

THE LAW COMMISSION SEVENTH PROGRAMME OF LAW REFORM

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

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THE LAW COMMISSION

SEVENTH PROGRAMME OF LAW REFORM

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THE LAW COMMISSION

SEVENTH PROGRAMME OF LAW REFORM

Working for Better Law

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

I have the honour to present to you for your approval the Law Commission's Seventh Programme of Law Reform to commence on 1 April 1999.

We hope that you will agree that the Seventh Programme contains a variety of the challenging projects which it is beneficial to the community for the Law Commission to undertake, and which will help achieve substantial and desirable improvements in our law.

Most law reform projects carried out by the Law Commission require detailed analysis of large areas of the law. Smaller projects are undertaken from time to time but generally our projects are major exercises, involving considerable work and consultation. Our aim is to produce recommendations for the systematic modernisation and reform of the law. For this aim to be effective, our programmes need to be mirrored by arrangements within the relevant Government departments to consider the reports, and, where accepted, to carry them forward to legislation. We are grateful for the close working relationship we have been able to establish with your Department, and others. The pressure on legislative time continues to be a serious block to progress towards implementation of a number of much-needed reforms.

Progressive codification of the criminal law continues to be a central part of our plans. We are encouraged by the strong support from the judiciary, and we understand Government to be sympathetic to the objective. Approval of the Seventh Programme will give further impetus to its achievement. An immediate priority is to achieve the early implementation of the proposals for reform of the Offences against the Person Act 1861. Our report was widely welcomed in 1993, and the main recommendations were accepted in a Home Office consultation paper published in February 1998. Legislation to give effect to these proposals would be an important step on the road to complete codification.

The new projects (compound interest, electronic commerce, bail, and easements) have been selected after consultation with a number of interested bodies and careful consideration by the Commission in the light of our project selection criteria. The Seventh Programme also describes the projects on which we are already working and which need further work before they are completed. We also summarise the projects which have been referred to us by Ministers outside the Programme.

This is to be a rolling Programme, applying initially for the next two years. Where possible we give an indication of our current best estimate of the likely timetable for each project. Over half should be completed within the first year, including our major projects on land registration and on damages. At the same time we will be considering, with the relevant Departments, other new projects which should be given priority for inclusion in the programme as the present projects are completed. We are actively considering aspects of the criminal law which we could usefully review in the light of the Human Rights Act, and have started work on the subject of bail.

Besides describing our work during the Seventh Programme, we also give an account of the Commission and of our work during the period of the Sixth Programme of Law Reform.

Sir Robert Carnwath
CHAIRMAN

PART I

WORK DURING THE SEVENTH PROGRAMME OF LAW REFORM

Introduction

- 1.1 The Law Commission is required to prepare and submit to you from time to time programmes for the examination of different branches of the law with a view to reform.¹ This document,² representing the Seventh Programme, consists of three Parts. Part I describes: the Programme's detailed items for the period from April 1999 until at least March 2001;³ the other law reform work we are doing, following specific requests we have received from Ministers; and, in summary, what we shall be doing in consolidating legislation, in statute law revision, and in advisory and other work. Part II sets out the position on the recent implementation of our reports. Part III gives an account of the law reform and other work which the Commission has done since June 1995, the start of the Sixth Programme. Appendix A provides a general description of the work of the Law Commission.
- 1.2 In this Part we focus on the detailed items of work which will represent most of our law reform activity during the period.

(1) The Seventh Programme of Law Reform

Consultation

- 1.3 As stated in the Foreword, we selected the proposed new projects after consultation with a number of interested bodies. Those we consulted included the Government Departments most closely concerned with our work, the Judges' Council, the Committee for Standards in Public Life, consumer bodies, law reform bodies, the Bar, the Law Society, the Society of Public Teachers of Law and the Insolvency Service. This process of consultation played a major role in our selection of topics, and we are grateful to those whom we consulted for the trouble which they took to reply to us. A summary of the major subjects which they suggested appears at Appendix C. We also have a substantial number of suggestions which have been sent to us over the course of time, and they formed a rich source of ideas. Some of the projects which were suggested could not be taken forward at the present time because work by us would possibly conflict with other work being done within Government. Other suggestions were not pursued because they were not, for various reasons, within our project selection criteria.⁴ In most

¹ Law Commissions Act 1965, s 3(1)(b). In the first 30 years of the Commission's life there were five programmes, two of them major. The First, published in 1965, consisted of 17 Items and the Fourth, published in 1989, consisted of 9 Items. The other three programmes in that period contained 6 Items between them. The Sixth Programme was approved in 1995; it contained 11 Items.

² Under s 3(2) the Lord Chancellor is to lay before Parliament any programmes which the Commission has prepared and which the Lord Chancellor has approved.

³ There will be additional projects: see paras 1.11-1.15 below.

⁴ See paras 1.6 - 1.7 below.

cases, however, the project could not be taken forward because of the limits on our human and financial resources. The fact that we are not recommending a topic as a Law Commission project does not necessarily mean that the topic is not appropriate for reform.

- 1.4 One subject which was considered for the Seventh Programme was Housing Law. In his final report, *Access to Justice*, Lord Woolf recommended that the Law Commission “should be invited to carry out a review of housing law with a view to consolidating the various statutory and other provisions in a clear and straightforward form”.⁵ We have explored with the Department of the Environment, Transport and the Regions (DETR) the possibility of conducting such a simplification and consolidation. However, we have not been able to include a project of this kind in the Seventh Programme of Law Reform. This is because we are informed by the DETR that there are several Government initiatives on housing which could be likely to overtake any such exercise. In particular, there may be changes to the law on homelessness⁶ and on licensing houses in multiple occupation. Furthermore, there may be other changes to the law on housing which result from the Government’s comprehensive spending review and from its leasehold reform review. We accept that an exercise in simplifying and consolidating the law may be pointless when legislative change is likely. However, we hope that serious consideration will be given at the appropriate time to the kind of exercise that Lord Woolf recommended. It would be of great value to the many persons who have the difficult task of operating and applying the present housing legislation, and assist the process of civil justice reform.
- 1.5 While no project on housing law is proposed, we are proposing that we should take on a new project on Easements and Analogous Rights and Land Obligations.⁷ We also expect to be closely involved in the important initiatives of the Government relating to the introduction of commonhold, and the parallel reform of the law relating to residential leaseholds.⁸ The Commission is well placed to assist in the co-ordination of such interdepartmental law reform projects.

The Law Commission’s project selection criteria

- 1.6 In the light of experience, during the course of the Sixth Programme we have developed project selection criteria to assist us make consistent and principled decisions as to the projects we accept or initiate. We have published these criteria in a summarised form in our Annual Reports for 1996 and 1997. As part of the

⁵ *Access to Justice, Final Report to the Lord Chancellor on the Civil Justice System in England and Wales (1996)*, p 199. There is a valuable critique of the problems that exist in relation to housing cases in the *Civil Justice Review: a report of the Review Body on Civil Justice (1988)*, Chapter 10. At para 752, it was stated that “[a] substantial number of written responses to consultation referred to the diversity and complexity of the substantive law as a major obstacle to wholesale reform in the field of housing law”. The law has become a great deal more complex since 1988.

⁶ This is a Government manifesto commitment.

⁷ See item 5(b) below, at p 12.

⁸ Consultation Paper published in November 1998 by the Department of the Environment, Transport and the Regions, “Residential Leasehold Reform in England and Wales”

selection process, we assess all relevant considerations, but the most important of these are

- (1) the importance of the issues (*the importance factor*);
- (2) the availability of resources in terms of both expertise and funding (*the resources factor*); and
- (3) the suitability of the issues to be dealt with by the Commission (*the suitability factor*).

1.7 There are several aspects to each of these factors and they are not applied mechanistically. In considering the importance factor, points taken into consideration are whether the area of law affects a wide section of the public, whether it is possible to avoid the problems identified by restructuring a transaction or taking certain precautions, and if so whether it is reasonable to expect people to take these precautions.⁹ In considering the second factor - whether we have the financial or human resources for a project- we have had to give careful consideration to the qualifications and experience of our Commissioners and legal staff and the funding likely to be available to us, and in addition to make judgments as to whether the Law Commission's work on one project is likely to be more valuable than its work on another. We are fortunate in having dedicated, highly-skilled and highly-motivated staff, but inevitably there are topics which they are better able to do than others. Our financial resources are principally provided by the Lord Chancellor's Department and as public funds their use has to be fully justified. We have made reasonable assumptions about the continuance of funding broadly at present levels, having regard to the Government's consistent commitment to our work.¹⁰ We believe that we give value for money. In considering the suitability factor (the third factor), we have to take into account such factors as whether the issues are predominantly legal and whether any other expertise that is required can be satisfactorily obtained from outside the Commission. For example, we do not undertake projects where reform is likely to be shaped by political judgements.

Timing of projects

1.8 We have given careful consideration with the Lord Chancellor's Department to the order in which we should seek to complete the law reform work described in this Part. We consider all the projects to be important and the prime consideration has been when we consider that we should be able to deliver our final reports. In reaching our conclusions we have also taken into account a range of factors, as well as the amount of work we have done on the project so far. They include: the need

⁹ In the context of the project on property rights of home-sharers (Item 5(c)), for instance, the issue arises as to whether unmarried home-sharers should reasonably be expected to deal with the difficulties which often arise in dividing up property when the sharing comes to an end, by a contract negotiated and entered into in advance.

¹⁰ For example, the Minister of State at the Lord Chancellor's Department has said "that a managed programme of law reform remained an essential part of a modern democracy's responsibilities, and that the Law Commission remained a vital part of that process". Written Answer, *Hansard* (HC) 19 March 1998, vol 308, col 709.

for systematic law reform in the field;¹¹ the intrinsic value of the project; the likelihood of our recommendations having effect;¹² and the Commission's resources involved in the project. Many of these factors reflect our project selection criteria.¹³

- 1.9 Taking these factors into account, we are planning to complete the projects in the following financial years:-

1999/2000

Damages for personal injury - non-pecuniary loss¹⁴
Damages for personal injury – medical and other expenses¹⁵
Damages – fatal accidents¹⁶
Damages for personal injury – collateral benefits¹⁷
Limitation periods¹⁸
Part X of the Companies Act 1985¹⁹
Third parties' rights against insurers²⁰
Evidence of previous misconduct in criminal proceedings²¹
Capacity to consent²²
Land registration²³
Trustees' powers and duties²⁴
Termination of tenancies²⁵

¹¹ Section 3(1) of the Law Commissions Act 1965.

¹² For example, some of our reports result in short, non-controversial and technically simple legislation and some do not even require primary legislation to realise their benefits; to take another example, it may be clear from our consultations or other sources that there is an especially high degree of support or interest in the subject matter - perhaps shown by the public, the courts, Parliament or the Government.

¹³ See para 1.6 above at (1) and (2).

¹⁴ See Item 1 below.

¹⁵ See Item 1 below.

¹⁶ See Item 1 below.

¹⁷ See Item 1 below.

¹⁸ See Item 2 below.

¹⁹ See p 25 below.

²⁰ See Item 9 below.

²¹ See p 23 below.

²² This is part of a wider project, on consent as a defence: see Item 10(1)(c) below.

²³ See Item 5(a) below.

²⁴ See Item 6(a) below.

²⁵ See p 33 below.

2000/2001

Home-sharers' property rights²⁶
Trust formalities²⁷
Bail²⁸

2001/2002

Illegal transactions²⁹
Partnership³⁰
Dishonesty and fraud³¹
Assisting and encouraging crime³²
Compound interest³³
Easements etc³⁴

The precise parameters of the proposed project on electronic commerce³⁵ are under discussion with the relevant Government departments, so that an estimate of timing cannot be given at this stage.

- 1.10 However, we fully recognise that priorities can change, sometimes quickly. It is therefore extremely difficult to estimate how quickly we could proceed with each of the projects and to specify when we would be able to publish consultation papers and reports for them. Examples of new factors are: an urgent new problem may arise, which we should address quickly if possible, such as the work on joint and several liability,³⁶ money transfers,³⁷ corruption³⁸ and trustees' powers;³⁹ an important relevant case may come before the Court of Appeal, House of Lords or European Court of Human Rights, making it advisable for us to await the outcome and perhaps any ensuing developments; special difficulties can arise in a project, requiring more detailed consideration and further consultation; we may need to contribute more than usual to the work done following publication of a report, possibly including assisting the Government during the passage of the Bill through

²⁶ See Item 5(c) below.

²⁷ See Item 6(b) below.

²⁸ See Item 10(2) below.

²⁹ See Item 3 below.

³⁰ See p 23 below.

³¹ See Item 10(1)(a) below and p24 below. This project may be dealt with in more than one consultation paper and report, not all of which may be completed by this time. In addition, there is the linked topic of misuse of trade secrets: see p 43 below.

