

**THE LAW COMMISSION**  
**THIRTY-FIFTH ANNUAL REPORT 2000**  
***A Year of Transition***

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

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# 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 Hugh Beale  
Mr Charles Harpum  
Professor Martin Partington ◦  
Judge Alan Wilkie 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.

◦ Appointed from January 2001 to succeed Miss Diana Faber, who left in September 2000.

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

# **THE LAW COMMISSION**

## **THIRTY-FIFTH ANNUAL REPORT 2000**

### ***A Year of Transition***

*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 35th Annual Report, for the year 2000.

The year has seen both activity and change at the Commission. Our work on some of our most substantial law reform projects (including Land Registration and Limitations) is nearing completion, and others are well under way. We have also been discussing with your own and other Departments a range of possible new projects for inclusion in the 8th Programme, which we will be presenting for your approval later this year.

We were joined by Professor Hugh Beale and Judge Alan Wilkie QC at the beginning of the year, to lead our Common Law and Criminal Law teams respectively. During the year, new appointments were made to fill the other two Commissioner positions. Professor Martin Partington, who began work at the beginning of the current year, will lead a new Administrative Justice team. Stuart Bridge, a fellow of Queen's College Cambridge, will succeed Charles Harpum in July this year, as leader of the Property and Trust Law team. One of the great strengths of the Commission since its foundation has been its ability to attract senior lawyers of the highest calibre. I am delighted that the appointments made by you over the last two years have continued this tradition.

The year has also seen a small but significant change in the emphasis of some of our work, in terms of its expected outcome. There are many types of essential law reform which demand primary legislation. In previous reports we have repeatedly emphasised the problem of securing legislative time for law reform projects which are not at the centre of the political agenda. As you have acknowledged, the "scrupulousness" of the study and consultation which precedes Law Commission recommendations can ease the passage of legislation through Parliament. We shall continue to press the Government for improvements to the legislative machinery, in line with its commitment to keeping the law "up to date, relevant and useful".

At the same time we have been studying ways of reforming the law through other means. Our report on Damages for Non-pecuniary Loss, followed by the landmark Court of Appeal decision in *Heil v Rankin*, showed the possibilities of using our work as an instrument to assist reform through the courts. The Human Rights Act 1998 is likely to provide more opportunities for this kind of project. Our paper on Damages under the Human Rights Act 1998<sup>†</sup> was an example. Its purpose, as you made clear when approving the terms of reference, was not legislation, but "to inform the judiciary, practitioners and public bodies".

Another current development, which may assist the process of law reform without primary legislation, is the Regulatory Reform Bill. We have been involved in discussions with the Government in the formulation of these proposals, which are designed to enable burdensome legislation to be reformed by Statutory Instrument. The precise limitations of the new procedures will have to be worked out in due course, when the Bill becomes law.

Finally, I would like to thank all those whose support I have enjoyed over the last year, both inside the Commission and outside. We are lucky in being able to draw on the expertise of an enormous range of groups and individuals. I am particularly grateful for the support of Ministers and Officers within your own Department, and in the other Departments with whom we have regular dealings.

**ROBERT CARNWATH, CHAIRMAN**

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<sup>†</sup> LC No 266, prepared jointly with the Scottish Law Commission

# **PART I**

## **OVERVIEW OF THE YEAR**

### **Introduction**

- 1.1 In this Part of the report we provide a summary of some of our publications in 2000 and of some issues which arose from our work. In the following Parts we outline each area of the Commission's work during the year.
- 1.2 In our law reform work we seek to ensure that the law is as simple, fair, modern and cost-effective as possible. Our methods concentrate on systematic law reform: careful selection of projects, following consultation; close study; comparison with the law in other countries; thorough consultation; and a final report which usually incorporates a draft Bill. A summary of our role and methods appears in Appendix A.

### **Our publications in 2000**

- 1.3 During 2000 we issued five publications. The law reform reports consisted of: Damages under the Human Rights Act; and Consent as a Defence. The consultation documents were those on: Partnership Law; and Prosecution Appeals against Judges' Rulings. Details are set out in Parts II - V below. We also published the Criminal Courts (Sentencing) Bill, and an accompanying report. All these publications appear in full and in summary on our Internet site at <http://www.lawcom.gov.uk>.

### **Implementation of law reform reports**

#### **Summary**

- 1.4 At the beginning of 2000:
  - (a) legislation from one of our reports had been introduced during the Parliamentary session,
  - (b) 7 of our reports had been accepted in full or in part, or in principle, by the Government and legislation had yet to be introduced and
  - (c) 16 other reports of ours awaited decisions by the Government.

At the end of 2000:

- (a) one new Law Commission reforming Act was on the statute book, and two others were partly implemented by the courts,
- (b) 9 of our reports had been accepted by the Government during or before the year, in full or in part, and
- (c) 12 other reports of ours awaited decisions by the Government.

**(a) Implementation in 2000**

- 1.5 Two new statutes from Law Commission reports were enacted, the Trustee Act and the Powers of Criminal Courts (Sentencing) Act. In addition, two other Law Commission reports were implemented to a significant effect by the courts.
- 1.6 The draft Bill (with minor modifications) attached to our Report, Trustees' Powers and Duties,<sup>1</sup> was introduced into Parliament by the Lord Chancellor in January 2000. This was within six months of publication of our report, a notable achievement. It successfully completed its passage through Parliament, and came into force on 1 February 2001. Bills to consolidate sentencing powers and European Parliamentary elections were also introduced.
- 1.7 In *Heil v Rankin* and *R v Z*<sup>2</sup> the Court of Appeal and House of Lords, respectively, partly implemented in effect one of our reports on damages and our consultation paper on double jeopardy.
- 1.8 In addition, the Contracts (Rights of Third Parties) Act 1999 came into force in May. The Act, with some modifications, implemented our 1996 Report (Law Com No 242) to create a major new exception to the privity rule, a huge change to the common law. It has been described as perhaps the most significant statutory reform in contract law in the twentieth century, certainly since 1977.<sup>3</sup>

**(b) Government decisions on our reports in 2000**

- 1.9 During 2000 the Government broadly accepted three more of our reports, in full or in part: those on corruption, on involuntary manslaughter and on business tenancies. However, the Government has decided not to implement our report on fiduciary duties. Details of these four developments are set out at paragraphs 1.12, 1.13, 1.32 and 1.34 below.

**(c) More generally**

- 1.10 At the end of the year there were 21 reports which awaited implementation. They are shown in the list at Appendix C. Some have been accepted at some time by the Government and await legislative opportunities. Some await decision by the Government. For some others, there are good reasons why the Government should not give a decision at present, for example because of their link with the Company Law Review. We will continue to explore with Government its progress on implementation of these important reforms. We can report as follows.

*(1) Offences Against the Person*

- 1.11 It was seven years ago that we published our report recommending an extremely important overhaul of the current legislation, which dates back to 1861 (Law Com No 218). In 1998 the Home Office published a consultation paper

<sup>1</sup> (1999) Law Com No 260.

<sup>2</sup> See paras 1.52 and 1.53 below.

<sup>3</sup> (2000) 116 LQR 518, Andrew Dickinson.

(“Violence: Reforming the Offences Against the Person Act 1861”) setting out their initial proposals for reforming the law in this area, based on our report. In both 1999 and 2000 the Government said that it hoped to bring forward legislation to reform the law on offences against the person as soon as Parliamentary time could be found: Written Answer, *Hansard* (HL) 2 December 1999, vol 607, col 54 WA; (HL) 27 January 2000, vol 608, col 209 WA. We therefore believe that there is good reason to be hopeful that such legislation will be introduced early in the next Parliament.

*(2) Involuntary Manslaughter*

- 1.12 In 1996 we published a report on involuntary manslaughter,<sup>4</sup> in which we recommended the replacement of the existing common law offence with statutory offences of “reckless killing” and “killing by gross carelessness”, plus a new offence of corporate killing. In May the Home Office published a consultation paper<sup>5</sup> containing proposals which were based upon our recommendations but diverged from them in certain respects. The consultation period expired in September. We retain a presence on the interdepartmental working party on involuntary manslaughter, and anticipate that Government policy will soon be finalised. We hope that the importance of this area of law reform will assist in its winning legislative time.

*(3) Corruption*

- 1.13 In 1998 we published a report<sup>6</sup> in which we recommended the creation of four new offences to replace those in the Prevention of Corruption Acts 1889–1916. In June the Home Office published its own proposals in a White Paper<sup>7</sup> which accepts nearly all our recommendations but takes them further in some respects.

*(4) Damages*

- 1.14 In 1999 we published the last in an important series of reports on damages. They have since been under consideration by the Lord Chancellor’s Department. We have kept in touch with LCD about progress, and have pressed them for action. The current position is as follows.

*(a) Non-Pecuniary Loss (Law Com No 257, published in April 1999)*

- 1.15 Most of the recommendations in this report were dealt with in February by the Court of Appeal, as summarised at paragraph 1.52 below. Still outstanding are our recommendations to reduce the role of juries in the assessment of damages.

<sup>4</sup> Legislating the Criminal Code: Involuntary Manslaughter, Law Com No 237.

<sup>5</sup> Reforming the Law on Involuntary Manslaughter: the Government’s Proposals. See also an interview with our Chairman, which concentrated on Involuntary Manslaughter, in *The Legal Executive Journal*, July 2000, p14.

<sup>6</sup> Legislating the Criminal Code: Corruption, Law Com No 248.

<sup>7</sup> Raising Standards and Upholding Integrity: The Prevention of Corruption (Cm 4759).

*(b) Aggravated, Exemplary and Restitutionary Damages (Law Com No 247, published in 1997)*

- 1.16 In November 1999 the Government accepted our recommendations on aggravated and restitutionary damages and announced that they would legislate when a suitable legislative opportunity arose.<sup>8</sup> At the same time the Government announced that they rejected our recommendations on exemplary damages in the absence of a clear consensus as to whether to have a complete legislative overhaul or to abolish such damages.

*(c) Structured Settlements (Law Com No 224, published in 1994)*

- 1.17 Our report has mainly been enacted, particularly in the Damages Act 1996. Under one of the provisions flowing from our report, when a court in England and Wales decides the return to be expected from investing a lump sum award of damages for pecuniary loss arising from a personal injury, it would take account of the rate of return determined by the Lord Chancellor. However, the power to determine the rate of return has not yet been used. We recommended that the rate of return on Index Linked Government Stocks should be used in the calculation of future pecuniary loss, which is what the House of Lords subsequently decided in *Wells v Wells*<sup>9</sup> In March 2000 LCD published a consultation paper which invited views on how this “discount rate” should be set and reviewed, before the Lord Chancellor decided whether and how to exercise the power provided by the Act.

*(d) Liability for Psychiatric Illness (Law Com No 249, published in 1998)*

*(e) Medical, Nursing and Other Expenses; Collateral Benefits (Law Com No 262, published in November 1999)*

*(f) Claims for Wrongful Death (Law Com No 263, published in November 1999)*

- 1.18 The first of these three reports considered the law regarding the suffering of psychiatric illness as a result of injury caused to someone else through a defendant’s negligence. In November 1999 the Government announced that it had carefully considered our recommendations, and that it would undertake a comprehensive assessment of the individual and aggregate effects of the recommendations in these three reports.<sup>10</sup> It was hoped that the full assessment would be available to inform the Government’s final decision on our recommendations early in 2000. We understand that work on the assessment is continuing.
- 1.19 The second of these reports covered the law on gratuitous services, where we recommended the reversal of the decision of the House of Lords in *Hunt v*

<sup>8</sup> Written Answer, *Hansard* (HC) 9 November 1999, vol 337, col 502 W.

<sup>9</sup> [1999] 1 AC 345.

<sup>10</sup> Written Answer, *Hansard* (HC) 9 November 1999, vol 337, col 502 W.

*Severs*<sup>11</sup>. It also covered the treatment of various benefits received by a victim of personal injury in the assessment of damages.

- 1.20 The third of these reports recommended improvements to the Fatal Accidents Act 1976, dealing with the recovery of compensation in respect of death caused by another's fault.

