - 1.30

The position is summarised at paras 1.33 - 1.35

See Part VII

See Part VII

The position is described at paras 1.3 and 1.5 - 1.28

[This page is blank]

MAJOR TARGETS FOR 1999

PUBLICATIONS

To complete consultation papers on:

- fraud ¹
- home-sharers' property rights
- bail
- double jeopardy
- illegal transactions ¹
- partnership*
- trust formalities ²

To complete reports on:

- land registration
- Part X of the Companies Act 1985*
- trustees' powers and duties ⁺
- limitation periods
- damages:
 - for non-pecuniary loss in personal injury cases ¹
 - for medical, nursing and other expenses
 - collateral benefits in personal injury cases
 - wrongful death

To publish:

- our Seventh Programme of Law Reform
- Consolidation Bills/Reports: Armed Forces* ²
Sentencing ²
- our Annual Report for 1998
- Chronological Table of Private and Personal Acts* ¹

* with the Scottish Law Commission

⁺ partly with the Scottish Law Commission

¹ published in early 1999

² to be published in 1999 or early in year 2000

ALL TARGETS ARE SUBJECT TO AVAILABILITY OF RESOURCES

PART II

COMMON LAW

TEAM MEMBERS ^o

Government Legal Service

Ms E M Barmes (*Team Manager*)
Mrs H Hall, Ms N S Pittam

Research Assistants

Mr C Daly, Miss F Frost,
Mr R Williams

^o as at the end of 1998

Professor Andrew Burrows
(Commissioner)

DAMAGES¹

- 2.1 We are in the closing stages of our series of projects on damages. Following publication of our Report on Aggravated, Exemplary and Restitutionary Damages² in 1997 and our Report on Liability for Psychiatric Illness³ in 1998, it remains for us to make final recommendations on a range of matters concerning damages for personal injury and death.⁴

¹ See Sixth Programme of Law Reform (1995) Law Com No 234, item 2.

² (1997) Law Com 247 which followed Aggravated, Exemplary and Restitutionary Damages (1993) Consultation Paper No 132.

³ (1998) Law Com 249 which followed Liability for Psychiatric Illness (1995) Consultation Paper No 137. We outlined our principal recommendations in our Annual Report for 1997, Law Com No 250, para 2.11.

⁴ Other publications in the damages series are as follows: Structured Settlements and Interim and Provisional Damages (1992) Consultation Paper No 125; Structured Settlements and Interim and Provisional Damages (1994) Law Com 224; Personal Injury Compensation: How Much is Enough? (1994) Law Com 225.

- 2.2 We are publishing a report on damages for non-pecuniary loss in personal injury cases in April 1999.⁵ By the end of 1999 we hope to finalise our report on the issues raised in our consultation papers on damages for medical, nursing and other expenses and on collateral benefits in personal injury cases.⁶ Within the same timespan we aim to finalise our recommendations to reform the law on claims for wrongful death.⁷
- 2.3 The issues which our final reports in the damages project will seek to resolve are manifold. For example, our work on damages for non-pecuniary loss in personal injury cases asks whether those damages are at the right level and the role which juries should play in the assessment of damages generally. An issue in the project on damages for expenses is how, if at all, compensation should be awarded in respect of care provided gratuitously to personal injury victims, including by the person who caused the injury. The central collateral benefits question is whether and, if so, how account should be taken - in the assessment of damages for personal injury - of money received from third parties. An issue fundamental to the project on wrongful death is who should be entitled to claim damages, including bereavement damages, where a person has been wrongfully killed.
- 2.4 The common law of damages for personal injury is of particular importance to those who are injured in circumstances in which compensation is available. It is, however, relevant to all, since we are all vulnerable to injury by the legal wrong of another, and because the availability of compensation at common law imposes costs on society at large. It is also noteworthy that the assessment of damages in personal injury cases exerts an important influence on the law of damages as a whole.⁸

LIMITATION OF ACTIONS

- 2.5 Following publication of our Consultation Paper on limitation of actions,⁹ we have received, and now analysed, over 150 responses. The responses received have provided us with a broad spectrum of views. This is of great assistance to us in

⁵ Damages for Personal Injury: Non-Pecuniary Loss (1995) Consultation Paper No 140. We commissioned research from the Office for National Statistics into what the public believe would be fair levels of compensation for the non-financial consequences of personal injury. The research involved face to face interviews with over 3500 people, who formed a random and representative sample of the population of Great Britain. We were greatly assisted in the design and interpretation of the research by Dr Mavis McLean of Wolfson College, Oxford, and of the Lord Chancellor's Department.

⁶ Damages for Personal Injury: Medical, Nursing and Other Expenses (1996) Consultation Paper No 144. Damages for Personal Injury: Collateral Benefits (1997) Consultation Paper No 147.

⁷ Claims for Wrongful Death (1997) Consultation Paper No 148.

⁸ For example, the law of damages in personal injury cases is influential on the assessment of damages for non-pecuniary loss in claims for defamation (see *John v Mirror Group Newspapers Ltd* [1997] QB 586), malicious prosecution and false imprisonment (see *Thompson v Commissioner of Police for the Metropolis* [1997] 3 WLR 403) and in claims of discrimination (*HM Prison Service and ors v Johnson* (1997) IRLR 162). It also influences the treatment of collateral benefits outside the personal injury sphere (see Damages for Personal Injury: Collateral Benefits (1997) Consultation Paper No 147, p 1, n 1).

⁹ Consultation Paper No 151, published in January 1998.

formulating our final recommendations. Strong support has been expressed for the core regime, which forms the centre of the Law Commission's provisional proposals to reform the law on limitation periods, and in particular for the idea that there should be a single limitations regime applying to most causes of action. The central elements of this regime are:

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

2.6 We hope to publish our final report in the last quarter of 1999.

ILLEGAL TRANSACTIONS

2.7 We approved for publication our consultation paper on illegal transactions.¹⁰ It examines the effect of illegality on contracts and trusts. We set out the present technical rules that are applied to decide whether a contract or trust which involves some form of illegality is invalid or unenforceable. In the paper we provisionally agree with the many criticisms that have been levelled at the current law by academics, practitioners and the judiciary, not least that it is overly complex and may result in injustice. We provisionally propose that the present rules should be replaced by a discretion under which a court could decide whether or not to enforce an illegal transaction, to recognise that property rights had been transferred or created under it, or to allow benefits conferred under it to be recovered. We also suggest that the proposed discretion should be structured in order to provide greater certainty and guidance.

2.8 We believe that our provisional proposals will enable the courts to focus much more closely on the type of illegality involved in the transaction, its seriousness, and whether denying a party to the illegal transaction his or her usual rights and remedies will further the underlying purpose of the rule which renders the transaction illegal. We are very grateful for the help given to us by our consultant on this project, Professor Richard Buckley, Professor of Law at the University of Reading.

¹⁰ Published in early 1999 (Illegal Transactions: The Effect of Illegality on Contracts and Trusts (1999) Consultation Paper No 154).

PART III

COMPANY AND COMMERCIAL LAW

TEAM MEMBERS ^o

Government Legal Service

Ms F R Lloyd, Ms A Moore-Williams,
Mr A C Scott

Research Assistants

Mr D Bunting, Mr S E Jelf, Miss C Eady,
Mr K Kapoor, Mr J Mortimer (Chairman's Research Assistant)

^o as at the end of 1998

Miss Diana Faber
(Commissioner)

COMMERCIAL LAW

Partnership law

- 3.1 In 1997 we were invited by the Department of Trade and Industry to carry out a review of partnership law, jointly with the Scottish Law Commission, with particular reference to the issues of independent legal personality, continuity of business irrespective of changes in ownership, solvent dissolution, and a model partnership agreement. The review was to cover both general partnerships¹ and limited partnerships.²
- 3.2 We are considering how the law could be developed to enable it to meet the needs of business in the next century. Together with the Scottish Law Commission we are now preparing a consultation paper on general partnerships. We had hoped to publish it in the second half of 1998 but, due to work undertaken on other projects, we now hope to complete it in 1999.³ We are being assisted in this project by a consultant, Mr R C l'Anson Banks, a barrister specialising in partnership law.

Third Parties (Rights Against Insurers) Act 1930

- 3.3 We published a consultation paper jointly with the Scottish Law Commission in January 1998.⁴

¹ Partnership Act 1890.