³² See Item 10(1)(b) below.

³³ See Item 4 below.

³⁴ See Item 5(b) below. The project may well not be concluded until the following year, depending upon when there is capacity to start.

³⁵ See Item 8 below.

³⁶ See para 3.15 below.

³⁷ See Part III, Item 11 below.

³⁸ See Part III, Item 11 below.

³⁹ See p 14 below.

Parliament – so temporarily reducing our capacity to continue work on current projects; or a shortage of resources may arise, including a staff vacancy.

Further projects

- 1.11 Many of the projects which we are taking forward during the period of the Seventh Programme will be completed well before the end of the period. As they progress, the Commission will have the capacity to undertake further law reform work. New projects are expected to come to the Commission by way of reference by a Minister or under one of this Programme's Items, following consultation with the relevant Government department. New Commissioners would also be involved in this process.
- 1.12 The Commission has other areas under consideration for possible law reform projects when there is opportunity during or after the Seventh Programme. They include:⁴⁰
- work arising from the Human Rights Act 1998;
 - work arising from the DTI's company law review;⁴¹ and
 - work on a possible commercial code.
- 1.13 With regard to the first of these areas, the incorporation of the European Convention on Human Rights into English law by the Human Rights Act 1998 will lead to changes in different areas of law and, in particular, criminal law. This Commission is well placed to assist the task of advising on the necessary changes. We have already started looking at the effect of the Convention on the law of bail⁴².
- 1.14 With regard to the last, we have been approached by Professor Roy Goode, Norton Rose Professor of English law at the University of Oxford, in connection with plans being developed for a project to produce a commercial code setting out the principles and rules governing commercial transactions. The code would be available as a guide to lawyers, business people, the courts and commercial arbitrators. The code would not necessarily be in statutory form. A code is an exportable product, as it can provide the inspiration for a modern commercial law elsewhere and particularly in developing countries and those that have moved or are moving to a market economy.
- 1.15 It is anticipated that such a project would commence with an extensive research phase designed to identify the problems, study solutions in other developed common law jurisdictions and gauge the support for a code. We intend to consider whether, should this project proceed, we can and should be involved in some way which would meet the Law Commission's project selection criteria. We would seek the approval of the Lord Chancellor before undertaking such a project.

⁴⁰ See also the discussion both of land obligations at p 13 below and of land mortgages at p 34 below.

⁴¹ See Item 7 below.

⁴² See Item 10(2) below.

A rolling programme of law reform

- 1.16 The new Programme will be for two years, at the request of the Lord Chancellor's Department. That is commonly too short a period for completion of a law reform project⁴³ but that fact is so far as practicable counter-balanced by the agreement of the Lord Chancellor to this being a "rolling" programme. That means that new projects are not necessarily expected to be completed within the life of the Programme, as is illustrated by the timetable in para 1.9 above. Projects which are not completed within that period will (subject to review as necessary) form part of the work in progress to be carried forward to the next Programme.

Programme Items

- 1.17 The projects on compound interest (Item 4), easements (Item 5(b)) and electronic commerce (Item 8) are new. The specific possibility of new work arising on human rights (see Item 10) is also new. Other items are carried forward from the Sixth Programme, except that we have omitted work which is completed (eg contract law and family law) and/or which we do not propose to carry forward.⁴⁴ The Law Commissions Act⁴⁵ also requires us to identify the Examining Agency to undertake the different items. We recommend that it should be the Law Commission itself which should undertake them, working jointly with the Scottish Law Commission on Item 9 and one aspect of Item 6(a).⁴⁶ In respect of most items, particularly Items 5(a), 6(a) and 8, we will be working in close association with other law reform agencies.

- 1.18 The Programme is described under the following headings⁴⁷:-

- 1: Damages
- 2: Limitation of actions
- 3: Illegal transactions
- 4: Compound interest
- 5: Property law
- 6: The law of trusts
- 7: The law of business associations
- 8: Electronic commerce
- 9: Third parties' rights against insurers
- 10: Criminal law

⁴³ Even if started on the first day of the Programme. It is proposed that they should be commenced as and when other projects are completed and resources permit.

⁴⁴ See pp 38 and 42 below.

⁴⁵ S 3(1)(b).

⁴⁶ See also Item 7.

⁴⁷ Although we refer to "recommendations", most of the items represent continuation of work under recommendations already approved.

ITEM 1: DAMAGES

Recommended: **that an examination be made of the principles governing and the effectiveness of the present remedy of damages for monetary and non-monetary loss, with particular regard to personal injury litigation. Certain matters to which specific consideration is to be given include:**

- (a) deductions and set-offs against monetary loss (excluding, unless expressly approved, the recovery provisions of the Social Security (Recovery of Benefits) Act 1997);⁴⁸**
- (b) awards to cover medical, nursing and other expenses incurred by the plaintiff;**
- (c) the law relating to fatal accidents, including bereavement damages;**
- (d) the award of damages for pain and suffering and other forms of non-pecuniary loss.**

A review of the law of damages was one of two new items in the Fifth Programme, and was also included in the Sixth Programme. We are now in the closing stages of this project. We propose to publish our final recommendations on damages for personal injury and wrongful death by about the end of 1999. These will address the issues raised in our consultation papers on damages for non-pecuniary loss⁴⁹ and for expenses,⁵⁰ on collateral benefits⁵¹ and on claims for wrongful death.⁵²

⁴⁸ The recoupment provisions were previously contained in the Social Security Administration Act 1992.

⁴⁹ Damages for Personal Injury: Non-Pecuniary Loss (1995) Consultation Paper No 140.

⁵⁰ Damages for Personal Injury: Medical, Nursing and Other Expenses (1996) Consultation Paper No 144.

⁵¹ Damages for Personal Injury: Collateral Benefits (1997) Consultation Paper No 147.

⁵² Claims for Wrongful Death (1997) Consultation Paper No 148.

ITEM 2: LIMITATION OF ACTIONS

Recommended: that there be a review of the law on limitation of actions, with of actions, with a view to its simplification and rationalisation.

A review of the law on limitation periods was a new item in the Sixth Programme. Our Consultation Paper⁵³ provisionally proposed a uniform limitations regime to be applied, so far as possible, to all causes of action. We believe that this regime would provide a modern code on limitation periods which would be coherent, fair, clear and cost-effective. We hope to publish our report by the end of 1999.

ITEM 3: ILLEGAL TRANSACTIONS

Recommended: that an examination be made of the law on illegal transactions, including contracts and trusts.

A review of the law on illegal transactions was another new item in the Sixth Programme. A consultation paper was published in January 1999.⁵⁴ We hope to complete the report at around the end of this two year programme.

⁵³ Limitation of Actions (1998) Consultation Paper No 151.

⁵⁴ Illegal Transactions: The Effect of Illegality on Contracts and Trusts (1999) Consultation Paper No 154.

ITEM 4: COMPOUND INTEREST

Recommended: that an examination be made of the courts' power to award compound interest.

The courts have a limited non-statutory jurisdiction to award interest: first, where the parties have agreed, expressly or impliedly, that interest shall be payable; secondly, where the interest is claimed by way of special damages as a consequence of a breach of contract; and thirdly, in equity, in cases of breach of fiduciary duty or profiting from fraud. In each of these three cases the interest may be awarded at simple or compound rates. In addition, the courts have a statutory discretion to award interest on a debt or damages. However, the statutory power is specifically limited to simple interest; as is a creditor's automatic right to interest after thirty days on unpaid commercial debt under the Late Payment of Commercial Debts (Interest) Act 1998.

Concern has been expressed that the courts' limited ability to award compound interest results in injustice to plaintiffs, who will not be properly compensated because they may have to borrow at compound rates or lose the opportunity to invest at compound rates while waiting for their award. In addition, it has been suggested that the courts' inability to award interest at compound rates causes the protraction of proceedings because it provides very little incentive for defendants to conclude litigation. A defendant can effectively "borrow" from the plaintiff at simple interest rates rather than the compound rates which a lending institution would charge. It is also regarded as anomalous that arbitrators have been given the power to award compound interest under section 49 of the Arbitration Act 1996. This means that if cases on identical facts came before an arbitrator and a judge, the arbitrator would be able to award a larger sum than the judge.

Moreover, in the 1996 case of *Westdeutsche Landesbank Girozentrale v Islington LBC*,⁵⁵ concerning a claim for compound interest in a restitutionary action for money paid under a void swap transaction, a majority of the House of Lords rejected the possibility of reform through the courts. Statutory reform therefore appears to be the only way forward.

Accordingly we believe that a review should be undertaken of the courts' power to award compound interest, with a view to rationalising and updating the law. We anticipate completing this project in 2001/2002.

⁵⁵ [1996] AC 669.

ITEM 5: PROPERTY LAW

Recommended: that an examination be made of:

- (a) **land registration;**
- (b) **easements and analogous rights, together with a possible system of land obligations;**
- (c) **the property rights of home-sharers; and**
- (d) **such other aspects of the creation, transfer and extinction of rights in or over registered and unregistered land as may from time to time appear to the Law Commission and to your Department to be required.**

Land registration

We are continuing our review of the land registration system in conjunction with both H M Land Registry and your Department. We have analysed the responses to Land Registration for the Twenty-First Century: A Consultative Document,⁵⁶ published in September 1998. This made far-reaching recommendations for the reform of the land registration system. It included proposals as to how electronic conveyancing should be introduced, and for improving the security both of title to registered land, and of rights over it. It is our intention to publish in 1999 a draft Bill which, if enacted, would replace all the present legislation which governs land registration.⁵⁷ We are giving this collaborative project, which will assist everyone who buys or sells property, the highest priority.⁵⁸

Easements and analogous rights and land obligations

This project is, in part, a new one. We shall be examining easements⁵⁹ and analogous private law rights (particularly profits *à prendre*⁶⁰) with a view to their reform and rationalisation. Although it affects many landowners, this aspect of property law has never been subject to a comprehensive review, and aspects of the law are now outdated and a cause of some difficulty. It is, for example, very difficult to terminate or vary an easement, and this can impede the rational use of land. The ways in which easements and profits can be acquired by long user ("prescription") are also unsatisfactory and irrational. The scope of what can be an easement is considered by some to be too restrictive.

⁵⁶ (1998) Law Com No 254.

⁵⁷ The principal Act is the Land Registration Act 1925 (as amended). See too the Land Registration and Land Charges Act 1971 (as amended).

⁵⁸ It was singled out for special mention in Modernising Justice - The Government's Plans for Reforming Legal Services and the Courts (December 1998) Cm 4155, para 1.14.

⁵⁹ An easement is the right enjoyed by one landowner over the land of another. Common examples are rights of way and rights of light.

⁶⁰ A profit *à prendre* is a right to take something from the land of another, such as a right to graze sheep or cattle, or sporting or shooting rights.

We intend to tie in this work with a reconsideration of the Law Commission's earlier work on land obligations.⁶¹ Although the Government has recently rejected our earlier recommendations, this was on the basis that we might look at them again to consider how future developments in property law might affect them.⁶² Our objective would be to produce a coherent scheme of land obligations and easements that would be compatible with any scheme of commonhold that might be proposed. This is an area of law that is of great practical importance to large numbers of landowners and where there is pressure for reform.

The property rights of home-sharers

We are examining the property rights of those who live together in the same household, except by reason of one of them being the other's employee, tenant, lodger or boarder. This covers a wide range of relationships,⁶³ many of them of a non-sexual character, as where a mother and daughter share a home. As the law stands, the property rights of such home-sharers are relevant in several situations, such as where the relationship of unmarried home-sharers comes to an end, where one of the home-sharers (whether married or not) dies or becomes insolvent, or where a creditor has a charge over his or her property.

Our first concern is to ensure that, where home-sharers expressly arrange their affairs by trust or contract, there should be no impediment to the enforcement of such arrangements except in clearly defined circumstances (such as where they were induced by fraud or undue influence).

Our second objective is to review the law applicable where the parties make no express arrangements. In particular, we are considering whether property law should continue to regulate the position of home-sharers on the breakdown of their relationship or whether there should instead be a more discretionary system for dealing with such cases, and whether the principles by which a home-sharer may acquire property rights in a home belonging to the other are the right ones. The present law gives rise to a number of difficulties. It is uncertain, it takes no account of the performance of domestic duties (such as bringing up a family) and it contains a number of anomalies. We hope to publish a consultation paper in 1999 and our report in 2000/2001.

⁶¹ See *Transfer of Land: The Law of Positive and Restrictive Covenants* (1984) Law Com No 127.

⁶² Written Answer, *Hansard* (HL) 19 March 1998, vol 587, col 213. It is understood that the Lord Chancellor had in mind the possible introduction of a system of commonhold.