*(5) Divorce Law*

- 1.21 The Government has announced that it will not be implementing the divorce provisions in Part II of the Family Law Act 1996. It proposes to invite Parliament to repeal the relevant sections once a suitable legislative opportunity occurs.<sup>12</sup>
- 1.22 In 1990, following extensive study, research and consultation, the Law Commission published its report, the Ground for Divorce, which made detailed recommendations for reform of divorce law and included a draft Bill to implement them. We particularly recommended that it should no longer be possible to obtain a divorce quickly and easily by the simple but often unjust and painful expedient of one party claiming that the other had committed adultery or behaved intolerably. We recommended that the parties should instead have a period of at least one year during which they could decide whether or not their marriage had irretrievably broken down and, if so and they were to be divorced, the arrangements needed for an orderly and preferably amicable outcome.
- 1.23 Following publication by the then Government of its own consultation paper and a White Paper, Parliament enacted new legislation for divorce in Part II of the 1996 Act. Although the legislation for divorce was largely based on our recommendations, several other measures were added, including a requirement that those considering divorce proceedings should attend individual information meetings designed among other things to save saveable marriages and, where this was not possible, to promote mediation in divorce as an alternative to adversarial litigation.
- 1.24 This legislation has never been put into operation but the Government has had research conducted to evaluate pilot information meetings. That research concluded that none of the models tested for those meetings was good enough. For that and other reasons, the Government has decided not to implement the legislation about divorce. The Government is, however, committed to the principles of Part I of the Act, including saving saveable marriages and, where marriages break down, bringing them to an end with the minimum distress to the parties and children affected.
- 1.25 We can understand why the provisions as enacted have been rejected. The simple scheme recommended by the Commission had become extremely complicated,

<sup>11</sup> [1994] 2 AC 350.

<sup>12</sup> Written Answer, *Hansard* (HL) 16 January 2001, vol 620, col 126 WA; (HC) 16 January 2001, vol 361, col 219 W.



uncertain and costly. However, the problems identified by the Commission cannot be ignored. The Advisory Board on Family Law, an expert body established to provide the Lord Chancellor with independent advice on the implementation and operation of the Act, “has seen the implementation of Part II, which replaces the widely discredited provisions of the Matrimonial Causes Act 1973, as an essential step in moving from the current fault-based approach to the ending of a marriage to one that focuses on the future interests of the parties, most particularly those of any children of the marriage. ... core features of the divorce process survive unchanged since the passage of the first Matrimonial Causes Act of 1857. It is still notionally achieved through litigation, although in the overwhelming majority of cases the process is in reality administrative, whilst still purporting to be judicial. In many cases, “fault” continues to represent a central, corrosive element. By prescribing a process in which the parties themselves play a greater part, [Part II] promises a radical departure from this approach.” (Annual Report 1999/2000).

- 1.26 The essential aim was to remove those unjust and divisive features of the present law, while ensuring so far as possible that couples had made arrangements to fulfil the responsibilities remaining from one marriage, particularly to their children but also to one another, before being free to enter another. The present system does not achieve this and is still in urgent need of reform.

*(6) Mental Incapacity*

- 1.27 A serious gap in the law is the absence of a single, comprehensive piece of legislation to provide for the personal welfare, healthcare and financial affairs of those who lack mental capacity. We published our report (Law Com No 231) in 1995. Most of our recommendations found favour with most of those who have commented on them. In December 1997 the Government published a Green Paper.<sup>13</sup> In October 1999 the Government published its plans to reform the law in this area.<sup>14</sup> That Policy Statement clearly accepted the majority of our recommendations, even although the Government has not wholly followed all of them: for example, the Government has omitted any proposals on advance statements about healthcare (sometimes described as living wills or advance directives). They have also made no commitment to take forward our recommendations for public law protection for vulnerable people.
- 1.28 The need for legislation in this field grows ever stronger. Those with an interest in the field continue to encourage the Government to introduce legislation into Parliament. The President of the Family Division referred in *Re F (Adult): Courts Jurisdiction*<sup>15</sup> to “the obvious need expressed by the Law Commission and the Government for a well-structured and clearly defined framework of protection of vulnerable, mentally incapacitated adults”. The Government has repeated its

<sup>13</sup> Who Decides? Making Decisions on Behalf of Mentally Incapacitated Adults.

<sup>14</sup> Making Decisions, Cm 4465.

<sup>15</sup> [2000] 2 FLR 512, 524.

intention to do so when Parliamentary time allows.<sup>16</sup> The Society for Advanced Legal Studies has established an expert working group, the Law and Medical Ethics Group, of which the Secretary of the Commission is a member. It is studying “End of Life and Medical Treatment Issues”.

- 1.29 Meanwhile, in May the Scottish Parliament enacted the Adults with Incapacity (Scotland) Act 2000. Although that Act does not contain provisions on advance statements, it is largely based on the Scottish Law Commission’s report on Incapable Adults, which was parallel with our own report. The approaches in the Act are broadly similar to those for England and Wales. Similar reforms are being considered for Northern Ireland.

*(7) Shareholder Remedies*

- 1.30 Our 1997 report on Shareholder Remedies (Law Com No 246), prepared in consultation with the Scottish Law Commission, is being considered as part of the wider Company Law Review by the Department of Trade and Industry.

*(8) Company Directors: Regulating Conflicts of Interest*

- 1.31 Our 1999 report on Regulating Company Directors’ Conflicts of Interest (Law Com No 261), prepared in consultation with the Scottish Law Commission, is also being considered as part of the wider Company Law Review by the Department of Trade and Industry. In March 2000 the DTI published a consultative document<sup>17</sup> in which they announced that they generally accepted our proposals.

*(9) Fiduciary Duties*

- 1.32 We referred in our last annual report to the Government’s intention to implement provisions on the lines of our 1995 report on fiduciary duties (Law Com No 236) during the passage of the Financial Services and Markets Bill through Parliament. In the event the Government decided that such provisions were not required. It is not now envisaged that our recommendations will be implemented.

*(10) Execution of Deeds and Documents by Bodies Corporate*

- 1.33 The Government announced in July 1999 that it accepted all the recommendations in our 1998 report on the Execution of Deeds and Documents by Bodies Corporate (Law Com No 253). A suitable legislative opportunity is awaited.

<sup>16</sup> LCD Press Notice on 3 November 2000, when Ms Jane Kennedy, Parliamentary Secretary at the Lord Chancellor’s Department, spoke about “Making Decisions”, at the Annual General Meeting of People First (Self-Advocacy).

<sup>17</sup> URN 00/656.

*(11) Business Tenancies: Landlord and Tenant Act 1954, Part II*

- 1.34 We issued our report in 1992 (Law Com No 208). In November the Government announced that, while maintaining the statutory right of business tenants normally to renew their leases, they were proposing to improve the workings of the Act to ensure that it operates more efficiently in the interests of both landlords and tenants. Many of their proposals stem from our 1992 report. Among the benefits would be a streamlining of the renewal process, making it simpler and quicker for tenants to renew their leases. The Government are proposing to consult on using the Order-making procedure in the draft Regulatory Reform Bill to implement these reforms.<sup>18</sup>

*(12) Landlord and Tenant: Responsibility for State and Condition of Property*

- 1.35 Our Report on Responsibility for State and Condition of Property<sup>19</sup> in 1996 made recommendations to reform the law on repairing liabilities in leases, for example that there should be an implied covenant in leases granted for a term of less than seven years that the property be fit for human habitation. That implied covenant would have been tied to the existing fitness standard. The Department of the Environment, Transport and the Regions (DETR) has welcomed the Law Commission recommendation in the context in which it was made, that is in relation to the current housing fitness standard. The proposal is consistent with the principle of a minimum standard of acceptability as regards housing conditions. The DETR is considering, in collaboration with us, what should be an appropriate relationship between an enhanced right of civil redress for tenants and the proposals for health and safety based enforcement by means of the public law and the Secretary of State's guidance.

*(13) Distress for Rent*

- 1.36 We are still awaiting a Government response to the recommendations made in our Report, Distress for Rent.<sup>20</sup> The Lord Chancellor's Department's current review of enforcement procedures<sup>21</sup> covers the practice of distress for rent and includes consideration of our recommendations.

*(14) The Rules Against Perpetuities and Excessive Accumulations*

- 1.37 We are hoping that the Government will shortly announce its decision on the recommendations contained in our Report, The Rules Against Perpetuities and Excessive Accumulations.<sup>22</sup>

<sup>18</sup> Written Answer, *Hansard* (HC), 27 November 2000, vol 357, col 369 W. See below at paras 1.61 - 1.63.

<sup>19</sup> Law Com No 238.

<sup>20</sup> (1991) Law Com No 194.

<sup>21</sup> Announced on 25 March 1998 (LCD press notice 65/98).

<sup>22</sup> (1998) Law Com No 251.

*(15) Judicial Review*

1.38 We published our report on Judicial Review and Statutory Appeals (Law Com No 226) in 1994. During 2000 the Report on the Crown Office List was published. As part of its terms of reference, the Review, chaired by Sir Jeffrey Bowman, was asked to have regard to our report.

1.39 The review agreed with a large number of our recommendations. Among our main recommendations with which the review agreed were:-

the retention of a leave stage, with all applications normally to be determined entirely on paper;

enabling parties to seek transfer to the High Court if a case raised public law issues;

explicit provision be made for the High Court to make advisory declarations where the court was satisfied that the point was one of general public importance; and

clear provision to grant interim relief, including interim injunctions.

In some cases the review felt the present state of the law was now sufficient to deal with the problems which the Commission had identified. In others, the review considered that its own proposals substantially implemented ours. The review also adopted many of the Commission's recommendations about statutory appeals, including allowing third party interventions.

1.40 One of the main recommendations was for a comprehensive study of the present structure, jurisdiction, procedures, remedies and routes of appeal of tribunals. The Lord Chancellor acted upon this recommendation, establishing the Leggatt Review of Tribunals, to which our new Commissioner, Professor Martin Partington, is an expert consultee.

**New Law Reform Work**

1.41 We have had detailed discussions on a range of possible new law reform projects for the Law Commission. In many instances we have suggested these topics to Government departments and others. In some instances they have been raised by others. We report below the current position on those which have been most actively under discussion.

*(a) Trust Law*

1.42 The Lord Chancellor has recently<sup>23</sup> asked us to review the law on:-

trustee exclusion clauses

<sup>23</sup> January 2001.

trustees' powers and duties to apportion between income and capital and

the rights of trust creditors against the trust fund.

During the passage through Parliament of the Trustee Bill, the Lord Chancellor announced that he would be asking the Law Commission to undertake this work. This was in response to concerns expressed by some members of the House of Lords about those topics. The Government has, at the instigation of the Commission, substantially reformed the law of trusts in recent years, so that it serves modern needs, such as investment, pensions and charities. This further work will deal with the most important remaining areas.

*(b) Unfair Contract Terms*

- 1.43 We summarise this new work at paragraphs 2.8 - 2.9 below.

*(c) Publication of Local Authority Reports*

- 1.44 Following the North Wales child abuse tribunal of inquiry, chaired by Sir Ronald Waterhouse, the inquiry report<sup>24</sup> included a recommendation that the Law Commission should be invited to consider the legal issues arising in relation to a local authority's decision not to publish a report of an inquiry into child abuse, following advice from its insurance company.
- 1.45 Following discussions between the Commission, the Department of the Environment, Transport and the Regions and the Lord Chancellor's Department, in February 2001 we were asked to undertake this work, including reviewing relevant aspects of the law of defamation, possible loss of public interest immunity or privilege, and existing insurance practice. We are conducting an examination of the issues with a view to publishing provisional proposals in a consultation paper in early 2002. We hope that one outcome may be better measures to prevent ongoing abuse of victims at an earlier stage.

*(d) Housing*

- 1.46 In *Access to Justice*, Lord Woolf recommended that the Law Commission should carry out a review of housing law "with a view to consolidating the various statutory and other provisions in a clear and straightforward form"<sup>25</sup>. He was firmly of the view that cost and delay in the courts would be reduced by reform of the substantive law<sup>26</sup>. Following a large number of calls for reform of housing law, in July the Department of the Environment, Transport and the Regions and

<sup>24</sup> "Report of the Tribunal of Inquiry into the abuse of children in care in the former County Council areas of Gwynedd and Clwyd since 1974" published in February 2000: (1999 - 2000) HC 201.

<sup>25</sup> *Access to Justice: Final Report to the Lord Chancellor on the civil justice system in England and Wales* (1996) at 220.

<sup>26</sup> *Ibid* 197.

the Lord Chancellor's Department invited the Commission to undertake a scoping study, to propose how reform of housing law could be taken forward. Housing law affects large numbers of people every day of the year. Far greater clarity is needed in the law here, to ensure its fairness, speed and effectiveness, and to improve people's understanding of their rights and responsibilities. We shall complete the scoping study review in early 2001. We have been assisted by a small Working Party, for whose help we are extremely grateful. We have also benefited from the knowledge and experience of District Judge Nic Madge, who was seconded to us from his judicial duties for approaching two months.

*(e) Compulsory Purchase*

- 1.47 Following a fundamental review of the laws and procedures of compulsory purchase and compensation, a report was published in July by the Advisory Group to the Department of the Environment, Transport and the Regions (DETR). It recommended, among other matters, that new compulsory purchase and compensation legislation, consolidating, codifying, simplifying and amending the law should be prepared in consultation with the Law Commission and brought before Parliament at the earliest opportunity. The Commission has believed for some time that a review of the law is needed, as new legislation in this field has the potential to provide greater fairness, speed and effectiveness.
- 1.48 The Government therefore agreed that we should undertake a preliminary study with the DETR to identify the scope for simplifying, consolidating and codifying compulsory purchase law. In December we were formally asked to undertake the preliminary study.
- 1.49 The resulting scoping study should be completed in early 2001. Sir Christopher Jenkins, former First Parliamentary Counsel, has assisted us as a consultant. We are most grateful to him, and to all the members of our working group.

