“The establishment of the Law Commission was an inspired act of Government, born of the belief that accessible, intelligible, fair and modern law is the constitutional right of every citizen”

Sir Terence Etherton, Master of the Rolls and former Chairman of the Law Commission

1.1 The statutory role of the Law Commission is to keep all the law of England and Wales under review, provide advice and information to Government with a view to law reform and recommend reform where it is needed.

1.2 The Law Commission plays an important, and sometimes understated, role in all stages of the legislative process relating to our law reform work. We appraise problems in the law, carry out wide consultation, develop policy, draft legislation, and assist Government with the passage of our Bills through Parliament. The Commission has a strong track record of developing robust, evidence-based, recommendations. We believe this approach leads to clearer draft legislation which, in turn, leads to smoother progress through Parliament and also stands the test of time. Time invested at the consultation and policy development stage can, we would suggest, lead to time and resource savings at later stages of the legislative process. This is perhaps best evidenced by the possibility of taking Law Commission Bills through the Special Parliamentary Procedure,¹ thus saving time in the House.

1.3 The driving principle of all our law reform work is to ensure that the law is fair, modern, accessible and as cost-effective as possible. We believe that, for the law to be fair, it must be capable of being understood. We strive to remove ambiguity and make the law easy to understand and use for the courts, legal practitioners and citizens.

1.4 We hope that this submission on the process by which the Law Commission consults on, and prepares, legislation will provide the Constitution Committee with a helpful case study on making good law.

1.5 In this submission, we explain how the Law Commission strives to make good law. We then respond to the questions in the Call for Evidence by reference to that discussion. This 11-page submission is supplemented by 6 appendices.

¹ See para 1.29 for an explanation of the Special Parliamentary Procedure.
BACKGROUND TO THE LAW COMMISSION

1.6 The Law Commission was established by the Law Commissions Act 1965 ("the 1965 Act") in recognition, by Parliament, of the need for an independent expert body to review the law and recommend reforms. Parliament defined the Commission’s purpose as: “promoting the reform of the law” and its function as: “to take and keep under review all the law ... with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law”.

1.7 We approach our work in two distinct strands: (1) law reform projects, and (2) statute law work, which includes both statute law repeals and consolidation.

(1) Law reform projects

1.8 Recommendations that the Law Commission should review an area of law are made by the judiciary (often in judgments), by Members of Parliament, Government Departments and other Government bodies, as well as by many voluntary and private sector organisations and individuals. To date, the Commission has produced 221 reports making recommendations for reform to Government. Of these, 146 have been accepted and our recommended reforms implemented in whole or part. Approximately two-thirds of our reports have therefore been implemented in whole or in part.

(2) Statute law work

1.9 Nineteen Statute Law (Repeals) Bills have been enacted since the Commission was established in 1965. Between them they have repealed more than 3,000 whole Acts and part repealed thousands of obsolete Acts. The Commission has also been responsible for more than 200 consolidation Acts. We explain our statute law work in Appendix C.

How the Law Commission works

Structure and independence

1.10 The Law Commission is an advisory Non-Departmental Public Body sponsored by the Ministry of Justice (MoJ), and is independent of Government. The Lord Chancellor is accountable to Parliament for the Law Commission.

1.11 Our position as an arm’s-length body enables us to seek the best solutions free from political influence and, where we feel it is necessary, to speak with a voice that is independent of any Department and does not necessarily accord with the position of the Government of the day.

2 See Appendix E for a list of recent reports and implementation.
1.12 The independence of the Commission allows us to propose reform in areas where it is important that public confidence may rest on the transparent development of policy by an independent expert body.

Protocol with Government

1.13 The Law Commission Act 2009 made provision for a protocol to be agreed between Government and the Law Commission setting out how Government Departments and the Law Commission should work together before, during and after law reform projects. The protocol was agreed between the Lord Chancellor (on behalf of the Government) and the Law Commission on 29 March 2010 (“the Protocol”). A similar protocol was agreed with Welsh Ministers in 2015.

The Law Commission’s expertise

1.14 There are five Law Commissioners, all of whom are public appointees who work full-time at the Commission under fixed-term contracts. The Commission is led by a Lord Justice of Appeal, currently Sir David Bean. The other four Commissioners are experienced barristers, solicitors or university academics in law. They have responsibility for overseeing our law reform work, supported by the Commission’s specialist teams of lawyers and researchers.

1.15 To maximise the potential value to Government, and assist in the implementation of our recommended reforms, we usually submit our reports to Government accompanied by draft legislation. The Law Commission has therefore always had a team of Parliamentary Counsel (usually on loan from the Office of the Parliamentary Counsel) embedded in the organisation. Working closely with the teams on a daily basis enables Parliamentary Counsel to develop a thorough understanding of the team’s policy and ensure this is reflected accurately and appropriately in our draft Bills.

1.16 Further information about the structure of the Law Commission, its funding, and its relationship with Parliament is set out in Appendix A.

Law reform projects

1.17 Our projects vary significantly; in complexity, duration, subject matter and format. Our work ranges from short projects on discrete law reform issues to the very large scale overhaul of an entire area of law. We have recently worked on reform projects which encourage economic growth, improve and clarify the law for consumers, and others which have wide social implications, or significant regulatory impact.

3 For example, our draft Bill on unjustified threats will make it easier for small businesses to enforce their patents, trade marks and design rights. Our work to reform bills of sale legislation would make it easier for unincorporated businesses to borrow money on the security of goods.

4 The Consumer Rights Act 2015 implemented Law Commission work on consumer remedies for faulty goods and on unfair terms in consumer contracts (see Unfair Terms in Consumer Contracts, Advice to BIS, 2013).

5 For example, our work on adult social care where we recommended new protection against abuse and neglect of disabled people. The Care Act 2014 implements our recommendations in England and the Social Services and Well-being (Wales) Act 2014, implements our recommendations in Wales.

6
1.18 The ability to devote attention to specialist areas of law reform has allowed us to undertake projects of a length and complexity that may not be possible for Government Departments. It has, for example, enabled us to undertake a long and demanding project on insurance contract law. Since starting work on this project in 2006, the Commercial Law team has been able to accumulate a high degree of knowledge and expertise in the area, and build solid and productive relationships with highly influential stakeholders. The team is responsible for two Acts of Parliament and Part 5 of the Enterprise Act 2016. The final report of the project – on insurable interests – is scheduled for 2017.

1.19 At the other end of the scale, our recent work on Firearms, Marriage, Social Investment by Charities, and Fiduciary Duties are all examples of projects where we delivered reports or papers within a year or less. In the case of Firearms, the project commenced in January 2015, the consultation paper was published in July 2015, the report was published in December 2015 and a Bill was introduced in February 2016.

