



LATEST NEWS

Times of Transition

In October 2008, we left our offices in Conquest House, John Street WC1 after more than 35 years and moved to new premises in Steel House, Tothill Street SW1. We are now just along the road from the Ministry of Justice in one direction and Parliament and the new Supreme Court in the other. We share the building with the Judicial Appointments Commission and the Judicial Studies Board.

In December 2008, we held our first staff conference: "Facing the Future Together". We ran it at the Science Museum, and the slightly unusual venue helped to stimulate ideas and encourage everyone to contribute. We invited Rowena Collins-Rice, Director General Democracy, Constitution & Law in the Ministry of Justice, to speak to us. There was also an opportunity to see some of the events in the museum. We found it a very worthwhile experience and came away with many new ideas about the role and future of the Law Commission.

In January, the new Law Commission Bill was introduced in the House of Lords by Lord Lloyd of Berwick. It is due to have its Second Reading on 24 April.

In March we said goodbye to William Arnold, our interim chief executive; and welcomed Mark Ormerod, who has been appointed substantively to the post of CEO.

EXTERNAL RELATIONS

We regularly meet a wide range of individuals, including Government ministers, and judicial and other visitors from overseas. The Chairman and the Chief Executive and in some cases one of our Commissioners are normally involved.

During the past three months, we have met:

- At the Ministry of Justice
 - The Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice
 - The Rt Hon Michael Wills MP, Minister of State
 - Bridget Prentice MP, Parliamentary Under Secretary of State
 - Maria Eagle MP, Parliamentary Under Secretary of State
- The Rt Hon Baroness Royall (Leader of the House)
- The following Ministers:
 - The Rt Hon Margaret Beckett MP (DCLG)
 - Gareth Thomas MP (BERR)
 - Ian Pearson MP (HM Treasury)
 - Phil Hope MP (DH)
- Dominic Grieve MP (Shadow Justice Secretary)

- David Howarth MP (Liberal Democrat spokesperson for justice)
- Lord Kingsland
- Douglas Hogg QC, MP
- Andrew Berkeley (International Chamber of Commerce)
- Professor Alan Norrie
- Andrew Rennison (the Forensic Science Regulator)
- The Lord Chief Justice of England and Wales, Lord Judge
- Professor Ian Dennis
- The Ambassador to the OECD
- Officials from the Ministry of Government Legislation, South Korea
- The chairman, commissioners and staff of the Northern Ireland Law Commission

Professor Jeremy Horder:

- gave a talk to the Expert Witness Institute (September 2008);
- published an article in Legal Studies on third party challenges to the courts' treatment of offenders (September 2008);
- gave talks on bribery to the City of London Police (November 2008) and at 7 Bedford Row (February 2008);
- recorded a contribution to the Radio Four programme "Unreliable Evidence" (December 2008);
- gave evidence to the Coroners and Justice Bill Committee (February 2009);
- gave the Halsbury Lecture at Merton College, Oxford (February 2009).

Professor Elizabeth Cooke has addressed:

- the Probate section of the Law Society (on Intestacy and Family Provision);
- the Property Bar Association and the Agricultural Law Association (on Easements, Covenants and Profits à Prendre);
- the Law Faculty at the University of Sheffield (on Marital Property Agreements).

The Property, Family and Trust Law team has held discussions with a range of stakeholders in relation to its law reform projects. Notably, it has met with:

- representatives of the Land Registry, the Lands Tribunal, the Northern Ireland Law Commission and its project advisory group (Easements, Covenants and Profits à Prendre);
- the Trust Law Committee, HM Treasury, HM Revenue and Customs and the Charity Commission (Capital and Income in Trusts);

- the Probate Service, the Bona Vacantia division of the Treasury Solicitor, the Government Actuary's Department, the Trust Law Committee, HM Revenue and Customs and its project advisory group on Intestacy and Family Provision.

PROJECTS UPDATE

Visit the "What's New" section and the "A-Z of Projects" on our website <http://www.lawcom.gov.uk> to keep up-to-date with all the latest developments.

The Commission is currently working on a new Business Plan and Communications Strategy. These will be published on the website in due course.

Adult social care

In the Tenth Programme of Law Reform, we announced a scoping review of the law relating to the provision of adult social care. The resulting Scoping Report was published in November 2008. The paper proposes a major substantive law reform programme to reform, modernise and consolidate this outdated area of the law.