² Limited Partnerships Act 1907.

³ We also hope to publish a separate consultation paper on limited partnerships.

⁴ Third Parties (Rights Against Insurers) Act 1930 (1998) Consultation Paper No 152.

- 3.4 The 1930 Act provides the victims of negligent or wrongful acts (“third parties” under the Act) committed by individuals or companies who become insolvent⁵ with rights against the proceeds of insurance policies taken out by the wrongdoer.
- 3.5 In our consultation paper, we provisionally proposed that victims should be able to establish the liability of the insured person and of the insurer under the insurance contract in the same proceedings. Currently, victims may be required to bring two or more sets of proceedings before obtaining judgment under the Act. One of our other provisional proposals was that certain policy information should be available to victims as soon as the insolvency event occurs.
- 3.6 We have analysed the responses to the consultation paper and hope to finalise our report and recommendations around the end of 1999. We have been assisted by a consultant, Dr Malcolm Clarke, of St John’s College, Cambridge.

Execution of deeds and documents by bodies corporate

- 3.7 We published our report in August 1998⁶. It followed a comprehensive consultation on the way in which companies and other corporations execute deeds and other documents. The report recommends detailed amendments to existing legislation to simplify what has become an unnecessarily complex area of the law.
- 3.8 We recommend that inconsistencies between the presumptions of due execution in section 74(1) of the Law of Property Act 1925 and section 36A of the Companies Act 1985 should be removed, while recommending that the irrefutable presumption of delivery in section 36A(6) of the Companies Act should be repealed. We seek to clarify the relationship between deeds, contracts under seal and specialities by introducing statutory provision that the face-value requirement⁷ is not satisfied merely because an instrument is executed under seal and that to be a speciality an instrument must be a deed (or be an obligation contained in a deed). We also recommend clarifying the rules relating to execution of deeds by attorneys and by liquidators.

Electronic commerce

- 3.9 Law reform to facilitate electronic commerce is one of the topics which we have considered, with a view to possible inclusion as a project in our Seventh Programme of Law Reform. We have undertaken some preliminary work. Any project which we undertook would be likely to focus on the sale and carriage of goods, domestically and internationally, and on associated banking and insurance transactions.

⁵ The Act sets out a number of insolvency “events” which must take place before it can be relied on. These include the making of a bankruptcy order or of a winding up order.

⁶ The Execution of Deeds and Documents by or on behalf of Bodies Corporate (1998) Law Com No 253.

⁷ To be a deed, an instrument must make it clear on its face that the parties intend it to be a deed. This is what is known as the face-value requirement.

COMPANY LAW

- 3.10 We refer above⁸ to the DTI's review of company law, to the relationship between that review and our work, and to the roles which Mrs Justice Arden and Miss Faber have in that review.
- 3.11 Mrs Justice Arden, the Chairman of the Commission throughout the year, took a close interest in the work of the team in the area of company law in view of her particular experience in this field. She took primary responsibility for the project on company directors mentioned below.

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

- 3.12 The Law Commission and Scottish Law Commission, at the request of the Department of Trade and Industry, are conducting a joint review of Part X of the Companies Act 1985 and other relevant provisions of the Companies Acts, such as those in Schedules 6 and 13 to the Companies Act 1985. Part X contains provisions designed to deal with situations in which a director has a conflict of interests. Many criticisms of its provisions have been made by company directors and others.
- 3.13 The Commissions published a consultation paper in September 1998.⁹ This suggests means by which provisions in Part X could be reformed, simplified or dispensed with altogether. In addition, the paper considers the case for a statutory statement of the duties owed by directors to their company, including a statement of their duty of care and skill. The consultation period expired in November.
- 3.14 An empirical survey of directors' views is being conducted for the Commissions by the Economic and Social Research Council's Centre for Business Research in Cambridge, made possible by the sponsorship of the Institute of Chartered Accountants in England and Wales and the technical assistance of the Institute of Directors.
- 3.15 Mrs Justice Arden made the project the subject of her Denning Lecture, given at Inner Temple Hall in October 1998. She continues to be involved in the preparation of our report following the end of her Chairmanship of the Commission in January 1999. Our report will be published in 1999. The DTI intends that the results of the Commissions' study will be fed into its wide review of company law, launched in March 1998 by its consultation document entitled *Modern Company Law for a Competitive Economy*.
- 3.16 The Law Commission is assisted in its work by Professor Dan Prentice (Pembroke College, Oxford), Richard Nolan (Director of Studies in Law at St John's College, Cambridge) and Dr Simon Deakin (of Peterhouse College, Cambridge and the ESRC Centre for Business Research, Cambridge).

⁸ Para 1.37 above.

⁹ Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties(1998) Law Com No 153; Scot Law Com No 105.

PART IV

CRIMINAL LAW AND EVIDENCE

TEAM MEMBERS °

Government Legal Service

Mr J Parry, Ms C M Hughes
(*Joint Team Managers*)

Mr R Percival, Dr E Finlason

Research Assistants

Miss M Ahamat, Ms L Busch, Miss C Tims

° as at the end of 1998

Mr Stephen Silber QC
(**Commissioner**)

Corruption

- 4.1 As a result of calls from two prestigious bodies,¹ we decided in 1996 to review the criminal law of corruption. The law is in a chaotic state and found in a multiplicity of sources, including overlapping common law offences and at least 11 statutes, many of which were a hasty response to a contemporary problem. In the light of the helpful and thoughtful responses to our consultation paper,² we published a report³ in March 1998 in which we recommended replacing the existing law of corruption with a modern statute creating four offences. The concept of doing something *corruptly* would be central to those offences. This word is used in existing legislation but is not defined, and we believe that this defect should be remedied. Our conclusion was that the essence of corruption lies in the influencing of a person to perform functions in a certain way and to do so in return (or at least primarily in return) for the conferring of an advantage on the person performing the function or a third party. We also ensured that our recommendations met the requirements of an Organisation for Economic Co-operation and Development Convention requiring member countries to take effective measures “to deter, prevent and combat the bribery of foreign public officials in connection with international bribery transactions”.⁴ We did not look at the position of Members of

¹ The Royal Commission on Standards of Conduct in Public Life (Chairman: the Rt Hon the Lord Salmon) and the Committee on Standards in Public Life, then chaired by the Rt Hon the Lord Nolan.

² Legislating the Criminal Code: Corruption (1997) Consultation Paper No 145.

³ Legislating the Criminal Code: Corruption (1998) Law Com No 248.

⁴ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

the Parliament as this matter was already being examined by a Joint Committee on Parliamentary Privilege.⁵

- 4.2 In July the Home Secretary said in Parliament that there was much support for the Law Commission's recommendations for the restatement of both the common law offence of bribery and the present statutory offences of corruption in a modern statute, with a clear definition of what is meant by acting in a corrupt manner.⁶ At that stage the Government also accepted in principle the Law Commission's recommendation that there should be a single offence of corruption to cover both public and private sectors. The Home Secretary announced that the Home Office had convened an inter-departmental working group, on which the Criminal Law Commissioner serves, to examine our recommendations. When the group completes its work, the Home Secretary proposes to publish a paper setting out the Government's detailed proposals for the law of corruption. In November the Home Secretary added that it was likely the government's reform would be modelled along the line of the Law Commission's draft Bill and that the government would wish to construct a criminal law having general application.⁷

Misuse of public office

- 4.3 At present, elected councillors and paid local government officials are liable to a surcharge if they misuse their official position. This remedy was looked at by the Committee on Standards in Public Life⁸ which provisionally suggested that there should be a new statutory offence of misuse of public office.⁹ At the suggestion of the Committee, consideration of how such legislation might best be framed was carried forward in consultation with the Criminal Law Commissioner. In advice given by the Commissioner, a new statutory offence was proposed¹⁰ which is now being considered by a Home Office-led inter-departmental working group¹¹ of which the Commissioner is a member. We are grateful for the financial assistance we have received from the Committee on Standards in Public Life; and for the assistance received from Professor Sir John Smith CBE, QC, LL.D, FBA, Emeritus Professor of Law at the University of Nottingham who acted as our consultant.

⁵ Under the Chairmanship of the Rt Hon the Lord Nicholls of Birkenhead.