*(f) Commercial Law Review*

- 1.50 Our proposals for exploratory new work are summarised in paragraphs 2.10 to 2.11 below.

**A New Administrative Justice Team**

- 1.51 For nearly seven years one of the Commission's four law reform teams, with Diana Faber as Commissioner, has been concerned with Company and Commercial Law. Following Miss Faber's appointment to the Bench (see paragraph 1.71 below), and the appointment of Professor Martin Partington, it is intended that there will be a re-alignment of the work of this team. Commercial Law will continue to play an important part in the Commission's work, but will be allocated to Professor Beale and the Common Law Team. Professor Partington will work with a new team under the general title "Administrative Justice". As described elsewhere, the Commission is examining potential projects relating to Housing Law and Compulsory Purchase Law, which if approved would be carried on within this team, as will the new project on the publication of local authority reports. It is anticipated that there may be further projects in the

field of Public Law. In the light of the fundamental review of Company Law presently being carried out by the DTI, to which the Commission has contributed, it is not expected that there will be any substantial projects in this field in the near future. However, the important joint project with the Scottish Law Commission on the Review of Partnership Law will be completed under the leadership of the Chairman.

### **Use of Law Commission material by the courts**

#### *(1) Damages for personal injury: non-pecuniary loss*

- 1.52 In February 2000 the Court of Appeal (sitting as a five judge court headed by the then Master of the Rolls) heard eight joined appeals on the issue of the appropriate level of damages for non-pecuniary loss. The hearing was arranged in response to our Report on Damages for Personal Injury: Non-Pecuniary Loss (Law Com No 257). In that Report, published in April 1999, we recommended that the levels of damages for non-pecuniary loss for personal injuries should be increased by the courts by 50% to 100% in the case of awards in excess of £3,000, and by a series of tapered increases of less than 50% for those awards in the range of £2,001 to £3,000. The decision of the Court of Appeal in *Heil v Rankin*<sup>27</sup> accepted the Law Commission's recommendation that the level of awards for non-pecuniary loss should be increased, though it was decided that only awards above £10,000 would be increased, and that the increase should be tapered with the maximum increase of 33% applying only to the most serious awards. The judgment is now reflected in "Guidelines for the Assessment of General Damages in Personal Injury cases", 5th ed, Judicial Studies Board, 2000. This is the first time, we believe, that the Commission has intended that its recommendations be implemented by the courts and without recourse to legislation.

#### *(2) The rule in Sambasivam*

- 1.53 Although traditionally the Law Commission's work is implemented through primary legislation, the desired result may sometimes be achieved through the development of the Common Law by the courts. A recent example arose from our Consultation Paper on Double Jeopardy<sup>28</sup> published at the end of 1999. One of our proposals was for the abolition of the rule in *Sambasivam -v- Public Prosecutor*<sup>29</sup> (which excluded evidence that a defendant was guilty of an offence of which he or she had been formerly acquitted). In *R -v- Z*<sup>30</sup>, this issue came before the House of Lords, and the same conclusion was reached. Lord Hutton, giving the leading speech, expressly adopted our reasons for abolishing the rule. Accordingly, in the final report on Double Jeopardy, due to be published early in 2001, no further recommendation is required on this issue.

<sup>27</sup> [2000] 2 WLR 1173

<sup>28</sup> Consultation Paper No 156.

<sup>29</sup> [1950] AC 458.

<sup>30</sup> [2000] 3 WLR 117.

## **Human Rights**

- 1.54 The Human Rights Act 1998 came into effect in October 2000. As for many years, we take account of the European Convention on Human Rights in our projects. Two of our projects this year have primarily concentrated on issues relating to the Act. On one, Damages Under the Human Rights Act, we published our final report with the Scottish Law Commission during the year: paragraphs 2.1 - 2.2 below. On the other, Bail and the Human Rights Act, we shall be publishing our report in 2001: paragraph 4.8 below.

## **Codification of the Criminal Law**

- 1.55 It is unnecessary to repeat what was said on this subject in our last Annual Report. The case for Codification remains very strong, and continues to attract support from those directly concerned with the Criminal Law. At the time of writing we await Lord Justice Auld's report on the workings of the Criminal Courts. We have urged on Lord Justice Auld the importance of codification of the substantive and procedural law as an essential part of a modern system. Among those who spoke out this year in support of a criminal code was Lord Brennan, the former Chairman of the Bar, in his maiden speech in the House of Lords, saying it would "give coherence, clarity and certainty to our community about what the criminal law is" and would save "the cost of the legal judicial establishment having to investigate, as we now do, the terminology of an Act of Parliament of the last century dictating crimes of violence": *Hansard*, vol 613, col 295, 17 May 2000. In addition, Lord Wilberforce referred in the Debate on the Queen's Speech to the need for codification of the criminal law as being extremely urgent: *Hansard*, vol 620, col 447, 13 December 2000.

## **Length of Law Commission Projects**

- 1.56 Good quality law reform rightly takes time. The need for that time is one of the reasons for the existence of a special full-time and permanent law reform body. Over the years we have undertaken a variety of law reform projects, of differing scope and priority. Some have been completed within a matter of months, for example prosecution appeals against judges' rulings.<sup>31</sup> Some others have taken several years, for example trustees' powers and duties.<sup>32</sup>
- 1.57 Even so, we are conscious that in the past some of our projects have taken too long. There are many reasons for this. Priorities may change, often for good reasons. Delays often arise because the project suffers from, for example, intervening litigation or case law, other intervening work for the Commission, lack of availability of a Commissioner, draftsman or member of staff. However, an unduly long project has a number of disadvantages, for example:-

it may lose its topicality and therefore the enthusiasm of those who were anxious to have the review undertaken in the first place;

<sup>31</sup> Paras 4.5 - 4.7 below.

<sup>32</sup> Paras 5.6 - 5.8 below.



the prospects for implementation may diminish;

it may be overtaken by case law or other events which make the project redundant; and

the cost of the project will increase.

1.58 In the course of the year we decided to take a number of steps to reduce delays to a minimum. For example:-

we shall aim to have fewer projects in our formal work programme;

while most projects will result in draft primary legislation, we shall undertake a proportion where that is unlikely, for example because they may lead instead to secondary legislation or because legislative reform of the law is not the objective;

we shall terminate projects in the (rare) circumstances where that is the best course;

we shall limit the ambit of a project where possible;

we shall aim for shorter publications;

we shall place greater emphasis on our project implementation processes; and

we shall seek to avoid unnecessary interruptions to projects.

These measures will obviously take some time to take full effect.

### **Ministerial Committee on Law Reform**

1.59 We referred in our last annual report to the establishment of a Committee of Ministers, chaired by a Minister at the Lord Chancellor's Department, currently Mr David Lock MP. The Committee's role is centred on:-

- (a) developing and co-ordinating Government's interests in law reform, with particular reference to making effective use of the Law Commission;
- (b) considering how implementation of Law Commission reports can be streamlined; and
- (c) considering outstanding Law Commission reports and the action to be taken on them.

We believe that the establishment of this Committee is a sign of the value which the Government places on the Commission and its work, of the Government's wish to see the Commission being as useful as possible and of the Government's

intention to deal with the Commission's reports as effectively as possible. Our Chairman appeared before the Committee at two of its meetings during the year.

- 1.60 One of the areas where the Committee has an important role is as we and Government departments consider possible projects for our future law reform work, such as those which might be undertaken during our Eighth Programme.<sup>33</sup>

### **Regulatory Reform Bill**

- 1.61 The Government introduced the Regulatory Reform Bill into Parliament in December. We had taken a considerable interest in the preparations for this Bill and had ongoing discussions with the Cabinet Office as, in the light of the continuing backlog of Law Commission Bills awaiting either introduction into Parliament or Government decisions, it seemed possible that this legislation could provide a means for Parliamentary consideration of at least a small number of our Bills without the need to await the opportunity for them to pass through the full Parliamentary procedures. It is right that many of our Bills be considered on the floor of each House. However, there are some which, while being of great benefit in particular areas of law and to particular parts of society, are of a technical and uncontroversial nature. We considered that it might be appropriate for such Bills to be passed by a special procedure which was introduced for Bills generally.
- 1.62 At heart the Regulatory Reform Bill provides a power to make provision by Order for the purpose of reforming legislation which imposes burdens, with a view to, for example, reducing those burdens or removing inconsistencies and anomalies. The Government's list of potential Regulatory Reform Orders includes<sup>34</sup> business tenancies under the Landlord and Tenant Act, and unfair contract terms. The Bill provides a detailed procedure for the examination of the Orders, similar to the procedure under the Deregulation and Contracting Out Act 1994. It additionally provides that, before making an Order, the Minister should consult the Commission or the Scottish Law Commission in such cases as he considers appropriate.
- 1.63 We shall continue to investigate the extent to which the Bill may assist the implementation of Law Commission reports.

### **Modernising Government**

- 1.64 While the Commission is clearly independent of the Government, many of our recent activities and methods have in fact fitted well with the thrust of the Modernising Government programme which the Government is taking forward. For example, we have been making strenuous efforts to ensure that we only review areas of the law which are in serious need of review; examples are: land registration, levels of damages, consumers' contracts, Human Rights Act

<sup>33</sup> See paras 1.41 - 1.50 above and paras 1.74 - 1.75 below.

<sup>34</sup> Paras 1.34 above and 2.9 below.

compatibility, business law and the law relating to modern technology. We engage in wide consultation and seek to base our recommendations on hard evidence, and we work closely with others and emphasise the need for our work to be timely. The relationship between Information Technology and our work is also important for us.<sup>35</sup>

1.65 The Commission is committed to ensuring that equality and diversity issues are taken fully into account, for example:-

in the substance of the recommendations on law and policy which the Commission makes; and

by full consultation with those likely to be affected by the Commission's proposals, including different groups within society.

The Commission's staff are also committed to ensuring that equality and diversity issues are taken fully into account in personnel matters at the Commission.<sup>36</sup>

1.66 We seek to be innovative and creative, not only in our recommendations for law reform, but also in our working methods. This ranges from personnel matters<sup>37</sup> to funding<sup>38</sup> and length of projects.<sup>39</sup>

### **Commissioners**

1.67 During the year, two new Law Commissioners took up post, the Lord Chancellor has made two other Commissioner appointments and one Commissioner's term of appointment ended.

1.68 Professor Hugh Beale and Judge Alan Wilkie QC were appointed as from January 2000. Hugh Beale is leading our work in the general field of common law. Alan Wilkie is in charge of our work on criminal law and evidence. We gave details of their background in last year's annual report.

1.69 Professor Martin Partington has been appointed a Commissioner as from January 2001. He has been a Professor of Law at Bristol University since 1987. He was Head of Department and Pro-Vice Chancellor. His work at the Commission is summarised at paragraph 1.51 above.

1.70 Stuart Bridge will take up appointment as a Commissioner in July 2001. He will lead our work on property and trust law, replacing Charles Harpum whose term of appointment expires. Stuart Bridge has been a Lecturer in Law at Cambridge

<sup>35</sup> Paras 3.10 - 3.13, 5.3, 7.4, 7.8, 7.12, 7.16 and 8.6 below.

<sup>36</sup> Para 8.6 below.

<sup>37</sup> Para 8.6 below.

<sup>38</sup> Para 8.10 below.

<sup>39</sup> Paras 1.56 - 1.58 above.

University since 1990. He has also been in part-time practice at the Bar since 1992.

- 1.71 Diana Faber's term of appointment ended in September after nearly seven years as a Law Commissioner. She was the first Commissioner to be appointed primarily to review company and commercial law. She led the Commission's work on a wide range of topics, from electronic commerce to partnership law and from the Companies Act to insurance law. She brought to bear her own valuable experience, both having been called to the Bar and having later qualified as a solicitor and worked in a City law firm. The Commission benefited greatly from her commitment, both in her sphere and in contributing to the Commission's wider role. She took up appointment as a Circuit Judge upon leaving the Commission.

### **Former Commissioner**

- 1.72 We record with sadness the death at the end of 2000 of Brian Davenport QC, who was a Commissioner between 1981 and 1988. He is remembered with great affection and admiration by all who worked with him. Sir Roy Beldam writes

“Brian Davenport was appointed a Law Commissioner in 1981. In 1985, when I became Chairman, he was the Commissioner responsible for the Criminal Law team. His leadership and industry inspired the team to produce work of the highest quality which included the draft proposals for reform of the law of Public Order Offences, Binding Over to Keep the Peace and Conspiracy to Defraud. With the help of Professor Ian Dennis he carried out the basic analysis of The Criminal Code project, a vital stage in bringing one of the Commission's longest and most challenging projects closer to its successful conclusion. Under his guidance the Commission proposed that the power of the Criminal Division of the Court of Appeal to order a retrial should be extended to all cases where the interests of justice required it, a measure which was quickly introduced. The Commission's recommendation that the jurisdiction of the Criminal Law should cover Fraud Offences Completed Abroad owed a great deal to his wide experience of Commercial Law and was eventually enacted in the Criminal Justice Act 1993. These significant reforms of our Criminal Law, now taken for granted as essential to the proper administration of justice, will stand as a permanent tribute to his outstanding abilities. However busy, Brian always found time to guide and encourage the young research assistants in his team and to advise and help them in their future careers. His contributions to discussion in meetings of the Commission were always thought-provoking and were often enlivened with amusing analogy and wit. All this he achieved in the face of increasing physical disability which he surmounted with indomitable spirit.”