The scoping report sets out detailed issues for reform in relation to community care and carers assessments, eligibility for services, the provision of services, service provision and client groups, discharge from hospitality, the ordinary residence rules, direct payments, charging, the health/social care divide, safeguarding adults and the system for complaints and redress. With the exception of the last, the Department of Health has agreed that we should consider all of these areas in a substantive law reform project. We are now engaged on that, and will publish a consultation paper in January 2010.

This phase of the project will conclude in spring 2011 with a report of our conclusions on the substantive issues. Both the Commission and the Department will then decide whether we should embark upon a third phase and produce a draft Bill.

Further information is available on our website at http://www.lawcom.gov.uk/adult_social_care.htm.

Codification of the criminal law

We are revisiting Part 1 of the draft Criminal Code that we published in 1989, in particular the following topics:

- conspiracy and attempts – we plan to publish a report and draft Bill by the end of 2009;
- intoxication – we published a report and draft Bill on 15/01/09.

Bribery

On 9 March 2007, the Government asked us to review the various elements of the law on

bribery with a view to modernisation, consolidation and reform.

We published a consultation paper on 30 November 2007 to which we received 36 responses.

We published a report and draft Bill on 20/11/08.

The consultation paper and report are available on our website at <http://www.lawcom.gov.uk/bribery.htm>.

The High Court's jurisdiction in relation to criminal proceedings

We distributed a discussion paper in July 2005. In this we invited comments on a number of issues relevant to resolving the problems experienced in interpreting the exclusionary words "relating to trial on indictment" in the Supreme Court Act 1981, section 29(3).

We published a consultation paper on 30 October 2007. We hope to publish a report and draft Bill in 2010.

The consultation paper is available on our website at http://www.lawcom.gov.uk/judicial_review.htm.

Expert evidence

In criminal trials, specialised areas of knowledge, where relevant to the determination of a disputed factual issue, may need to be explained to the jury by an expert in the field. This gives rise to a real danger if there are legitimate questions about the validity of the expert's opinion. The problem is accentuated if there is no available expert in the same field who can be called by the opposing party to provide an effective criticism. In such cases, the jury may have no option but to defer to the view of the expert.

We will be publishing a consultation paper in April. The consultation will run from April to July and will include an online consultative forum in addition to our usual consultation methods.

Fitness to plead and insanity

This project addresses the treatment of mentally ill defendants in the criminal justice system.

Many of the problems surrounding the current rules for determining fitness to plead and insanity relate to the fact that they were devised when psychiatry was in its infancy. The project will draw on relevant empirical evidence and comparative jurisdictions in an attempt to identify more appropriate contemporary legal tests and rules for determining fitness to plead and legal insanity.

We hope to hold a consultation at the beginning of 2010.

More information is available on our website:
<http://www.lawcom.gov.uk/insanity.htm>.

Remedies against public bodies

On 3 July, we published the consultation paper "Administrative redress: Public Bodies and the Citizen".

After considering the importance of non-court remedies, the paper makes provisional proposals to improve the legal regime in which the public sector ombudsmen operate. It then sets out provisional proposals for a new scheme to govern the liability of public bodies for "truly public" activities, displacing the normal rules for liability in negligence. On the public law side, the provisional proposal is that compensation should be available on judicial review, on a discretionary basis.

Consultation closed on 07/11/08 and we are currently considering the next steps in relation to the project.

Further information is available on our website at <http://www.lawcom.gov.uk/remedies.htm>.

Housing dispute resolution

Our final report was published in May 2008. We are awaiting a response from the Government.

More information is available on our website at http://www.lawcom.gov.uk/housing_disputes.htm.

Encouraging responsible letting

This project takes a broad approach to the question of how the private rented sector can be appropriately regulated, with the aim of ensuring that landlords and tenants adhere to their obligations.

We published our report in August 2008. In our recommendations, we move away from the immediate introduction of a compulsory system of enforced self-regulation, as we provisionally proposed in the consultation paper. Whilst such a system may still prove necessary, we concluded that much progress could be made by improving the range of existing self-regulatory mechanisms, whilst putting in place the apparatus to trigger greater compulsion should that prove necessary. We are awaiting the Government's response.

More information is available on our website at http://www.lawcom.gov.uk/housing_renting.htm.

Insurance contract law

We are currently drafting a Bill on pre-contract information in consumer insurance, which we plan to publish before the end of the year. For the background to this Bill, see our first consultation paper (published in July 2007) and a summary of consumer responses (published in May 2008), available on our website at

http://www.lawcom.gov.uk/insurance_contract.htm.

In March 2009 we published a policy statement on the status of intermediaries, discussing whom an intermediary acts for in transmitting pre-contract information from a consumer to an insurer.

Our next issues paper will discuss the need to protect micro-businesses.

