



The Law Commission and Law Commission Bill Procedures

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This note briefly examines the work of the Law Commission of England and Wales (the Law Commission). The Law Commission is a statutory independent body created by the [Law Commissions Act 1965](#) to keep the law under review and to recommend reform where it is needed.

The paper provides details of reforms introduced under the [Law Commission Act 2009](#), which (amongst other things) creates a duty on the Lord Chancellor to report annually to Parliament on the extent to which Government has implemented Law Commission recommendations.

It also considers the new Law Commission Bill procedure, which is set out in detail in appendices to the note.

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1 What is the Law Commission?

The Law Commission for England and Wales (hereafter the Law Commission) is a statutory independent body created by the [Law Commissions Act 1965](#) to keep the law under review and to recommend reform where it is needed.¹ The aim of the Commission is to ensure that the law is: fair; modern; simple; and as cost-effective as possible.

There are five Commissioners. They are appointed on a full-time basis, but may on occasions undertake other work including judicial training or judicial service. The Chairman is either a High Court or an Appeal Court judge, appointed to the Commission for up to three years. The other four Commissioners are experienced judges, barristers, solicitors or teachers of law. They are appointed by the Lord Chancellor and Secretary of State for Justice for up to five years, although their appointments may be extended.

The Commissioners are supported by a Chief Executive and about 20 members of the Government Legal Service, two Parliamentary Counsel (who draft the Bills to reform and consolidate the law), and a number of research assistants, who are usually recently qualified law graduates.

1.1 The work of the Law Commission

The *Law Commissions Act 1965* requires the Commission to submit "programmes for the examination of different branches of the law" to the Lord Chancellor for his approval before undertaking new work.

Before deciding which projects to take forward, the Law Commission takes views from judges, lawyers, Government Departments, the voluntary and business sectors, and the general public.

¹ The 1965 Act also created a [Scottish Law Commission](#), which is now devolved

Details of the Law Commission's full programme of work can be found on its website.²

In the course of a Parliamentary debate in the House of Lords in May 2014, the Minister of State for Justice, Lord Faulks responded to questions as to how the Government intended to prioritise "and clear the backlog of Law Commission bills awaiting parliamentary consideration." During the course of that debate, he also provided details about the Government's approach to the Law Commission and the new Parliamentary procedures that have been used to expedite Law Commission Bills. These are discussed in more detail at Section 2 and Appendix 1 of this paper.

Lord Faulks

[...] I speak from my own experience that, in decades gone by, the Law Commission would produce valuable reports but, sadly, often little was done with them because there was not sufficient political will, time, or whatever to bring some of its sensible suggestions into force. However, in the past few years, the Law Commission, in collaboration with the Ministry of Justice, has engaged in a major exercise to enhance its profile within Whitehall and to increase the level of implementation of its work. Elements of that include the introduction of the new procedure, to which we have had reference, in your Lordships' House for the consideration of non-controversial Law Commission Bills; a statutory duty on the Lord Chancellor to report to Parliament on implementation of Law Commission work [...]; and a statutory protocol on the relationship between the Law Commission and government departments. Those actions have resulted in a more efficient and streamlined way of working for the commission. As much was recognised in the recent triennial review undertaken in respect of the Law Commission, which was reported to this House. The review identified a number of areas of particularly good practice by the Law Commission and its sponsor team at the Ministry of Justice. It commended the open and transparent approach to law reform and policy-making as an exemplar of open policy-making.

When the commission examines a particular area of law, it first establishes the scope of its work in conjunction with the relevant government department. It then consults on existing law and on proposals for change. It makes a report to the Lord Chancellor or the relevant Minister with recommendations and reasons. The report may—and often does—include a draft Bill giving effect to the commission's recommendations. The Bills are referred to as Law Commission Bills. Since the new procedure was put in place in 2010, six Bills have been through the Law Commission Bill procedure. As your Lordships will appreciate, there are practical reasons for a limit to the number of Bills that can go through the procedure in a Session, but as and when opportunities have arisen, Bills have been taken forward using that special procedure.

It is perhaps important also to stress that we use what might be described as the normal procedure wherever possible to take forward the commission's recommendations. For example, most of the recommendations in the Contempt of Court—Juror Misconduct and Internet Publications report were included in the Criminal Justice and Courts Bill introduced in Parliament in February 2014, and which is part of a carryover Bill, which will be considered by your Lordships' House during the summer or perhaps in the autumn.