### **Code of Best Practice for Law Commissioners**

- 1.73 In accordance with Government policy for all non-departmental public bodies, including the Law Commission, we have agreed with the Lord Chancellor's Department a written code for Law Commissioners. It follows the Seven Principles of Public Life, as set out originally by the Nolan Committee. It covers

such matters as the role and responsibilities of Commissioners. Copies of the code are available from the Law Commission.

### **Programmes of Law Reform**

- 1.74 Our ongoing and future planned law reform projects are set out in the Seventh Programme of law reform which was approved by the Lord Chancellor and published in 1999 (Law Com No 259). It is a two year rolling programme.
- 1.75 For some time now we have been planning, and discussing with Government departments and others, the work which we should undertake during our Eighth Programme, which we anticipate being published during 2001 - as mentioned at paragraphs 1.41 - 1.50 above.

### **Summary of Work in 2000 and 2001**

- 1.76 The table at the end of Part I summarises the major targets we had for our publications in 2000, with the outcome. A summary of our main planned publications for 2001 follows it.

## MAJOR TARGETS FOR 2000

### PUBLICATIONS

#### To complete consultation papers on:

- prosecution appeals in criminal cases
- partnership\*
- electronic commerce\*
- home-sharers' property rights

#### To complete reports on:

- consent as a defence<sup>1</sup>
- damages under section 8 of the Human Rights Act 1998
- Third Parties (Rights against Insurers) Act 1930\*
- land registration<sup>2</sup>
- termination of tenancies<sup>3</sup>
- limitation periods<sup>3</sup>
- fraud<sup>3</sup>

#### To publish:

- Annual Report for 1999
- Consolidation Bills/Reports: Sentencing powers<sup>4</sup>  
European Parliamentary  
elections  
Criminal appeals
- We also published Guidelines on Digital Signatures (para 3.13)

\* with the Scottish Law Commission

<sup>1</sup> submitted to the Home Office Sex Offences Review in February; this completed the project in so far as it relates to capacity and validity: see paras 4.12 - 4.14

<sup>2</sup> jointly with HM Land Registry

<sup>3</sup> to be published in 2000 or early in 2001

<sup>4</sup> with the Scottish Law Commission in some small respects

- Published in July
- Published in September
- Delayed: see paras 3.10 - 3.12
- Delayed: see para 5.4

- Published in July
- Published in October
- Delayed: see paras 3.7 - 3.9
- Delayed: see paras 5.1 - 5.3
- Delayed: see para 5.5
- Delayed: see paras 2.3 - 2.4
- Delayed: see para 4.9

- Published in April
- Published in March
- Published in May
- Delayed: see para 6.9

ALL TARGETS WERE SUBJECT TO AVAILABILITY OF RESOURCES

## MAJOR TARGETS FOR 2001

### **PUBLICATIONS**

#### **To complete reports on:**

- land registration<sup>o</sup>
- double jeopardy
- prosecution appeals against judges' rulings
- Third Parties (Rights against Insurers) Act 1930\*
- bail and the Human Rights Act 1998
- limitation of actions
- evidence of previous misconduct

#### **To complete consultation papers on:**

- limited partnerships\*
- the property rights of those who share homes
- unfair contract terms\*

#### **To complete:**

- paper following scoping study on aspects of housing law
- paper following scoping study on compulsory purchase
- paper on electronic commerce\*
- paper on illegality in tort
- Annual Report for 2000
- Eighth Programme of Law Reform

\* with the Scottish Law Commission

<sup>o</sup> jointly with HM Land Registry

Each of the above topics is described in more detail elsewhere in this report, generally with a more specific timetable.

ALL TARGETS ARE SUBJECT TO AVAILABILITY OF RESOURCES

# **PART II**

## **COMMON LAW**

### **TEAM MEMBERS<sup>1</sup>**

#### **Government Legal Service**

Ian Walker (*Team Manager*)

Nicola Pittam, James Robinson, Helen Hall<sup>2</sup>

#### **Research Assistants**

Benedict Mills, Robert Moretto,

Nadia Motraghi

Professor Hugh Beale  
**(Commissioner)**

### **Damages under the Human Rights Act 1998**

- 2.1 In October we and the Scottish Law Commission published a joint Report on Damages under the Human Rights Act 1998,<sup>3</sup> following a reference to us in February by the Lord Chancellor and the Scottish Ministers respectively. Section 7 of the Human Rights Act 1998 created a new claim against public authorities where the public authority has acted in a way which is incompatible with the claimant's rights under the European Convention on Human Rights. The remedies that may be sought include damages which a court may award if it is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made. This is the test applicable to the European Court of Human Rights in Strasbourg under Article 41 of the Convention. Section 8(4) also requires courts in this country to take into account the principles applied by the Strasbourg Court in deciding whether to award compensation for a violation of the Convention, and the amount of any award. Rather than recommending legislation, the report contains an article by article description of the case-law under the Convention and an analysis of the practice of the Strasbourg Court in relation to awards. It examines the implications for awards of damages made by courts in the United Kingdom under the Human Rights Act.
- 2.2 The report concludes that on the whole the approach of the Strasbourg Court does not significantly differ from the rules applied by courts in this country. The report does note a few areas where differences exist, such as the fact that the

<sup>1</sup> As at the end of 2000.

<sup>2</sup> Mrs Hall is currently on a career break.

<sup>3</sup> Law Com No 266; Scot Law Com No 180.



Strasbourg Court has awarded compensation in relation to some forms of non-pecuniary, or intangible, loss - such as for loss of relationship between parent and child - which have not at present been recognised by courts in this country. However, subject to such points, the report concludes that the Human Rights Act does not require major changes to the current law on damages. We hope that the report will provide a useful source of information on the award of damages under the Convention.<sup>4</sup> We were grateful to Jeremy McBride, of Birmingham University, for his assistance as a consultant.

### **Limitation of Actions**

2.3 In finalising our report on this subject, we are working towards a unified limitations regime instead of the current multiplicity of limitation periods applicable under the Limitation Act 1980. The central elements of this regime would be:

- An initial limitation period of three years running from the date when the claimant 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 accrual of the cause of action or, if earlier, the date of the act or omission which gives rise to the claim.

2.4 We were unable to publish the report in 2000 as we had hoped because of the prolonged unavailability of parliamentary counsel to work on the draft Bill. Parliamentary counsel has now returned to the project, and we hope to publish the report in 2001.

### **Illegal Transactions**

2.5 We have completed an analysis of the responses we have received from consultees commenting on the provisional proposals made in our Consultation Paper, *Illegal Transactions: The Effect of Illegality on Contracts and Trusts*.<sup>5</sup> Our main provisional proposal was that the complex rules in this area should be replaced by a discretion for the courts to decide whether to enforce an illegal transaction, to recognise that property rights have been transferred or created under it, or to allow benefits conferred under it to be recovered. We also provisionally proposed a set of factors to which the court would be obliged to refer in exercising this discretion.

2.6 The majority of consultees welcomed the broad thrust of our proposals. However, a number of consultees have expressed concern that the project did not cover the illegality defence in relation to tort claims. We are therefore considering whether our proposals should be extended to cover the effect of

<sup>4</sup> See also "ECHR Remedies from a Common Law Perspective" 2000 [49] ICLQ 517, Sir Robert Carnwath, our Chairman.

<sup>5</sup> Consultation Paper No 154.

illegality on claims in tort, and, if so, what our proposals should be in this area. We intend to submit our proposals to further consultation on this issue.

### **Compound Interest**

- 2.7 We have started work on an examination of the courts' power to award compound interest.<sup>6</sup> There is concern that the courts' limited ability to award compound interest results in injustice to claimants, and gives defendants little incentive to conclude litigation early. We hope that our review will rationalise and update the law in this area.

### **Unfair Contract Terms**

- 2.8 There is a real need to revise the law governing unfair contracts. The validity of terms in contracts confronts both customers and businesses on a daily basis. The present law is extremely confusing because there is an overlap between the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999, and yet the two pieces of legislation use significantly different criteria and produce significantly different results. This overlap causes a real burden, according to the responses to a recent White Paper.<sup>7</sup> The law also needs to be made clearer for the layman, and to be consistent with European measures.
- 2.9 The Government has recently<sup>8</sup> asked us, jointly with the Scottish Law Commission, to undertake a project on:-

- (1) replacing both the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contract Regulations 1999, by one piece of legislation, which would be consistent with the EC Directive on Unfair Terms in Consumer Contracts;
- (2) extending the scope of the Regulations (or their replacement under (1)) to protect businesses, in particular small enterprises; and
- (3) making any replacement legislation clearer and more accessible to the lay reader.

It is anticipated that a consultation paper will be published in Summer 2001, and a final report about a year later. One of the items which the Government has said could be implemented under the Regulatory Reform Bill<sup>9</sup> is "removing from businesses the costs of having to adhere to two different sets of regulations surrounding unfair contract terms".<sup>10</sup>

<sup>6</sup> Item 4 of our Seventh Programme of Law Reform (Law Com No 259).

<sup>7</sup> "Modern Markets: Confident Consumers", DTI, Cm 4410.

<sup>8</sup> January 2001.

<sup>9</sup> See para 1.62 above.

<sup>10</sup> Written Answer, *Hansard* (HC) 27 November 2000, vol 357, col 369W.

## **Commercial Law Review**

- 2.10 In our Seventh Programme of Law Reform<sup>11</sup> we said that we had been approached by Professor Sir Roy Goode in connection with his proposal for a commercial code which would set out the principles and rules governing commercial transactions. Parts of commercial law were codified in the late nineteenth century and may now need revision; other parts have never been stated in a coherent fashion, which makes the law hard to find and sometimes uncertain. It is argued that an up-to-date restatement of the law would be of great benefit to the business community, and would improve knowledge of and understanding of the parties' rights and responsibilities. A clearer and more modern commercial law might encourage inward investment and would assist foreign lawyers and business people who may wish to adopt, or continue to use, English law but who have difficulty in discovering it in the mass of statutes, precedents and textbooks or who find that it no longer meets their needs.
- 2.11 The Department of Trade and Industry sponsored a conference on Sir Roy's proposals in May 2000, and we presented a paper setting out how we considered that the initial stages of the project might usefully be carried forward. Since then we have been in discussion with the DTI and others and have proposed that, as a preliminary, the Law Commission (together with, it is hoped, the Scottish Law Commission) carry out a review of the law governing a range of commercial transactions (primarily those used in domestic rather than purely international commerce) to establish exactly which subjects are in need of updating or reform, which would really benefit from a restatement and what would be the most appropriate form (statutory or otherwise) of the restatement. It is also proposed that the Law Commission prepare drafts on one or two topics which can be identified as in need of review irrespective of any wider codification. This would help consultees to assess the merits of various possible forms of codification.

<sup>11</sup> Law Com No 259, paras 1.14-1.15.

# **PART III**

## **COMPANY AND COMMERCIAL LAW**

### **TEAM MEMBERS<sup>1</sup>**

#### **Government Legal Service**

Richard Percival (*Team Manager*)

Hugh Boileau, Wayne Mitchell

#### **Research Assistants**

Zoë Beach, Catherine Lloyd, Sarah Venn

Diana Faber<sup>2</sup>  
**(Commissioner)**

### **Partnership law**

- 3.1 In September we published, jointly with the Scottish Law Commission, a consultation paper on the law on general partnerships.<sup>3</sup>
- 3.2 Partnerships encompass a broad spectrum of businesses and industries, make a significant contribution to the economy of the United Kingdom and employ in excess of 2.75m people. The main rules of partnership law are set out in the Partnership Act 1890, which has hardly been amended since its enactment. Our consultation paper considers how the law might be changed to meet the needs of modern business. The importance of partnerships within the economy means that reform of partnership law can make a real contribution to both efficiency and competitiveness.
- 3.3 In our consultation paper we provisionally propose the introduction of separate legal personality, continuity of partnership and the introduction of a new method for the solvent dissolution of partnerships.
- 3.4 When we have analysed the responses to the consultation paper we hope to finalise our report and recommendations in 2002. We are being assisted in the project by a consultant, Roderick l'Anson Banks, a barrister specialising in partnership law and the current editor of the most authoritative English textbook, *Lindley & Banks on Partnership*.