Taking on law reform projects

1.20 There are two ways that the Law Commission takes on law reform projects.

(1) Programmes of law reform

1.21 The Commission and the Lord Chancellor agree a Programme of Law Reform every three years or so, which sets out the bulk of the projects that we will undertake. The latest such Programme is the 12th, which included nine new projects and on which we started work in 2014.

1.22 We are currently consulting on our 13th Programme of Law Reform. We are conducting a wide and thorough consultation, inviting participation from members of the public, interest groups, representative organisations, parliamentarians, the judiciary, legal practitioners and academics, and senior Government officials, using a mix of direct contact and the specialist legal press.

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6 For example, our project on the regulation of healthcare professionals which considered the regulation of 1.34 million professionals in 32 professions.


8 2015 (LCCP224) and (LC363). See Appendix D.

9 2015 Getting Married: A Scoping Paper. See Appendix D.

10 2014 (LCCP216) and 2014 (Recommendations Paper).

11 2013 (LCCP215) and 2014 (LC350).
In addition to our programmes of law reform, we also undertake projects referred directly to us by UK Government Ministers or by Welsh Ministers. Recognition of the essential nature of the Commission’s work is demonstrated by the number of references we receive from across Government, including sensitive and difficult legal issues on which the Government seeks an independent view. Recent examples include references (1) from the Ministry of Justice to review the law regulating the solemnisation of marriage (see Appendix D) and to make recommendations on hate crime; (2) from the Department for Communities and Local Government to review event fees in retirement leases (see Appendix D); and (3) from the Cabinet Office to examine the law surrounding breaches of protected Government data.

Project selection

All the proposals or requests we receive are subject to careful consideration of their suitability before being accepted by the Commissioners. They are measured against the Commission’s established criteria, reviewed by Commissioners and assessed from a legal and economic perspective to give us a better understanding of the scope of the project and the potential impact of reform. We explain our project selection criteria in Appendix B.

One of the most important provisions of the Protocol, and one that may prove to have the greatest impact on the rate at which our recommendations are implemented, is the requirement for Ministers to give an undertaking that there is a serious intention in the Department to take forward law reform in the specified area. The Protocol stipulates that, before the Commission includes a project in a law reform programme or undertakes a referral from a Minister, the Lord Chancellor will expect the Minister (with the support of the Permanent Secretary) to give the Commission this undertaking.

Overview of a Law Commission project

Although every project is different, the typical stages of a law reform project are:

1. Initiation: we decide on the remit of the project, in conjunction with the relevant Government Department. A memorandum of understanding is agreed with the relevant Department setting out how the project will be delivered.

2. Pre-consultation: we undertake a study of the area of law and identify its defects. We also look at other systems of law to see how they deal with similar problems. At this stage we also approach interest groups and specialists in the area, and may produce preliminary scoping and issues papers.
(3) Consultation: a consultation paper is issued setting out in detail the existing law and its defects, giving the arguments for and against the possible solutions and inviting comments or a call for additional evidence. The paper is circulated widely to all interested individuals and organisations, and to the media. We speak at consultation events and meet with as many stakeholders as possible to discuss our proposals. We actively encourage feedback from any interested stakeholders, including comments on problems we may not have dealt with or the likely effect of something we have proposed.

(4) Policy development: we analyse the responses to the consultation, which will help us develop and refine our thinking. We may also produce further issues papers and consult on some or all of the draft Bill.

(5) Reporting: at the end of a project we submit a report to the Lord Chancellor, giving our final recommendations and the reasons we are making them. Where necessary, we include a draft Bill that would give effect to our recommendations.

Examples of Law Commission projects

In Appendix D, we summarise some recent Law Commission projects all of which demonstrate different aspects of the process by which we aim to make good law. We explain our projects on:

(1) Getting Married;

(2) Firearms;

(3) Mental capacity and deprivation of liberty; and

(4) Event fees in retirement leases.

IMPLEMENTATION OF LAW REFORM PROJECTS

The Law Commission cannot introduce a Bill into Parliament. To implement legislative reform, we are dependent on Government or occasionally upon the support of an individual parliamentarian who can carry our work forward by means of a private member’s Bill.

Once Government is ready to introduce a Law Commission Bill in Parliament, it will either be introduced as part of the main legislative programme, or specific clauses may be included in other departmental Bills.
Law Commission Special Parliamentary Procedure

1.30 Government also has the option of using the Special Parliamentary Procedure for Law Commission Bills. This House of Lords procedure for scrutinising Law Commission Bills was adopted by the House in October 2010, following a successful trial. The procedure allows the Second Reading of uncontroversial Law Commission Bills to be taken off the floor of the House, enabling valuable legislation to proceed to the statute book that would previously have found it difficult to secure a place in the main legislative programme. The Bill is then considered in detail by a Special Public Bill Committee which may hear evidence from witnesses about the contents of the Bill. Report stage and Third Reading are taken on the floor of the House.

1.31 Six of our Bills to date have been enacted through the Special Procedure and a further Bill is currently being considered by Parliament under the procedure. We intend to make a separate submission to the Constitution Committee about the Special Procedure at Stage 2 of its inquiry.

Implementation of statute law work

1.32 There are also special procedures for Law Commission statute law bills, which are discussed in Appendix C.

Response to the Committee’s specific questions

1.33 We respond below to the questions in the Committee’s Call for Evidence. We comment only on our own work in the legislative process.

Creating good law

1. How effective are current practices in Government and Parliament at delivering clear, coherent, effective and accessible draft legislation for introduction in Parliament?

1.34 We think that the model adopted by the Law Commission for preparing draft legislation for introduction into Parliament – as explained above – is an effective way to deliver good law. Genuinely open consultation at the policy development stage results in differences being resolved between various parties far earlier in the process. We would suggest that time invested at this stage, has a positive bearing on how legislation is prepared and passes through Parliament. It is not always appropriate for policy to be developed by an independent body such as the Law Commission, and generally we focus on non-party political issues. However, we would recommend our overall approach as being good practice across Government. Our in-house Parliamentary Counsel are involved at a very early stage and are therefore able to advise on drafting aspects of our policy development and its potential impact in Parliament, which should make progress through the Houses smoother.

1.35 In Appendix F, we explain the suggestions that we made to the Constitutional and Legislative Affairs Committee’s Inquiry into Making Laws in Wales.
2. Are there mechanisms, processes and practices at this stage of the legislative process that hinder the development of ‘good law’?

1.36 So far as the Commission is concerned, there is often uncertainty as to whether our recommendations and draft legislation will be given time in Parliament, either through the Special Procedure or as a Government Bill. This can result in widely agreed proposals lying dormant simply because they may not, at any given time, be a high priority when compared to other legislation. The Special Procedure can help in that regard, although there may be uncertainty at the start of a project about the extent to which Law Commission recommendations will be suitable for that process.