⁶³ Including married couples in all cases *except* the breakdown of the marriage. That is regulated by the Matrimonial Causes Act 1973, s 25 (as amended), and is outside the scope of this project.

ITEM 6: THE LAW OF TRUSTS

Recommended that an examination be made of:

- (a) **the powers and duties of trustees to administer trusts in the best interests of the beneficiaries or trust objects including, in particular, trustees' powers of collective delegation and powers of investment;**
- (b) **the formal requirements for the creation of trusts and interests in land and for the disposition of equitable interests;**
- (c) **such other aspects of the law of trusts as may from time to time appear to the Law Commission or other examining agency and to your Department to require examination.**

Trustees' Powers and Duties

The Lord Chancellor's Department agreed in 1995 that a project relating to the powers and duties of trustees should be undertaken under item 7(d) of the Sixth Programme and that the work should be carried out in conjunction with the independent Trust Law Committee. In June 1997 the Commission published a consultation paper, *Trustees' Powers and Duties*,⁶⁴ produced in consultation with the Trust Law Committee. Our work on this project will continue under the Seventh Programme and will be expanded to encompass an examination of trustees' powers of investment.⁶⁵ This aspect of the project will be undertaken jointly with the Scottish Law Commission. It is anticipated that a Report will be published by the Summer of 1999.

Formalities

At present there are certain statutory formal requirements for the creation of trusts and interests in land and for the disposition of equitable interests.⁶⁶ These date back to 1677. These provisions are now a cause of some difficulty. First, the requirement that a trust of land is unenforceable unless evidenced in writing⁶⁷ has led to the judicial development of so-called "common intention" constructive trusts, as a means of giving effect to informal agreements between the parties. The resulting body of law is widely regarded as uncertain and unsatisfactory.⁶⁸ In relation to other forms of property, where there are no equivalent formal

⁶⁴ (1997) Consultation Paper No 146.

⁶⁵ We have already undertaken work in this regard, having assisted HM Treasury in the preparation of a consultation document, published in 1996, on the possible repeal of the Trustee Investments Act 1961.

⁶⁶ See the Law of Property Act 1925, s 53.

⁶⁷ *Ibid*, s 53(1)(b).

⁶⁸ The unsatisfactory state of the present law is the main reason why we are examining the law on home-sharers (see Item 5(c), above) in parallel with this project.

requirements, very similar informal arrangements have been found to create express trusts,⁶⁹ and the difficulties associated with common intention constructive trusts have not arisen. Secondly, the requirement that a disposition of a subsisting equitable interest must be made in writing⁷⁰ is not only inherently unsatisfactory as it has been interpreted,⁷¹ but it is perceived to be a problem in relation to certain forms of electronic trading in securities.⁷² Thirdly, developments in electronic commerce mean that formal requirements need to be reviewed to ensure that they can accommodate widely used forms of electronic communication.⁷³ A substantial amount of work has been undertaken on this project and we expect to publish a consultation paper around the end of 1999 and a report in 2000/2001.

⁶⁹ See *Paul v Constance* [1977] 1 WLR 527.

⁷⁰ Law of Property Act 1925, s 53(1)(c).

⁷¹ It appears to have no clear rationale: see *Neville v Wilson* [1997] Ch 144, holding that a specifically enforceable contract to assign an equitable interest was effective to transfer that interest without the need for writing. It is not easy to see why the specific enforceability or otherwise of an agreement should determine whether formal requirements of writing apply.

⁷² The legal issues are complex. The problem typically arises where a custodian holds the securities in intangible electronic form for the benefit of investors, and then trades in them.

⁷³ See, in particular, the UNCITRAL Model Law on Electronic Commerce, Article 6, which may be incorporated into English law in the near future.

ITEM 7: THE LAW OF BUSINESS ASSOCIATIONS

Recommended: that an examination be made of such aspects of company and partnership law as may from time to time appear to the Law Commission and to the Department of Trade and Industry to require examination.⁷⁴

The Government has launched a thorough and wide-ranging review of core company law. It is to be an open review, with wide consultation. The Government aim to publish a detailed White Paper towards the end of the present Parliament, probably in the year 2001 - with a view to legislation in the next Parliament. The Department of Trade and Industry published an initial Consultation Paper in March 1998.⁷⁵ There was a further consultation document in February 1999.⁷⁶ As part of their wider considerations, they referred to:-

our report on shareholder remedies, which contributes to the discussion of “civil sanctions”, one of the issues in the DTI’s review;⁷⁷

our work, jointly with the Scottish Law Commission, on the law relating to directors’ duties;⁷⁸ and

the review of partnership law which we are conducting with the Scottish Law Commission and which will inform the DTI’s company law review.⁷⁹

It is possible that specific remits will be made to the Law Commission and the Scottish Law Commission during the progress of the review, as the Consultation Paper indicates.⁸⁰

⁷⁴ Ie, in addition to the project on partnership law, which has been referred to the Law Commission and the Scottish Law Commission by the Minister of State at the DTI: see p 23 below.

⁷⁵ Modern Company Law for a Competitive Economy (DTI).

⁷⁶ “The Strategic Framework”, issued by the Company Law Review’s Steering Group.

⁷⁷ Para 6.3 of the DTI’s Consultation Paper.

⁷⁸ Para 3.7 of the DTI’s Consultation Paper; see p 44 below. See also “The Strategic Framework”, the consultation document issued by the Company Law Review’s Steering Group, chapter 7.

⁷⁹ Para 5.7 of the DTI’s Consultation Paper; see p 23 below. The Law Commission’s review “may well lead in the longer term to a better unlimited liability vehicle for the needs of modern business” (“The Strategic Framework”, the consultation document issued by the Company Law Review’s Steering Group, para 5.2.10).

⁸⁰ Para 7.7.

ITEM 8: ELECTRONIC COMMERCE

Recommended: that an examination be made of the current law and of proposals for domestic and international law reform with a view to assisting the development of domestic proposals and to making recommendations of additional reforms necessary to facilitate electronic commerce.

The work would focus on the sale and carriage of goods (both domestically and internationally) and on associated banking and insurance transactions. A number of methods will be used. The survey of current law will take full advantage of previous studies. It will also include model legislative and contractual provisions which have been produced by international bodies such as UNCITRAL, the International Chamber of Commerce and the European Union. There will be discussions with government departments, regulators and international law reform bodies to ascertain likely developments that have not yet been published. Discussions will be held with the end users of the law, including legal practitioners and businesses, to ascertain present or future problems not adequately addressed in the law.

ITEM 9: THIRD PARTIES' RIGHTS AGAINST INSURERS

Recommended: that the Law Commission, jointly with the Scottish Law Commission, examine the scope and operation of the Third Parties (Rights Against Insurers) Act 1930 in the light of the current law and market practices of the insurance industry.

The Third Parties (Rights Against Insurers) Act 1930 provides protection to the victims ("third parties") of negligent or wrongful acts by persons (individual or companies) who become insolvent,⁸¹ by giving them direct rights to the proceeds of liability insurance policies taken out by the insolvent persons. Such third parties can also obtain information about the insurance policies. However, it has been held that a third party's rights to take action against the insurer, and to obtain disclosure of policy information, only come into play once the insured's liability to him or her has been established. It can be wasteful in time and costs to require the third party to pursue to judgment an insolvent insured who has no interest in the outcome of proceedings. The real dispute with the insurer may be deferred and, without access to policy information, the third party may find the claim thwarted if the insurer has repudiated cover.

We published a consultation paper in 1998,⁸² and we hope to finalise our report around the end of 1999.

⁸¹ The Act sets out certain insolvency situations which are necessary for the provisions to come into effect. These include, among others, a bankruptcy order being made against an individual and a winding up order being made against a company.

⁸² (1998) Consultation Paper No 152.

ITEM 10: CRIMINAL LAW

Recommended: **(1) that an examination be made of the criminal law, with a view to codification of the main areas, including:**

- (a) all offences of dishonesty, including those arising under the Theft Acts 1968 and 1978 and the Forgery and Counterfeiting Act 1981;**
- (b) the law relating to the liability of those who assist and encourage others to commit crime;**
- (c) the law relating to consent, with particular reference to offences against the person and sexual offences; and**

(2) that an examination be made of particular areas of criminal law, evidence and procedure where issues arise in connection with the application of the Human Rights Act 1998.

*Codification of the criminal law*⁸³

The Law Commission first expressed its support for the codification⁸⁴ of the criminal law in 1968. That continues to be its overall approach, subject to the limits imposed by its resources. In 1980 the Criminal Law Sub-Committee of the Society of Public Teachers of Law generously proposed that a team drawn from its members should consider and make proposals to the Commission in relation to a criminal code. This suggestion was accepted by the Commission. Following the work of a team led by Professor Sir John Smith CBE, QC, LL.D, FBA the draft Code⁸⁵ was published in 1985 in the form of a draft Bill with commentary⁸⁶ and an introduction by the Commission.

This Code was a major piece of work, and illustrated graphically how criminal law could be made more intelligible if it was properly organised and expressed in clear and up to date language. The Code covered large areas of criminal law, but save in limited respects it did not in general seek to change the existing law. It contained extensive provisions on the general principles of liability, and a number of substantive offences including offences against the person, sexual offences, theft, fraud and related offences. The Code had the great advantage of bringing much of

⁸³ See our Annual Report for 1997, Law Com No 250, paras 1.24 - 1.26.

⁸⁴ Codification in this context is the “useful reduction of scattered enactments and judgments on a particular topic to coherent expression within a single formulation” F A R Bennion, *Statutory Interpretation* (3rd ed 1997) p466, subject to any changes considered necessary as a result of review.

⁸⁵ (1985) Law Com No 143.

⁸⁶ Parliament has recently decided that Bills should be accompanied by explanatory notes which will be much fuller than the notes on clauses previously made available to members of Parliament. In the case of a Code, these notes will form an invaluable and readily accessible guide to the provisions.

the criminal law into one enactment, removing anomalies and making sensible changes. It also put the criminal law into more up to date and simpler language.

Unfortunately it became apparent that there was no prospect of Parliamentary time to implement such a large measure. For this and other reasons, the Commission decided not to press on with the Code, but rather to review discrete topics of the criminal law. The overarching intention of this piecemeal review was and is that, if the Commission's recommendations are implemented, the resulting legislation could be welded together into a Code by the streamlined legislative procedure for consolidation bills. In pursuance of this policy the Commission has produced the reports on offences against the person and general principles,⁸⁷ involuntary manslaughter,⁸⁸ the year and a day rule,⁸⁹ money transfers,⁹⁰ rape within marriage,⁹¹ computer misuse,⁹² intoxication,⁹³ hearsay⁹⁴ and corruption.⁹⁵ Projects in progress which will ultimately assist in codification include dishonesty and evidence of previous misconduct. We envisage that there may be three or four parts to the Code: substantive law, procedure, evidence and sentencing. Work is now well-advanced⁹⁶ on a consolidation of the sentencing powers of the criminal courts, which are scattered among over a dozen statutes. The end product when enacted will effectively form a codification of sentencing legislation.

There is little disagreement about the merits and importance of codification in principle.⁹⁷ In a recent speech, Lord Bingham LCJ described the present system of criminal law as "chaotic", and littered with distinctions which had no basis in reason but were merely historical accidents. Quoting the Chairman of the Law Commission, he said that the only cure for the situation was codification.⁹⁸ The principal advantages are

it would make the criminal law clearer

it would make it easier to find the relevant law

it would make the law more consistent and coherent.

It would continue to be the case that the judges would have to develop the law through statutory interpretation. The criminal law is less likely to be found to be in

⁸⁷ (1993) Law Com No 218.

⁸⁸ (1996) Law Com No 237.

⁸⁹ (1995) Law Com No 230.

⁹⁰ (1996) Law Com No 243.

⁹¹ (1992) Law Com No 205.

⁹² (1986) Law Com No 186.

⁹³ (1995) Law Com No 229.

⁹⁴ (1997) Law Com No 245.

⁹⁵ (1998) Law Com No 248.

⁹⁶ See paras 1.23-1.25 below.

⁹⁷ England and Wales is one of the very few major jurisdictions not to have a criminal code.

⁹⁸ "A Criminal Code: Must We Wait for Ever?" [1998] Crim L R 694.

breach of the Convention if it is clarified by the process of codification and brought up to date by Parliament.⁹⁹

It will take time for the process of codification to be completed. Now that the Government has accepted in principle the part of our Offences against the Person report which dealt with offences, that part of the criminal law should soon be in statutory form and ready to be put into the Code. We hope that our recommendations on involuntary manslaughter will also be accepted and implemented. The major areas of substantive law then remaining to be reviewed for the purposes of a Code would be theft, sexual offences, murder and the law of manslaughter (so far as not covered by our report on involuntary manslaughter).