<sup>1</sup> As at the end of 2000.

<sup>2</sup> Until September 2000. Her successor is Professor Martin Partington: see para 1.69 above.

<sup>3</sup> Consultation Paper No 159.

### **Limited partnership law**

- 3.5 We referred in our last annual report to our preparing a separate paper on the law of limited partnership.<sup>4</sup> The main rules of limited partnership law are set out in the Limited Partnership Act 1907; again, this has hardly been amended since its enactment. The use of limited partnerships has changed since their introduction; for example they now have a significant role in the venture capital market.
- 3.6 Together with the Scottish Law Commission, we will consider whether the law needs to be changed to reflect the needs of modern limited partnerships and the purposes for which they are used. We plan to consult on the issues in mid-2001.

### **Third Parties (Rights Against Insurers) Act 1930**

- 3.7 The 1930 Act provides victims (“third parties”) of negligent or wrongful acts, committed by insured individuals or companies in specified financial difficulties, with rights to the proceeds of the wrongdoer’s insurance.
- 3.8 Although it remains valuable to third parties, a number of defects have become apparent in the 1930 Act. Together with the Scottish Law Commission we are examining ways in which the law can be reformed to make it more useful to third parties, at the same time taking account of the significance of the 1930 Act for both insolvency and insurance practitioners. We have been assisted by Professor Harry Rajak, Dean of the School of Legal Studies at the University of Sussex, and by the Association of Business Recovery Professionals,<sup>5</sup> in relation to insolvency aspects of this project.
- 3.9 We intend to publish our report in the first half of 2001; the pressure of other work prevented us doing so in 2000. We are likely to recommend that the 1930 Act should be replaced by a new Act giving third parties earlier access to policy information, together with a quicker, cheaper and more effective mechanism for gaining access to the insurance proceeds in proceedings.

### **Electronic commerce**

- 3.10 Certain aspects of electronic commerce were included in the Law Commission’s Seventh Programme of Law Reform. Our work, together with the Scottish Law Commission, is focusing on the international sale and carriage of goods and the associated banking and insurance transactions. We are conducting an examination of the existing law and current proposals for domestic and international reform, with a view to our assisting the development of domestic proposals and making recommendations for the additional reforms necessary to facilitate electronic commerce.

<sup>4</sup> Our terms of reference do not extend to a consideration of limited liability partnerships.

<sup>5</sup> Formerly the Society of Practitioners of Insolvency.

- 3.11 We have been assisted in this project by Christopher Nicoll, a barrister and senior lecturer in commercial law at the University of Auckland, in relation to the insurance aspects and by Dr Joanna Benjamin and Hugh Pigott, directors of the Centre for Law Reform based in London, in relation to the banking aspects. Following the departure of the Commissioner,<sup>6</sup> Christopher Nicoll has been assisting as a consultant in respect of all aspects of the project.
- 3.12 The allocation of resources to other projects meant that we were unable to publish our proposals in 2000. It is envisaged that our advice will be finalised in the first half of 2001.

### **Digital Signatures - Guidelines**

- 3.13 Digital signature technology serves to establish the authenticity and integrity of electronic documents. With the rise in electronic commerce it is likely that there will be litigation concerning those issues. The Guidelines aim to introduce the practical aspects of digital signatures to those judges who have no prior knowledge of the topic. The Guidelines were produced for the Judicial Studies Board (JSB) by a working group chaired by Lord Saville of Newdigate. The members of the group included Diana Faber, members of the judiciary, civil servants from the Department of Trade and Industry and the Cabinet Office and a lawyer from the digital signature industry. The Law Commission met the production costs. An electronic version was published on the JSB and Law Commission websites. Hard copies were distributed by the JSB to all the judges in England and Wales.

<sup>6</sup> See para 1.71 above.

# **PART IV**

## **CRIMINAL LAW, EVIDENCE AND PROCEDURE**

### **TEAM MEMBERS<sup>1</sup>**

#### **Government Legal Service**

Christina Hughes, Jacques Parry  
(*Joint Team Managers*)  
Elizabeth Finlason

#### **Research Assistants**

Alan Bates, Alexandra Bentley, Adam Zellick

His Honour Judge Alan Wilkie QC  
(**Commissioner**)

### **Double Jeopardy; Prosecution Appeals Against Judges' Rulings**

- 4.1 In October 1999 we published a consultation paper<sup>2</sup> on the law of double jeopardy, which (subject to certain exceptions) protects a person who has been acquitted or convicted of an offence from being prosecuted again in respect of the same facts.<sup>3</sup> We provisionally proposed that the rule should be retained and put on a statutory basis, but that a new exception should be created under which a second prosecution might be permitted where strong new evidence of guilt emerges after an acquittal.
- 4.2 The Home Affairs Select Committee of the House of Commons subsequently decided to conduct its own investigation of this issue. In January 2000 our Chairman and Judge Wilkie met the Committee informally to discuss our proposals. On 8 June the Committee published its report. It recommended, as we had proposed, that there should be an exception to the double jeopardy rule for cases of new evidence; but the details of the Committee's conclusions differed from ours in various respects.
- 4.3 The Committee's report was debated in Westminster Hall on 26 October. In advance of the debate, and to assist the House, our Chairman outlined our current thinking on the key issues to the Chairman of the Committee, Mr Robin Corbett MP, who summarised it in opening the debate. Briefly, the provisional conclusions we had reached at that time were that there should be a new exception, but that it should be confined to a narrower range of offences than we

<sup>1</sup> As of January 2001.

<sup>2</sup> Consultation Paper No 156.

<sup>3</sup> The Home Secretary referred this subject to us in July 1999, following recommendation 38 of the Macpherson report on the inquiry into the Stephen Lawrence case.

had envisaged in the consultation paper – namely murder, and that form of involuntary manslaughter which, if the recommendations we made in our report on the subject<sup>4</sup> were implemented, would be superseded by our proposed new offence of “reckless killing”; that, where the original investigation was not conducted with due diligence, that fact should be a relevant factor in determining whether it is in the interests of justice to reopen the acquittal, rather than (as we had previously proposed) a complete bar; and that the new exception should have retrospective effect. In developing our final recommendations we have of course taken full account of both the Committee’s report and the points made by MPs in the course of the debate.

4.4 In his Tom Sargant Memorial Lecture in November 1999 the Attorney-General indicated that the Government would be asking us to extend our work on double jeopardy so as to include the related issue of whether the Crown should be able to challenge an acquittal by way of *appeal* (as distinct from a fresh prosecution). He described the prosecution’s inability to appeal against (for example) a decision to stay a prosecution on the ground of abuse of process, or to exclude crucial prosecution evidence, as “an imbalance in the system”; and he queried whether it was right for judges to be “unaccountable to the appeal courts as to a crucial aspect of their responsibilities, at the very time that we are providing them with greater powers through the implementation of the Human Rights Act”.<sup>5</sup>

4.5 In January, we agreed to undertake this work. It was formally referred to us in May by the Home Secretary, who asked us to consider

- (4) whether any, and if so what, additional rights of appeal or other remedies should be available to the prosecution from adverse rulings of a judge in a trial on indictment which the prosecution may wish to overturn and which may result or may have resulted, whether directly or indirectly, in premature termination of the trial;
- (5) to what, if any, procedural restrictions such appeals would be subject;

and to make recommendations.

4.6 We published a consultation paper in July.<sup>6</sup> We provisionally proposed that, in trials for certain serious offences,<sup>7</sup> there should be a right of appeal against a

<sup>4</sup> Legislating the Criminal Code: Involuntary Manslaughter (1996) Law Com No 237.

<sup>5</sup> The issue was illustrated by the report by His Honour Gerald Butler QC, published in June 2000, of his inquiry into a Customs and Excise prosecution which Turner J had stayed as an abuse of process. The case involved the importation of cocaine said to have a “street value” of about £34 million. Judge Butler recommended that consideration be given to the creation of a right of appeal against the termination of a prosecution on grounds of abuse of process.

<sup>6</sup> Prosecution Appeals Against Judges’ Rulings, Consultation Paper No 158.

<sup>7</sup> We proposed that the offences subject to the new right of appeal should be the same as those in respect of which, in the event of a conviction, the Attorney-General would have power to refer the sentence to the Court of Appeal under s 36 of the Criminal Justice Act 1988 on the ground that it is unduly lenient.



ruling by the judge, at any stage up to the close of the prosecution case,<sup>8</sup> which *either* of itself brings the proceedings to an end (such as an order that they be stayed as an abuse of process) *or* results in an acquittal because, in the light of the ruling, the Crown decides to offer no evidence or no further evidence.

- 4.7 The issues of double jeopardy and prosecution appeals, though distinct, are clearly related. They both concern the circumstances in which an acquittal may be revisited at the instigation of the prosecution, with the possibility of a retrial. Some of the arguments apply to both. We have therefore decided to publish our recommendations on both subjects as a single report. This report is due to be published in March 2001.

#### **Bail and the Human Rights Act 1998**

- 4.8 In December 1999, in anticipation of the coming into force of the Human Rights Act 1998 and at the request of the Lord Chancellor's Department, we published a consultation paper<sup>9</sup> in which we considered whether the law of bail is in need of amendment to ensure compliance with Article 5 of the European Convention on Human Rights. We have been reconsidering this question in the light of the responses received, and intend to publish a report in the Spring of 2001.

#### **Fraud and Deception**

- 4.9 In April, Judge Wilkie and Mr Parry contributed to a seminar organised by the Fraud Advisory Panel to discuss the consultation paper on fraud and deception which we published in April 1999.<sup>10</sup> We had hoped to report in 2000. However, in the light of the response to the consultation paper the criminal law team conducted a limited and informal consultation on revised proposals between July and September. These proposals would involve the creation of a single offence of deception and of a number of ways in which a course of fraudulent conduct might be charged in a single count. This has inevitably involved a delay, but we hope to publish our report in 2001. Our consultant is Professor Sir John Smith CBE QC FBA, of the University of Nottingham.

#### **Misuse of Trade Secrets**

- 4.10 Following our consultation paper on the possibility of creating an offence of misusing a trade secret,<sup>11</sup> we have decided to postpone further consideration of this issue until we have reached our final conclusions on the law of fraud.

<sup>8</sup> This would include rulings made at pre-trial hearings under s 40 of the Criminal Procedure and Investigations Act 1996. It would not include the acceptance of a submission at the close of the prosecution's case that there is no case to answer, or an acquittal by the jury on the merits.

<sup>9</sup> Bail and the Human Rights Act 1998, Consultation Paper No 157.

<sup>10</sup> Legislating the Criminal Code: Fraud and Deception, Consultation Paper No 155. We outlined our principal proposals in our annual report for 1998: Law Com No 258, paras 4.8 - 4.12.

<sup>11</sup> Legislating the Criminal Code: Misuse of Trade Secrets (1997) Consultation Paper No 150.

### **Evidence of Previous Misconduct**

- 4.11 In June, Judge Wilkie and Mr Parry contributed to a seminar organised by JUSTICE for Lord Justice Auld's review of the criminal courts, which included discussion of our provisional proposals on the admissibility of evidence of previous misconduct<sup>12</sup> and our current thinking on this issue. Our final recommendations are nearing completion, and we anticipate publishing our report and draft Bill in 2001. Our consultant is Professor Diane Birch of the University of Nottingham.

### **Consent as a Defence**

- 4.12 In January 1999 the Home Secretary announced a review of the law of sexual offences. In view of this we decided, within the context of our wide-ranging work on consent as a defence to criminal offences generally,<sup>13</sup> to focus on the issues raised by the defence of consent in *sexual* offences; and in February 2000 we submitted to the Sex Offences Review a special report<sup>14</sup> containing our final recommendations on those issues only. This report was not laid before Parliament, or published as a Command Paper in the ordinary way, but is included as an appendix to the Review's report to the Home Secretary,<sup>15</sup> which was published in July 2000. It is also available from the Commission as a free-standing document.
- 4.13 In our report to the Review we made recommendations for a statutory definition of consent to conduct which would otherwise amount to a sexual offence, and of the circumstances in which a person should be regarded as lacking the capacity to give such consent, or in which an apparent consent should be disregarded because it was obtained by deception or threats. We also recommended that, where a jury has to decide whether the defendant may have genuinely but erroneously *believed* that the victim consented, the judge should be required to direct the jury to have regard to whether the defendant availed himself of any opportunity to ascertain whether the victim consented, and to disregard an asserted belief in consent if it was caused solely by voluntary intoxication.
- 4.14 We have not yet decided how, if at all, to take forward our work on consent as a defence to non-sexual offences.

### **Assisting and encouraging crime**

- 4.15 In an earlier consultation paper<sup>16</sup> we had considered the scope and structure of the law relating to the liability of those who assist or encourage others to commit offences. If resources permit, we hope to start formulating our policy during 2001.

<sup>12</sup> Evidence in Criminal Proceedings: Previous Misconduct of a Defendant (1996) Consultation Paper No 141.