⁶ Written Answer, *Hansard* (HC) 24 June 1998, vol 314, col 520; and Written Answer, *Hansard* (HC) 31 July 1998, vol 317, col 849.

⁷ See the Home Secretary's letter to the Chairman of the Joint Committee on Parliamentary Privilege, in the Committee's Report, published on 30 March 1999 (1998-99) HL 43-I, HC 214-I, vol 3, p 154.

⁸ Misuse of Public Office - A New Offence? (A consultation paper) - July 1997.

⁹ The Committee drew attention to the strong views held in some quarters that, whereas elected local councillors and paid officers of local government may be liable to a penalty surcharge in the event of losses to the taxpayer, no such penalty applied in other areas of public life. It did not, for example, apply to Ministers or civil servants. The Committee were concerned about this and that under the surcharge provision a councillor or officer was at risk of being held liable for the entire loss in the case of relatively minor cases of misconduct.

¹⁰ Further details were given in *The Times*, 5 January 1999.

¹¹ Written Answer, *Hansard* (HC) 24 June 1998, vol 314, col 520; and Written Answer, *Hansard* (HC) 31 July 1998, vol 317, col 849.

- 4.4 The new offence which has been proposed is based on an improper exercise of, or improper omission to exercise, a duty or power, and the threshold of liability would be set at a high level. To be convicted of the offence the defendant must have either performed an unlawful act or made an unlawful omission which he or she knew to be unlawful; or, alternatively, performed an act or made an omission which was improper according to the standards of any reasonable and honest holder of the defendant's office as he or she was aware.¹²
- 4.5 To combat the risk that this offence could be used for political purposes it was recommended that no prosecution for the new offence should be brought without the consent of the Director of Private Prosecutions.

Consents to prosecution

- 4.6 We reviewed the rules which require the consent of either the Attorney-General or the Director of Public Prosecutions before a prosecution can be brought for certain criminal offences. Those provisions may cause delay in criminal proceedings and impose an administrative burden. They also constitute an impediment to the right to bring a private prosecution – a right widely regarded as fundamental.¹³
- 4.7 Just over a year after our consultation paper¹⁴ we published our report,¹⁵ taking into account the many responses. We concurred with the view of many commentators that there is no unifying principle to justify the range of offences included within it: a former Law Officer, for example, described it as being “full of anomalies and even absurdities”.¹⁶ We made recommendations to modernise the present system in a principled way. Our starting point was that any new regime had to be offence-structured, as otherwise it would not be possible for a prosecutor to know if a consent was required. Consent¹⁷ should only be required if the offence falls into one of three categories:
- (a) where it is very likely that a defendant will reasonably contend that prosecution for a particular offence would violate his or her rights guaranteed under the European Convention on Human Rights.

¹² Mere negligence or gross negligence, as opposed to knowing or conscious wrongdoing, would not suffice.

¹³ Eg, it was described by Lord Diplock as “a useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against the criminal law” *Gouriet v Union of Post Office Workers* [1978] AC 435, 497 H - 498 B.

¹⁴ Criminal Law: Consents to Prosecution (1997) Consultation Paper No 149.

¹⁵ Criminal Law: Consents to Prosecution (1998) Law Com No 255.

¹⁶ Eg, the consent of the DPP is required to prosecute a victim's spouse for stealing or unlawfully damaging property, but is not needed to prosecute that same spouse for obtaining property by deception, wounding, committing blackmail, rape or attempted murder.

¹⁷ In most cases where consent would be required, the consent decision would be made by the DPP personally or by the Head of Central Casework. It would only be for category (b) that the decision would be made by a Law Officer.

- (b) where an offence involves the national security or has some “international element”. By “international element” we mean those offences which are related to international obligations of the state, involve measures introduced to combat international terrorism or in response to international conflict, or have a bearing on international relations.
- (c) where the offences create a high risk that the right of private prosecution will be abused and the institution of proceedings will cause the defendant irreparable harm.

Fraud

- 4.8 The Home Secretary asked us in April 1998 to examine the law of fraud. We were particularly asked to consider whether it was comprehensible to juries, adequate for effective prosecution, fair to defendants and adequate to deal with technological developments.¹⁸ We were specifically asked to consider a “general offence of fraud”, which we took to mean either a general dishonesty offence or a general deception offence.
- 4.9 Our Consultation Paper,¹⁹ published in April 1999, first considered the dishonesty and deception versions of a general fraud offence. We provisionally rejected both. The first would extend the reach of the common law too far, rendering criminal that which should not be. In addition it was probably too uncertain to comply with the requirements of the ECHR. The second would also extend the law too far and in too indeterminate a way to be justifiable in principle. Our provisional approach was that such gaps as there are in the coverage of the existing deception offences should be closed by specific extensions to the current law.
- 4.10 In order to ensure that those who engage in Eurobond and other banking fraud are caught we proposed that, for the purposes of the offence of obtaining property by deception, it should be sufficient that the person to whom the property belongs is *deprived* of it by deception, whether or not anyone else *obtains* it. We also took the provisional view that the requirement of an intention permanently to deprive should be abolished. Further, given that deception necessarily involves causing another to believe something which the deceiver knows to be untrue or realises may be untrue, we considered that obtaining by deception should in itself be sufficient for liability without the additional need to prove dishonesty.
- 4.11 The current law of deception is, we provisionally considered, ill suited to charging the fraudulent use of credit, debit and charge cards and we therefore proposed a new offence of imposing on another, without authority, a liability to pay money. As a result of technological change, particularly the development of the Internet, it has become possible to obtain services of significant value fraudulently without deceiving a human mind. We provisionally concluded that it should be an offence to obtain a service without the permission of the person providing it, albeit without the deception of a human mind; but, on the ground that such an offence would be

¹⁸ Written Answer, *Hansard* (HC) 7 April 1998, vol 310, cols 176 - 177; and Written Answer, *Hansard* (HL) 7 April 1998, vol 588, col 119.

¹⁹ Legislating the Criminal Code: Fraud and Deception (1999) Law Commission Consultation Paper No 155.

more appropriately treated as one of theft than of deception, we deferred our detailed proposals on the issue to our forthcoming review of the law of theft.

- 4.12 We have had the benefit of the assistance of our consultant, Professor Sir John Smith CBE, QC, LL.D, FBA, Emeritus Professor of Law at the University of Nottingham. The consultation period closes on 31 July 1999.

Trade secrets

- 4.13 We published a consultation paper in November 1997.²⁰ The consultation period closed, after an extension, in April 1998. In the light of the reference by the Home Secretary on the issue of fraud,²¹ we have decided that it would be preferable to delay formulating our policy on trade secrets until we have formed at least a provisional view on a general fraud offence, and had the benefit of responses to consultation on that project.

Evidence of previous misconduct

- 4.14 Following our consultation paper, work is now well under way on the draft report which we hope to publish in early 2000. It did not prove possible to publish this report in 1998, due to shortage of the necessary staff.
- 4.15 We have been assisted in this project by research by the Oxford Centre for Socio-Legal Studies into the effect on magistrates of knowledge of a defendant's previous convictions; this research was undertaken with financial assistance from the Lord Chancellor's Department, for which we are most grateful. We are also being assisted by a consultant, Professor Diane Birch, of the University of Nottingham.

Bail in criminal proceedings

- 4.16 We have started examining the question of how the police should consider the question of bail post-charge and how the courts should deal with applications for bail when the Human Rights Act 1998 comes into effect. Under Article 5(1) of the European Convention on Human Rights, individuals have the right to "liberty and security of person" and the English courts determining applications for bail must take into account decisions on the Convention.²² It is obviously a matter of great concern if a person is denied his or her liberty in such a way that the Convention is not observed. There are also financial implications for Government because an individual may be entitled to compensation for breaches of Article 5.²³ Professor Andrew Ashworth QC FBA, the Vinerian Professor of English Law at the University of Oxford, is acting as a consultant. We hope to publish a consultation paper in 1999.

²⁰ Legislating the Criminal Code: Misuse of Trade Secrets (1997) Consultation Paper No 150.

²¹ See paras 4.8-4.12 above.

²² S 3 of the Human Rights Act 1998.

²³ Article 5(5) and s 9(3) of the Human Rights Act 1998.