The special procedure has helped to clear the previous backlog and significantly reduce delays. Bills that have benefited from this new procedure include the Trusts (Capital and Income) Act 2013—the noble Lord, Lord Beecham, will be familiar with that—the Consumer Insurance (Disclosure and Representations) Act 2012, [...], the

² Law Commission, [Our work](#)

Third Parties (Rights Against Insurers) Act 2010, the Perpetuities and Accumulations Act 2009, [...], the Inheritance and Trustees Powers Bill; and the Partnerships (Prosecution) (Scotland) Act. With the exception of the Inheritance and Trustees' Powers Bill, which is awaiting Royal Assent, all are now Acts and have made important changes to the effectiveness, efficiency and quality of the law.

In March 2010, the Lord Chancellor and the commission agreed a statutory protocol governing how government departments and the Law Commission should work together on law reform projects. We see this as a key document for ensuring a more productive relationship with the Law Commission and improved rates of implementation of Law Commission reports. The protocol covers the various stages of a project: before the commission takes the project on; at the outset of the project; during the currency of the project; and after the project. It applies both to projects set out in one of the commission's regular programmes of law reform and to projects which arise out of individual referrals made to the commission. The protocol applies only to projects which the commission takes on after the date on which the protocol was agreed, although government departments and the commission have agreed to take it into account, as far as practicable, in relation to projects which were in progress at that date. This protocol does not apply to commission proposals for consolidation or statute law revision. I commend the protocol as a thorough and efficient process. [...] The consultation for the commission's 12th programme closed on 31 October and the commission is currently reviewing the suggestions that have been made. It has submitted proposals, and the main part of its law reform will then be set for the following three years. [...]. Although the Law Commission provides invaluable assistance to any Government of whatever colour on law reform, there is no obligation on the part of a Government to bring forward proposals: it is a question of using a valuable resource. [...] The fact that the Law Commission examines a subject and comes up with proposals does not necessarily mean that it has provided the perfect answer, although very often it provides valuable assistance.

I should make some observations about the Lord Chancellor's *Report on the Implementation of Law Commission Proposals* and the duty introduced by the Law Commission Act 2009 for an annual report. [...] The report shows that a number of Law Commission proposals have taken effect:

“The Trusts (Capital and Income) Act 2013 has come into force, as have the amendments to the Companies Act 2006 which streamline the system for registering charges and securities interests granted by companies. In furtherance of the Commission's function to repeal laws that no longer serve any useful purpose”—

another important part of its work—the largest ever Statute Law (Repeals) Act, removing more than 800 Acts from the statute book, received royal assent on 31 January, 2013 and came into force immediately.³

1.2 The Law Commission Act 2009

As noted above, the [Law Commission Act 2009](#) introduced new duties on the Government. It came into force on 12 January 2010. In particular, the Act:

- creates a duty on the Lord Chancellor to report annually to Parliament on the extent to which Government has implemented Law Commission recommendations, and

³ For the full debate, see: HL Deb 12 May 2014 [c435-450GC](#)

- allows for a [Protocol between the Lord Chancellor \(on behalf of the Government\) and the Law Commission](#), which sets out how Ministers of the Crown, Government Departments and the Law Commission should work together.

The purpose of the *Law Commission Act 2009* and the Protocol is to improve the rate at which the Commission's recommendations for reform of the law are implemented by Government.

The most recent [Report on the Implementation of Law Commission Proposals](#) was published in May 2014.⁴

1.3 Consolidation Bills

The Law Commission is also responsible for Consolidation Bills. Consolidation Bills essentially seek to draw together a number different enactments (including Acts of Parliament and statutory instruments) into a single Act. The Law Commission has described how it conducts this work on its website, stating that:

Consolidation is one of our statutory functions under the Law Commissions Act 1965. We have been responsible for over 200 consolidation Bills that have become Acts since 1965. The aim is to make the statute law clearer, shorter and more accessible. A good consolidation has real practical benefits for those who work with the law (such as legal practitioners and the courts), those concerned with making it (such as Parliament and Government) and for those who need to access or use it (such as citizens and businesses).

The main purpose of a consolidation project is to draw together different enactments on a topic into a single Act. The Act usually replaces provisions in different Acts (and often statutory instruments) passed over a period of years. The structure of the original law will often have become distorted over time and so requires reforming to make the cumulative effect of successive layers of legislation intelligible. The drafter is also able to remove obsolete material, modernise language (now conventionally gender-neutral) and resolve many of the minor inconsistencies and ambiguities that creep in over the years. Changes to the general law and to EU law that affect the existing legislation also need to be considered to ensure that the Bill reproduces accurately the effect of all current law.