1.37 Another potentially promising model to avoid this problem is the use of the consolidation procedure, whereby a Bill which consolidates and streamlines the law, rather than making major changes of policy, can receive parliamentary scrutiny through a joint committee (the Joint Committee on Consolidation, &c. Bills). This avoids long technical Bills taking up time on the floor of the House. Consolidation can be accompanied by a measure of alteration of the effect of the legislation being consolidated. There are two principal methods currently in use by which this can be achieved without the Bill requiring scrutiny on the floor of the Houses. One is for the Bill to be accompanied by a report of the Law Commission making recommendations for minor alterations in the effect of the legislation; these recommendations are reviewed by the Joint Committee and either accepted or rejected. The other method is for the introduction of the consolidation Bill to be preceded by pre-consolidation amendments of the existing law effected either in or under powers conferred by a “paving” Bill. This is the model currently being adopted in the Commission’s project for a New Sentencing Code. In appropriate cases these methods of consolidation represent a highly efficient use of Parliamentary time.12

3. Are there improvements that could be made at this stage of the process that would result in law that is more easily understandable by users and the public?

1.38 For the reasons set out above, the Commission is of the view that our approach ensures that views from users and the public have formed a strong part of how our draft legislation is prepared. We consult widely on our proposals, preparing shorter summaries so as to help non-professionals respond, as well as holding roadshows involving representative organisations. It is true to say, however, that some of the more technically complex areas of law on which we work do not attract significant public representation at the consultation stage, but our strong relationship with relevant representative stakeholders, who have an operational understanding of how the current law affects individuals, can mitigate against that.

12 These methods of consolidation are described in more detail in our report on The Form and Accessibility of the Law Applicable in Wales (LC366), paras 3.8 to 3.15.
1.39 Although the Commission does have relationships with a number of parliamentarians, we would welcome consideration as to whether these links could be strengthened. This would help the Commission to develop a greater understanding of the issues being raised via constituency surgeries, for example. There are positive examples of MPs approaching the Commission in relation to specific policy proposals. For example, the issues surrounding logbook loans were raised through these channels, as well as via Citizens’ Advice, which has culminated in the Commission’s 2016 report on Bills of Sale. We would certainly be keen to see these links strengthened so that there is greater involvement by the public as we develop our proposals and prepare draft legislation.

1.40 It is also worth noting the Commission’s work on the Form and Accessibility of the Law Applicable in Wales, published earlier this year. In that report, we recommend a new approach to law-making in Wales and ways to make the existing law applicable in Wales clearer, simpler and easier to access. Most of our recommendations in that report are more relevant to Stage 2 of this inquiry and we will submit them at the appropriate time. However, one of our recommendations is relevant here. We recommend the introduction of written legislative standards – in effect a set of agreed criteria against which the quality of legislation might be objectively measured. We believe that standards could be of great assistance to members of the legislature when scrutinising Bills, and to policy makers when developing them. This idea has been raised for the UK Parliament before, most recently in the First Special Report of the Constitutional and Legislative Reform Committee. That Committee’s recommendation was rejected by the Coalition Government in 2013.

1.41 We would suggest that more innovative methods of presenting draft legislation could secure greater public engagement; for example, the use of interactive tools and a greater use of tables and flow-charts.

**Brexit**

4. **What impact will the UK’s withdrawal from the EU have on the volume and type of legislation and how will that affect this stage of the legislative process?**

1.42 Following the UK’s withdrawal from the EU there will be a large number of decisions to be made about whether to repeal, amend, replace or leave unaltered EU legislation applicable in the UK. The statute repealing the European Communities Act 1972 will no doubt provide for much of this work to be done by secondary legislation using either affirmative or negative resolution procedure.

1.43 Some of this secondary legislation will deal with significant issues. The Law Commission model of publishing draft legislation and consulting on it, sometimes used for draft Bills at Westminster but infrequently for statutory instruments, is one we would commend to the Committee, especially if there is no change to the rule that secondary legislation before Parliament must either be approved or rejected but cannot be amended.
5. Will there be changes required to how the Government and Parliament deal with legislation following Brexit?

1.44 Even without Brexit there has always been, and no doubt always will be, great pressure on Parliamentary time. The House of Commons in particular naturally wishes to devote most of its time and energy to issues of political controversy. The Law Commission suggests to the Committee and the House authorities that it is essential to ensure that a mechanism such as the Special Procedure is available to ensure proper scrutiny of non-party political legislation (whether Brexit-related or not) in Committee without taking more than a short amount of time on the floor of either House.

Technology

6. How effectively do Parliament and the Government make use of technology at this stage of the legislative process?

1.45 By statute, Law Commission reports are laid before Parliament and are available in the libraries of both Houses. We understand that there is a requirement to do so in hard-copy, which incurs some cost for the Commission. We would encourage the Houses to consider whether digital laying is a viable option. It is already available in the Scottish Parliament and we understand that reports of the Scottish Law Commission are laid there digitally.

7. How could new or existing technologies be used to support the development and scrutiny of legislation?

1.46 We have made use of social media and web-based video to help improve our outreach when developing proposals, which in turn feeds into the development of our draft legislation. We are keen to develop this method of consultation in the future.

1.47 The Commission is currently in active discussion with the National Archive regarding ways in which the legislation.gov.uk website could be harnessed to explore new and innovative ways to allow scrutiny of, and interaction with, draft legislation. The current intention is for a draft version the New Sentencing Code to be hosted online for a lengthy period of pre-legislative public scrutiny, in a format which clearly shows users how the law would look if enacted, and encourages user-friendly interaction, for example, through the use of tables, flow-charts, and filtering tools.

8. To what extent, and how effectively, are the public and stakeholders involved in this stage of the legislative process?

1.48 As explained above, we highly value the involvement of stakeholders in our law reform projects, both during formal consultations and throughout all stages of our projects: it assists us in developing understandable and workable legislation.

1.49 We seek to make our consultation papers and reports as accessible as possible to a wide readership by publishing, alongside the full paper: summary documents (typically around 20 pages), overviews of one or two pages, easy-read documents, and video-casts summarising the main points of a paper. We also produce Welsh translations.
9. What factors inhibit effective engagement?

1.50 The key to effective engagement, we would suggest, is a genuinely open approach to policy development and subsequent draft legislation. We would suggest that the Commission’s track record and independence means that we have, over time, developed an excellent network of stakeholders who know that they have an opportunity to influence our thinking. Without their willingness to devote considerable time to scrutinising our work, our proposals would no doubt be weaker. It is, of course, important that those engaging with our work feel that their input will result in change, which is another reason for trying to gain greater certainty about the future implementation of our proposals.