Consent as a defence

- 4.17 Following our consultation paper on consent as a defence,²⁴ principally to offences against the person and sexual offences, we received a large number of thoughtful responses. All the responses have been analysed by Mr Paul Roberts, Lecturer in Law at the University of Nottingham. We have also been greatly assisted by Lord Justice Brooke, a former Chairman of this Commission.
- 4.18 The consultation paper, and the one which preceded it, covered a very large range of issues, many of them complex and contentious. We are taking this project forward in conjunction with the current Home Office review of sexual offences. We plan to finalise a report early in 2000 addressing the questions of: what it means to consent to an act which would otherwise constitute an offence, what constitutes a valid consent, and who has the capacity to give a genuine consent. We shall consider in due course how to deal with the remaining issues set out in the consultation papers.

Assisting and encouraging crime

- 4.19 Our consultation paper²⁵ covered the scope and structure of that part of the criminal law which relates to those who assist or encourage others to commit offences. Resources did not permit us to make any progress on this project in 1998. If resources permit, we hope to start formulating our policy on this project during 1999.

Double jeopardy

- 4.20 In February 1999 the Home Secretary announced that he was asking the Law Commission to consider the proposal in the Macpherson Report of the Stephen Lawrence Inquiry²⁶ that consideration should be given to the Court of Appeal being given power to permit prosecution after acquittal where fresh and viable evidence is presented.
- 4.21 This work entails the examination of the important principle that a person should not be tried for a crime of which he or she has already been acquitted; and consideration of the extent to which that principle might justifiably be modified (if at all) in the interests of convicting those guilty of crimes. We hope to issue a consultation document in 1999.

Codification

- 4.22 We have described our approach to codifying the criminal law in Part I above.²⁷

²⁴ Consent in the Criminal Law (1995) Consultation Paper No 139.

²⁵ Assisting and Encouraging Crime (1993) Consultation Paper No 131.

²⁶ *Hansard* (HC) 24 February 1999, vol 326, col 392.

²⁷ Paras 1.33-1.35.

Consolidation of the sentencing statutes

4.23 Consolidation of the sentencing statutes is a vitally important project, on which a great deal of work has been done.²⁸

²⁸ See para 6.7 below for further details.

PART V

PROPERTY AND TRUST LAW

TEAM MEMBERS ^o

Government Legal Service

Mr J W Holbrook (*Team Manager*)

Miss R Ellis, Mrs G A Field

Research Assistants

Miss L J Boocock, Mr M J Coggins,

Mr N E J Wells

^o as at the end of 1998

Mr Charles Harpum

(Commissioner)

LAW OF PROPERTY

Land Registration

- 5.1 The Joint Working Group on Land Registration¹ has been engaged on the substantial task of replacing the Land Registration Act 1925 in its entirety. It published its Second Report² in September 1998.
- 5.2 We anticipate that, within the next ten years or so, it will be possible for title to land to be transferred electronically. This will make conveyancing faster, and land registration will become much more an integral part of the process than it is now, removing many problems that exist at present. However, such developments cannot be accommodated without a new legislative framework, and the joint working group has now offered a blueprint for its construction.
- 5.3 In addition to paving the way for electronic conveyancing, the joint working group has made proposals for substantive reform of the land registration system. With more than 80 per cent of all titles now registered, it is appropriate to develop registered land according to principles that reflect its nature and potential rather than seeking to mirror the position where title is unregistered (which has been the approach to date). New rules are proposed on the acquisition of title to registered land by adverse possession that would considerably strengthen the protection enjoyed by those who have registered title. There are also proposals, among others, for the simplification of the methods of protecting - by registration - rights in or over land (such as easements, restrictive covenants and options), for making the

¹ For the background to the Joint Working Group see our Annual Report for 1994, Law Com No 232, paras 2.67 - 2.69.

² Land Registration for the Twenty-First Century - A Consultative Document (1998) Law Com No 254.

register a more complete record of the matters to which title may be subject, and for the simplification of technical aspects of the conveyancing process.

- 5.4 The Report was in the form of a consultative document. The consultation period ended in November. The responses have been analysed and both Commissioners and H M Land Registry have agreed the policy to be adopted in relation to the recommendations made in the Report. The joint working group expects to publish a short Report together with a draft Land Registration Bill during 1999.³

Termination of tenancies

- 5.5 In earlier reports⁴ we had recommended a statutory scheme of landlords' termination orders to replace the present law on forfeiture of tenancies. While those recommendations had been widely welcomed, significant concern had been expressed about the fact that implementation of our original recommendations would have resulted in the abolition of the right to terminate a tenancy by peaceable re-entry. In January 1998 we published a Consultative Document on Termination of Tenancies by Physical Re-entry, in which we provisionally proposed the retention of such a right, provided that it was placed on a statutory footing which would be integrated into the proposed termination orders scheme and hedged with proper safeguards for the protection of tenants and those with derivative interests.
- 5.6 The consultation period closed at the end of March and the team has since made a detailed analysis of the many helpful responses which we received. We have also held discussions with organisations representing the interests of both landlords and tenants and with relevant government departments. Commissioners have agreed the policy to be adopted in relation to the proposals that were made. A Report together with a revised Termination of Tenancies Bill will be published as soon as drafting resources permit, which is likely to be in late 1999 or early 2000.⁵

Home-sharers' property rights

- 5.7 This project is concerned with the property rights of all those who live together in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder.⁶ Progress on the project must again be measured in the context of competing priorities and limited resources. We were not able to publish a Consultation Paper during 1998 (as we had hoped to do) and this is a source of considerable regret, but we anticipate doing so in 1999.

³ The importance of this work was reiterated by the Government in the White Paper "Modernising Justice": see para 1.28 above.

⁴ Law Com Nos 142 and 221.

⁵ Because of the particularly heavy demands that have been made on Parliamentary Counsel, it has been necessary to prioritise the drafting of Bills. The Land Registration and Trustee Bills have been given priority over the revision of the Termination of Tenancies Bill.

⁶ The project was explained more fully in our Annual Report for 1995, Law Com No 239, paras 6.7 – 6.12.

LAW OF TRUSTS

Perpetuities and accumulations

- 5.8 The rule against perpetuities restricts the extent to which future interests in property can be created by requiring that they take effect within a specified period. The rule against excessive accumulations limits the periods for which a settlor may direct the accumulation of income under a trust to one of six specified by statute. However, the law applicable to the operation of both rules is needlessly complicated and in a number of situations it is uncertain whether or how it applies. In addition, the rule against perpetuities now applies to many types of property rights for which it was never intended, and where the justification for it is absent. There is very little reason nowadays for the rule against excessive accumulations.
- 5.9 At the end of March we published our final Report on this subject.⁷ In it we recommend that the application of the rule against perpetuities should be restricted to interests and rights arising under wills and trusts. The rule would not apply to rights over property such as options, rights of first refusal or future easements created after any legislation was brought into force. All pension schemes would be exempted from the application of the rule.⁸ The circumstances in which the rule would apply would be set out in clear statutory form, and there would be one fixed perpetuity period of 125 years. A future interest or right would be void for perpetuity only when it became clear that it would not take effect within 125 years from the date on which the instrument creating it took effect. The rule against excessive accumulations would be abolished except in relation to charitable trusts.⁹ The only restriction on accumulations would be the 125-year perpetuity period.
- 5.10 We anticipate that these reforms would facilitate dealings with land by enabling parties to enter into reasonable contracts and other arrangements which at present they cannot, and as a result should allow for the more effective use of land. The abolition of the rule against excessive accumulations would also make the administration of trusts - particularly pension trusts - much easier.

⁷ The Rules Against Perpetuities and Excessive Accumulations (1998) Law Com No 251. We are very grateful to two members of the Bar, Mr Edward Nugee, QC and Mr James Kessler, who generously read the draft Perpetuities and Accumulations Bill and made many helpful suggestions for its improvement.

⁸ In the Report we questioned the traditional analysis of how the rule against perpetuities applied to pension trusts and offered a different view, by which the application of the rule to such trusts is much more limited: see Law Com No 251, para 3.53. As we go to press, we have received the judgment of the Privy Council in *Air Jamaica Ltd v Charlton* (delivered in April 1999), in which our alternative analysis was expressly approved.

⁹ We recommend that charitable trusts with a power or duty to accumulate income would only be able to do so for 21 years. This is because charitable trusts may be of perpetual duration and if they were given unfettered power to accumulate they might do so indefinitely.