Consolidation work can be exceptionally difficult. The drafter must be confident that a restructured or re-worded text reflects the true effect of the current law, subject only to changes of the kind permitted by the parliamentary procedure described below.

Technical substantive changes to the law are often required in order to produce a satisfactory consolidated text. If these cannot be made under that procedure, they would have to be made by or under an ordinary Act before they could be incorporated into a consolidation Bill.⁵

There is a special Parliamentary procedure for Consolidation Bills, which is outlined in Appendix 2.

⁴ Ministry of Justice, *Report on the Implementation of Law Commission Proposals*, HC 1237, May 2014

⁵ Law Commission, [Consolidation](#)

2 Law Commission Bill Procedure

2.1 House of Commons

The House of Commons has had a special procedure for Law Commission Bills: that is bills that makes changes in the law.

The procedure has been enshrined in Standing Orders since 1995. The changes were made as a result of recommendations from the Jopling Committee on sittings of the House which reported in February 1992.⁶ They were made operational through a Sessional Order in 1994-95.⁷ The procedure was briefly outlined by Tony Newton, the Leader of the House, when the House adopted it in November 1995. He noted that “the Government would as at present, to respond to any request from the Opposition for a Second Reading debate on the Floor of the House”:

I emphasised that a different procedure applies to those Law Commission Bills that make some changes in the law rather than simply consolidate it. Those Bills will be referred automatically to a Second Reading Committee, but--this is an important point--the Government would expect, as at present, to respond to any request from the Opposition for a Second Reading debate on the Floor of the House. The opportunities for hon. Members to scrutinise the details of those Bills in Committee--this may be of particular importance to the hon. Member for Thurrock (Mr. Mackinlay)--and on Report will be exactly the same as for any other Bill.⁸

2.2 House of Lords

A trial Law Commission Bill procedure was introduced in the House of Lords in 2008. Having used the trial procedure on two occasions (namely the *Perpetuities and Accumulations Act 2009* and the *Third Parties (Rights Against Insurers) Act 2010*, the House of Lords Procedure Committee reported on its use in July 2010. The Committee agreed that the experimental procedure for dealing with Law Commission Bills should be made permanent and confirmed that “Law Commission bills originating in the work of the Scottish Law Commission will also be eligible for the new procedure”.⁹

On 7 October 2010, the House of Lords approved the Procedure Committee’s report. Before the motion was agreed, Lord Brabazon of Tara, the Chairman of Committees, briefly described the procedures for considering Law Commission Bills:

The Chairman of Committees: My Lords, a couple of years ago, in April 2008, the House agreed to new procedures for consideration of certain non-controversial Law Commission Bills on a trial basis. They involve holding the Second Reading debate in the Moses Room, with a Motion for Second Reading subsequently being taken formally in the Chamber. The Committee stage is then generally conducted by means of a Special Public Bill Committee, and then Report and Third Reading take place in the Chamber, as with other Bills.¹⁰

⁶ Select Committee on Sittings of the House, *Report*, 18 February 1992, HC 20 1991-92

⁷ [HC Deb 19 December 1994 cc1456-98](#)

⁸ HC Deb 2 November 1995 c411

⁹ Procedure Committee, *Law Commission Bills*, 27 July 2010, HL 30 2101-11

¹⁰ HL Deb 7 October 2011 c224

The Procedure Committee's February 2008 Report – *Law Commission Bills* – described the process in more detail.¹¹ The Committee's description is set out in full in Appendix 1 to this note.

2.3 What is a non-controversial Bill?

During the passage of the *Insurance Bill 2014-15*, which was before a Special Public Bill Committee in the House of Lords in 2014, the question arose as to what is a non-controversial Bill. The Minister, Lord Newby, responded:

There is, unhelpfully for a Minister, no precise definition of what does and does not constitute controversy for the purposes of a Law Commission Bill. If the Bill were to include matters that are clearly controversial, as this is, the question is whether they could reasonably be expected to prejudice its passage through either your Lordships' House or the House of Commons.¹²

¹¹ Procedure Committee, *Law Commission Bills*, 25 February 2008, HL 63 2007-08

¹² House of Lords Special Public Bill Committee, *Insurance Bill [HL]* HL Paper 81, 24 December 2014

Appendix 1: Procedures for considering Law Commission Bills

A1.1 House of Commons

The House of Commons adopted the procedure for dealing with Law Commission Bills, described in Standing Order No 59, in 1995.