<sup>13</sup> Consent and Offences Against the Person (1994) Consultation Paper No 134; Consent in the Criminal Law (1995) Consultation Paper No 139.

<sup>14</sup> Consent in Sex Offences.

<sup>15</sup> Setting the Boundaries: Reforming the Law on Sex Offences.

<sup>16</sup> Assisting and Encouraging Crime (1993) Consultation Paper No 131.

# **PART V**

## **PROPERTY AND TRUST LAW**

### **TEAM MEMBERS<sup>1</sup>**

#### **Government Legal Service**

Elaine Brown (*Team Manager*)

Georgina Field, Julia Jarzabkowski

#### **Research Assistants**

Diggory Bailey, Alec Brown,

Jamie Goldsmith

Charles Harpum  
**(Commissioner)**

### **LAW OF PROPERTY**

#### **Land registration; electronic conveyancing**

- 5.1 We have continued work on Land Registration, a joint project with HM Land Registry. The objective is to replace the existing legislation on land registration<sup>2</sup> in England and Wales in its totality and to create a coherent and modern system for the registration of title to land. This is the largest single project ever undertaken by the Law Commission and the magnitude of the project and volume of work generated by it has meant we have had to delay the publication of a final Report and draft Bill, which we now anticipate will be published by Summer 2001.
- 5.2 The recommendations and the draft Bill to implement them will create the necessary legal framework for electronic conveyancing. The principles contained in the Bill will more fully reflect the logic of a system of title registration than does the existing legislation. The benefit to both the public and practitioners of a faster and more rational system of dealing in land are likely to be considerable. There is considerable public interest in the move to electronic conveyancing and it was indeed the subject of a debate in Parliament at Westminster Hall in which our work was mentioned.<sup>3</sup>

<sup>1</sup> As of January 2001.

<sup>2</sup> The principal Act is the Land Registration Act 1925.

<sup>3</sup> See Westminster Hall, *Hansard* (HC) 9 November 2000, vol 356, cols 111 - 140WH, especially at cols 123 - 124WH.

- 5.3 The Law Commission together with HM Land Registry have also assisted the Lord Chancellor's Department in the preparation of a draft Order, to be made under section 8 of the Electronic Communications Act 2000, that will enable electronic conveyancing to be introduced even in advance of the Land Registration Bill.<sup>4</sup> This draft Order will make provision for the formal requirements for both electronic dispositions of land and contracts for the sale or other disposition of land in electronic form. At the time of finalising this Annual Report, the draft Order was due to be issued shortly for public consultation.

### **Property rights of those who share homes**

- 5.4 Work on this project has been continuing. Unfortunately the publication of our consultation paper has had to be delayed. This was because of the need to divert team resources to other pressing projects, in particular to land registration, electronic conveyancing and the provision of assistance to the Lord Chancellor's Department in the passage through Parliament of the Trustee Act 2000.<sup>5</sup> However, the policy of the consultation paper has now been settled and we anticipate publication in 2001. This project involves a review of the law as it relates to the property rights of all those who share a home in relation to that shared home except where their relationship is a "commercial" one, as where a person's occupation is attributable to a tenancy, a contractual licence or his or her employment.

### **Termination of tenancies**

- 5.5 Last year we anticipated publishing a draft Termination of Tenancies Bill in 2000.<sup>6</sup> This did not happen because it became apparent that the review of leasehold reform by the Department of the Environment, Transport and the Regions (DETR) might overlap with our project and that their proposals might have a significant impact on the Bill.<sup>7</sup> The DETR and the Lord Chancellor's Department published a joint consultation paper and draft Bill in August.<sup>8</sup> The effect of these proposals on our work is slight and we have therefore resumed work on a revision of our draft Bill.

<sup>4</sup> It will not, however, be possible to make substantial progress with the development of electronic conveyancing in the absence of the fundamental reforms that will be contained in the Land Registration Bill.

<sup>5</sup> See below, para 5. .

<sup>6</sup> See our annual report for 1999, Law Com No 265, at paras 5.4 - 5.5. The Law Commission published a draft Termination of Tenancies Bill in 1994: see Law Com No 221. The present exercise is concerned to produce a revised Bill in the light of further consultation on the issue of peaceable re-entry and other developments in the law that have taken place since 1994. See our annual report for 1998, Law Com No 258, paras 5.5 - 5.6.

<sup>7</sup> See the Department's press release "Leasehold Reform: the way forward" (20 December 1999).

<sup>8</sup> Commonhold and Leasehold Reform (2000) Cm 4843.

## LAW OF TRUSTS

### Trustees' powers and duties

- 5.6 Last year we reported that the Government had accepted the recommendations in our joint Report with the Scottish Law Commission, 'Trustees' Powers and Duties'<sup>9</sup> and had announced its intention to implement them in the 1999/2000 Session of Parliament in so far as they applied to England and Wales.<sup>10</sup> The Trustee Bill<sup>11</sup> passed all its stages through Parliament, received the Royal Assent on 23 November and came into force on 1 February 2001. At Second Reading the Lord Chancellor said that our report was "the result of the Commission's usual rigorous research and consultation.... The scrupulousness of the processes [the Law Commission] carries out when producing its reports, the wide range of its consultations and the regard in which its final conclusions are generally held made piloting them through your Lordships' House a less hazardous process than is sometimes the case with other Bills.... This Bill provides an important and very worthwhile enhancement of the powers of trustees for the benefit of trusts."<sup>12</sup> The team provided assistance to the Lord Chancellor's Department throughout the Bill's passage through Parliament. We are delighted to see one of our Reports both accepted by the Government and implemented so soon after publication.
- 5.7 The Trustee Act 2000 represents the most significant change to trustee law since 1925. It is deregulatory in character and will confer substantially wider powers on trustees to invest trust assets,<sup>13</sup> purchase land, delegate functions to agents and insure trust property. Trustees are given a new power to vest trust assets in nominees and the Act contains a limited default charging clause for trustees who provide professional services to the trust. The Act also lays down a statutory duty of care that applies to trustees in the exercise of their powers under the Act and in certain other circumstances as well. We have noted with interest that, in the Isle of Man, a Trustee Bill, based upon the Trustee Act 2000, has been introduced in Tynwald, the Manx Parliament. Furthermore, in August, the Northern Ireland Office of Law Reform issued a Consultation Paper, "Trustees' Powers and Duties", based upon the Law Commissions' recommendations, to ascertain whether there was support for similar trustee legislation in Northern Ireland.

<sup>9</sup> (1999) Law Com No 260; Scot Law Com No 172. This Report had two draft Bills attached to it, one relating to England and Wales and the other applicable to Scotland.

<sup>10</sup> The law relating to trustees is a devolved matter under the Scotland Act 1998. The changes to the law of trusts in Scotland can only be implemented therefore by the Scottish Parliament. To date no Bill has been introduced in the Edinburgh Parliament.

<sup>11</sup> Which was in substance the Bill attached to the Law Commission so far as it related to England and Wales.

<sup>12</sup> *Hansard* (HL) 14 April 2000, vol 612, cols 373 and 380. Similar views were expressed by Lords Goodhart (col 381), Wilberforce (col 391) and Kingsland (col 392).

<sup>13</sup> The restrictive provisions of the Trustee Investments Act 1961 that applied to trustee investment are repealed and trustees are given instead a power to invest as if absolutely entitled to the assets.

5.8 It became apparent in the course of the passage of the Bill through Parliament that there was pressure for further reform of trustee law. As a result, the Lord Chancellor has referred three further aspects of the law to the Law Commission, as described in paragraph 1. 42 above.

**Trust formalities**

5.9 The publication of any consultation paper on this project, which concerns a review of the current formality requirements in the law of the creation of trusts, has had to be delayed once more. This is due to staffing shortages and the extent of the work which the team has had to do on other projects (as explained above). A good deal of research has been undertaken and the main problems have been identified. We are currently reviewing the project to see whether it may be possible to address the most pressing problems quickly by use (for example) of an Order made under section 8 of the Electronic Communications Act 2000.<sup>14</sup>

<sup>14</sup> See above, para 5. .

# **PART VI**

## **STATUTE LAW**

### **TEAM MEMBERS <sup>1</sup>**

#### *Consolidation*

The Chairman, John Sellers, Douglas Ramsey, David Sprackling, Godfrey Lyne

#### *Statute Law Revision (including Local Legislation)*

The Chairman, John Saunders, Elizabeth McElhinney, Carol Aitken

### **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.
- 6.5 The main consolidation feature of the year has been the enactment of the sentencing consolidation in the shape of the Powers of Criminal Courts (Sentencing) Act 2000. This large Act, which is of great practical significance, has brought together in a single piece of legislation sentencing powers which were previously to be found in more than a dozen Acts. The difficult and complex task of bringing a rational order to the many disparate provisions concerned was the work of a consultant (Mrs Léonie McLaughlin, a former member of the Office of the Parliamentary Counsel) engaged by the Commission, with the assistance of

<sup>1</sup> As at the end of 2000.

Dr David Thomas QC (Hon), Editor of "Current Sentencing Practice". We are also most grateful to the Home Office for their assistance.

- 6.6 Previous annual reports have mentioned that a large number of paving amendments were included in the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999. In addition, a number of further minor additional changes in the law necessary to facilitate the consolidation were the subject of Law Commission recommendations.<sup>2</sup>
- 6.7 A consolidation of the law relating to European Parliamentary elections was introduced in May but, owing to lack of Parliamentary time, was not able to complete its passage through Parliament before the end of the 1999-2000 Session. The intention is to reintroduce the consolidation in the 2000-2001 Session.
- 6.8 Work has begun on the consolidation of the remainder of the law relating to elections, ie. the law relating to parliamentary and local government elections.
- 6.9 It has not yet proved possible to bring to a conclusion the work on the consolidation of the provisions relating to the functions of the criminal division of the Court of Appeal. The Home Office has not been able to comment on the consolidation Bill because of the particularly heavy burden of current legislation in the 1999-2000 Session of Parliament. However, it is hoped that it will be possible for the Bill to be introduced into Parliament in 2001.
- 6.10 Work has also begun on a consolidation of the legislation relating to wireless telegraphy. The consolidation will bring together enactments currently found in half a dozen different Acts, the oldest being the Wireless Telegraphy Act 1949. This area of law is one which calls out for modernisation and reorganisation.
- 6.11 Finally, it has become clear that there is no prospect of making progress with the Armed Forces consolidation, mentioned in previous reports. The Government has decided to move to a tri-service discipline Act, rather than retaining a separate Act for each of the armed forces. The consolidation, which was well advanced, had proceeded on the latter basis.

#### **STATUTE LAW REVISION**

- 6.12 Statute law revision is the process by which legislation which has lost any practical utility or is obsolete is removed from the statute book. It is a weeding-out of the statute book and is mainly achieved by means of Acts of Parliament specifically prepared by us jointly with the Scottish Law Commission. The work helps to modernise the statute book, leaving it clearer and shorter, and is an integral part of the general progress of statute law reform. Our remit on statute law revision covers local and personal Acts as well as public general Acts and our vehicle for repealing legislation is the Statute Law (Repeals) Bill. We have drafted 16 such

<sup>2</sup> Jointly with the Scottish Law Commission in two small respects: Law Com No 264; Scot Law Com No 175



Bills since 1969. All have been enacted and have repealed more than 2000 Acts in their entirety and have achieved the partial repeal of thousands of other Acts.

- 6.13 During the last year we have completed work on a large project of ecclesiastical law repeals. We have also been carrying out research work in the areas of trade and industry, agriculture, public health, environmental protection and registration of births, marriages and deaths. The first two of these are major projects. Under the heading of trade and industry there are a number of obsolete provisions reflecting social and economic change since 1945 including the price controls of the 1970s and the privatisation of publicly-owned industries in the 1980s. The agriculture project reflects changes in agricultural development, production and marketing since 1945, many of the changes coming about as a result of the influence of the Common Agricultural Policy following the United Kingdom's accession to the EEC in 1973.
- 6.14 Work in hand at present includes the topics of property law and the administration of justice. The property law project will include many obsolete provisions dating from the 1925 property law consolidations. The administration of justice project will reflect changes in the civil justice system during the last century and will include a wide range of courts and legal services enactments.
- 6.15 In all our work we produce a consultation document inviting comments on a selection of repeals in each area. These documents are then circulated to Departments and other interested bodies and individuals. Subject to the response that we receive we hope to include repeals relating to all the projects mentioned above in our next Statute Law Revision report.

## **PART VII**

### **EXTERNAL RELATIONS**

- 7.1 It is extremely important that we have effective links with a wide range of organisations and individuals who have an interest in reforming the law. The following are examples of contacts that we have had.