Trustees' powers and duties

- 5.11 We have completed an analysis of the many helpful responses which we received to our Consultation Paper on Trustees' Powers and Duties.¹⁰ We have not yet published our final Report on the issues raised in that Paper (as we had hoped to do), because the scope of the project has been widened to include a consideration of trustees' powers of investment. This is being undertaken in conjunction with the Scottish Law Commission. A substantial amount of work has already been done by the two Commissions.¹¹ We consider that an integrated approach to the reform of trustees' powers of this kind is the most likely to result in enduring legislative improvements. We hope to publish our final Report by the Summer of 1999.

Trust formalities

- 5.12 We have explored the practical difficulties caused by the present law on the formalities required for the creation of trusts before taking further steps towards the preparation of a Consultation Paper. We have concluded that there is a real question as to whether the existing formal requirements¹² are still needed. There is evidence to suggest that the requirement for an enforceable trust of land to be evidenced in writing and for the disposition of an equitable interest in any property to be made by signed writing may be the cause of particular difficulties, the latter particularly in relation to certain types of commercial transactions. We are therefore pressing ahead with the preparation of a Consultation Paper, which we hope to publish around the end of 1999.

¹⁰ (1997) Consultation Paper No 146. Explained in more detail in our Annual Report for 1997, Law Com No 250, para 5.8.

¹¹ In particular, we provided assistance to HM Treasury in the preparation of their consultation paper on the proposed repeal of the Trustee Investments Act 1961. This led to a draft Order under the Deregulation and Contracting Out Act 1994, but the Order was lost after the 1997 General Election was called. See our Annual Report for 1997, Law Com No 250, paras 5.10 and 5.11.

¹² Those requirements are set out in s 53 of the Law of Property Act 1925.

PART VI

STATUTE LAW

TEAM MEMBERS °

Consolidation

The Chairman, Mr J M Sellers, Dr H J Caldwell, Miss B A Waplington, Ms E C White, Ms C D Wynter

Statute Law Revision (including Local Legislation)

The Chairman, Mr J D Saunders, Mr A M Rowland, Miss J E Speight

°as at the end of 1998

CONSOLIDATION

- 6.1 The Law Commission has a duty to keep under review all the law with which it is concerned, with a view to reducing the number of separate enactments and generally simplifying and modernising the law. An important aspect of this function is consolidation. The need for this arises when, over a period of time, separate statutes are enacted on the same general subject matter or particular legislation is repeatedly amended. In either case, the law can become difficult to piece together.
- 6.2 Consolidation consists of drawing together different enactments on the same subject matter to form a rational structure and of making more intelligible the cumulative effect of different layers of textual amendment. Usually, this is done by means of a single statute. However, in the case of a large consolidation, it may be done by means of several statutes. This makes the law more comprehensible, both to those who apply it and to those affected by it.
- 6.3 If anomalies are revealed in the process of consolidation, various devices (such as amendments recommended by the Law Commission) are available to rectify them. If a change needed to rectify an anomaly is of such a nature that it ought to be made by Parliament in the normal way, a paving Bill is required or else the anomaly has to be reproduced.
- 6.4 The process of consolidation requires the support and participation of the Government department within whose responsibility the subject matter falls.¹
- 6.5 Two consolidation Bills received Royal Assent during 1998. They were the Petroleum Act 1998 and the Audit Commission Act 1998. Both were “straight” consolidations, ie reproducing the existing law without amendments giving effect to Law Commission recommendations.

¹ The Government’s recognition of the importance of consolidation was reiterated in the White Paper “Modernising Justice”: see para 1. 28 above.

- 6.6 Work has continued on the very large consolidation relating to the armed forces and is now well advanced. Four Bills have been drafted, consisting of about 500 clauses and 15 schedules. The prospects for introducing the consolidation are affected by the need for amending legislation to be introduced first. Subject to that, it is hoped that it will be possible for the Bills to be enacted in the 1999-2000 Session of Parliament. It is proposed that there should be a number of recommendations by the Law Commission and the Scottish Law Commission, to facilitate the consolidation.
- 6.7 Work has also continued on the large, difficult and complex consolidation relating to the sentencing powers of the courts. They are currently found in over a dozen Acts. The consolidation is being undertaken by a consultant (Mrs Leonie McLaughlin, a former member of the Parliamentary Counsel Office) engaged by the Commission, with the assistance of Dr David Thomas QC (Hon), Editor of "Current Sentencing Practice". A large number of paving amendments were included in the Crime and Disorder Act 1998 (section 106 and Schedule 7). It is hoped that it will be possible for the consolidation to be introduced into Parliament early in the 1999/2000 Session.
- 6.8 Work has begun on a consolidation of the provisions relating to the functions of the criminal division of the Court of Appeal.

STATUTE LAW REVISION

- 6.9 The principal purpose of statute law revision is to repeal statutes which are obsolete or which otherwise no longer serve any useful purpose, so modernising the statute book and making it clearer and shorter.² Our work on this is effected by means of Statute Law (Repeals) Bills which we publish periodically in a Statute Law Revision Report. There have been 16 such Bills since 1965. All have been enacted, thereby repealing 4600 enactments, including over 2000 whole Acts. Where appropriate, our work on statute law revision is conducted jointly with the Scottish Law Commission. The work covers local and personal Acts as well as public general Acts.
- 6.10 Two major statute law revision projects have been completed this year. These are the publication of our Sixteenth Report on Statute Law Revision and the completion of the Chronological Table of Private and Personal Acts 1539-1997. Both have been produced jointly with the Scottish Law Commission.

Sixteenth Report on Statute Law Revision

- 6.11 Our Sixteenth Report on Statute Law Revision³ was published in May 1998. Annexed to it was the draft Statute Law (Repeals) Bill that was introduced into the House of Lords in May 1998 and which received Royal Assent in November 1998. This has resulted in the repeal of 180 whole Acts and the removal of redundant provisions from some 200 other Acts. The repeals included a wide range of

² The Government's recognition of the importance of statute law revision was reiterated in the White Paper "Modernising Justice"; see para 1. 28 above.

³ Joint Report with the Scottish Law Commission: Law Com No 252; Scot Law Com No 166.

obsolete enactments including the Ecclesiastical Leases Act 1571 and many nineteenth-century Acts relating to tithes, inclosures and the slave trade. Large numbers of obsolete local Acts relating to Hereford and Worcester were also repealed.

Chronological Table of Private and Personal Acts

- 6.12 The Chronological Table of Private and Personal Acts 1539-1997⁴ lists all 11,000 private and personal Acts passed by the Parliaments at Westminster between those years. Its publication marks the first occasion on which a complete and authoritative record of both public general, local and private legislation in force has been made publicly available; it will serve a similar purpose to the Chronological Table of Local Legislation 1797-1994⁵ but will cover enactments dealing principally with such matters as marriage, divorce, the settlement of estates and local inclosures. The immediate purpose of the Table is to provide an accessible and authoritative means for determining the extent to which private legislation is in force. By recording the specific repeals, amendments and other modifications made to private legislation, the Table will be a basic tool and an important source of information for drafters of primary legislation, legal practitioners who need to advise their clients about the effect of private legislation, and for librarians who need to supply information about private Acts to the legal profession, researchers and members of the public in general. The long term purpose of the Table is to act as an aid for the repeal of obsolete private legislation.

Future work

- 6.13 Work on the next Statute Law Revision Report will be starting soon. This will, as always, contain proposals for the repeal of public general and local Acts which are no longer of practical utility. Candidates being considered for possible repeal include the railway shipping Acts (a series of mainly Victorian local Acts giving railway companies the power to provide steamboat services), a series of Acts relating to trade and industry, mostly reflecting changes in business and commerce since 1945, and some statutory provisions relating to transport law.

⁴ Joint Report with the Scottish Law Commission (1999) Law Com No 256; Scot Law Com No 170.

⁵ The *Chronological Table of Local Legislation 1797-1994* was published by the Law Commissions in 1996. Law Com No 241; Scot Law Com No 155. Public general legislation in force is recorded in the *Chronological Table of the Statutes* which was first published in 1870.

PART VII

EXTERNAL RELATIONS

- 7.1 We are very conscious of the continuing need for contacts with many different individuals and bodies outside the Commission. It is invaluable to us. We are most grateful to all those who help us in this way. Their assistance is a key ingredient in our work.