Standing Order No 59 provides:

- (1) Any public bill, the main purpose of which is to give effect to proposals contained in a report by either of the Law Commissions, other than a private Member's bill or a bill to which [Standing Order No. 58 \(Consolidation bills\)](#) applies, shall, when it is set down for second reading, stand referred to a second reading committee, unless
 - (a) the House otherwise orders, or
 - (b) the bill is referred to the Scottish Grand Committee.
- (2) If a motion that a bill such as is referred to in paragraph (1) above shall no longer stand referred to a second reading committee is made by a Minister of the Crown at the commencement of public business, the question thereon shall be put forthwith.
- (3) The provisions of paragraphs (3) to (5) of [Standing Order No. 90 \(Second reading committees\)](#) shall apply to any bill referred to a second reading committee under paragraph (1) above.¹³

The provisions of paragraphs (3) to (5) of Standing Order No 90 are:

- (3) A second reading committee shall report to the House either that it recommends that the bill ought to be read a second time or that it recommends that the bill ought not to be read a second time, and in the latter case it shall have power to state its reasons for so recommending.
- (4) When a second reading committee shall have made a report to the House in respect of a bill referred to it under paragraph (2) above, the bill shall be ordered to be read a second time upon a future day.
- (5) Upon a motion being made for the second reading of a bill reported from a second reading committee, the question thereon shall be put forthwith.¹⁴

A1.2 House of Lords

The Procedure Committee's February 2008 Report – *Law Commission Bills* – described the procedures for considering Law Commission Bills in the House of Lords:

6. On introduction, the Bill would be identified as a Law Commission bill in House of Lords Business. This would be done by means of an italic note.
7. Following first reading, a motion would be tabled, with at least three sitting days' notice, to refer the Bill to a "Second Reading Committee". This would be an innovation for the Lords. It would function like a Grand Committee, with unlimited membership, and would take place in the Moses Room. Any Member could speak and there would be no time limit on the debate. However, as in Grand Committee, there would be no provision for divisions.

¹³ House of Commons, [Standing Orders of the House of Commons - Public Business 2013](#), December 2013, HC 900 2013-14

¹⁴ House of Commons, [Standing Orders of the House of Commons - Public Business 2013](#), December 2013, HC 900 2013-14

8. The Second Reading Committee would only debate the bill; it would not itself decide on the motion for second reading. As for affirmative instruments which have been debated in Grand Committee, and which still have to be approved formally by the House, the Second Reading Committee would simply report that it had considered the bill, and the motion for second reading would be taken formally in the House at a later date. It would of course be possible, in the event of serious opposition to the bill, for a vote to take place at this stage, as for any other public bill.

9. Assuming the bill had been given a second reading, the next stage would be a motion to commit the bill. The *Companion to the Standing Orders* describes Special Public Bill Committees as being particularly suited to Law Commission bills, and we recommend that this existing procedure should become the norm for the committee stage for Law Commission bills.

10. Special Public Bill Committees are empowered to take written and oral evidence within a 28-day period following their appointment. Having taken evidence, they then consider the bill clause by clause and consider amendments in the usual way.

11. Special Public Bill Committees are appointed by the House on the basis of a recommendation by the Committee of Selection, and normally have a membership of nine or ten, including the relevant minister and spokesmen of opposition parties. Members of the House who are not appointed to the Committee are free to attend public meetings, speak and move amendments, but may not vote in the event of a division.

12. Once the Special Public Bill Committee has completed its work the bill is reprinted as amended. Written and oral evidence, and a verbatim report of proceedings, are also published.

13. The remaining stages, Report and Third Reading, would follow in the usual way, on the floor of the House and on separate days. Subsequent proceedings (for instance consideration of Commons amendments) would also be exactly as for any other public bill.¹⁵

¹⁵ Procedure Committee, *Law Commission Bills*, 25 February 2008, HL 63 2007-08

Appendix 2: Procedures for considering Consolidation Bills

There is a special Parliamentary procedure for Consolidation Bills. The Law Commission explains that:

The Law Commissions and Parliament have established a special parliamentary procedure for a consolidation Bill. This enables the Bill to be scrutinised on a non-partisan basis without taking up much time on the floor of either House. The main parliamentary stage is the detailed consideration of the Bill by the Joint Committee on Consolidation etc Bills. If the Joint Committee is content with the Bill the other parliamentary stages are largely formal.