These reviews need not all be carried out by the Law Commission. We are pleased that the Home Office has itself launched a major review of the law on sexual offences, which is overdue for reform. We are already in the process of reviewing the law of dishonesty, which will deal with key aspects of the law of theft. It is of course particularly important in criminal law that thorough consultation takes place. Even so, we have strong hopes that during the currency of the Seventh Programme it will become an accepted fact that recently revised or consolidated criminal law will form the foundations of the first criminal code for England and Wales. The programme item for criminal law will enable the Law Commission to continue this work.

Offences of dishonesty

We embarked on a comprehensive review of the offences of dishonesty, including those created by the Theft Acts 1968 and 1978, for four main reasons. The first was that there was cogent judicial criticism that the law of theft was in urgent need of simplification and modernisation.¹⁰⁰ Secondly, in the period since the enactment of the Theft Acts and the Forgery and Counterfeiting Act 1981, there have been radical and multifarious technological advances. It is doubtful whether the law has kept up with these advances and whether all acts of dishonesty are effectively covered by the present legislation, because Parliament could not possibly have envisaged all the technical advances which have been made. Thirdly, there has been much criticism of the length and complexity of fraud trials and we are concerned to discover whether it might be possible to shorten and simplify trials by simplifying the law, while always ensuring that the defendant is fully protected against the danger of unfair conviction. Lastly, as part of the process of codification of the law, after our work on offences against the person, reviewing the law of dishonesty is a logical next step.

To date, we have produced reports on Conspiracy to Defraud¹⁰¹ and on Money Transfers.¹⁰² The recommendations in both those reports were implemented by

⁹⁹ *Kokkinakis v Greece* (1994) 17 EHRR 397.

¹⁰⁰ *Hallam, The Times*, 27 May 1994, per Beldam LJ.

¹⁰¹ (1994) Law Com No 228.

¹⁰² (1996) Law Com No 243.

the Theft (Amendment) Act 1996. We have also reviewed the law of corruption and produced a report.¹⁰³

In April 1998 we received a reference on the law of fraud from the Home Secretary. This is described below.¹⁰⁴

Double jeopardy

In February 1999 the Home Secretary announced that he was asking the Law Commission to consider the proposal in recommendation 38 of the Macpherson Report of the Stephen Lawrence Inquiry.¹⁰⁵ That recommendation reads:

That consideration should be given to the Court of Appeal being given power to permit prosecution after acquittal where fresh and viable evidence is presented.

This work entails the examination of the important principle that a person should not be tried for a crime of which he or she has already been acquitted; and consideration of the extent to which that principle might justifiably be modified (if at all) in the interests of convicting those guilty of crimes.

Work has started, and it is hoped to issue a consultation document in 1999.

Assisting and encouraging crime

This project is concerned with the extent to which persons who do not themselves commit a substantive offence should be subject to sanctions for assisting and encouraging others to commit offences. The present law on these topics is complicated and uncertain; the policy decisions that they raise are both important and difficult.

The Commission produced a Consultation Paper in 1993¹⁰⁶ and the responses have been analysed. Priority was given to other projects, and it was also decided to postpone consideration until the House of Lords had given their decision in *Powell and English*.¹⁰⁷ We thought, in the light of comments received, that we should wait until the consequences of this case became clear. This is a project on which we anticipate undertaking further work during the period of this Programme, as opportunity arises with the progress of other projects.

Consent

During the course of our work on offences against the person, culminating in the production of our report in 1993,¹⁰⁸ we became very conscious of the important and difficult problems of the extent to which consent should be a defence to

¹⁰³ (1998) Law Com No 248.

¹⁰⁴ See p 24 below.

¹⁰⁵ *Hansard* (HC) 24 February 1999, vol 326, col 392.

¹⁰⁶ Consultation Paper No 131.

¹⁰⁷ [1997] 3 WLR 959.

¹⁰⁸ Law Com No 218.

offences against the person. Problems in this branch of the law arise regularly and the law is unclear and undeveloped. The matter was considered by the House of Lords in *Brown*¹⁰⁹ and by the European Court of Human Rights in *Laskey Jaggard and Brown v UK*.¹¹⁰

Nevertheless, many problems remain. They have been considered in two Consultation Papers published in 1994 and 1995 (Law Com Nos 134 and 139). The responses have been analysed.

We plan to produce a first report early in 2000 to deal with the important issue of capacity to consent and associated matters. We may be able to undertake work, during the time of this Programme, on other aspects of the law of consent as opportunity arises with the progress of other projects.

Human rights

We also have in mind that law reform issues might well arise from the Human Rights Act 1998 in relation to criminal law, evidence or procedure. Under the Act the court is empowered to make a declaration of incompatibility if it concludes that a provision of English law is in contravention of the European Convention on Human Rights. We are considering how far it would be appropriate for us to study and report on any such issues. This work might be undertaken as part of this Item or as advisory work.¹¹¹ We have started on the first such project, which is on the law of bail in criminal cases.

¹⁰⁹ [1994] 1 AC 212.

¹¹⁰ (1997) 24 EHRR 39.

¹¹¹ Under s 3(1)(e) of the Law Commissions Act 1965.

(2) References to the Commission by Ministers

- 1.19 In addition to our work on Programme items, we are currently working on four references from Ministers pursuant to section 3(1)(e) of the Law Commissions Act 1965. The second and fourth of these are being conducted in consultation with the Scottish Law Commission.
- 1.20 We set out these references below in the order we received them.

EVIDENCE IN CRIMINAL CASES

Referred by: The Home Secretary

Date: April 1994

Topic: **An examination of the principles relating to the admission of hearsay evidence and evidence of previous misconduct in criminal proceedings.**

The law in respect of both these areas has been heavily and frequently criticised as being illogical, uncertain and leading to potential miscarriages of justice. Following a recommendation by the Royal Commission on Criminal Justice,¹¹² the Home Secretary invited the Law Commission to consider these matters, and to make appropriate recommendations, including, if they appear to be necessary in consequence of changes proposed to the law of evidence, changes to the trial process.

We published a consultation paper on hearsay in 1995,¹¹³ followed by a report in June 1997.¹¹⁴ All the recommendations in that report have now been accepted by the Government.¹¹⁵ We published a consultation paper on previous misconduct in 1996¹¹⁶ and hope to complete our report early in the year 2000.

PARTNERSHIP LAW

Referred by: The Minister of State at the Department of Trade and Industry

Date: November 1997

Topic: **To carry out a review of partnership law jointly with the Scottish Law Commission, with particular reference to independent legal personality, continuity of business irrespective of changes in ownership, solvent dissolution, and a model partnership agreement. The review is to be conducted under the present law of partnership, namely the Partnership Act 1890 and the Limited Partnerships Act 1907.**

¹¹² (1993) Cm 2263, Chapter 8, para 25 and Recommendation 189.

¹¹³ Consultation Paper No 138.

¹¹⁴ Law Com No 245.

¹¹⁵ Written Answer, *Hansard*, (HC) 17 December 1998, vol 595, col 184.

¹¹⁶ Consultation Paper No 141.

Our 1994 Feasibility Study on the Law Applicable to Private Companies¹¹⁷ discussed the significance of the partnership for small businesses and highlighted a number of practical problems with partnership law. Responses to the publication of our study by the Department of Trade and Industry showed widespread support for a review of partnership law right across the business, legal and academic community.

We are now engaged in a review of partnership law.¹¹⁸ The project is joint with the Scottish Law Commission. We will be considering how the law might be developed to enable it to meet the needs of the business community in the next century. Subject to further discussion with the Scottish Law Commission, we hope to complete one or more consultation papers in 1999. The first is likely to be on general partnerships under the Partnership Act 1890.¹¹⁹

FRAUD

Referred by: The Home Secretary

Date: April 1998

Topic: **To examine the law on fraud and in particular to consider whether: it is readily comprehensible to juries; is adequate for effective prosecution; is fair to potential defendants; and meets the need of developing technology including electronic means of transfer.**

We are conducting a comprehensive review of the offences of dishonesty.¹²⁰ As a part of that work, the Home Secretary invited the Commission to consider the law on fraud, to make recommendations to improve the law and, in making these recommendations, to consider whether a general offence of fraud is desirable.

It is very important that the law is fair, but also that it is clear and certain and can be deployed effectively. It is doubted whether the law of dishonesty has kept up with advances in technology. There is also concern about the length and complexity of fraud trials. We hope to publish a consultation paper in response to this reference in the first half of 1999. We also hope to publish a report at around the end of this Programme. Whether there will be a further consultation paper or report will be decided at a later date.

PART X OF THE COMPANIES ACT 1985

Referred by: The Minister of State at the Department of Trade and Industry

Date: August 1998

¹¹⁷ Department of Trade and Industry, *Company Law Review: The Law Applicable to Private Companies. A Consultative Document* (November 1994). URN 94/529.

¹¹⁸ See Item 7 above.

¹¹⁹ As part of the project we will also be considering limited partnerships under the Limited Partnerships Act 1907. This will form the basis of a separate consultation document.

¹²⁰ See Item 10(1)(a) above.

Topic: **A joint review with the Scottish Law Commission of Part X of the Companies Act 1985 with a view to considering how its provisions can be simplified and modernised. The review is also to consider the case for a statutory statement of the duties owed by directors to their company under the general law, including their fiduciary duties and the duty of care, as well as additional provisions of the Companies Acts which Commissioners consider should be examined as part of the same project.**

Part X of the Companies Act 1985 contains a variety of provisions designed to deal with situations in which a director has a conflict of interest. It covers an important and sensitive area, namely the statutory rules which regulate dealings by directors which affect their company. It is widely perceived as being extremely detailed, fragmented, excessive and, in some respects, a defective scheme for the regulation of directors. The Minister therefore requested the Law Commissions to see if the provisions of Part X could be reformed.

In addition, the DTI asked the Law Commissions to examine the case for a statutory statement of the duties owed by directors to their companies under the general law. There is a link between reform of Part X and a statutory statement, since an increased awareness of directors' duties through an accessible statement of the general law might enable Parliament to dispense with some of the detailed provisions of Part X. Two previous Companies Bills, in 1973 and 1979, which were lost due to the calling of general elections, had contained such statements.

In September 1998 we published a detailed Consultation Paper.¹²¹ The work of the review is continuing with an empirical survey of directors' views being conducted for the Commissions by the ESRC Centre for Business Research in Cambridge. Our report will be published in 1999.

The project aims to contribute to the wide review of company law launched by the DTI in March 1998.¹²² "The Law Commissions' work covers ground which is part of the area on which the Review will be making integrated proposals".¹²³

(3) Consolidation of Legislation

- 1.21 Our current and future consolidation work includes the legislation relating respectively to the armed forces, to the sentencing powers of the courts and to criminal appeals.

(i) The Armed Forces Consolidation

- 1.22 This is a very large project. The existing legislation dates mainly from the mid-1950s. The most important Acts being consolidated are the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. The Acts (which in large part re-iterated 19th century Acts) have been amended by Armed Forces Acts

¹²¹ Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties(1998) Law Com No 153; Scot Law Com No 105.

¹²² See Item 7 above.

¹²³ "The Strategic Framework", a consultation document issued by the Company Law Review's Steering Group, para 7.20.

every five years culminating in 1996. Consolidation of armed forces legislation was described as long overdue in the early 1970s by the draftsman of the Armed Forces Act 1971. The present consolidation has been given particular impetus by the views expressed in Parliament when the Bill for the Armed Forces Act 1996 was being considered.

- 1.23 One feature of the present legislation is that the Army Act and the Air Force Act are extremely similar, whereas the Naval Discipline Act, although designed to achieve very similar objectives, has for historical reasons been structured and drafted in a different way. This has led to ambiguities and anomalies. Subsequent amendments have sometimes failed to take account of lurking differences in the Acts, which required different amendments to produce the same result. One aim of the consolidation is to pare away drafting differences between the two main schemes, so that the real similarities and differences can be more readily appreciated.
- 1.24 Another feature of the present legislation is that the provisions relating to the application of the Acts to civilians have become extremely tortuous. Initially, the Acts were applied to civilians with relatively simple modifications. Over the years the modifications have become increasingly complicated. Some mistakes appear to have occurred as a result. The consolidation aims to reproduce the effect of the provisions in a more accessible form, within the constraints of the consolidation process.
- 1.25 The work on the consolidation has been affected by the Government's decision (announced in July 1998) to abolish the death penalty for offences under the Acts. This decision has been implemented by the Human Rights Act, which replaces the death penalty under the Acts with liability to life imprisonment, and requires the Acts to have effect with the necessary modifications. The consolidation will show the effect of these modifications on the text of the Acts. Some 78 separate provisions of the three main Acts have been affected by this change in the law.
- 1.26 It is hoped that it will be possible to remove some of the flaws that have been discovered in the course of the consolidation process by using the special procedure for recommendations made by the Law Commission and the Scottish Law Commission.
- 1.27 The work on the consolidation is now well advanced. Four Bills have been drafted, consisting (at the time of writing) of 494 clauses and 15 Schedules. The prospects for introducing the consolidation are affected by the need for amending legislation to be introduced first. Subject to that, it is hoped that it will be possible for the consolidation to be enacted in the 1999-2000 Session of Parliament.