Consultation

- 7.2 The consultations which we undertake are one of our most important forms of contact with those outside the Commission. There is the formal consultation via consultation papers – and we issued five consultation documents this year. There is also less formal consultation which takes place in writing and face to face at many stages of a project. It may start when we are considering possible future law reform projects.¹ Then, to take the example of a typical law reform project, consultation may continue when we are assessing the difficulties with the current law and with possible options for reform, and through all the various stages of the project. It often continues to the time when we are finalising our report, and even in discussions following publication of our report.

Consultants

- 7.3 We frequently engage legal or other consultants to help us in our projects. For example, this year we have had the assistance of consultants in our work on fraud,² sentencing consolidation,³ previous misconduct,⁴ partnership law⁵ and directors' duties.⁶

Socio-legal, economic and empirical research

- 7.4 We try to use this type of research when it would assist us in a project, if it already exists or if we can gain the funding to have it carried out. Law applies to and serves the community at large, and research of this kind is therefore an invaluable tool. Apart from using existing research, we have ourselves had research undertaken in three areas this year. One was on the effect on magistrates of knowledge of a defendant's previous convictions.⁷ Another was in the project on company directors' duties,⁸ and the third on non-pecuniary loss in personal injury cases.⁹

¹ See para 1.39 above.

² Para 4.12 above.

³ Para 6.7 above.

⁴ Para 4.15 above.

⁵ Para 3.2 above.

⁶ Para 3.16 above.

⁷ See para 4.15 above.

⁸ See para 3.14 above.

⁹ See para 2.2 above.

- 7.5 We are generally represented at the annual conference of the Socio-Legal Studies Association, and an Association representative attends our annual meeting with the Society of Public Teachers of Law.¹⁰ Mrs Justice Arden has been a member of the Advisory Council of the Centre for Socio-Legal Studies at the University of Oxford, of the Board of the Institute of Advanced Legal Studies and of the Advisory Committee for the Sir William Dale Centre for Legislative Drafting (at the same Institute). The Secretary is a member of the Socio-Legal Research Users Forum.

Relations with Parliament, Ministers and Government Departments

- 7.6 The Commission has regular meetings and contact with the Lord Chancellor and with senior officials in the Lord Chancellor's Department; with the Home Secretary and with senior officials in the Home Office; and also, respectively, with senior officials in the Department of Trade and Industry, and in the Department of the Environment, Transport and the Regions. One of the Commissioners has served on Home Office - led working parties considering some of our published reports on aspects of criminal law.
- 7.7 We are also most grateful for the assistance we have received from the Law Officers and from senior officials in other departments or organisations such as H M Land Registry, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office.

Relations with law reform and other bodies elsewhere

- 7.8 We have a large number of contacts with law reform bodies in other countries. The Law Commission and the Scottish Law Commission were established by the same legislation, and we have a statutory duty to work in consultation with each other. We work closely with the Scottish Law Commission on particular topics, especially joint law reform projects, and on other matters of mutual interest. The Chairman had regular meetings in London and Edinburgh with the Chairman of the Scottish Law Commission, Lord Gill. We also have very beneficial contacts with the Law Reform Advisory Committee for Northern Ireland. The Chairman had a meeting with the Chairman of the Scottish Law Commission and Mr Justice Girvan, the Chairman of the Law Reform Advisory Committee for Northern Ireland. She also had a meeting with Mr Justice Hederman, the President of the Irish Law Reform Commission.
- 7.9 A review of the criminal justice system in Northern Ireland was established during the year. A consultation paper was published seeking views on a range of issues within the criminal justice system.¹¹ The consultation paper also considered the existing arrangements for law reform and sought views on how law reform might be addressed there in the future. This included the question whether an independent law commission should be established for Northern Ireland to take forward the task of proposing law reform for Northern Ireland, possibly to cover both criminal law and civil law. We responded to these particular proposals and

¹⁰ See para 7. 13 below.

¹¹ Review of the criminal justice system in Northern Ireland, a consultation paper, published in August 1998 by the Criminal Justice Review Group.

offered our assistance to the Review. We also had a meeting, at his invitation, with a University of Ulster researcher who was conducting research for the Review.

- 7.10 We were pleased to welcome to the Commission the visitors from overseas who are listed in Appendix E. They included representatives of seven overseas law reform commissions or equivalent bodies. The Appendix also lists visits we received by delegations from Argentina, Australia, Bangladesh and China. These discussions are of great assistance to us and, we hope, to our visitors.
- 7.11 Stephen Silber QC, the Criminal Law Commissioner, visited Namibia as a consultant for a few days at the request of their Ministry of Justice and at the expense of the German Agency for Technical Co-operation. He presented a paper and participated in an expert hearing on the codification of their criminal procedure code, to advise on the issues to be taken into consideration in a common law country in codifying the criminal law and in particular in codifying the general principles of the criminal law.
- 7.12 The Secretary visited Bangladesh for a week at the request of the World Bank and at the expense of the Bangladesh Law Commission. The Government of Bangladesh had proposed a Bangladesh Legal and Judicial Capacity Building Project, with possible World Bank funding. It would include a significant component for strengthening the Bangladesh Law Commission. The Secretary worked as a consultant, to evaluate and report on the capacity of the Bangladesh Law Commission.

Other contacts

- 7.13 We continue to have invaluable contacts with the Society of Public Teachers of Law,¹² the Bar and the Law Society. We have an annual meeting with each of them and we often have contact with their committees and members, such as the Criminal Bar Association and the Law Society's Company Law Committee. In addition, we have contact with the judiciary, who also give us considerable assistance, as do many other bodies and individuals.
- 7.14 Some talks given by the Commission are mentioned elsewhere in this report.¹³ The Chairman also gave the Conkerton Memorial Lecture,¹⁴ the Denning Lecture,¹⁵ the Hardwicke Lecture¹⁶ and the Hind Lecture. She also attended the Annual Conference of the Irish Association of Law Teachers. Other Commissioners spoke this year to, among others, the annual legal conference of the World Bank in Washington,¹⁷ the Institute of Advanced Legal Studies,¹⁸ the Chancery Bar

¹² Several Commissioners addressed their annual conference.

¹³ Eg para 7.11.

¹⁴ "Law Reform and the Practitioner".

¹⁵ Company Directors and their Accountability.

¹⁶ Criminal Law at the Cross-roads: The Impact of Human Rights from the Law Commission's perspective and the need for a code.

¹⁷ Our recommendations on the law of corruption.

¹⁸ Conflicts of Interest and Duty: the Trustee's Perspective.

Association, the Association of Property Litigators, a Ditchley Park Anglo-American Conference, the University of Hong Kong Law School,¹⁹ a meeting of German senior civil servants in Potsdam²⁰ and Judicial Studies Board seminars on several Circuits in England and Wales. Professor Burrows chaired an Association of British Insurers/Trades Union Congress conference on “Rehabilitation: Getting People Back to Work” and made presentations on the work of the Law Commission to, among others, the Civil Justice Council and the Oxford University Law Society. Among the staff who addressed various audiences, Nicola Pittam gave a talk²¹ at the Annual Colloquium of the British Insurance Lawyers Association.

Publications

- 7.15 We mainly publish consultation papers and reports about law reform matters, together with reports on statute law revision and consolidation reports. While we continue to publish in traditional hard copy format,²² over the past two years we have also made our publications available electronically on the Internet. In addition, for over eleven years we have published a bulletin entitled “Law under Review”. This gives details of a range of Government or Government-sponsored law reform projects, including our own projects, and also a list of our reports which are awaiting implementation. The bulletin is available on our Internet website,²³ free of charge, and is published three times a year. The latest edition summarises nearly 140 projects. We also have available, on request, a list of the publications we have issued since 1965, which briefly sets out the reports which resulted from consultation papers, and the enacted legislation which resulted from reports. An extract from the list, showing implemented reports since 1985, is reproduced at Appendix B to this report.

¹⁹ Fraud and Constructive Trusts.

²⁰ Misuse of public office.

²¹ The implications for the insurance and reinsurance industry of the Law Commission’s provisional proposals on limitation.

²² We are grateful to The Stationery Office for all their assistance in publishing our work.