10. What mechanisms could be used to increase or improve engagement with the public and stakeholders?

1.51 As above, based on our experience, we think that engagement with the public and stakeholders is greatly assisted by:

(1) genuine questions about options for law reform;
(2) careful consideration and appraisal of all comments with reasoned responses;
(3) open and transparent policy-making;
(4) an extensive consultation process, seeking to raise awareness amongst stakeholders and gather their views by various means not limited to written responses to a formal consultation paper;
(5) finding different ways to engage, such as focus groups, easy-read text, detailed reasoning accompanied by summaries, and translations;
(6) meeting with experts to address difficult policy issues and points of detail;
(7) agreeing to speak about our work at meetings and seminars; and
(8) a continuing informal dialogue with stakeholders.

Information provision

11. How effectively is information about potential legislation disseminated at this stage in the process?

1.52 We attempt to publicise our consultations and our projects as widely as possible. We aim to speak to as many stakeholders as possible, including by meetings and telephone conversations, by seminars, consultation events, and by using our website, webcasts and Twitter. We have produced easy-read materials to aid wider understanding of our proposals. Providing Welsh translations is also an important aspect of our work.
12. How useful is the information that is disseminated and how could it be improved?

1.53 We hope that the information we disseminate is useful and relevant to the individuals and stakeholders concerned.

Parliamentary involvement

13. To what extent is Parliament, or are parliamentarians, involved in the development of legislation before it is introduced into Parliament?

and

14. Is there scope for Parliament or parliamentarians to be more involved at this stage of the legislation process?

1.54 We are always happy to speak to parliamentarians during the course of a project. Where we know parliamentarians have a particular interest in a given area of law, we attempt to make contact with them to ascertain their views during the course of a project. And we welcome formal consultation responses from parliamentarians.

1.55 For example:

(1) we have attended roundtable meetings, co-chaired by Sir Peter Bottomley MP and Jim Fitzpatrick MP, organised by the Leasehold Knowledge Partnership and held in Portcullis House/Palace of Westminster;

(2) we have also met those MPs to discuss a potential project on reforming residential leasehold law for our forthcoming 13th Programme of Law Reform;

(3) we arranged a Parliamentary seminar about our consultation on reforming the Deprivation of Liberty Safeguards under the Mental Capacity Act, hosted by the (then) social care minister Alastair Burt MP and attended by over 15 members of the House of Commons and the House of Lords (and staff); and

(4) we received detailed and helpful responses to our consultations on charity law from Lord Hodgson of Astley Abbots.

1.56 We have also fostered relationships with relevant All Party Parliamentary Groups and appeared before Select Committees when called upon to do so.

1.57 We would welcome greater contact with parliamentarians. For example, we would welcome suggestions for law reform projects from parliamentarians. Indeed, our consultation on our next programme of work is currently open and we are welcoming suggestions for the areas of law that we should review. Developing methods to strengthen the links between Parliament, its members and committees and the Commission is something we would be very interested in exploring.
1.58 We would also welcome consultation responses from more parliamentarians on our law reform projects, which would be beneficial to us as we develop our recommendations for reform. It would also allow parliamentarians to have more input at an early stage, rather than their first involvement being by way of tabling an amendment to a Law Commission Bill that has already been introduced into Parliament.

1.59 To help strengthen links, it might also be helpful for new parliamentarians to be given a short briefing about the Law Commission as part of their induction to Parliamentary life.

**Conclusion**

1.60 We are grateful to the Committee for considering our submission. Should the Committee have any queries about it, they should not hesitate to contact us. We look forward to having the opportunity to comment at Stage 2 of the Inquiry.

Sir David Bean, Chairman  
Professor Nick Hopkins, Law Commissioner  
Stephen Lewis, Law Commissioner  
Professor David Ormerod QC, Law Commissioner  
Nicholas Paines QC, Law Commissioner  
Phillip Golding, Chief Executive  
14 October 2016
APPENDIX A
FURTHER BACKGROUND TO THE LAW COMMISSION: STRUCTURE, FUNDING AND RELATIONSHIP WITH PARLIAMENT

Structure

Commissioners

A.1 The Commissioners are responsible for the discharge of the functions of the Law Commission and as such may organise themselves as they see fit. The Commissioners have two types of governance meetings. One involves the discussion of law reform proposals through the process of peer review, where Commissioners provide policy and strategic leadership on law reform projects within their areas of responsibility. The other functions as the Board and focuses on strategic and governance issues.

Chief Executive

A.2 The Chief Executive supports the Commissioners by advising them on the strategy and performance of the Law Commission and ensuring that the organisation has the capacity, capability and resources to deliver its functions. In addition, the Chief Executive is the budget holder for the Law Commission and is accountable to the Principal Accounting Officer of the Ministry of Justice (the Permanent Secretary), through the relevant Director General responsible for its sponsorship, for the resources under his control. He is responsible for ensuring that taxpayers’ money is used appropriately, and that the Law Commission delivers value for money and efficiency savings in line with Government requirements.

Non-Executive Board Member

A.3 The Law Commission has appointed one Non-Executive Board Member (NEBM), in accordance with Cabinet Office guidance on such appointments. Sir David Bell, Vice-Chancellor of Reading University, took up the position of NEBM in 2015. He is advisory and provides support and constructive challenge to the Commissioners and Chief Executive. He attends board meetings, but not peer review meetings. It is expected that a second NEBM will be appointed in the near future.

Legal staff

A.4 The Commission is staffed by expert teams of lawyers and research assistants, split across four teams – Criminal Law, Commercial and Common Law, Public Law and Property, Family and Trusts Law – as well as by Parliamentary Counsel. The unique expertise and skills of our staff in the process of law reform allows the Commission to work flexibly and effectively whatever the size of the project.

Funding

A.5 Provision is made in section 5 of the 1965 Act for the funding of the Law Commission. The current practice is that funding is provided principally through the Ministry of Justice from the monies voted to the Ministry by Parliament in accordance with section 5.
A.6 The Commission relies on this money to fulfil its statutory purposes and discharge its functions. The Commission’s budget is delegated to it through the Director General responsible for the sponsorship team.

A.7 The Commission’s core funding, which pays for a core complement of Commissioners and staff, is £2.67m in 2016-17. As with wider Government, the Commission’s budget has reduced considerably over the last few years and this is set to continue as part of the Spending Review process.

A.8 The Commission is also able to receive funding from Government Departments or the Welsh Government to meet the marginal costs of delivering additional projects falling within their respective policy areas. This funding is used to pay for a (fixed-term contract) lawyer, a research assistant and other ancillary costs associated with the delivery of a law reform project, including, for example, the cost of legislative drafting.

A.9 In 2015-16 this accounted for £1.2m, around 25% of our overall funding. The amount of this additional funding has varied over the years and is always subject to review and associated risk. There is no guarantee of additional funding, which depends wholly on Departments wanting us to undertake projects for them and being able to pay for them. Clearly, as our core funding reduces it places greater reliance on securing additional funding of this type, which in turn could reduce our ability to take on future projects.

