

Sir Bob Neill, MP
Chair of the Justice Select Committee,
House of Commons,
Westminster,
London SW1A 0AA

2 February 2023

Dear Sir Bob,

Implementation of law reform proposals: Law Commission Act 2009

I am writing to you in your capacity as Chair of the House of Commons Justice Select Committee. My concerns turn on the issue of implementation by the UK Government of law reform proposals recommended by the Law Commission for England & Wales. I am a former (now retired) member of the Commission's legal staff and presently co-lead the IALS Law Reform Project at the Institute of Advanced Legal Studies in London.

The Law Commission's sponsoring department of state is the Ministry of Justice (MoJ), under the aegis of the Lord Chancellor. Leading up to 2008 there was growing concern within the Commission that Government (principally the MoJ) was giving insufficient attention to the reports produced by the Commission and, more particularly, to the implementation of the Commission's various recommendations for law reform, notwithstanding the fact that the projects involved emanated in the main from programmes of work previously approved by the Lord Chancellor. After significant negotiation by the then Chair of the Commission (Lord Justice Etherton, as he then was) Government was persuaded to support an amendment to the Law Commissions Act 1965 (c.22) (the founding statute). The Law Commission Act 2009 (c.14) – which relates to England & Wales only – was brought forward as a private peer's Bill by Lord Lloyd of Berwick.

Section 1 of the Law Commission Act 2009 inserts a new section 3A into the 1965 Act. The provision places a statutory obligation on the Lord Chancellor (and thus the MoJ) to prepare a report to Parliament on the Law Commission proposals for law reform which have been implemented, and those which have not, during the preceding reporting year. That report must be made '[a]s soon as practicable after the end of each reporting year': section 3A(1). The reporting year runs from 12 January in each year, commencing with the year 2010-11: section 3A(3).

The last report was published by the MoJ in July 2018 for the year 2017-18. None have been prepared or laid since. The reports apply to the joint jurisdiction of England & Wales. Separate provisions apply to the Senedd in Wales for Wales-only proposals. There is no statutory provision for Scotland, although informal arrangements also apply. Law Commission proposals covered by the Act embrace both substantive law reform recommendations and proposals for consolidation and statute law revision (the latter being delivered by Statute Law (Repeals) Bills).

The absence of MoJ annual reports is evidenced by the MoJ's website entry at: <https://www.gov.uk/government/collections/implementation-of-the-law-commission-proposals>

The Law Commission itself has an obligation to produce annual reports, which it has observed consistently since 1966. As you will know, the work of the Law Commission down the years has been recognised many times by ministers and parliamentarians as both professionally thorough and essential to the rule of law.

There are three main issues of concern relating to the MoJ's interest in Law Commission reports and the department's degree of action or inaction, viz –

- As indicated above, the failure by the MoJ to produce annual reports to Parliament as required on the steps taken to implement recommendations since the last report published in July 2018 (well before the challenges of the pandemic). Reports have not been forthcoming for the years 2018-19, 2019-20, 2020-21, 2021-22, and a report is now due for 2022-23
- The continuing relatively low implementation rate for law reform proposals, notwithstanding the reporting requirement and the 2010 Protocol (both of which were designed to enhance production and implementation). The 2010 Protocol is underpinned by section 3B of the 1965 Act (as amended). The most recent Law Commission annual report – for 2021-22 – shows that the implementation rate for reports in whole or in part stood at 64% (as at 31.3.2022). This figure has not improved since 2009-10 when the figure was 68%.
- The failure by the MoJ to progress the last Statute Law (Repeals) Bill, prepared and published in draft in June 2015, which benefits from a fast-track procedure via a joint parliamentary committee. SLR and Consolidation Bills are, by their very nature, straightforward and non-controversial. This Bill was prepared jointly with the Scottish Law Commission. Details are available at: <https://www.lawcom.gov.uk/project/statute-law-repeals-20th-report/>

Against this backcloth I wonder whether the Justice Select Committee would consider raising the issue of law reform implementation with the MoJ at the next most convenient opportunity. I appreciate that the Committee's work programme is substantial and that the Government presently has many pressing issues on its plate. But the lack of adherence to a statutory obligation shows, in my submission, an element of disrespect both to Parliament and to the public whom ministers serve. It also undermines the purpose behind the changes made in 2009.

I should conclude by mentioning that last year I wrote and had published an article in the *European Journal of Law Reform* which sought to examine the issue of law reform implementation in more detail. I am enclosing with this letter a printed copy of the issue containing the article at (2021) 23(4) EJLR 405-427. Tables 1 and 3 recite the implementation statistics, and Table 4 sets out the position with regard to MoJ reports.

Thank you for taking the time to read and consider this letter. If I can be of any assistance either to you or to your committee please let me know.

Yours sincerely,

sgd. Jonathan Teasdale

J. P. Teasdale

Associate research fellow in the Sir William Dale Centre for Legislative Studies (Institute of Advanced Legal Studies, University of London) and co-leader of the IALS Law Reform Project:

<https://ials.sas.ac.uk/research/research-centres/sir-william-dale-centre-legislative-studies/ials-law-reform-project>