Consumer remedies for faulty goods

On 10 November 2008, we published a consultation paper on consumer remedies for goods which do not conform to contract.

The consultation period closed in February, and we received 52 responses. We are currently working on a summary of responses which will be published this summer. Following that, we will publish a final report with recommendations.

The consultation paper is available on our website at

http://www.lawcom.gov.uk/consumer_remedies.htm.

Illegality

On 23/01/09 we published a consultative report on the illegality defence in contract, tort, unjust enrichment and trust.

We provisionally recommend that no legislative reform is necessary in relation to how the law deals with a claimant who has been involved in criminal activity where the claim is brought in contract, tort or unjust enrichment. Any improvement is best left to development through the case law. However, we do recommend that legislative reform is needed in relation to how the illegality defence applies in the case of trusts.

A copy of the report is available on our website at <http://www.lawcom.gov.uk/docs/cp189.pdf>.

Level crossing law

This project, included in the Tenth Programme, seeks to modernise, rationalise and consolidate the law relating to level crossings.

The law relating to the between 9,000 and 9,500 level crossings of all kinds in Great Britain is hopelessly complicated and inaccessible, much still remaining in the railway company promoters' nineteenth century private legislation. Further, the current legal framework for the regulation of level crossings appears unsatisfactory and unable to cope with modern safety and efficiency concerns. Economic modelling suggests that there may be a good case for the closure of many more crossings than actually are being closed.

This is a joint project with the Scottish Law Commission. We expect to publish a joint consultation paper in the second half of this year.

More information is available on our website at http://www.lawcom.gov.uk/level_crossings.htm.

Easements, covenants and profits à prendre

We published a consultation paper on the general law of easements, covenants and profits à prendre on 28 March 2008. The paper addressed the characteristics of such rights, how they are created, how they come to an end and how they can be modified.

The formal consultation period ended on 30/06/08. We received 89 detailed responses. The Commission is now in the process of reviewing the responses to the consultation paper, with a view to finalising its policy in the areas under review and then instructing Parliamentary Counsel to produce a draft Bill. We aim to publish a report and draft Bill in late 2010.

Further information is available on our website at <http://lawcom.gov.uk/easements.htm>.

Capital and income in trusts: classification and apportionment

This trust project recommenced at the beginning of 2008, having been suspended since a consultation in 2004.

The project examines the classification of trust receipts and expenses as capital and income and the rules requiring apportionment between different beneficiaries. It considers the means by which total return investment should be enabled for private and charitable trusts.

The team is currently finalising a report and draft Bill which we aim to publish in spring 2009.

The consultation paper is available on our web site at <http://www.lawcom.gov.uk/citcat.htm>.

Intestate Succession and the Inheritance (Provision for Family and Dependants) Act 1975

This project was referred to us by the Ministry of Justice. Work began on 01/10/08.

The project involves a general review of the law of intestacy – the distribution of a deceased person's estate in the absence of a valid and comprehensive will. The legislation under which family members and dependants may apply to court for reasonable financial provision from the estate of a deceased person, whether or not there is a valid will, will also be considered.

A consultation paper is due to be published in October 2009.

Further information is available on our website at www.lawcom.gov.uk/intestate_succession.htm.

The Perpetuities and Accumulations Bill and Third Parties (Rights against Insurers) Bill

In February 2008, a new procedure for uncontroversial Law Commission Bills was recommended by the House of Lords Procedure Committee. The Perpetuities and Accumulations Bill and Third Parties (Rights Against Insurers) Bill have been put forward as candidates for the trial of the new procedure.

The Perpetuities and Accumulations Bill was introduced on 1 April 2009 in the House of Lords.

The reports relating to each of the above projects can be found on the Law Commission web site at http://www.lawcom.gov.uk/lc_reports.htm.

An explanation of the new procedure for Law Commission Bills can be found at www.parliament.the-stationery-office.co.uk/pa/ld200708/ldselect/ldprohse/63/63.pdf.

Statute Law Repeals

We are continuing our work on the repeal of enactments that are obsolete or which otherwise no longer serve any useful purpose. Work in 2009 will include a range of topics including railways, poor relief, courts and turnpikes.

Our next report, with a draft Bill to give effect to our proposals, is due for publication in 2012.

Consolidation

We are currently working on consolidations of the law relating to charities, private pensions and the Health Service Commissioner for England.

Work on a consolidation of the law relating to elections has been suspended at the request of the relevant Department (Ministry of Justice).

April 2009

We welcome comments/suggestions on this newsletter – communications@lawcommission.gsi.gov.uk.