(ii) The Sentencing Consolidation

- 1.28 This is also a major undertaking. This Bill will consolidate legislation relating to the powers of criminal courts to sentence and otherwise deal with convicted persons. Such powers are at present found in over a dozen Acts, ranging from the Children and Young Persons Act 1933 to the Crime and Disorder Act 1998. Statute law in this field has been re-written and expanded over the last few years, to the point where its arrangement is completely illogical, causing great practical problems for those who have to apply it. For example, a court thinking of

sentencing an offender to imprisonment must, in the most straightforward case, take into account a variety of provisions now contained in Acts of 1973, 1982, 1991 and 1997, before it can decide whether it has power to imprison and if so for how long. If it is a magistrates' court, it must also consider the sections about imprisonment in the Magistrates' Courts Act 1980. If imprisonment is not available because the offender is a juvenile, a further range of provisions about custodial sentences for young offenders, also split between different Acts, must be considered. In these circumstances, it is not surprising that, on occasions, a provision relevant to a particular sentence may be overlooked, or its relation with another provision misunderstood. Mistakes in sentencing and appeals are the result. The courts' task is not helped by the fact that many sentencing statutes have been so heavily amended that their meaning is hard to ascertain. One example (among many) is section 53 of the Children and Young Persons Act 1933, a key provision about sentencing young offenders convicted of serious crimes. The result is a body of legislation, in this most important area, that is extremely difficult to apply correctly. For some time there have been strong calls for consolidation from both the judiciary and academics.

1.29 The consolidation will bring together sentencing powers that are now scattered in different Acts and give them a rational order. For example, different community sentences, created by Acts of 1969, 1973, 1982, 1991, 1997 and 1998, will appear side by side in the consolidation. This will make it a great deal easier for the courts to review the community sentences that are available to them in a particular case and to decide which is the most appropriate. The main benefit of the consolidation will therefore be to create a single piece of legislation to which the courts and practitioners can refer, instead of a multiplicity of inter-relating Acts. The consolidation will also help understanding by re-stating more clearly provisions that have become unintelligible with age and amendment. The consolidation has been assisted by including in the Crime and Disorder Act 1998 a Schedule of pre-consolidation amendments to cure problems discovered in the course of work on the consolidation.

1.30 A considerable amount of work has been done on this project. It is likely to lead to a Bill of over 150 clauses and at least 10 Schedules, in effect a codification of sentencing legislation.¹²⁴ It may include recommendations to remove some anomalies. We intend the Bill to be ready for introduction into Parliament early in the 1999/2000 Session.

(iii) The Criminal Appeals Consolidation

1.31 This is a medium sized project. It is likely to lead to a Bill of about 50 clauses and 5 Schedules. It concerns the consolidation of provisions relating to the functions of the criminal division of the Court of Appeal. It may be extended to deal also with criminal appeals to the House of Lords. The legislation to be consolidated is largely found in the Criminal Appeal Act 1968, an Act which has been heavily amended, in particular by the Criminal Appeals Act 1995.

¹²⁴ See Item 10 above.

(4) Statute Law Revision

1.32 Work on the next Statute Law Revision Report has started, with a view to completion by 2002. As always, this will contain proposals for the repeal of public general and local Acts which are no longer of practical utility. Candidates being considered for possible repeal include:-

(a) the railway shipping Acts, a series of mainly Victorian local Acts giving railway companies the power to provide steamboat services;

(b) a series of Acts relating to trade and industry, mostly reflecting changes in business and commerce since 1945;

(c) a selection of statutory provisions relating to transport law.

(5) Advisory and other work

1.33 We shall continue to be ready to undertake appropriate advisory and other work, as we have previously.¹²⁵

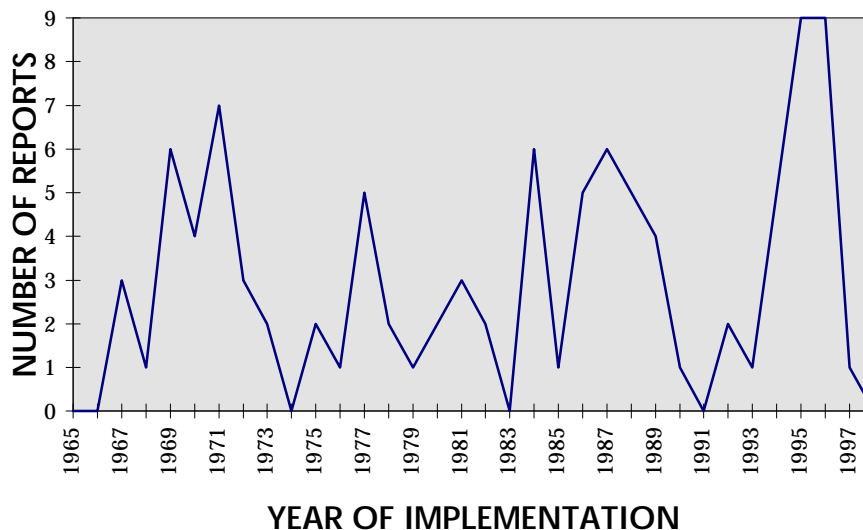
¹²⁵ See paras 3.15-3.16 below.

PART II

IMPLEMENTATION OF THE LAW COMMISSION'S REPORTS

- 2.1 The graph below shows the pattern of implementation of the Commission's law reform reports since the Commission's creation in 1965. Apart from the overall quantity of reports implemented, it demonstrates how the rate of implementation varies over time. Many reports not yet implemented will in our view ultimately be implemented when Parliamentary time allows. Not all our recommendations call for primary legislation. Legislation should not however be taken as the only measure of our success. As we explained in our last annual report, our reports have also had a significant effect in changing views on particular subjects and leading to a gradual change in the law by developments through the courts or other means.

LAW COMMISSION LAW REFORM REPORTS IMPLEMENTED DURING 1965-1998



- 2.2 Over two-thirds of our law reform reports have been implemented in full or in part.¹ The last Parliament implemented the most, largely because of a record of 9 in 1995. The Bills connected with all our reports on consolidation and statute law revision have been implemented. The table which follows shows the number

¹ That proportion would be even higher if one discounted the inevitable gap between publication of our Report and implementation by Parliament.

and rate of implementation of all our reports since our establishment in 1965 to the end of 1998, leaving aside Annual Reports, Programmes etc.

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

	IMPLEMENTABLE REPORTS PUBLISHED	REPORTS IMPLEMENTED ²	RATE OF IMPLEMENTATION OF REPORTS
LAW REFORM	144	100	69.4%
CONSOLIDATION	42	42 ³	100%
STATUTE LAW REVISION	17	17	100%
TOTAL	203 ⁴	159	78.3%

(i) The position on reports published under the Sixth Programme

2.3 During the period of the Sixth Programme we have published 15 law reform reports, with the following results to date(details are given in Part III):

Implemented	2
Accepted	2

(ii) The position on reports published before the Sixth Programme

2.4 With regard to the 32 law reform reports which had been published before the start of the Sixth Programme and on which there was no final outcome with government by then, the position to date is as follows:⁵

Implemented	12
Accepted	3 ⁶
Not accepted	7
Under consideration	6

² In this table a report is counted as implemented if (a) it is implemented in full or in part and (b) it is implemented by legislation, generally by Act of Parliament. Occasionally reports are in effect implemented by decisions of the courts; but they are not included in the table.

³ The number of consolidation Acts is very much larger, many having emanated from the Law Commission without the need for a formal report.

⁴ A few of our reports have not included draft legislation and were not intended for direct implementation. There have been 13 such reports on law reform, and one on statute law revision, bringing the number of those reports published at the end of 1998 to 157 and 18 respectively.

⁵ Four other reports were overtaken or decisions on them were deferred.

⁶ Including two which have been partly accepted in principle.

2.5 The following reports, published before the Sixth Programme, have been implemented since then, in full or in part:-

YEAR	LAW COM NO	TITLE
1983	124	Private International Law: Foreign Money Liabilities
1985	146	Private International Law: Polygamous Marriages
1988	170	Facing the Future: A Discussion Paper on the Ground for Divorce ⁷
1988	174	Landlord and Tenant Law: Privity of Contract and Estate
1988	181	Transfer of Land: Trusts of Land
1989	188	Transfer of Land: Overreaching
1990	192	Family Law: The Ground for Divorce ⁸
1992	207	Family Law: Domestic Violence
1994	224	Structured Settlements and Interim and Provisional Damages ⁹
1994	226	Administrative Law: Judicial Review and Statutory Appeals ¹⁰
1994	228	Criminal Law: Conspiracy to Defraud
1995	230	Legislating the Criminal Code: The Year and a Day Rule in Homicide

The Late Payment of Commercial Debts (Interest) Act 1998 in effect also implemented parts of the Commission's report on interest,¹¹ of which a part had been implemented previously by eg the Administration of Justice Act 1982.

⁷ Implemented but not yet fully commenced.

⁸ Implemented but not yet fully commenced.

⁹ Implemented but not yet fully in operation.

¹⁰ Only a very small proportion of this report has been implemented to date.

¹¹ Law of Contract: Report on Interest (1978) Law Com No 88.

2.6 The present position, with regard to the other reports published before the Sixth Programme and on which no decision had been made by government by then, is as follows:-

YEAR	LAW COM NO	TITLE	DESTINATION
1989	178	Compensation for Tenants' Improvements	Under consideration
1991	194	Distress for Rent	Under consideration
1992	208	Business Tenancies: A periodic review of the Landlord and Tenant Act 1954 Part II	Under consideration
1993	218	Offences Against the Person	Part accepted in principle ¹²
1994	220	Delegation by Individual Trustees	Accepted ¹³
1994	221	Termination of Tenancies Bill ¹⁴	Decision deferred pending outcome of work on termination by physical re-entry
1994	222	Binding Over	Under consideration
1994	227	Restitution: Mistakes of Law and Ultra Vires Public Authority Receipts and Payments	Part accepted in principle ¹⁵
1995	229	Criminal Code: Intoxication and Criminal Liability	Under consideration
1995	231	Mental Incapacity	Under consideration

¹² The part dealing with offences has been accepted in principle. The part dealing with general defences is still under consideration.

¹³ The Trustee Delegation Bill, which would implement this report, is currently passing through Parliament.

¹⁴ This is a draft Bill to implement the scheme for landlords' termination orders recommended in (1985) Law Com No 142.

¹⁵ Part of this report was accepted in principle but has subsequently been overtaken by the House of Lords' judgment in *Kleinwort Benson Ltd v Lincoln City Council and Others* [1998] 3 WLR 1095. The other parts are under consideration.

2.7 In our Sixth Programme of Law Reform, we noted that - of all the parts of the law on which the Law Commission had worked - landlord and tenant law had been the least successful in terms of implementation.¹⁶ For that reason we did not recommend that any new work be undertaken in this field except to complete one outstanding project¹⁷ and to undertake what was necessary to facilitate the implementation of existing reports.¹⁸ The one item of work that fell into the latter category was the Consultative Document on Termination of Tenancies by Physical Re-entry.¹⁹ This was prompted by concerns arising from our earlier proposals on termination of tenancies, and in particular the proposal to abolish peaceable re-entry. In the light of the responses that we received to that paper, we anticipate completing a revised version of the Termination of Tenancies Bill²⁰ during the first year of the Seventh Programme.

¹⁶ The reasons for this are not hard to seek. As a former Commissioner explained, “any change of substance, however minimal, is likely to alter the balance between landlords and tenants, and if you make things easier for tenants, you are by the same token probably making things harder for landlords - scarcely a technical or non-controversial or apolitical matter”: Aubrey L Diamond, “The Law Commission and Government Departments”, in Graham Zellick (ed), *The Law Commission and Law Reform* (1988) pp 23-24.

¹⁷ Landlord and Tenant Law: Responsibility for State and Condition of Property (1996) Law Com No 238.

¹⁸ (1995) Law Com No 234, p 30.

¹⁹ See Item 5 in Part III below.

²⁰ See Termination of Tenancies Bill (1994) Law Com No 221, in para 2.6 above.