**Relationship with Parliament**

A.10 The Lord Chancellor is accountable to Parliament for the activities and performance of the Law Commission. The Lord Chancellor has a number of statutory duties and powers set out in the 1965 Act in relation to the Commission, including:

1. appointing the Chairman and other Commissioners;
2. appointing the Chief Executive and other Commission staff;
3. laying before Parliament programmes of law reform prepared by the Law Commission and approved by him or her;
4. laying before Parliament recommendations for law reform formulated by the Law Commission pursuant to such programmes, under section 3 of the 1965 Act; and,
5. laying before Parliament the Commission’s annual report.
A.11 The Lord Chancellor is also required to report annually to Parliament on the implementation of Law Commission reports. The report must set out the Commission’s recommendations for reform that have been implemented during the year and those that have not yet been implemented, including “plans for dealing with any of those proposals” and, where any decision has been taken not to implement, “the reasons for the decision”. We consider this to be important in that it increases the transparency of Government’s approach to our work and allows Parliament an opportunity to exercise oversight of Government’s response to our proposals.

A.12 The Law Commission also has a direct relationship with Parliament through:

(1) maintaining contacts with parliamentarians and Committee Chairs to discuss matters relating to its functions and its projects;

(2) submitting and giving evidence from time to time on matters relating to its functions and its projects; and

(3) special parliamentary legislative procedures for Law Commission Bills, consolidation Bills and Statute Law (Repeals) Bills.

A.13 In addition, the Chief Executive may be required to give evidence to the Public Accounts Committee, normally with the Principal Accounting Officer, on the stewardship and use of public funds by the Law Commission.

A.14 The Protocol agreed by the Lord Chancellor and the Law Commission (see para 1.13 above), and any revisions to it, must be laid before Parliament, and published on the Law Commission website.

A.15 Under the terms of the Protocol, the relevant Department is required to provide an interim response to every Law Commission report: “as soon as possible and in any event within six months”, and a final response: “as soon as possible after delivery of the interim response and in any event within one year of publication of the report”, in each case unless otherwise agreed with the Commission. If Government is minded either to reject or substantially modify any significant recommendation of the Commission it must first give us the opportunity to discuss and comment on its reasons before finalising the decision.

A.16 The Wales Act 2014, which amended the 1965 Act to take account of Welsh devolution, provided for a protocol to be agreed between the Welsh Government and the Law Commission. This protocol follows the same basis as the protocol with the Lord Chancellor, and was signed on 2 July 2015.
APPENDIX B
PROJECT SELECTION

Introduction

B.1 Only projects that are appropriate for the Law Commission and have a reasonable expectation of implementation are accepted by the Commission. Where projects appear to be appropriate for inclusion in the programme, we will conduct preliminary discussions with the relevant Government Department under the terms of the Protocol.

SELECTION CRITERIA

B.2 We assess each project proposal against the following broad selection criteria.

(1) Importance: the extent to which the law is unsatisfactory (for example, unfair, unduly complex, inaccessible or outdated); and the potential benefits of reform.

(2) Suitability: whether the reform would be suitable to be put forward by a body of lawyers after legal research and consultation (this would tend to exclude subjects where the considerations are shaped primarily by political judgements).

(3) Resources: internal and external resources needed, and whether those resources are likely to be available; and the need for a good mix of projects in terms of the scale and timing so as to enable effective management of the programme.

(4) The degree of departmental support for the project.

(5) Devolution: whether there is a Scottish or Northern Irish dimension to the project that would need the involvement of the Scottish and/or Northern Ireland Law Commissions, and whether there is a Welsh dimension that needs the involvement of the Welsh Government.

(6) Whether the independent, non-political Commission is the most suitable body to conduct a review in that area of law.

(7) Whether project-specific funding is available from the Department (if relevant).
APPENDIX C
STATUTE LAW WORK

Consolidation of legislation

C.1 As part of its statutory functions in relation to law reform the Law Commission has always had responsibility for the production of consolidation Bills. The aim of consolidation is to make statute law more accessible and comprehensible, both to those who have to apply it and to those who are affected by it.

C.2 Consolidation draws together a number of existing enactments on the same subject, usually into one Bill, to form a rational structure and make the cumulative effect of different layers of amendment more intelligible. In all consolidation, the effect of the current law should be preserved.

C.3 The need for consolidation is often particularly acute after there has been considerable legislative activity in an area of law without the original legislation having been replaced or rewritten. The language can become out of date and the content obsolete or out of step with developments in the general law. There is also often scope for improving drafting and removing the minor inconsistencies, ambiguities and obsolete material that can result from successive Acts on the same subject and more general changes in the law.

C.4 Modern methods of updating legislation have made it much easier to access reliable, up-to-date versions and have reduced the pressure to consolidate simply to take account of amendments. There is still, however, a need for consolidation as a process. This is usually because the law on a subject is found in a number of different Acts or instruments, or because layers of amending legislation have distorted the structure of the original Act.

C.5 The Law Commission has been responsible for numerous consolidation Bills since it was established in 1965. Our most recent consolidation Act was the Co-operative and Community Benefit Societies Act 2014 which received Royal Assent on 14 May 2014. Although we have no specific consolidation project currently, our work on sentencing law is informed by our expertise in this area.

Statute Law Repeals

C.6 In reforming the law, the Law Commission does not just propose new laws. We also propose the repeal of laws that have become obsolete. This work is carried out by specialist lawyers, with assistance from colleagues at the Scottish Law Commission.
C.7 The purpose of statute law repeals work ("SLR") is to promote the accuracy of the body of legislation recorded as being in force. In this way Acts that have no modern use, once repealed, will be recorded as such. Those who use the statute book, particularly lawyers, therefore need no longer be concerned with them. As a result, unnecessary costs are avoided, and confusion as to what law should be followed or applied is reduced.

C.8 All the Commission’s draft SLR Bills have been enacted by Parliament by means of a Statute Law (Repeals) Bill. SLR Bills are not controversial and enjoy a special Parliamentary procedure. They are generally introduced into the House of Lords soon after their publication by the Commission.

C.9 The Ministry of Justice has responsibility for SLR Bills in both Houses. Our twentieth SLR Bill is ready to proceed and we hope to see it introduced into Parliament soon.
APPENDIX D
MAKING GOOD LAW: CASE STUDIES

Getting married

D.1 This project involved a review of the law governing how and where people can marry in England and Wales. A couple’s wedding is one of the most meaningful days of their lives and yet, despite huge social changes, marriage law is still based on a structure designed in the 19th century.

D.2 In 2014 the Government consulted on whether non-religious belief organisations should be able to solemnise marriages. There was considerable support for a reform but the consultation highlighted the difficulty of further piecemeal extension of the already complex and unclear law. For this reason the Government asked us to conduct a broad review of the law governing how people get married to prepare the way for potential future reform. Our scoping exercise marked the first stage in considering how to make marriage law fairer, simpler and more appropriate for the way we live now.

