

*These notes refer to the Law Commission Act 2009 (c.14)
which received Royal Assent on 12 November 2009*

LAW COMMISSION ACT 2009

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Law Commission Act 2009 which received Royal Assent on 12 November 2009. They have been prepared by the Ministry of Justice, with the consent of Lord Lloyd of Berwick, the Peer in charge of the Bill in the House of Lords, and the consent of Emily Thornberry, the member in charge of the Bill in the House of Commons, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act creates a duty on the Lord Chancellor to report to Parliament on the implementation of Law Commission proposals. The Act also provides that the Lord Chancellor and Law Commission may agree a protocol about the Law Commission's work.

BACKGROUND

4. The Law Commission is constituted under section 1 of the Law Commissions Act 1965 ("the 1965 Act"). It consists of a Chairman and four other Commissioners appointed by the Lord Chancellor. The purpose of the body is to promote the reform of the law of England and Wales.
5. The functions of the Law Commission are set out in section 3 of the 1965 Act. These include keeping the law under review with a view to its systematic development and reform. The Law Commission may, pursuant to recommendations approved by the Lord Chancellor, examine particular branches of law and formulate proposals for reform. It may also undertake to consolidate areas of law and propose statute law revision, pursuant to any programme approved by the Lord Chancellor.
6. Section 3 of the 1965 Act also deals with the relationship between the Law Commission, the Lord Chancellor and Parliament. The Lord Chancellor must lay before Parliament programmes prepared by the Law Commission that he has approved and proposals for reform. The Law Commission must make an annual report to the Lord Chancellor and the Lord Chancellor must lay this report before Parliament.
7. The Scottish Law Commission and the Northern Ireland Law Commission are devolved to their respective administrations. The Act is solely directed towards the Law Commission (of England and Wales).

TERRITORIAL EXTENT

8. The Act has the same extent as the 1965 Act, that is, it extends to the whole of the UK.

COMMENTARY ON CLAUSES

Section 1: Reports on implementation of Law Commission proposals

9. **Section 1** inserts a new section 3A into the 1965 Act. The following references to subsections are references to subsections of that new section 3A.
10. *Subsection (1)* requires the Lord Chancellor to prepare an annual report, which must be laid before Parliament, on the implementation of Law Commission proposals.
11. The Lord Chancellor will also be required to set out plans for dealing with any Law Commission proposals which have not been implemented and provide the reasoning behind decisions not to implement proposals. The section provides a mechanism through which Government is to account for the way in which it has dealt with Law Commission proposals.
12. *Subsections (4) and (5)* provide that once a decision is taken not to implement a Law Commission proposal, it does not need to be addressed again by the Lord Chancellor in later reports.
13. *Subsection (6)* sets out the meaning of “Law Commission proposal” by reference to section 3(1)(c) and (d) of the 1965 Act. Such a proposal is either one formulated after the Law Commission has examined a particular branch of the law (see section 3(1)(c)) or a proposal for consolidation or statute law revision for which a draft Bill has been prepared (see section 3(1)(d)).

Section 2: Protocol about the Law Commission’s work

14. **Section 2** inserts a new section 3B into the 1965 Act. The following references to subsections are references to subsections of that new section 3B.
15. *Subsection (1)* provides that the Lord Chancellor and Law Commission may agree a protocol about the Law Commission’s work. The protocol is designed to provide a framework for the relationship between the UK Government and the Law Commission. The Lord Chancellor must lay the protocol before Parliament.
16. *Subsection (2)* sets out examples of what matters the protocol may include. For example, it may include provision about the principles and methods to be applied in deciding the work to be carried out by the Law Commission. However this list is non-exhaustive.
17. *Subsection (3)* provides that the protocol is to be reviewed from time to time and may be revised.
18. *Subsection (5)* provides that Ministers of the Crown and the Law Commission must have regard to the protocol.
19. The protocol addresses the relationship between the Law Commission and other parts of Government. It relates only to existing powers and functions, and does not create new powers or confer new functions. It is not intended to create directly enforceable rights and obligations.

COMMENCEMENT

20. The Act will come into force two months after it has received Royal Assent.

The following table sets out the dates and Hansard references for each stage of this Act’s passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	23 January 2009	Vol. 706 Col. 1851

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Stage	Date	Hansard Reference
Second Reading	24 April 2009	Vol. 706 Cols. 1734-1738
Committee	18 May 2009	Vol. 710 Col. 1204
Report and Third Reading	1 June 2009	Vol. 711 Col. 11
House of Commons		
Introduction	1 June 2009	Vol. 493
Second Reading	12 June 2009	Vol. 493 Col. 1106
Committee	8 July 2009	Vol. 495 Cols. 3-10
Report and Third Reading	16 October 2009	Vol. 497 Col. 581-603
Royal Assent	House of Lords Hansard Vol. 714 Col. 918	
	House of Commons Hansard Vol. 499 Col. 418	