The procedure cannot be used for a Bill that alters the substantive effect of the law, unless the change is recommended by one or both of the Law Commissions. The purpose of any such change must be to produce a satisfactory consolidated text. For example a change might be necessary to enable the Bill to address similar points in the same language, despite variations in the original legislation. But the procedure is not designed for policy debates or for making changes that do not relate to issues arising from the consolidation process itself.

Changes recommended by the Law Commissions need to be approved by Parliament. This is almost invariably done by the Joint Committee.

[...]

The documents submitted to Parliament with a Consolidation Bill

The following documents will be made available to Parliament when it is considering a consolidation Bill:

Drafters Notes to the Joint Committee: These provide the Joint Committee with some background to the project, describe things the drafter has (or has not) done in consolidating the law and identify the more significant issues that have required the drafter to make a decision as to the best way of reproducing the law.

Table of Origins (previously known as a Table of Derivations): This sets out where the provisions of the Bill have come from in the legislation being consolidated. Any text that does not originate in provisions repealed by the Bill will also be indicated, such as text implementing a Law Commission recommendation.

Table of Destinations: This sets out where the repealed provisions have ended up in the Bill. It will also identify existing text that is not reproduced in the Bill with a brief reason (for example because it is spent).

A Law Commission Report relating to the Bill will also be made and submitted to Parliament if there are any Law Commission recommendations for changes to the law being consolidated. A report recommending changes affecting the law of Scotland will be made jointly with the Scottish Law Commission¹⁶

The 24th Edition of Erskine May notes that where the title of the Bill is *to consolidate with amendments to give effect to recommendations of the Law Commission*, the only amendments permissible are, first, amendments which would have been permissible if the Bill had been a pure consolidation bill and, second, amendments relating directly to the recommendations of the Law Commissions.

¹⁶ Law Commission, [Consolidation](#)

The Commons Standing Orders set out how consolidation bills are to be considered. Standing Order No 58 provides:

- (1) In this order 'a consolidation bill' means a public bill which falls to be considered by the select committee appointed under [Standing Order No. 140 \(Joint Committee on Consolidation, &c., Bills\)](#).
- (2) Notices of amendments, new clauses and new schedules to be moved in committee in respect of a consolidation bill may be received by the Clerks at the Table before the bill has been read a second time.
- (3) When a motion shall have been made for the second reading, or for the third reading, of a consolidation bill, the question thereon shall be put forthwith.
- (4) If a motion that a consolidation bill be not committed is made by a Minister of the Crown immediately after the bill has been read a second time, the motion shall not require notice and the question thereon shall be put forthwith and may be decided at any hour, though opposed.¹⁷

Standing Order No 140 sets out the composition and remit of Joint Committee on Consolidation &c Bills:

- (1) There shall be a select committee, to consist of twelve Members, to join with the committee appointed by the Lords as the Joint Committee on Consolidation, &c., Bills to consider
 - (a) consolidation bills, whether public or private;
 - (b) Statute Law Revision Bills;
 - (c) bills prepared pursuant to the Consolidation of Enactments (Procedure) Act 1949, together with any memoranda laid pursuant to that Act and any representations made with respect thereto;
 - (d) bills to consolidate any enactments with amendments to give effect to recommendations made by one or both of the Law Commissions, together with any report containing such recommendations;
 - (e) bills prepared by one or both of the Law Commissions to promote the reform of the statute law by the repeal, in accordance with Law Commission recommendations, of certain enactments which (except in so far as their effect is preserved) are no longer of practical utility, whether or not they make other provision in connection with the repeal of those enactments, together with any Law Commission report on any such bill; and
 - (f) any Order in Council laid or laid in draft before the House where an affirmative resolution is required before it is made, or is a condition of its continuance in operation, and which but for the provisions of the Northern Ireland Act 1974 would, in the opinion of the committee, have been enacted by a consolidation bill, whether public or private, or by a Statute Law Revision Bill.
- (2) The committee shall have power to send for persons, papers and records; and to sit notwithstanding any adjournment of the House.
- (3) Two shall be the quorum of the committee.

¹⁷ House of Commons, [Standing Orders of the House of Commons - Public Business 2013](#), December 2013, HC 900 2013-14

(4) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.¹⁸

¹⁸ House of Commons, *Standing Orders of the House of Commons - Public Business 2013*, December 2013, HC 900 2013-14