#### **Parliament, Ministers and Government Departments**

- 7.2 We have a special relationship with the Lord Chancellor's Department, our sponsor department. The Chairman has regular meetings with the Lord Chancellor. He has also had meetings with David Lock, the Parliamentary Secretary at LCD with responsibility for law reform. He chairs the Ministerial Committee on Law Reform, described at paragraphs 1.59 - 1.60 above. Mr Lock also attended our Annual Conference with LCD. We are most grateful to the Lord Chancellor and Mr Lock for their support of our work. We are also indebted to officials in LCD for their co-operation. We would mention, among many others, Miss Joan MacNaughton (the Director-General, Policy) and Hugh Burns (Head of Civil Law Development Division) and his team. We would also like to express our thanks to his predecessor, Ray Sams.
- 7.3 The Chairman and other Commissioners have regular contact and meetings with a number of Ministers and senior officials in other Government departments. This is especially the case with Government departments which have the leading responsibility for the law which we are reviewing. For example, during the year the Chairman met the Home Secretary (Jack Straw), the Minister for Housing, Planning and Construction (Nick Raynsford) and the Parliamentary Under-Secretary of State at the Department of the Environment, Transport and the Regions (Lord Whitty). More generally, there is contact with officials in the Home Office, in the Department of Trade and Industry and in the DETR. The Chairman is also a member of the Lord Chancellor's Advisory Committee on Statute Law.

#### **Consultation and consultants**

- 7.4 Our contacts with many bodies and individuals outside the Commission are invaluable to us. Their assistance to us is an essential part of our work and we are, as ever, most grateful to those who help us in this way. We undertake formal consultation through our published consultation papers, encouraging responses to be sent to us by e-mail. We also consult less formally in writing or face to face through the various stages of a project. Consultation helps us assess the difficulties with the current law and the options for reform.
- 7.5 Quite separately, we engage experts in specific fields of law to assist us as consultants when the need arises. Projects on which we have been assisted in this way this year include the consolidation of the sentencing legislation, the work on damages under the Human Rights Act and the reform of the law on electronic commerce, partnership, previous misconduct, compulsory purchase, housing, third parties' rights against insurers, and fraud and deception.

### **Socio-legal research**

- 7.6 Socio-legal, economic or empirical research can be of considerable help to our law reform projects. This can provide an excellent source of evidence on which to base our recommendations, whether we use existing research results or seek the funding for new research. For example, the results of research which we commissioned were of great assistance in our work on non-pecuniary loss in personal injury cases and on previous misconduct, described respectively in Parts I and IV above. We also have a number of other links with the socio-legal community. For example, the Socio-Legal Studies Association (SLSA) is represented at our annual meeting with the Society of Public Teachers of Law, and the Secretary of the Commission attended the Annual Conference of the SLSA. He is also a member of the Socio-Legal Research Users Forum, which is chaired by Professor Partington, now appointed a Law Commissioner.

### **International co-operation**

- 7.7 We have considerable contact with law reform bodies elsewhere. We have good and frequent working relations with the Scottish Law Commission, and are conducting some projects jointly with them. The Chairman of the Scottish Law Commission, Lord Gill, has visited us. We had a joint meeting with the Scottish Law Commission, in Edinburgh. This was a most successful meeting at which there was a constructive discussion of current projects and future plans. Commissioners, the Secretary and other legal staff also had meetings during the year with their Scottish Law Commission counterparts. We also have useful contacts with the Law Reform Advisory Committee for Northern Ireland: their Chairman, Mr Justice Girvan, paid us a visit. With representatives of the main other law reform agencies in Britain and Ireland, the Secretary gave a presentation at the SLSA Annual Conference.<sup>1</sup>
- 7.8 Discussions with visitors from overseas are of great interest and assistance to us. We were pleased to welcome the visitors listed in Appendix D. In addition, our Secretary attended a conference of Commonwealth Law Reform Agencies, arranged in Perth by the Law Reform Commission of Western Australia. He spoke on co-operation between commonwealth reform agencies. The conference formally resolved in principle that a commonwealth association of law reform agencies should be formed, with the lead being taken by a steering committee which he is co-convening with the Chief Justice of Victoria. One of its first tasks will be to build on existing material so as to produce a single, easily accessible database of commonwealth information about law reform.

### **Other contacts**

- 7.9 We also continue to have invaluable contacts with the Law Society, the Bar and the Society of Public Teachers of Law. We have an annual meeting with each of them, were represented at their Annual Conferences and are frequently in touch with many of their committees and members. We also have contact with the judiciary at many levels; they too are of the greatest assistance to us. We have

<sup>1</sup> The presentations were summarised in the SLSA's "Socio-Legal Newsletter", November 2000, p10.

reintroduced the practice of occasionally inviting distinguished speakers to address Commissioners and staff. Among others this year, Lord Justice Buxton spoke to us about human rights, Professor Deborah Demott of Duke University, USA, about the nature of Restatements in the USA, and Linda Mulcahy, President of the SLSA, spoke about socio-legal research.

7.10 Among the talks given by the Commission are the following. The Chairman gave a talk at the Oxford Planning Conference.<sup>2</sup> He also gave the Grotius Lecture, under the auspices of the British Institute of International and Comparative Law, on “Damages under the Human Rights Act”, and addressed the Commonwealth Magistrates and Judges’ Association Triennial Conference. Mr Harpum gave the Blundell Memorial Lecture at The Law Society Hall, London, on “The Contracts (Rights of Third Parties) Act 1999 and its impact on Property Law”. His other talks included:

“Property in an Electronic Age”; Property 2000 Conference, University of Reading;

“The Human Rights Act 1998 and Property Law”; Anglo-American Real Property Institute, Bath;

“The Trustee Bills”<sup>3</sup>; Society of Trust and Estate Practitioners’ Isle of Man Conference;

“The Trustee Bill”; Society of Trust and Estate Practitioners’ Annual London Conference.

7.11 Professor Beale’s talks included:

“A Commercial Code - Initial Study”;<sup>4</sup>

“The Impact of the Human Rights Act 1998 on English Tort and Contract Law”;

“Principles of European Contract Law - useful or legal esperanto?” (a talk at the Institute of Advanced Legal Studies);

“The (Codification of the) English Common Law” (a talk at an ERA Conference on European Civil Codes, in Trier).

Miss Faber gave the following lectures:

“Electronic Communications: the Challenge for Commercial Lawyers”, the first in the series of Norton Rose Commercial Law Lectures at Oxford University;

<sup>2</sup> “Compulsory Purchase - a Model for Law Reform?” Sir Robert Carnwath (JPL Occasional Papers 2000 at p 57).

<sup>3</sup> That is, the Trustee Bills before the Parliaments at Westminster and Tynwald.

<sup>4</sup> A paper given at the Department of Trade and Industry Seminar mentioned in para 2.11 above.

“Vehicles and Structures for Small Businesses”, at Manchester University; and

“The Law Commissions’ work on the Reform of Partnership Law”, to the Association of Partnership Practitioners.

In addition, Judge Wilkie gave the inaugural annual Commercial Crime Services lecture, on “Combating 21st Century Commercial Fraud”. Among other talks given,<sup>5</sup> the Secretary addressed a conference of Commonwealth Law Reform Agencies, a group of senior Romanian lawyers, a group of Commonwealth Government lawyers, and a seminar for lawyers at the Department of Trade and Industry.

#### *Publications*

- 7.12 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,<sup>6</sup> over the past four years we have also made our publications available electronically on the Internet.<sup>7</sup> Our website contains the full text of all the consultation papers and reports we have issued since March 1997, together with a few that were published earlier. As well as making the full text available in a freely downloadable or browsable format, we also publish an executive summary of most publications.
- 7.13 Our website contains details of all our current law reform projects, and other background information about the Commission, including information about the law reform, statute law revision and consolidation teams.
- 7.14 For over thirteen 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, and also a list of our reports which are awaiting implementation. The bulletin is available on our Internet website, free of charge, and is published three times a year. The latest edition summarises nearly 150 projects.
- 7.15 We 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.
- 7.16 Our website has been redesigned this year. We also have a new address, which is far easier to remember.

<sup>5</sup> The previous Chairman of the Commission, Lady Justice Arden (as she now is), gave a speech about the Law Commission in April to a seminar to mark a visit to London by the Chinese Minister of Justice.

<sup>6</sup> We are grateful to the Stationery Office for their assistance in publishing our work.

<sup>7</sup> Our website address is **www.lawcom.gov.uk**. We are grateful to the Central Computer and Telecommunications Agency, who host our website.

## **PART VIII**

# **STAFF AND RESOURCES**

### **Staff**

8.1 The Commissioners have continued to enjoy loyal and expert support from all the legal and administrative staff, for which they are very grateful. As usual, a number of staff left the Commission during the year and we thank them in particular for their work at the Commission. The names of all the staff in the post at the end of 2000 are set out at the beginning of Parts II to VI above or in Appendix E.

#### *(a) Legal Staff*

8.2 The Commission's main legal staff are part of the Government Legal Service, consisting of barristers and solicitors drawn from a wide variety of professional backgrounds who are recruited as a result of open competition following public advertisement. We welcome those who have joined us during the year. Those who left us in 2000, following various periods at the Commission, were Jonathan Bacon and Jonathan Holbrook.

8.3 The Office of the Parliamentary Counsel seconds to the Commission a team of draftsmen who prepare the draft Bills attached to our law reform reports and who undertake the consolidation of existing legislation. The team's skilled and committed work, led by John Sellers, is greatly appreciated. Partly because of the amount of Government legislation needing drafting, they have been under particular pressures of work this year, so that one or two of our Bills could not be drafted as early as we had hoped.<sup>1</sup> One, Esther White, left us in 2000.

#### *(b) Research Assistants*

8.4 To assist the teams with research and allied work, about a dozen well-qualified graduates are recruited annually. They generally spend a year here before moving on to the next stage of their legal training; many of our former research assistants have been extremely successful in their subsequent careers. The Commission recognises the important contribution they make to its work, not least through their ideas, enthusiasm and ability. We express our thanks to the research assistants who left us in 2000, to work in firms of solicitors, Chambers and elsewhere.

#### *(c) Administrative, Technical and Support Staff*

8.5 The Commission also recognises and is grateful for the contribution made by the non-legal staff. We especially acknowledge this year the work of one of them, Louise Collet, who has left the Commission after 13 years' service with us: as our personnel officer, her skill, common sense and sound judgement have been of

<sup>1</sup> Para 2.4.

enormous benefit to the Commission as a whole and to many individual members of staff. Between them, and in many cases with the assistance of the Lord Chancellor's Department, these staff provide the services needed to enable the Commission to function effectively. These include accommodation, finance, human resources, information technology, publishing, records management, secretarial assistance and security.

*(d) Recruitment and Working Patterns*

- 8.6 The type of work which the Commission undertakes is of great interest to those who would like to participate in some way in improving the law. While that tends to be attractive to Law Commission staff, we also take great pains to recruit, retain and develop suitable staff. Apart from a range of recruitment activities and arrangements (eg, we welcome appropriate secondments), we have introduced a large number and variety of work/life balance arrangements for such a small workforce, including many flexible working arrangements. The Commission's staff are also committed to ensuring that equality and diversity issues are taken fully into account in personnel matters. All vacancies at the Commission are advertised on our website, with brochures and application forms available there, if the posts are open to non-civil servants.

*(e) Investors in People*

- 8.7 In 1998 the Lord Chancellor's Department and offices such as the Law Commission were awarded accreditation as an Investor in People (IiP). During 2000, those same bodies, including the Commission, were reviewed as part of the usual process following recognition as an IiP. The independent assessment was that we all continued to meet the requirements of the IiP National Standard. This is a demanding national scheme involving a thorough assessment of methods of staff induction, training and appraisal, and also planning and communications.

## **Resources**

*(a) Library*

- 8.8 Our library has continued to provide a vital information service in support of the legal work of the Commission. We make use, reciprocally, of a number of other libraries in our work and particular thanks are due to the libraries of the Institute of Advanced Legal Studies, the Supreme Court and the Lord Chancellor's Department. Our library makes full use of the Internet and other electronic services and databases in its work, as well as a large collection of printed sources.

*(b) Information Technology*

- 8.9 We describe our website at paragraphs 7.12 - 7.16 above. The Lord Chancellor's Department has provided us with a much-needed new computer system this year.

*(c) Finance*

- 8.10 The cost of the Commission is summarised in Appendix F. The Government's funding of the Commission is of course limited, as for any public body. The financial year 1999/2000 had been the fifth successive year in which we had not received any increase in the funds allocated to us by the Lord Chancellor's Department, our sponsoring department. We have of course still had to meet pay rises and other rising costs. We were pleased to receive a small increase, approaching 2% of our costs, for the financial year 2000/01. We managed to stay within budget, despite the constraints as, for example, some posts have been vacant for periods (resulting in delays to our work); and we have secured some contributions from other Government departments to help fund particular pieces of work - for which we are most grateful. We also benefit greatly from the many individuals and organisations who contribute to our work without payment, particularly those who respond to our consultations.