D.3 The aim of the initial scoping phase was to set out clearly what a review of marriage law would need to consider, given that marriage law touches on wider social concerns and areas such as immigration and religion. We conducted an in-depth analysis of the current law, research into comparative law, and asked a broad range of stakeholder groups about their concerns and wishes.

D.4 The scoping team travelled around England, Wales and Scotland speaking to a wide range of faith organisations. They talked to representatives of the British Humanist Association and Government bodies, including the General Register Office and the Forced Marriage Unit. They met professional celebrants and went to a variety of weddings, including religious weddings, a Humanist wedding ceremony and two civil marriages, one for a same-sex couple and another for a Muslim couple who had already had a religious ceremony. They also went to Scotland, where the law allows for non-religious belief organisations to conduct legally binding weddings.

D.5 Our concern was to understand the range of stakeholder viewpoints and to get a clear sense of where the law is particularly complicated, unfair or restrictive. For example, there was a strong feeling amongst independent celebrants and Humanists that they should be allowed to conduct legally binding ceremonies. It was also clear that there is a great demand from the public for a wider range of wedding venues. Outdoor ceremonies are particularly popular, for example, but couples will, in most cases, have to go through an additional, legally binding, wedding ceremony.
D.6 Certain religious wedding ceremonies do not meet the legal criteria either but may appear to be legally binding to one or both of the couple. This uncertainty has the potential to create hardship for those who discover their ceremony had no legal status. It is not just about giving people more choice. Choice needs to be balanced against the need for safeguards and the protection of the interests of the state. We suggest that any reformed marriage law should aim to provide greater choice within a simpler and clearer overall structure.

D.7 In December 2015 we published Getting Married, a scoping paper setting out the proposed parameters and direction of a future project. We concluded that the law is in need of reform and we set out the issues that we would address in a future law reform project. We await the Government’s response to our recommendations for further work. If the Government wishes us to continue with the review, we will agree detailed terms of reference before we move on to the next stage and produce a consultation paper containing proposals for reform of the law.

Firearms law

D.8 The current law regulating firearms is contained in a labyrinth of over 34 pieces of legislation and related case-law. This unnecessary complexity has clear implications for public safety and means in practice that both criminal justice professionals and legitimate firearms users face significant difficulties in understanding the law.

D.9 In July 2015 we published a scoping consultation paper on firearms law. The paper had two aims: first, to ascertain the most pressing problems with the law and propose ways they could be remedied, and second, to examine whether more fundamental reform of the law was necessary. Our paper was based on our significant research and extensive engagement with a wide range of stakeholders including ballistic experts, police, the proof houses (who are responsible for confirming the safety of firearms and checking they have been deactivated correctly), shooting enthusiasts and antique firearms collectors, as well as those concerned to place greater control on firearms.

D.10 During the consultation period, we held a symposium that brought together stakeholders who held very different views on the issues discussed in our consultation paper. The symposium was attended by 106 delegates, representing the police, the National Crime Agency, the Crown Prosecution Service, police forensic firearms experts, in addition to individual members of the licensed firearms community and the organisations that represent them. The symposium presented a valuable opportunity for delegates to hear a range of viewpoints, which ultimately enriched the consultation responses we received.
D.11 We received over 200 responses to our scoping consultation from the groups at the symposium and others. Our engagement with a broad spectrum of stakeholders led us to identify two types of problem with the current law. First, the fact that key terms, including the meaning of “lethal” and “antique firearm”, were left undefined in the primary act, the Firearms Act 1968. Secondly, that the law has failed to keep pace with technological developments. Evidence from stakeholders suggested that these problems caused difficulties in practice, not just for the police and CPS, but also for members of the licensed firearms community.

D.12 We published our final report in December 2015. We are delighted that the Government decided to take forward the majority of our recommendations in the Policing and Crime Bill.

Mental capacity and deprivation of liberty

D.13 The Deprivation of Liberty Safeguards (“DoLS”) were intended to protect a small number of people who lacked capacity to consent to their own care in specific medical settings and needed to be deprived of their liberty in their own best interests. This could happen, for example, if care home staff prevented an elderly person with worsening dementia from leaving the building alone because they could become confused and get lost. The DoLS were first set up in 2009 to plug a legislative gap whereby this specific group was found not to be adequately protected in compliance with article 5 of the European Convention on Human Rights.

D.14 But the DoLS are not working. In 2014 a House of Lords Select Committee described the DoLS as “not fit for purpose” and soon afterwards a Supreme Court judgment (known as Cheshire West) expanded the definition of the phrase “deprivation of liberty” to cover instances far beyond those originally envisaged. This has placed a huge burden on health and social care professionals and local authorities and has resulted in a ten-fold increase in the number of deprivation of liberty cases in England. The Law Commission was asked to review the relevant legislation and consider how best to authorise and supervise the deprivation of liberty in hospitals, care homes and community settings.

D.15 We published a consultation paper in July 2015 which proposed a new system, quite different in its approach from DoLS, called “Protective Care”. The consultation paper went into a good deal of detail about our proposals for the new system. These included reducing the number of professional assessments that would be required (partly by allowing the use of equivalent existing assessments for this purpose), and allowing deprivations of liberty to be authorised in more than one setting. We also proposed rights to independent advocacy for the person and their family along with a straightforward tribunal system should they wish to challenge the deprivation of liberty. In addition we made proposals around “supportive care”, whereby people who lack mental capacity and are receiving care but are not subject to deprivation of liberty are given some protection in the form of preventive safeguards.
During our four months’ public consultation members of the team attended 83 events across England and Wales. These covered a wide audience, including service users, patients, family members and other unpaid carers, health and social care professionals, academics, lawyers, service providers, regulatory bodies and voluntary, charitable and campaigning organisations. At each of the consultation events we attended, we heard a wide range of views on various aspects of our proposals. We were struck by the widespread support for the project and the need to reform this area of law as a matter of priority.

Because DoLS have a very poor public image it was particularly important to raise awareness of the consultation among the general public. To this end, the lead lawyer on the project team appeared alongside two family carers on Radio 4’s You and Yours. We also attended events organised by service-user and carers’ groups such as a half-day workshop in Bristol with family carers who provide support to people with learning difficulties.

Our consultation exercise yielded 583 responses. These came, in the main, from local authorities and individual health and social care practitioners and providers. Most were supportive of our proposals, although a number raised concerns about how any new system might be funded.

We have revised our proposals in the light of responses received in consultation, so as to make our proposed scheme simpler. We published an interim report on 25 May 2016, setting out the key issues that emerged from the consultation and some initial conclusions in light of those issues. We aim to submit a full report with recommendations and a draft Bill at the end of 2016.

**Event fees in retirement leases**

Older people who buy a leasehold retirement flat often have to pay more than just the purchase price. When the property is later sold, they may be required to pay between 1 per cent and 30 per cent of the resale value to the company that built or manages the property. These fees can also be triggered by other events such as sub-letting.