²³ Our website address is given in Appendix F below.

PART VIII

STAFF AND RESOURCES

Staff

- 8.1 As always, the Commission gratefully acknowledges the contribution made to its work by its staff. The names of all the staff are set out at the beginning of Parts II to VI above or in Appendix F.
- 8.2 We would particularly like to mention here two lawyers who retired from the Commission this year after many years of service to the Commission.
- 8.3 Roger Maitland, a barrister, joined us in 1983 when he was seconded from the Office of the Director of Public Prosecutions to assist our criminal law team. His interest in legal historical research well qualified him for the statute law revision team which he joined two years later on permanent transfer. He made a noteworthy contribution to many statute law revision projects, most recently those concerned with proposals to repeal obsolete tithe and public enclosure enactments.
- 8.4 Anthony Rowland, a solicitor, joined the statute law revision team over 20 years ago, in February 1978, having worked for many years previously on the Victoria History of the Counties of England. Most of Anthony's work for us has been on Local and Private Act projects. The publication in 1996 of the Chronological Table of Local Legislation 1797-1994 and the recent completion of the Chronological Table of Private and Personal Acts 1539-1997 owe much to Anthony's meticulous scholarship and his enthusiasm for researching local history.

(a) Legal staff

- 8.5 The Commission's permanent legal staff is made up of barristers and solicitors who are members of the Government Legal Service. They are drawn from a wide variety of professional backgrounds, including private practice, the academic world and the public service. When vacancies occur, they are generally filled as a result of open competition following public advertisement.
- 8.6 In addition to its own staff, the Commission is fortunate to have the services of a number of Parliamentary Counsel not only to prepare the draft Bills which are attached to its law reform Reports but also to undertake the Commission's work in consolidating legislation. The team, on secondment from its own Office, is currently led by John Sellers, who took over in September from Geoffrey Bowman CB when he returned to Whitehall. We are extremely grateful to Geoffrey for his invaluable work for us in his two years here.

(b) Research Assistants

- 8.7 To assist the Commissioners and legal staff with research and ancillary matters, up to 15 well-qualified law graduates are recruited annually. These research assistants generally spend a year here before moving on to the next stage of their legal training; many have subsequently gone on to outstandingly successful careers in

the legal and academic professions. Their skills, enthusiasm and creativity enable them to make a vital contribution to the Commission's work.

(c) Non-legal staff

- 8.8 The Commission is likewise grateful to its other staff for their provision of financial management, information technology support, publishing services, records management, library, accommodation and maintenance services and human resource management. They are in their turn greatly assisted by the Lord Chancellor's Department, which provides or supports many of these activities either directly or in an advisory capacity.

Resources

(a) Library

- 8.9 Our Library ably supports the legal work of the Commission, both from its own stocks and by way of inter-library loans. We are particularly grateful to the Libraries of the Institute of Advanced Legal Studies, the Supreme Court and the Lord Chancellor's Department for their help throughout the year. We also make full use of the Internet, CD ROMS and LEXIS.

(b) Information Technology

- 8.10 The Commission's Internet site (see Appendix F for its address) has now been in place for some years, and is well used. There has likewise been direct e-mail access to the Commission; this is available to those who respond to our consultation papers, among other uses.
- 8.11 It is proposed that the Commission should continue to update its computer systems in line with current technology but no fundamental changes are proposed at present because of lack of funds.

(c) Training and Investors in People

- 8.12 All staff are required to evaluate their own development needs and to discuss with their managers any training requirements which may assist them. Managers themselves are very conscious of the benefits of the effective development of staff, and make every effort to ensure that the appropriate training opportunities are made available.
- 8.13 During the year the Lord Chancellor's Department and offices such as the Law Commission were awarded accreditation as an Investor in People. This is a national scheme which involves a thorough assessment of methods of staff induction, training and appraisal, and also planning and communications. It has a demanding standard. The Commission is delighted to have participated, and will continue to ensure that IiP principles are put into practice.

(d) Finance

- 8.14 The cost of the Commission is summarised in Appendix G. The Government's funding of the Commission is of course limited, as for any public body. We recognise that some others funded by Government have fared worse than us. However, the financial year 1998/99 is the fourth successive year in which we have

in fact received no increase in the money allocated to us and yet have had to meet the cost of pay rises and of inflationary elements such as increased costs. Continuing financial restraints mean that, despite efficiency and other savings, we are working to an extremely tight budget and are having to make increasingly unwelcome savings each year. For example, a growing number of staff posts have remained unfilled for some time, which has affected our ability to complete work as quickly as planned, as foreseen in our last annual report.¹

- 8.15 Most of our funds come from the Lord Chancellor's Department, our sponsoring department. However, the Commission is grateful to other Government Departments who have contributed to specific pieces of work, particularly the Department of Trade and Industry, the Ministry of Defence and the Cabinet Office (via the Committee on Standards in Public Life). In addition, the Commission is most grateful to all those who contribute to the Commission's work without payment, notably all those who respond to our many formal and informal consultations.

(Signed) ROBERT CARNWATH, *Chairman*
ANDREW BURROWS
DIANA FABER
CHARLES HARPUM
STEPHEN SILBER

MICHAEL SAYERS, *Secretary*
21 April 1999

¹ Para 1.36.

APPENDIX A

THE LAW COMMISSION'S ROLE AND METHODS

The Law Commission has now been in operation for 33 years. It was established by the Law Commissions Act 1965 to review the law of England and Wales with a view to its systematic development and reform. A number of specific types of reform were mentioned:

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

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

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

The Commission's final recommendations are set out in a report which contains a draft Bill where the recommendations involve primary legislation. The report is laid before Parliament. It is then for the Government to decide whether it accepts the recommendations and to introduce any necessary Bill in Parliament, unless a Private Member or Peer does so. After publication of a report the Commission often gives further assistance to Government Ministers and departments, so as to ensure that the best value is obtained from the effort and resources devoted to the project by the Commission and others.

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

APPENDIX B

THE LAW COMMISSION'S IMPLEMENTED REPORTS SINCE 1985

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

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

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

APPENDIX C

LAW COMMISSION LAW REFORM REPORTS AWAITING IMPLEMENTATION

Of all the Law Commission's 157 law reform reports, the 23 listed below remain outstanding.¹ Five of these, marked * , have been expressly accepted by the Government in full or in part, the first in principle, and the others subject to Parliamentary time being available.

<i>Year</i>	<i>No</i>	
1989	178	Compensation for Tenants' Improvements
1991	194	Distress for Rent ²
1992	208	Business Tenancies: Landlord and Tenant Act 1954, Part II
1993	218	* Legislating the Criminal Code: Offences against the Person and General Principles ³
1994	220	* Delegation by Individual Trustees ⁴
	221	Termination of Tenancies Bill ⁵
	222	Binding Over
	226	Judicial Review and Statutory Appeals ⁶
	227	* Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments ⁷
1995	229	Intoxication and Criminal Liability
	231	Mental Incapacity ⁸
	236	Fiduciary Duties and Regulatory Rules ⁹
1996	237	Involuntary Manslaughter ¹⁰
	238	Landlord and Tenant: Responsibility for State and Condition of Property ¹¹
	242	* Privity of Contract: Contracts for the Benefit of Third Parties ¹²
1997	245	* Evidence in Criminal Proceedings: Hearsay and Related Topics ¹³
	246	Shareholder Remedies ¹⁴
	247	Aggravated, Exemplary and Restitutionary Damages
1998	248	Legislating the Criminal Code: Corruption ¹⁵
	249	Liability for Psychiatric Illness
	251	The Rules Against Perpetuities and Excessive Accumulations
	253	The Execution of Deeds and Documents by or on behalf of Bodies Corporate
	255	Consents to Prosecution ¹⁶

¹ Of those, two were passing through Parliament at the end of 1998: the Trustee Delegation Bill and the Contracts (Rights of Third Parties) Bill, based respectively on two of our reports: see para 1.5 above.

² See para 1.21 above.

³ See para 1.13 above.

⁴ See para 1.7 above about the Bill in Parliament.

⁵ See paras 5.5-5.6 above.

⁶ Two small parts of this report have been accepted: see para 1.19 above.

⁷ See para 1.22 above.

⁸ See paras 1.16-1.18 above.

⁹ See para 1.7 above.