*(Signed)* ROBERT CARNWATH, *Chairman*  
HUGH BEALE  
CHARLES HARPUM  
MARTIN PARTINGTON  
ALAN WILKIE

MICHAEL SAYERS, *Secretary*  
14 February 2001



# **APPENDIX A**

(Para 1.2)

## **THE LAW COMMISSION'S ROLE AND METHODS**

The Law Commission has now been in operation for 35 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 Seventh Programme, approved in 1999. 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

(Para 7.15)

## 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.

<b>Law Com No</b>	<b>Title</b>	<b>Implementing Legislation</b>
<b>1985</b>		
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).
<b>1986</b>		
157	Family Law: Illegitimacy (Second Report) (Cmnd 9913)	Family Law Reform Act 1987 (c 42).
<b>1987</b>		
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).
<b>1988</b>		
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).
<b>1989</b>		
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)

<b>Law Com No</b>	<b>Title</b>	<b>Implementing Legislation</b>
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).
<b>1990</b>		
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).
<b>1991</b>		
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).
<b>1992</b>		
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).
<b>1993</b>		
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).
<b>1994</b>		
220	The Law of Trusts: Delegation by Individual Trustees (HC 110)	Trustee Delegation Act 1999 (c 15).
224	Structured Settlements and Interim and Provisional Damages (Cm 2646)	In part by Finance Act 1995 (c 4); Civil Evidence Act 1995 (c 38); and Damages Act 1996 (c 48).
226	Administrative Law: Judicial Review and Statutory Appeals (HC 669)	In part by Housing Act 1996 (c 52).
228 62).	Criminal Law: Conspiracy to Defraud (HC 11)	Theft (Amendment) Act 1996 (c
<b>1995</b>		
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).
<b>1996</b>		
242	Privity of Contract: Contracts for the Benefit of Third Parties (Cm 3329)	Contracts (Rights of Third Parties) Act 1999 (c 31).
243 62).	Offences of Dishonesty: Money Transfers (HC 690)	Theft (Amendment) Act 1996 (c
<b>1998</b>		
252	Statute Law Revision: Sixteenth Report (Joint Report - Scot Law Com No 166) (Cm 3939)	Statute Law (Repeals) Act 1998 (c 43).
<b>1999</b>		
260	Trustees' Powers and Duties (Joint Report - Scot Law Com No 166) (HC 538/SE 2)	Trustee Act 2000 (c 29).

# APPENDIX C

(Para 1.10)

## LAW COMMISSION LAW REFORM REPORTS AWAITING IMPLEMENTATION

Of all the Law Commission's 162 law reform reports, the 21 listed below remain outstanding. Nine of these, marked \*, have been accepted by the Government in full or in part, subject to Parliamentary time being available.

Year	Law Com No	Title
1991	194	Distress for Rent <sup>1</sup>
1992	208	* Business Tenancies: Landlord and Tenant Act 1954, Part II <sup>2</sup>
1993	218	* Legislating the Criminal Code: Offences against the Person and General Principles <sup>3</sup>
1994	222	Binding Over
	226	Judicial Review and Statutory Appeals <sup>4</sup>
1995	229	Intoxication and Criminal Liability
	231	* Mental Incapacity <sup>5</sup>
1996	237	* Involuntary Manslaughter <sup>6</sup>
	238	Landlord and Tenant: Responsibility for State and Condition of Property <sup>7</sup>
1997	245	* Evidence in Criminal Proceedings: Hearsay and Related Topics
	246	Shareholder Remedies <sup>8</sup>
	247	* Aggravated, Exemplary and Restitutionary Damages <sup>9</sup>
1998	248	* Legislating the Criminal Code: Corruption <sup>10</sup>
	249	Liability for Psychiatric Illness <sup>11</sup>
	251	The Rules Against Perpetuities and Excessive Accumulations <sup>12</sup>
	253	* The Execution of Deeds and Documents by or on behalf of Bodies Corporate <sup>13</sup>
	255	* Consents to Prosecution
1999	257	Damages for Personal Injury: Non-Pecuniary Loss <sup>14</sup>
	261	Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties <sup>15</sup>
	262	Damages for Personal Injury: Medical, Nursing and other Expenses; Collateral Benefits <sup>16</sup>
	263	Claims for Wrongful Death <sup>17</sup>

<sup>1</sup> See para 1.36 above.

<sup>2</sup> See para 1.34 above.

<sup>3</sup> See para 1.11 above.

<sup>4</sup> See paras 1.38 - 1.39 above.

<sup>5</sup> See paras 1.27 - 1.29 above.

<sup>6</sup> See para 1.12 above.

<sup>7</sup> See para 1.35 above.

<sup>8</sup> See para 1.30 above.

<sup>9</sup> See para 1.16 above.

<sup>10</sup> See para 1.13 above.

<sup>11</sup> See para 1.18 above.

<sup>12</sup> See para 1.37 above.

<sup>13</sup> See para 1.33 above.

<sup>14</sup> Much of this report was dealt with by the Court of Appeal in early 2000 in *Heil v Rankin*: see paras 1.15 and 1.52 above.

<sup>15</sup> See para 1.31 above.

<sup>16</sup> See para 1.19 above.

<sup>17</sup> See para 1.20 above.

## **APPENDIX D**

### **VISITORS FROM OVERSEAS**

(Para 7.8)

Among the visitors to the Law Commission during 2000 were:

<i>Australia</i>	Mr Justice John Muir (Chairman, Queensland Law Reform Commission)
<i>Bangladesh</i>	Mr Kazi Habibul Awal (Former Secretary, Law Commission)
<i>Canada</i>	Mr Geoff Plant (Shadow Attorney-General, British Columbia)
<i>Costa Rica</i>	Judge Sergio Alonso Valverde-Alpizar (Supreme Court of Justice)
<i>Chile</i>	Mr Hernan Ampuero (Head of the Information Office, Chilean Parliament)
<i>Hong Kong</i>	Mr Stuart M I Stoker (Secretary, Law Reform Commission)
<i>Ireland</i>	Mr Pearse Rayel (Project Manager, Law Reform Commission)
<i>Latvia</i>	Judge Inita Klavina
<i>New Zealand</i>	Mr Justice Baragwanath (Chairman, Law Commission)
<i>Pakistan</i>	Justice Sarwana (High Court Judge)
<i>Swaziland</i>	Mr Phesheya Dlamini (Attorney-General)
<i>USA</i>	Professor Deborah DeMott (Duke University, North Carolina)

#### A DELEGATION OF COMMONWEALTH GOVERNMENT LAWYERS

Mr Nainendra Nand (Solicitor General, Fiji)  
Mrs Janet R Sallah-Nije (Solicitor General, The Gambia)  
Mr Ter Kim Cheu (Head of Legislation Division, Attorney General's Chambers, Singapore)  
Mr Ng Cheng Thiam (State Counsel/Deputy Public Prosecutor, Singapore)  
Mr Asipeli Aminiasi Kefu (Assistant Crown Counsel, Tonga)

#### A DELEGATION FROM COLOMBIA

Leonardo Cruz Bolivar (Prosecutor at the "Tribunal Superior", Bogota)  
Farid Samir Benavides Vanegas (Specialist Prosecutor, Bogota)  
Stella Taborda Pereanez (Local Prosecutor, Amaga)  
Erika Marquez Montano (Researcher, Office of the Deputy Chief Prosecutor, Bogota)  
Marcela Abadia (Assistant to the Deputy Chief Prosecutor, Bogota)

#### A DELEGATION FROM THE ISRAELI PARLIAMENT

Mr Yossi Katz MK (Delegation Head, One Israel Party)  
Rabbi Ariyeh-Gamliel MK (Shas Party)  
Mr Meshulam Nahari MK (Shas Party)  
Professor Yehudit Naot MK (Shinui Party)  
Ms Anat Maor MK (Meretz Party)  
Mr Genadi Riger MK (Israeli Bealiyah Party)  
Mr Eliezer Cohen MK (Israeli Beteinu Party)  
Ms Anna Olikier (Advocate, Professional Adviser)  
Yehuda Golan (Journalist, Political Correspondent Knesset, Maariv Newspaper)  
Ms Irit Levy (Parliamentary Assistant)

#### A DELEGATION FROM NAMIBIA

Mr U D Nujoma (Chairperson, Law Reform and Development Commission)  
Mr W J Potgieter (Secretary, Law Reform and Development Commission)  
Mr T T July (Office of the Prosecutor-General)  
Ms R Falkenberg (Deutsche Gesellschaft für Technische Zusammenarbeit mbH)

## **APPENDIX D**

### **VISITORS FROM OVERSEAS [CONTINUED]**

#### A DELEGATION FROM SOUTH AFRICA

Ms Zubeda Seedat (Part-time Member, Law Commission)

Mr William Henegan (Secretary, Law Commission)

Mr Deon Rudman (Deputy Director-General/Head of Legislation Branch, Department of Justice)

#### A DELEGATION FROM VIETNAM

Mr Dam Van Tranh (Prosecutor of the Supreme People's Procuracy)

Mr Dinh Hung Nguyen (Prosecutor)

Mr Manh At Doan (Prosecutor General of Ninh Binh People's Procuracy)

Mr Tran Thu (Prosecutor General of the Supreme People's Procuratorate)

Mr Le Minh Tuan (Legal Expert, Supreme People's Procuracy)

Mr Van Hau Duong (Legal Expert, Ministry of Justice)

Mr Do Van Duong (Procurator, Supreme People's Procuracy)

# APPENDIX E

## STAFF

(Para 8.1)

(AS AT THE END OF 2000)

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:

<b>Secretary</b> Mr M W Sayers	<b>Assistant Secretary</b> Mr C K Porter	<b>Planning, Policy and Personnel</b> Vacant
<b>Personnel / Recruitment</b> Mrs N L Spence Miss J A Griffiths	<b>Printing, Publishing and Website</b> Mr D R Leighton <i>Editor / Web Manager</i>	<b>Accommodation, Registry and Accounts</b> Ms A L Peries <i>Accommodation Officer</i> Mr T D Cronin <i>Registry</i> Miss J A Griffiths <i>Registry / Accounts</i> Miss R Mabbs <i>Office Keeper</i> Mr J M Davies <i>Messenger</i> Mrs P J Wickers <i>Messenger</i>
<b>Library Services</b> Mr K Tree <i>Librarian</i> Mr M Hallissey <i>Assistant Librarian</i> Miss A Campbell <i>Library Trainee</i>	<b>Secretarial Support</b> Miss C P Cawe Ms J Coulson Mrs H C McFarlane Miss A J Meager Ms J R Samuel Mrs J Sharma	
<b>Chairman's Support</b> Mr J Edwards <i>Clerk</i> Mr T G H Smith <i>Research Assistant</i>		

### CONTACT POINTS:

- ◆ The general enquiry telephone number is: 020-7453-1220
- ◆ The general fax number is: 020-7453-1297
- ◆ The Law Commission's website address is: <http://www.lawcom.gov.uk>

### E-mail addresses

- General e-mail address (except for library services): [secretary.lawcomm@gtnet.gov.uk](mailto:secretary.lawcomm@gtnet.gov.uk)
- Library e-mail address: [library.lawcomm@gtnet.gov.uk](mailto:library.lawcomm@gtnet.gov.uk)
- The law reform teams and the statute law revision team have individual e-mail addresses, which can be found on the team pages of the Commission's website

# APPENDIX F

(Para 8.10)

## 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.

	2000		1999	
	£000	£000	£000	£000
Accommodation charges <sup>1</sup>	826.5		952.5	
Headquarters' overheads	— <sup>2</sup>		799.2 <sup>3</sup>	
		826.5 <sup>2</sup>		1,751.7
Salaries and pensions of Commissioners <sup>4</sup>	417.5		504.0	
Salaries of legal staff <sup>5</sup> and secondees and payments to consultants	1,407.2		1,360.6 <sup>4</sup>	
Salaries of non-legal staff <sup>6</sup>	373.0		411.7 <sup>5</sup>	
		2,197.7		2,276.3
Printing and publishing; supply of information technology; office equipment and books	252.0		249.2	
Telephone and postage	23.4		28.1	
Travel and subsistence	12.1		9.7	
Miscellaneous (including recruitment) <sup>7</sup>	10.3		15.1 <sup>6</sup>	
Entertainment	1.8		1.0	
		299.5		303.1
<b>TOTAL</b>		<b>3,323.8<sup>2</sup></b>		<b>4,331.1</b>

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 Owing to a change in allocating Headquarters' overheads during 1999-2000 it has not proved possible to give a comparable figure for 2000.

3 This is the portion of the total cost which the Lord Chancellor's Department Headquarters attributed to the Law Commission.

4 These figures include ERNIC and Superannuation. The lower figure for 2000 is because one new Commissioner is a Circuit Judge and is therefore not paid for from the Commission's budget.

5 The lower figure for the 1999 salaries is almost entirely due to vacancies in legal staff posts.

6 The 1999 figure includes the cost of permanent IT staff.

7 The 1999 figure includes the recruitment campaigns for lawyers.