2.8 The Government has announced that it has decided not to implement the following reports:

YEAR	LAW COM NO	TITLE
1981	110	Breach of Confidence
1984	127	Transfer of Land: The Law of Positive and Restrictive Covenants ²¹
1985	152	Transfer of Land: Liability for Chancel Repairs ²²
1987	168	Private International Law: Domicile ²³
1991	201	Obsolete Restrictive Covenants
1991	204	Transfer of Land: Land Mortgages ²⁴
1993	219	Contributory Negligence as a Defence in Contract

2.9 The recommendation in *Transfer of Land: Overreaching: Beneficiaries in Occupation*²⁵ that interests under bare trusts should be overreachable was implemented by the *Trusts of Land and Appointment of Trustees Act 1996*. The remainder was rejected because it did not have sufficiently wide support.²⁶

2.10 The recommendations in *Land Mortgages* were rejected because they had not been supported sufficiently widely.²⁷ However, we were invited to reconsider our proposals after the completion of our current work on land registration.²⁸ There is unlikely to be an opportunity to do this during the currency of the Seventh Programme, but we hope that it may be possible to do so at a later date.

²¹ See p 13 above for details, particularly about further work we have been asked to undertake in due course.

²² The Government acknowledged the hardship that this open-ended liability could cause, but noted that it was often reflected in the sale price and was enforced in relatively few cases. There was also a concern that, although the continuation of the liability carried with it the risk of breaching the European Convention on Human Rights, so too did its abolition: Written Answer, *Hansard* (HL) 29 July 1998, vol 592, col 202.

²³ Joint report with the Scottish Law Commission.

²⁴ See para 2.10 below.

²⁵ (1989) Law Com No 188.

²⁶ Written Answer, *Hansard* (HL) 19 March 1998, vol 587, col 213.

²⁷ *Ibid.*

²⁸ *Ibid.*

PART III

WORK COMPLETED DURING THE SIXTH PROGRAMME

Introduction

- 3.1 The period since the start of the Sixth Programme has been one of progress. There has been a steady flow of Law Commission reports and consultation papers.¹ We welcome the implementation (in whole or part) by Parliament, particularly in 1995 and 1996, of a large number of outstanding reports, and we hope that this trend will continue during the Seventh Programme. In addition, we have received the Government's response on many reports, some of which were completed several years ago. These are encouraging signs which we believe indicate that the importance of an ongoing programme of law reform is appreciated at the highest levels. We have continued to strengthen our working relationships with the Government Departments principally concerned with the results of our work.
- 3.2 There is also considerable interest in law reform outside the Commission and Government. The reform of the civil justice system, following Lord Woolf's Inquiry into *Access to Justice*,² is rightly seen as going hand in hand with reform of substantive law.³ Further, the Government's programme for constitutional change (including increased protection of human rights) gives a heightened urgency to modernisation of the law.
- 3.3 Within the Commission, there have been significant internal changes,⁴ along with the quinquennial review to which we referred in our Annual Report for 1997. The Law Commission can best achieve its purpose if it continues to adapt and change. It has to be flexible and forward-looking in its approach, in accordance with the needs of the day, while preserving its independence and the expertise built up since its creation. In summary, the Law Commission is well-placed to embark on its new Programme.
- 3.4 We now set out the specific law reform projects undertaken by the Commission from June 1995, when the Sixth Programme was launched, until the end of March 1999, under the Items in that Programme:

¹ See para 2.3 above.

² *Access to Justice, Final Report to the Lord Chancellor on the Civil Justice System in England and Wales (1996)*.

³ Such as *Limitation of Actions*.

⁴ Para A.23 below in Appendix A.

- 1: The law of contract
- 2: Damages
- 3: Limitation periods
- 4: Illegal transactions
- 5: The law of landlord and tenant
- 6: Transfer of land
- 7: The law of trusts
- 8: Family law
- 9: Company law
- 10: Third parties (rights against insurers)
- 11: Criminal law.

3.5 During this period we published 11 law reform reports and 12 consultation papers⁵ in the course of work carried out pursuant to Programme Items. We also published four reports and five consultation papers in pursuance of references received from Ministers.

3.6 We set out the present status of each report which recommended a change in the law. Only two of these reports have so far been implemented, although the Government has indicated acceptance of a further two reports, in whole or in part. We mention above⁶ the outcome to date of reports published pursuant to earlier programmes on which decisions had not been made by government by then.

3.7 We then describe the work done following specific references to us by Ministers. We have also included in this Part a description of our consolidation and statute law revision work during this period, and a mention of some other significant contributions to law reform made from within the Commission during this period.

⁵ Including one Consultative Document: Landlord and Tenant Law: Termination of Tenancies by Physical Re-entry (1998): see p 39 below.

⁶ Paras 2.4-2.10.

(a) The Sixth Programme of Law Reform

ITEM 1: THE LAW OF CONTRACT

Recommended: **that an examination of the law of contract be made, with particular reference during the period of this Programme to the completion of an examination of the law relating to contracts entered into for the benefit of third parties.**

Work on this item was completed by the publication of the following report during this period:

Year	Law Com No	Title	Destination
1996	242	Privity of Contract: Contracts for the Benefit of Third Parties	Accepted ⁷

ITEM 2: DAMAGES

Recommended: **that an examination be made of the principles governing and the effectiveness of the present remedy of damages for monetary and non-monetary loss, with particular regard to personal injury litigation. Certain matters to which specific consideration is to be given include:**

- (a) deductions and set-offs against monetary loss (excluding, unless expressly approved, the recovery provisions of the Social Security Administration Act 1992);**
- (b) awards to cover medical, nursing and other expenses incurred by the plaintiff;**
- (c) the law relating to fatal accidents, including bereavement damages;**
- (d) the principles relevant to awards for aggravated, exemplary and restitutionary damages;**
- (e) the award of damages for pain and suffering and other forms of non-pecuniary loss;**
- (f) liability for psychiatric illness, including “nervous shock”;**
- (g) the effectiveness of the present remedy of damages in multi-party litigation, examining in particular whether awards of damages should be assessed for the class as a whole and the means for determining their allocation to individual parties.**

We published the following reports during this period:

⁷ The Contracts (Rights of Third Parties) Bill, which implements the report, is currently passing through Parliament.

Year	Law Com No	Title	Destination
1997	247	Aggravated, Exemplary and Restitutionary Damages	Under consideration
1998	249	Liability for Psychiatric Illness	Under consideration

We also published the following Consultation Papers during this period:

Year	Law Com No	Title
1995	140	Damages for Personal Injury: Non-Pecuniary Loss ⁸
1996	144	Damages for Personal Injury: Medical, Nursing and Other Expenses ⁹
1997	147	Damages for Personal Injury: Collateral Benefits ¹⁰
1997	148	Claims for Wrongful Death ¹¹

Item 2(g) referred to multi-party litigation. No work has been carried out on this topic because it was addressed by Lord Woolf in his report on Access to Justice.¹² We recommend that in the light of Lord Woolf's work item 2(g) should be discontinued.

ITEM 3: LIMITATION PERIODS

***Recommended:* that there be a comprehensive review of the law on limitation periods with a view to its simplification and rationalisation.**

We published the following consultation paper during this period:

Year	Law Com No	Title
1998	151	Limitation of Actions ¹³

⁸ See Part I, Item 1.

⁹ See Part I, Item 1.

¹⁰ See Part I, Item 1.

¹¹ See Part I, Item 1.

¹² Final Report to the Lord Chancellor on the Civil Justice System in England and Wales (1996), pp 223-249.

¹³ See Part I, Item 2.

ITEM 4: ILLEGAL TRANSACTIONS

Recommended: **that an examination be made of the law on illegal transactions, including contracts and trusts.**

We published the following consultation paper during this period:

Year	Law Com No	Title
1999	154	Illegal Transactions: The Effect of Illegality on Contracts and Trusts ¹⁴

ITEM 5: THE LAW OF LANDLORD AND TENANT

Recommended: (a) **that an examination be made of the obligations of landlords and tenants in relation to the state and condition of the property let;**
(b) **that an examination be made of the law of waste so far as it applies to tenants and licensees;**
(c) **that, to facilitate the implementation of the reports which we have previously published, an examination be made of such parts of the basic law of landlord and tenant as may appear appropriate with a view to their modernisation, simplification and codification.**

We published the following report during this period:

YEAR	LAW COM NO	TITLE	DESTINATION
1996	238	Responsibility for State and Condition of Property	Under consideration

We also published the following Consultative Document¹⁵ during this period:

YEAR	TITLE
1998	Termination of Tenancies by Physical Re-entry ¹⁶

¹⁴ See Part I, Item 3.

¹⁵ This was not published as part of our numbered series of Consultation Papers.

¹⁶ This followed on from our previous work on forfeiture of tenancies and our reports on Forfeiture of Tenancies (1985) Law Com No 142; and Termination of Tenancies Bill (1994) Law Com No 221. See para 2.7 above.

ITEM 6: TRANSFER OF LAND

Recommended: **that an examination be made of the creation, transfer and extinction of rights in or over registered and unregistered land with a view to the modernisation and simplification of the law.**

We published the following reports during this period:¹⁷

YEAR	LAW COM NO	TITLE	DESTINATION
1995	235	Land Registration: First Report of the Joint Working Group	Implemented ¹⁸
1998	254	Land Registration for the Twenty-First Century: A Consultative Document	Forms the basis of work to be carried out under Item 5(a) of the Seventh Programme

¹⁷ Both reports were published jointly with H M Land Registry as the First and Second Reports of a Joint Working Group on the Implementation of the Law Commission's Third and Fourth Reports on Land Registration (1987) Law Com No 158; (1988) Law Com No 173.

¹⁸ By the Land Registration Act 1997.

ITEM 7: THE LAW OF TRUSTS

Recommended: **that an examination be made of:**

- (a) the rules against perpetuities and excessive accumulations;**
- (b) the formal requirements for the creation of trusts and interests in land and for the disposition of equitable interests;**
- (c) the personal and proprietary remedies available for the recovery of property that has been transferred in breach of trust or fiduciary duty or in circumstances which constitute a devastavit by personal representatives;**
- (d) such other aspects of the law of trusts as may from time to time appear to the examining agency and to your Department to require examination.**

We published the following report during this period:

YEAR	LAW COM NO	TITLE	DESTINATION
1998	251	The Rules against Perpetuities and Excessive Accumulations	Under consideration

We also published the following Consultation Paper during this period:

YEAR	CP NO	TITLE
1997	146	Trustees' Powers and Duties ¹⁹

It has been decided not to take forward, at least for the present, the project on the personal and proprietary remedies available for the recovery of property that has been transferred in breach of trust. No substantial work could be done on this project during the period of the Sixth Programme because of the need to devote resources to other matters which were more pressing. Nor does it seem likely that resources will permit us to undertake it in the period of the Seventh Programme either. Although this is an important area of the law in need of principled restatement and clarification, there have been a number of developments since the publication of the Sixth Programme, both judicial²⁰ and extra-judicial,²¹ which suggest that such a restatement of the law could be expected if an appropriate case reached the House of Lords or the Judicial Committee of the Privy Council. The case for *legislative* reform is therefore rather less pressing than it is in relation to other projects.

¹⁹ See Part I, Item 6(a).

²⁰ See, eg *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378; *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669; *Trustees of the Property of FC Jones & Sons v Jones* [1997] Ch 159.

²¹ See particularly, Lord Nicholls of Birkenhead, "Knowing Receipt: The Need for a New Landmark" in WR Cornish, R Nolan, J O'Sullivan & G Virgo (ed), *Restitution Past, Present and Future: Essays in Honour of Gareth Jones* (1998) p 231. There has been substantial academic literature on the issues during this period as well: see, eg Lionel D Smith, *The Law of Tracing* (1997).

ITEM 8: FAMILY LAW

Recommended: **that an examination be made (a) of the property rights of home-sharers and (b) of such other aspects of family law as may from time to time appear to require examination, with a view to the systematic reform and eventual codification of family law.**

No work under this Programme Item has been completed since 1995.²² Although we are taking forward our work on the property rights of home-sharers under Item 5 of the Seventh Programme, we are discontinuing work on family law as a distinct programme item. However, we may of course do work on family law where it is related to our other law reform work.

ITEM 9: COMPANY LAW

Recommended: **that an examination be made of such aspects of company law as may from time to time appear to the Law Commission and to the Department of Trade and Industry to require examination.**

Our work on company law has been undertaken under references from Ministers. It is summarised elsewhere.²³

ITEM 10: THIRD PARTIES (RIGHTS AGAINST INSURERS)

Recommended: **that the Law Commission, jointly with the Scottish Law Commission, examine the scope and operation of the Third Parties (Rights Against Insurers) Act 1930 in the light of the current law and market practices of the insurance industry.**

We published the following Consultation Paper during this period, jointly with the Scottish Law Commission:

YEAR	LAW COM NO	TITLE
1998	152	Third Parties (Rights Against Insurers) Act 1930 ²⁴

²² However, much has been done in relation to (a).