¹⁰ See para 1.14 above.

¹¹ See para 1.20 above.

¹² See para 1.7 above about the Bill in Parliament.

¹³ See para 1.11 above.

¹⁴ See para 1.15 above.

¹⁵ See paras 4.1-4.2 above.

¹⁶ See paras 4.6-4.7 above.

APPENDIX D

LAW REFORM REPORTS: NUMBERS PUBLISHED AND IMPLEMENTED

The following table shows the numbers of law reform reports published and the numbers of those which have been implemented. A report is counted as implemented if it has been implemented in full or in part. Implementation has nearly always been by Act but on occasion by Rules of the Supreme Court. Thirteen published reports made no recommendations for implementation.

Year	Law Reform Reports published	running total	Law Reform Reports implemented	running total
1965	-	-	-	-
1966	5	-	-	-
1967	4	9	3	3
1968	1	10	1	4
1969	9	19	6	10
1970	8	27	4	14
1971	2	29	7	21
1972	1	30	3	24
1973	4	34	2	26
1974	3	37	-	26
1975	4	41	2	28
1976	5	46	1	29
1977	4	50	5	34
1978	4	54	2	36
1979	2	56	1	37
1980	3	60	2	39
1981	4	64	3	42
1982	5	69	2	44
1983	5	74	-	44
1984	4	78	6	50
1985	11	89	1	51
1986	3	92	5	56
1987	9	101	6	62
1988	5	106	5	67
1989	8	114	4	71
1990	3	117	1	72
1991	6	123	-	72
1992	3	126	2	74
1993	5	131	1	75
1994	8	139	5	80
1995	5	144	9	89
1996	4	148	9	98
1997	3	151	1	99
1998	6	157	1	100
TOTAL	157		100	

APPENDIX E

VISITORS FROM OVERSEAS

Among the visitors to the Law Commission during 1998 were:

<i>Australia</i>	Mr Michael Adams QC (Chairman, New South Wales Law Reform Commission) Ms Marion Brewer (Administrative Officer, Law Reform Commission of Western Australia) Ms Veronique Ingram (Assistant Secretary, Australian Treasury)
<i>Austria</i>	Her Hon Judge Petra Smutney (Department for Penal Legislation, Federal Ministry of Justice)
<i>Bangladesh</i>	Mr Amir-Ul Islam (Vice-President, Bangladesh Bar Council)
<i>Canada</i>	Mr Bernard Starkman (Senior Counsel, Department of Justice)
<i>Chile</i>	Ms Constantinedes Minister Alvear (Minister of Justice)
<i>Estonia</i>	Priidu Parna (Vice-Chancellor, Ministry of Justice)
<i>Ghana</i>	Justice Sophia Akuffo (Justice of the Supreme Court)
<i>Hong Kong</i>	Mr Stuart M I Stoker (Secretary, Law Reform Commission)
<i>Ireland</i>	Mr Gerard Quinn (Irish Law Reform Commission)
<i>Japan</i>	Dr Nobuo Aoki (Faculty of Human Welfare, Baika Women's University)
<i>Lithuania</i>	Daina Petrauskaite
<i>Malawi</i>	Mr Elton M Singini (Law Commissioner)
<i>New Zealand</i>	The Hon Justice Baragwanath (President, Law Commission)
<i>Uganda</i>	The Hon Bart Katureebe (Attorney General)
<i>Ukraine</i>	Dr Stanislav Schevchuk
<i>USA</i>	Judge Vanessa D Gilmore (District Judge, Southern District of Texas)
<i>Zimbabwe</i>	Mr Justice Wilson Sandura (Supreme Court Judge)

A DELEGATION FROM ARGENTINA

Judge Eduardo Sisco (Delegation Leader and Labour Court Judge)
Judge Margarita del Carmen Tropiano de Findeisz (Court of Appeal Judge)
Judge Jorge Eduardo Carrera (Criminal Court Judge)
Judge Irene Dolores Rodriguez de Gonzalez
Judge Claudio Ramos Feijoo (Examining Magistrate)
Raquel Maria Cetra (Lawyer, Clerk of the Registrar of Commerce)
Carlos Enrique Thompson (Lawyer, Clerk of the Criminal Court)
Domingo Enrique Casasco (Lawyer-Mediator, Ministry of Labour)

A DELEGATION FROM THE SCRUTINY OF ACTS AND REGULATIONS COMMITTEE OF THE PARLIAMENT OF VICTORIA, AUSTRALIA

Mr P J Ryan MP (Chairman)
Ms M J Gillett MP
The Hon P A Katsambanis MLC
Mr A Plowman MP

APPENDIX E

VISITORS FROM OVERSEAS [CONTINUED]

A DELEGATION FROM THE LAW COMMISSION OF BANGLADESH

Justice Naimuddin Ahmed (Acting Chairman)

Mr S M Kuddus Zamman (Senior Research Officer and Secretary-in-Charge)

A DELEGATION FROM THE STATE ECONOMIC AND TRADE COMMISSION OF THE PEOPLE'S
REPUBLIC OF CHINA

Chen Lijie (Head of the Delegation, Deputy Director, Law and Treaties Department)

Wu Aihe (Division Chief, Division of General Affairs, Law and Treaties Department)

Liang Yan (Deputy Division Chief, Enterprise Law Division, Law and Treaties Department)

Zhou Hao (Official, Enterprise Law Division, Law and Treaties Department)

Liu Bo (Chief Section Member, Law Department of the State Council)

Liu Cheng (Translator)

APPENDIX F

STAFF *

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

In addition, the Law Commission Secretariat comprises:

Secretary

Mr M W Sayers

Personnel and Recruitment

Miss L A Collet
Personnel Officer

Library Services

Mrs J King
Librarian
Mrs V Price
Assistant Librarian
Mr T Stanton
Library Trainee

Chairman's Support

Mr A Parkinson MBE
Clerk
Mr J Mortimer
Research Assistant

Assistant Secretary

Mr C K Porter

Computer Systems and IT Support

Mr G Ellis
Systems Manager
Mr J Gould
IT Consultant
Mrs N L Spence
Local Computer Officer
Mrs M M Blenman
Typing Support

Publishing

Mr D R Leighton
Editor

Secretarial Support

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

Policy and Planning

Mrs S J Samuel

Accommodation, Registry and Accounts

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

CONTACT POINTS:

The general enquiry telephone number is:

0171 453 1220

The general fax number is:

0171 453 1297

The Law Commission's website address is:

<http://www.open.gov.uk/lawcomm/>

E-mail addresses

General e-mail address (except for library services):

secretary.lawcomm@gtnet.gov.uk

Library e-mail address:

library.lawcomm@gtnet.gov.uk

Common law team:

common.lawcomm@gtnet.gov.uk

Company and commercial law team:

company.lawcomm@gtnet.gov.uk

Criminal law team:

criminal.lawcomm@gtnet.gov.uk

Property and trust law team:

property.lawcomm@gtnet.gov.uk

Statute law revision team:

slr.lawcomm@gtnet.gov.uk

* As at the end of 1998

APPENDIX G

THE COST OF THE COMMISSION

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

	1998		1997	
	£000	£000	£000	£000
Accommodation charges ¹	853.1		713.2	
Headquarters' overheads ²	<u>400.4</u>		<u>432.9</u>	
		1,253.5		1,146.1
Salaries and pensions of Commissioners ³	518.8		484.3	
Salaries of legal staff and secondees and payments to consultants ³	1,502.1		1,532.2	
Salaries of non-legal staff ³	<u>380.9</u>		<u>373.5</u>	
		2,401.8		2,390.2
Printing and publishing; supply of information technology; office equipment and books ⁴	282.9		241.4	
Telephone and postage	28.8		30.9	
Travel and subsistence	6.1		6.3	
Miscellaneous (including recruitment)	6.4		3.0	
Entertainment	<u>1.1</u>		<u>0.8</u>	
		325.3		282.4
TOTAL	<u>3,980.6</u>		<u>3,818.5</u>	

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

2 This is the portion of the total cost of the Lord Chancellor's Department Headquarters notionally attributed to the Law Commission. The portion attributed to offices such as the Law Commission is proportional to the number of staff paid as established staff, including research assistants.

3 These salaries include ERNIC and Superannuation.

4 This figure includes the cost of an IT contractor for a full year.