Event fees can help make specialist housing for older people affordable for buyers to buy and builders to supply. However, a lack of transparency about the fees in the past has led to people having been caught unawares when they came to sell their property.

In 2013 the Office of Fair Trading investigated and concluded that terms imposing these fees were potentially unfair contract terms and noted “a lack of clarity in the legal framework”.

In September 2014, the Department for Communities and Local Government asked the Law Commission to look into the problem, the existing law and possible solutions.
On 29 October 2015 we opened a consultation, making proposals that focused on early, clear and prominent disclosure of event fees to make sure consumers have a choice and on ensuring that the fees collected are managed well for the benefit of residents. In brief, our proposals included:

1. ensuring any fees are clearly advertised alongside the purchase price; and
2. requiring landlords to provide a full disclosure statement regarding event fees to all prospective purchasers at the earliest stage.

The consultation included a leaflet and questionnaire for residents in retirement properties. The team worked with older people’s charities and organisations and held information events at retirement communities to raise awareness of the project and the opportunity to contribute. We also consulted with industry bodies.

Our “Building Fairness” event, jointly hosted with the Elderly Accommodation Counsel, was well attended and filled the room at Portcullis House. It aimed to shine a light on the law relating to retirement property. The event marked the highlight of our consultation exercise. Dame Esther Rantzen, a high-profile advocate for older people, delivered a powerful keynote address calling for a better retirement property market. Participants included residents, developers, and representatives from Age UK, the Elderly Accommodation Counsel (EAC), the Association of Retirement Community Operators and LEASE, the Leasehold Advisory Service.

By the time the consultation closed, we had received 168 responses. Of these, 131 were from residents and consumer groups, 21 from developers, operators, managing agents and investors in retirement property and 16 from other interested professionals.

In June 2016, we published a progress report. It set out our initial policy conclusions and recommended next steps. One of our immediate priorities, which we expect to complete by spring 2017, is the development of a single set of code of practice provisions on event fees to give guidance to the retirement property industry and to consumers.

On 30 September 2016 we published a draft code of practice and accompanying consultation document. This code of practice outlines when event fees can be charged. It also places obligations on freeholders to provide transparent, and early, information about the event fee on a property. We propose that this information will be in the form of a standardised disclosure document.
Throughout the project we have continued to work with developers, operators, managing agents, estate agents, consumers and professional bodies. By spring 2017, we expect to publish a final report and finalise the code of practice. We propose that this code of practice will be underpinned by primary and secondary legislation. We also propose to provide guidance to estate agents on how to comply with their existing obligations to disclose estate fees to consumers.
APPENDIX E
RECENT REPORTS, CURRENT WORK AND IMPLEMENTATION

reports PUBLISHED since January 2013

E.1 We have published the following reports since January 2013:

- The Electronic Communications Code (LC336) 28/02/13
- Renting Homes in Wales (LC337) 09/04/13
- Level Crossings (LC339) 25/09/13
- Contempt of Court (1): Juror Misconduct and Internet Publications (LC340) 09/12/13
- Co-operative and Community Benefit Bill: Report on the Consolidation of Legislation Relating to Co-operative and Community Benefit Schemes (LC341) 19/12/13
- Wildlife Law: Control of Invasive Non-native Species (LC342) 11/02/14
- Matrimonial Property, Needs and Agreements (LC343) 27/02/14
- Contempt of Court (2): Court Reporting (LC344) 26/03/14
- Regulation of Health Care Professionals: Regulation of Social Care Professionals in England (LC345) 02/04/14
- Patents, Trade Marks and Design Rights: Groundless Threats (LC346) 15/04/14
- Taxi and Private Hire Services (LC347) 23/05/14
- Hate Crime: Should the Current Offences be Extended? (LC348) 28/05/14
- Conservation Covenants (LC349) 24/06/14
- Fiduciary Duties of Investment Intermediaries (LC 350) 01/07/14
- Data Sharing between Public Bodies (LC 351) 11/07/14
- Insurance Contract Law: Business Disclosure; Warranties’ Insurers’ Remedies for Fraudulent Claims; Late Payment. (LC 353) 17/07/14
- Social Investment by Charities (Recommendations Paper) 24/09/14
- Simplification of Criminal Law: Kidnapping and Related Offences (LC355) 20/11/14
- Rights to Light (LC356) 04/12/14
- Statute Law Repeals: Twentieth Report (LC 357/ SLC 243), 3/6/15
- Simplification of Criminal Law: Public Nuisance and Outraging Public Decency (LC 358, 25/06/15)
- Patents, Trade Marks and Designs: Unjustified Threats (LC360) 13/10/15
• Reform of Offences against the Person (LC361) 03/11/15
• Wildlife Law (LC362) 10/11/15
• Firearms Law – Reforms to Address Pressing Problems (LC363) 16/12/15
• Unfitness to Plead (LC364) 13/01/16
• Electoral Law: Interim Report (04/02/16)
• A New Sentencing Code for England and Wales – Transition: Final Report and Recommendations (LC365) 20/05/16
• Form and Accessibility of the Law Applicable in Wales (LC366) 30/06/16
• Consumer Prepayments on Retailer Insolvency (LC368) 14/07/16
• Bills of Sale (LC369) 13/09/16
• Sentencing Law in England and Wales – Legislation Currently in Force: Interim Report (07/10/16)

Consultation papers / other publications published since January 2013

E.2 We have published the following other papers since January 2013:

• Rights to Light (LCCP210) 18/02/13
• Conservation Covenants (LCCP211) 28/03/13
• Patents, Trade Marks and Design Rights: Groundless Threats (LCCP212) 17/04/13
• Hate Crime: The Case for Extending the Existing Offences (LCCP213) 27/06/13
• Criminal Liability: Insanity and Automatism (Discussion Paper) 23/07/13
• Data Sharing between Public Bodies (LCCP214) 16/09/13
• Fiduciary Duties of Investment Intermediaries (LCCP215) 22/10/13
• Social Investment by Charities: A Consultation Paper (LCCP216) 24/04/14
• Unfitness to Plead (Issues Paper) 02/05/14
• Reform of Offences against the Person: A Scoping Consultation Paper (LCCP217) 12/11/14
• General Statute Law Repeals: A Consultation Paper (SLR 03/14) 27/11/14
• Electoral Law: A Joint Consultation Paper (LCCP218) 09/12/14
• Enforcement of Family Financial Orders: A Consultation Paper (LCCP 219) 11/03/15
• Technical Issues in Charity Law: A Consultation Paper (LCCP 220) 20/03/15
• Insurance Contract Law: Insurable Interest – Updated Proposals (Issues Paper) 27/03/15
• Consumer Prepayments on Retailer Insolvency: A Consultation Paper (LCCP 221) 18/06/15
• Sentencing Procedure (Transition Issues Paper) 01/07/15
• Mental Capacity and Deprivation of Liberty: A Consultation Paper (LC 222) 07/07/15
• Form and Accessibility of the Law Applicable to Wales (LCCP 223) 09/07/15
• Firearms Law (LCCP 224) 20/07/15
• Bills of Sale (LCCP 225) 09/09/15
• Residential Leases: Fees on Transfer of Title, Change of Occupancy and Other Events (LCCP 226) 29/10/15
• Getting Married: A Scoping Paper (17/12/15)
• Misconduct in Public Office (Issues Paper 1) 20/01/16
• Updating the Land Registration Act 2002 (LCCP227) 31/03/16
• Planning Law in Wales (LCCP228) 30/06/16
• Technical Issues in Charity Law (LCCP220 Supplementary Consultation) 01/09/16
• Reforming Misconduct in Public Office (LCCP229) 05/09/16