²³ Paras 3.8-3.9 below, and Item 7 in Part I above.

²⁴ See Part I, Item 9.

ITEM 11: CRIMINAL LAW

Recommended: **that a comprehensive examination be made of the criminal law, extending to general principles and specific topics including:**

- (a) all offences of dishonesty, including those arising under the Theft Acts 1968 and 1978 and the Forgery and Counterfeiting Act 1981;²⁵**
- (b) the law relating to offences against the person, with particular reference to the law of involuntary manslaughter;**
- (c) the law relating to consent, with particular reference to offences against the person and sexual offences;²⁶**
- (d) the law relating to the liability of those who assist and encourage others to commit crime.²⁷**

We published the following reports during this period:

YEAR	LAW COM NO	TITLE	DESTINATION
1996	237	Involuntary Manslaughter	Under consideration
1996	243	Offences of Dishonesty: Money Transfers	Theft (Amendment) Act 1996
1998	248	Corruption	Under consideration
1998	255	Consents to Prosecution	Under consideration

We also published the following Consultation Papers during this period:

YEAR	CP NO	TITLE
1995	139	Consent in the Criminal Law
1997	145	Corruption
1997	149	Consents to Prosecution
1997	150	Misuse of Trade Secrets

²⁵ See Part I, Item 10(1)(a).

²⁶ See Part I, Item 10(1)(c).

²⁷ See Part I, Item 10(1)(b).

(b) References to the Commission by Ministers

3.8 We published the following Consultation Papers during this period, pursuant to references which Ministers had made to us under section 3(1)(e) of the Law Commissions Act 1965:

YEAR	LAW COM NO	TITLE	REFERRED BY
1995	138	Hearsay and Related Topics.	The Home Secretary
1996	141	Previous Misconduct of a Defendant.	The Home Secretary
1996	142	Shareholder Remedies.	The Lord Chancellor and the President of the Board of Trade.
1997	143	The Execution of Deeds and Documents by or on behalf of Bodies Corporate.	The Lord Chancellor and the President of the Board of Trade.
1998	153	Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties. ²⁸	The Minister of State at the Department of Trade and Industry.

3.9 We also delivered the following reports to your predecessor or yourself during the period, pursuant to references by Ministers

YEAR	LAW COM NO	TITLE	DESTINATION
1996	236	Fiduciary Duties and Regulatory Rules.	Accepted ²⁹
1997	245	Evidence in Criminal Proceedings: Hearsay.	Accepted ³⁰
1997	246	Shareholder Remedies. ³¹	Under consideration. ³²
1998	253	Execution of Deeds and Documents.	Under consideration.

²⁸ Jointly with the Scottish Law Commission.

²⁹ Provisions, which the Government has said that it intends to incorporate in the Financial Services and Markets Bill, would in effect implement our report: para 5.11 of "Financial Services and Markets Bill: A Consultation Document", published in July 1998, H M Treasury.

³⁰ Written Answer, *Hansard* (HC) 17 December 1998, vol 595, col 184.

³¹ In consultation with the Scottish Law Commission.

³² See now Shareholder Remedies, a consultative document issued by the DTI (URN 98/994) (November 1998). This states that the DTI and Lord Chancellor's Department provisionally support the majority of the Law Commission's recommendations.

(c) Consolidation of Legislation

3.10 During this period, 14 Consolidation Bills were presented to Parliament.³³ Two of them included amendments to give effect to Law Commission recommendations.³⁴ Most were prepared by draftsmen at the Commission, although two were drafted at the Parliamentary Counsel Office³⁵ and some of the work on some of the others was completed after the draftsman had returned to the Parliamentary Counsel Office. The number of Consolidation Bills presented to Parliament in this period does not fully reflect the consolidation work done at the Commission during the Sixth Programme. Consolidation is always prey to changes in the legislative climate, as illustrated by the fact that at least three sizeable projects fell by the wayside in the period concerned, after substantial work had been done on them.

3.11 To give an idea of the work involved, we summarise the background to just two shorter consolidations, which happen to be those most recently completed:

(i) *Petroleum Act 1998*. This Act consolidated legislation, beginning with the Petroleum (Production) Act 1934, about searching for and extracting petroleum (which includes natural gas), authorising submarine pipelines and decommissioning pipelines and other offshore apparatus. The consolidation resolved a number of points of difficulty and also made possible the consolidation in subordinate legislation (by the Department of Trade and Industry) of a large body of model clauses for licences under the 1934 Act. Work on the consolidation began in February 1997. The Bill was introduced in December and received Royal Assent on 11 June 1998. The Act is pure consolidation, with no Law Commission recommendations.

(ii) *Audit Commission Act 1998*. The Act consolidated Part III of the Local Government Finance Act 1982, which established the Audit Commission and contained the main provisions about external audit of Local Government bodies. The legislation had been extensively amended, to apply it to Health Service bodies and to introduce new procedures, adding 15 sections to the original 20. The Act also brings together other provisions about the Audit Commission's functions, including the Citizen's Charter Provisions in Part I of the Local Government Act 1992. The Bill was introduced in January 1998 and received Royal Assent on 11 June. The Act is pure consolidation, with no Law Commission recommendations.

(d) Statute Law Revision

³³ They are listed in Appendix B.

³⁴ The Education Act 1996 and the School Inspections Act 1996: Report on the Consolidation of certain Enactments relating to Education (1996) Law Com No 240.

³⁵ The Architects Act 1997 and the Lieutenancies Act 1997.

- 3.12 Since our Sixth Programme of Law Reform was published in June 1995 we have completed three major projects. The first was the Chronological Table of Local Legislation 1797-1994³⁶ which was a four-volume work of 2681 pages which we published in 1996. This represented the culmination of over twenty years' work undertaken by members of the statute law revision team and provided for the first time an authoritative table of 26,500 local Acts detailing those which have been repealed and amended over the years.
- 3.13 The second major project was the publication in May 1998 of our Sixteenth Report on Statute Law Revision,³⁷ annexed to which was the draft Statute Law (Repeals) Bill that you introduced into the House of Lords in May 1998 and which received Royal Assent in November 1998. This has resulted in the repeal of 180 whole Acts and the removal of redundant provisions from some 200 other Acts. The repeals included a wide range of obsolete enactments including the Ecclesiastical Leases Act 1571 and a large number of nineteenth century Acts relating to tithes, inclosures and the slave trade. Large numbers of obsolete local Acts relating to Hereford and Worcester were also repealed.
- 3.14 The third major project resulted in the publication in March 1999 of the Chronological Table of Private and Personal Acts.³⁸ This is a table serving a similar purpose to the Chronological Table of Local Acts referred to above, but covering enactments dealing principally with such matters as marriage, divorce, the settlement of estates and local inclosures.

(e) Advisory and other work

- 3.15 We continue to respond to requests which Government departments make to us for advice.³⁹ The following are examples of such advisory or other work.

(a) In December 1995 the Commission's Common Law Team, at the request of the Lord Chancellor's Department and the Department of Trade and Industry, completed a feasibility investigation into possible reform of joint and several liability. The study was published as a consultation paper by the Department of Trade and Industry in February 1996.⁴⁰ This paper has been the focus of widespread public debate, and has been of particular interest and concern to the accountancy profession.⁴¹ It is important to note that the work involved in this

³⁶ Joint Report with the Scottish Law Commission: Law Com No 241; Scot Law Com No 155.

³⁷ Joint Report with the Scottish Law Commission: Law Com No 252; Scot Law Com No 166.

³⁸ Law Com No 256; Scot Law Com No 170.

³⁹ Law Commissions Act 1965, s 3(1)(e).

⁴⁰ Department of Trade and Industry Consultation Document, *Feasibility Investigation of Joint and Several Liability by the Common Law Team of the Law Commission*, HMSO, 1996.

⁴¹ The Secretary of State for Trade and Industry announced in September 1998 a package of measures regarding both regulation of the accountancy profession and concerns about the professional liability of accountants. In the course of his announcement he said he accepted the major views of our Team's study (DTI Press Notice P/98/699) and the Government had decided that fundamental reform of the general law on joint and several liability was not justified.

study necessarily delayed the timetable of work for the Sixth Programme common law projects (ie damages, limitation of actions and illegal transactions).

(b) The Commission's Property and Trust Law Team, together with the Scottish Law Commission and the Trust Law Committee, provided detailed advice to H M Treasury on the question of trustees' powers of investment. A paper drafted by the team formed the basis for a consultation document on the possible repeal of the Trustee Investments Act 1961.⁴²

(c) The Commission's Company and Commercial Law Team assisted the Department of Trade and Industry on certain technical aspects of its consultation paper on limited liability partnerships.⁴³

(d) The Government's major review of company law is referred to above.⁴⁴ Mrs Justice Arden, until January 1999 the Chairman of the Law Commission, is a member of the Steering Group which the Department of Trade and Industry has established. The Commissioner for Company and Commercial Law has served on the Review's Small Firms Sub-Group.

(e) The Criminal Law Commissioner, with the aid of one of our research assistants, took forward the proposals of the Committee on Standards in Public Life that consideration should be given to the introduction of a new statutory offence of misuse of public office. The Committee concluded its consultation paper by explaining that consideration of how such legislation might best be framed should be carried out in consultation with the Law Commissioner responsible for criminal law matters. In his advice a new statutory offence was proposed, and he is a member of an inter-departmental committee considering the terms of the new offence.

3.16 We have also referred to the work which we do following publication of our reports.⁴⁵

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

MICHAEL SAYERS, *Secretary*
10 March 1999

⁴² Investment Powers of Trustees: A Consultation Document by H M Treasury, May 1996. See also at Item 6 of Part I above.

⁴³ URN 97/597, February 1997.

⁴⁴ See Part I, Item 7, above.

⁴⁵ Appendix A at paras A.20-A.21.

APPENDIX A

THE WORK OF THE LAW COMMISSION

Introduction

- A.1 This Appendix describes the Commission and the relevance of its work today. It then summarises its aims, methods and advantages.

The Commission's role

- A.2 The Commission exists for the purpose of promoting the reform of the law,¹ and it is our duty to keep the whole of the law of England and Wales under review.² Parliament has directed us to have a view to the systematic development and reform of the law, and has drawn particular attention³ to the desirability of codification, 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.

The Commission's aims

- A.3 Much of the law in England and Wales is of high quality. However, many areas of the law need reform and modernisation to keep pace with the rapid changes in society.
- A.4 The Commission aims to make the law
- (1) fairer
 - (2) simpler
 - (3) more modern and
 - (4) cheaper to use.⁴

Fair

- A.5 It is vital that the law is fair. It must therefore be based on sound principles. A balance needs to be maintained between competing interests. The law should respect the rights⁵ of the individual. It should also enable disputes to be resolved speedily and without unnecessary litigation.

¹ Law Commissions Act 1965, s 1(1).

² Law Commissions Act 1965, s 3(1); see also *ibid*, s 1(1) and (5).

³ Law Commissions Act 1965, s 3(1).

⁴ See (1993) Law Com No 210, paras 1.13-1.18; (1994) Law Com No 223, paras 1.1-1.9; (1995) Law Com No 232, pp 1-8.

⁵ Various rights are protected in the European Convention on Human Rights, to which the Human Rights Act 1998 will give further effect in the United Kingdom.

Simple

- A.6 The law should be both simple and without unnecessary complications. Clarity includes simplicity in the language of the legislation.⁶ It should also be as clear and as easy to understand as possible. Clarity will make it more accessible and predictable to those who have to use it. Defects and anomalies should be eliminated. Laws which are obsolete or unnecessary should be repealed. Wherever possible, different laws dealing with the same subject matter should be consolidated into a single piece of legislation.

Modern

- A.7 The law should be modern, so that it accords with contemporary conditions and is relevant to current needs. It must keep pace with scientific, technological and economic development, with changes in society and with community and cultural attitudes and expectations.

Cost-effective

- A.8 If the law is to be usable and accessible it must be as efficient as possible while observing fairness. The law needs to maintain proper standards while at the same time causing as little expense as possible to all who are affected by it, whether the ordinary citizen, business or the State.

The Commission's methods

- A.9 The Commission uses the following methods to achieve its aims, developing new methods for new needs.
- A.10 The Commission's work is based on thorough and thoughtful 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. Its preliminary research seeks to establish the existing legal position here and, if appropriate, in comparable jurisdictions. It highlights the current shortcomings, and considers ways in which other jurisdictions have tried to overcome them and ways in which commentators have suggested overcoming them. Most usually we look to the law of other common law jurisdictions and we often gain considerable assistance from the reports of their Law Commissions.
- A.11 The process of law reform draws out many new legal principles in accordance with the values of society. A systematic approach to law reform is necessary to ensure consistency in the law.
- A.12 The Commission takes full account both of the European Convention on Human Rights and of European Community law. The European Convention has had a considerable effect on our work for some years and we take it into account when

⁶ A current example of work being undertaken to simplify the statute book is the Tax Law Rewrite project, being pioneered by the Inland Revenue and Parliamentary Counsel. The Law Commission raised similar issues on legislative drafting, in our Consultation Paper on Part X of the Companies Act (1998) Law Com No 153.

formulating our recommendations.⁷ We anticipate human rights being more important for our work following the implementation of the Human Rights Act 1998.⁸

- A.13 The Law Commission is conscious of the increasing significance of legal initiatives within the European Union. For example, we seek to reflect the increasing momentum towards harmonisation of legal principles⁹ within the European Union by focusing more on civil law jurisdictions when undertaking comparative studies¹⁰ in our publications. In the past the Commission has also played a significant role in the reform of private international law and, subject to resources, is available should its assistance be sought with respect to the Hague Conventions or other similar matters.
- A.14 The Commission consults extensively by issuing public consultation papers which describe the present law and its shortcomings and set out possible options for reform. The consultation process is taken very seriously and extends to a wide range of people. It covers those who have any real interest in the subject, including the legal and other professions, members of interest groups, business people, consumers of goods and services, central and local Government and the public at large. Our publications are also made available now on the Internet as they are published, and we can receive comments by e-mail.
- A.15 Some of the Commission's projects have important social or economic aspects. In these instances we use or commission empirical research of a socio-legal or economic nature to assist our work, eg on compensation for personal injury,¹¹ on the property rights of home-sharers¹² and on the duties of directors.¹³ Alternatively, we may issue questionnaires to professionals or members of the public.
- A.16 The Commission takes into account the consequences of the changes it recommends, ranging from their practical effect upon the public to their cost implications for Government and others.
- A.17 The Commission publishes reports, setting out its final conclusions and recommendations in straightforward terms.
- A.18 The Commission's Parliamentary Counsel prepare draft legislation in the form of Bills attached to almost all of its reports. This has the advantages that the policy

⁷ Offences Against the Person (1993) Law Com No 218; Binding Over (1994) Law Com No 222; Judicial Review (1994) Law Com No 226; Aggravated Damages (1997) Law Com No 247; Misuse of Trade Secrets (1997) Consultation Paper No 150; Money Transfers (1996) Law Com No 243; Corruption (1998) Law Com No 248; Land Registration (1998) Law Com No 254; Limitation of Actions (1998) Consultation Paper No 151.

⁸ See p 22 above.

⁹ There are many initiatives seeking to codify European legal principles including, for example, contract law, civil procedure, tort and financial services.

¹⁰ A statutory duty under s 3(1)(f) of the 1965 Act.

¹¹ See Item 1 in Part I above.

¹² See Item 5(c) in Part I above.

¹³ See p 25 above.

behind the recommendations is fully worked through and that the policy is focussed in its practical implications.

- A.19 While being careful to preserve its independence, the Commission has developed closer links with the main Government departments responsible for the legislation covered by the Commission's projects, both before and after publication of our reports. The Commission has regular meetings with the departments, at Ministerial and/or official level. The Commission discusses a proposed project with the department in advance, and keeps the department informed of progress during the project. This enables the Commission, for example, to be kept informed of relevant work planned by Government and of relevant research or other studies in which Government is involved.
- A.20 Once the Commission has published its report, if the department are minded to recommend to Ministers the rejection of a significant part of it, the department now generally give the Commission their reasons, and the opportunity to comment before they finalise their advice for Ministers. The department also endeavour to ensure that decisions about implementation of the report are made as soon as possible.
- A.21 The Commission has been playing an increasing part in assisting the Government, not only when it is considering the Commission's recommendations but also when the Commission's Bills are being prepared for implementation by Parliament and in support of the legislation during the legislative process. The Commission, and the draftsmen at the Commission, frequently assist the Government department responsible for the Bill. We believe that this is an important contribution which we should make as a permanent law reform body. It also helps to minimise duplication of work.
- A.22 The Commission provides high quality, relevant and timely legal advice on law reform to the Lord Chancellor and the Government.
- A.23 Several new initiatives have been taken at the Commission, often with the assistance of the Lord Chancellor's Department or others, to improve working methods. First, we have consulted widely when preparing this Programme.¹⁴ While maintaining our independence, we have sought early commitment to our projects by Government departments. We have established criteria to help us assess suggestions for new law reform projects.¹⁵ We have introduced a more sophisticated project initiation process: this helps us in planning projects. Our Programmes now summarise the work we completed during the previous Programme. Our annual reports now publish a summary set of objectives for the coming year, giving the Commission's major targets for publications and outlining its work towards longer-term aims. We are using a variety of means to ensure that our publications are more user-friendly. The quinquennial review of the Law

¹⁴ See para 1.3 above.

¹⁵ See paras 1.6-1.7 above.

Commission¹⁶ encouraged the continuation and development of such initiatives, itself suggesting some.

Work with the Scottish Law Commission and other law reform agencies

- A.24 Where law applying to the whole of Great Britain is involved, several of our projects are done in consultation or jointly with the Scottish Law Commission. There is no precisely comparable body for Northern Ireland but the Law Reform Advisory Committee advises the Secretary of State for Northern Ireland on questions of civil law and we frequently consult with them. This enables us to produce recommendations which are most likely to be suitable for the whole of the United Kingdom. This joint approach on consultation will continue to be a feature of our work to some degree even after the creation of the Scottish and Northern Ireland Parliaments.
- A.25 There are many bodies and institutions similar to ourselves across the world. We are in regular contact with a number of them. This is becoming more necessary with the increasing globalisation of law and the changes brought about by technological innovation. We draw on their experiences as part of our study of foreign laws in areas covered by our projects.

The advantages of a Law Commission

- A.26 There are considerable advantages in a separate and permanent law reform body. The main advantages are as follows.

Independence

- A.27 The recommendations of an independent law reform body have a particular value because they are not dependent on the views of the Government of the day or indeed on any other current views. In a modern and democratic society, it is desirable that non-party political law reform should be considered by an independent body. At the same time, there must be confidence in the work and standing of that body. That confidence is needed both by consultees, who must be sure that they are participating in a project of real significance, and by the Government, who are the ultimate recipients of its recommendations. The Commission is publicly accountable. It produces an annual report each year, and its reports and consultation papers are published.

Expertise

- A.28 During its 33 years the Law Commission has built up a fund of expertise, knowledge and specialist contacts in the law and in law reform. Its independence and its reputation have attracted Commissioners and staff of considerable ability. Commissioners have been appointed against the background of the statutory requirements for eligibility, as well as the special demands of law reform.
- A.29 The Commission's methods ensure that recommendations are thoroughly worked through before they reach the Government and ultimately Parliament. Opinions from all quarters are obtained and taken fully into account. In addition, expertise is

¹⁶ See para 1.29 of our Annual Report for 1997, (1998) Law Com No 250.

brought in from outside by way of consultants who assist with aspects of particular projects or conduct the empirical research which is needed on occasion. The Commission is immensely grateful for the huge amount of assistance it receives from so many quarters outside.

- A.30 A distinctive feature of the Law Commission is the presence of Parliamentary Counsel at the Commission. They draft all the Commission's law reform Bills. In addition, most consolidation Bills are drafted at the Commission.
- A.31 The Commission has used its experience to establish strong links with Government Departments, Parliament, the judiciary, all areas of the legal profession and legal academics, enabling the Commission to benefit from the pooled knowledge and skills available. The Commission cultivates this dynamic relationship and the resulting interplay of legal ideas and arguments, which bears fruit in discussion of specific issues within projects.

Purpose and Focus

- A.32 In a modern developed democracy it is part of the responsibility of good government to see that the law is brought into line with changing social need; the Commission is a permanent means towards that end. The Commission has a single central purpose: promoting the reform of the law. It benefits greatly from having a purpose which is so closely focused. It can concentrate its energy, time and resources, free from the distractions faced by Ministers and Government Departments.¹⁷ The Commission also provides a focus for law reform activity throughout England and Wales, so reducing duplication of effort. A body established for the purpose of law reform is able to undertake subjects which are broader and more closely interlinked than would be feasible for others.

Continuity

- A.33 There is great benefit in having a continuing body devoted to law reform. The Commission has acquired experience in the processes which are most useful for the complex task of law reform. In addition, projects are often linked by their subject matter, so that the knowledge and experience gained in one project benefits the Commission when working at a different time on another; and the Commission's continuity ensures a consistent approach. Systematic development and reform of the law are required by the 1965 Act. It is best achieved by a permanent body.
- A.34 Before the Commission was established, law reform had been effected by departmental and inter-departmental committees, ad hoc committees of experts, and bodies constituted to look at particular aspects of the law. This was generally done on a part-time and temporary basis, and was comparatively sparse and random. Such alternatives are worthwhile but far from satisfactory. The Law

¹⁷ "It may be your Lordships' experience that things in life do not get done unless it is somebody's job to do them. It has never been anybody's job in England, who could do it, to see that our law is in good working order and kept up-to-date." (Lord Gardiner, the then Lord Chancellor, in 1965 during the Second Reading in Parliament of the Law Commissions Bill, which led to the establishment of the two Law Commissions in Great Britain).

Commission was established to overcome such problems and because consistency of quality would be more assured than when the work was undertaken on an ad hoc basis.¹⁸

- A.35 A permanent Law Commission saves Government Departments' resources in conducting the law reform process, and in producing both recommendations and draft legislation. As a standing body, it is then able to engage in a continuing discussion with Government, over what can sometimes be some years, on the merits of its recommendations, and their strengths and weaknesses.

¹⁸ "You cannot reform the law of England in your spare time on an occasional afternoon."
(Lord Gardiner, during Second Reading of the Law Commissions Bill in 1965).

APPENDIX B

CONSOLIDATION BILLS PREPARED

DURING THE SIXTH PROGRAMME

Listed below are all the consolidation Bills which were prepared by draftsmen at the Law Commission, or in whose preparation the Commission was involved, during the period of the Sixth Programme of Law Reform. Those marked with an asterisk included recommendations of the Commission or joint recommendations of the Commission and the Scottish Law Commission.

1995

Merchant Shipping (c.21)

Shipping and Trading Interests (Protection) (c.22)

Goods Vehicles (Licensing of Operators) (c.23)

1996

Police (c.16)

Industrial Tribunals (c.17)

Employment Rights (c.18)

Education (c.56)*

School Inspections (c.57)*

1997

Architects (c.22)

Lieutenancies (c.23)

Nurses, Midwives and Health Visitors (c.24)

Justices of the Peace (c.25)

1998

Petroleum (c.17)

Audit Commission (c.18)

APPENDIX C

POSSIBLE LAW REFORM PROJECTS

A Summary of Suggestions by Consultees for the Commission's Seventh Programme

- ◆ *Mens rea* in smuggling
- ◆ involvement of law enforcement officer in crime
- ◆ rape and indecent assault
- ◆ property handled in dematerialised form
- ◆ defendants resident abroad: obtaining evidence for use in prosecution here and enforcement of penalties abroad
- ◆ privilege against self-incrimination
- ◆ rules on severing indictments
- ◆ impact of Information Technology on criminal law and process
- ◆ electronic government and commerce
- ◆ regulation of financial services
- ◆ Company Directors Disqualification Act 1986
- ◆ taking security over cash and intangibles
- ◆ aspects of company law including the Companies Act 1986, sections 651-658 of the Companies Act 1985 and *bona vacantia*
- ◆ treatment of patients at end of their lives
- ◆ restrictions on reporting court proceedings about juveniles
- ◆ limitation of liability by professionals
- ◆ consent to medical treatment for children
- ◆ ante-nuptial contracts
- ◆ treatment of body parts
- ◆ tracing
- ◆ compound interest
- ◆ actions for breach of statutory duty
- ◆ generally, Community law
- ◆ statutory interpretation
- ◆ United Nations Convention on Contracts for the International Sale of Goods 1980
- ◆ codification of environmental law
- ◆ privilege
- ◆ rights and obligations of highway users
- ◆ rescission and counter-restitution
- ◆ maternity rights
- ◆ provision for courts considering questions of *vires* under English law
- ◆ aspects of insurance law including non-disclosure, and breach of warranty, insurable interest (scope of the Life Assurance Act 1774), aspects of subrogation, aspects of causation, codification of personal lines insurance contract law, and assignment of life policies
- ◆ employment protection for individuals
- ◆ *Tracey v. Crossville Wales Ltd* [1998] AC 167 (employment law)
- ◆ severance of joint tenancies
- ◆ taxis
- ◆ compensation for blight
- ◆ contempt