Current law reform projects

Public Law

E.3 Electoral Law – we published an interim report in February 2016 and are waiting to hear from the Government before taking the project through to a final report and draft Bill.

E.4 Mental Capacity and Deprivation of Liberty – we aim to publish a final report with recommendations and a draft Bill at the end of 2016.

E.5 Planning Law in Wales – the public consultation on our scoping paper will run until 31 October; this will inform a detailed consultation paper which we aim to publish in spring 2017.


Criminal Law

E.7 Misconduct in Public Office – we published an issues paper in January and a consultation paper in September 2016. We intend to publish our final report in 2017.
E.8 Sentencing – we published a paper on the issue of transition in May 2016 and an interim report in October 2016. We expect to publish a consultation paper in summer 2017 and our final report in 2018.

E.9 Protection of Official Data – this project commenced in February 2016. We intend to publish a consultation paper in November 2016 and a final report in spring 2017.

E.10 Criminal Records Disclosure – we started work on a review of specific aspects of the disclosure and barring service regime in July 2016. We intend to publish a report before the end of the year.

Property Family and Trust Law

E.11 Enforcement of Family Financial Orders – we expect to publish our recommendations in late 2016.

E.12 Charities – this project is in two parts: we expect to publish our recommendations (with a draft Bill) on Technical Issues by mid-2017; the Charities (Protection and Social Investment) Act 2016 implemented our proposals on Social Investment by Charities.

E.13 Land Registration – we published a consultation paper at the end of March 2016.

E.14 Wills – we intend to publish a consultation paper in spring 2017.

Commercial and Common Law

E.15 Event Fees in Retirement Properties – we plan to publish a final report in spring 2017.

E.16 Groundless Threats in Intellectual Property – the Intellectual Property (Unjustified Threats) Bill, which implements our recommendations, was introduced into Parliament on 19 May 2016 under the Special Procedure.

E.17 Insurance: Insurable Interest – we plan to publish a report with recommendations and a draft Bill in 2017.

LEGISLATIVE Implementation since January 2013

E.18 Not all of our reports require legislation. This section focuses on those areas where there has been legislation as a direct result of Law Commission recommendations.

In Westminster

- The Trusts (Capital and Income) Act 2013 implements Law Commission recommendations on Capital and Income in Trusts: Classification and Apportionment.

- The Crime and Courts Act 2013 implements Law Commission recommendations on Scandalising the Court.

• The Care Act 2014 implements Law Commission recommendations on Adult Social Care.

• The Co-operative and Community Benefit Societies Act 2014 is a Law Commission consolidation Act.

• The Government announced in October 2014 that it has adopted the recommendations in the Law Commission report on Fiduciary Duties of Investment Intermediaries.


• The Infrastructure Act 2015 implements Law Commission recommendations on Control of Non-Indigenous Invasive Species.

• The Criminal Justice and Courts Act 2015 implements certain Law Commission recommendations in relation to Juror Misconduct and Internet Publications.

• The Consumer Rights Act 2015 implements recommendations in the Law Commission’s most recent report on insurance law.

• The Charities (Protection and Social Investment) Act 2016 implemented Law Commission recommendations on Social Investment by Charities.

• The Enterprise Act 2016 includes reforms recommended in our report on insurance law (see also Insurance Act 2015 above) relating to late payment of claims.

• The Policing and Crime Bill, which was introduced on 10 February 2016, will implement Law Commission proposals on Firearms Law.

• The Intellectual Property (Unjustified Threats) Bill, which was introduced on 19 May 2016, will implement Law Commission recommendations on groundless threats in intellectual property.

• The Digital Economy Bill, which was introduced on 5 July 2016, will implement the majority of our recommendations to replace the Electronic Communications Code.


• On 29 January 2015 the Department of Health announced that it accepted the majority of the Commission’s recommendations in its joint report with the Scottish and Northern Ireland Law Commissions on Regulation of Healthcare / Social Care Professionals and is committed to legislate on this matter in due course.
In the Welsh Assembly

- The Social Services and Well-being (Wales) Act 2014 implements Law Commission proposals on Adult Social Care. This represents an important milestone for the Law Commission and the National Assembly for Wales as this is the first occasion on which Law Commission recommendations have been implemented by the National Assembly using its powers under Part 4, Government of Wales Act 2006.

- The Renting Homes (Wales) Act 2016 implements the Law Commission’s 2006 report on Renting Homes, updated in Renting Homes in Wales / Rhentu Cartrefi yng Nghymru (LC337) 09/04/13.
APPENDIX F
CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE’S INQUIRY INTO MAKING LAWS IN WALES

F.1 In our evidence to the Constitutional and Legislative Affairs Committee’s Inquiry into Making Laws in Wales we made a number of suggestions based on our own experience of preparing legislation. These were endorsed by the Committee in their Report. First we suggested that better legislation could be promoted by:

(1) identifying and analysing the underlying policy issues in a way which will highlight clearly the problems to be addressed and possible solutions;

(2) formulating well thought-through policy objectives, with transparent impact assessment;

(3) carefully assessing whether a legislative or non-legislative solution would be more appropriate; and

(4) setting aside adequate time and resources for pre-introduction public consultation and solution-testing.

F.2 The Committee recommended that the Welsh Government should adopt more robust policy development criteria based around those highlighted by the Law Commission. In response, the Welsh Government said its approach to policy development was already consistent with these principles.

F.3 We also suggested that the quality of legislation could be improved by

(1) ensuring that instructions to counsel are comprehensive and clear and reflect fully thought out and agreed policy;

(2) having departments work closely with drafters to ensure that Bills are clear, concise, consistent, unambiguous, and easily intelligible, keeping technical terminology to a minimum;

(3) minimising the need for government to table its own amendments to a Bill after it has entered the legislative process;

(4) making greater use of Keeling Schedules (as part of the explanatory notes) to clarify changes that a Bill makes to previous enactments; and

(5) providing for the clear repeal of any existing enactments that are superseded by the Bill.

14 October 2016