

NOTE RE LAW COMMISSION'S 11TH PROGRAMME OF LAW REFORM PUBLISHED 19TH JULY 2011

Background.

On 19th July the Law Commission published its Report setting out the Eleventh Programme of Law Reform; Report No. 330; "the Report".

It should be noted that this is a separate report from that published on 8th June 2011 which formed part of the Ninth Programme of Reform, and which contained the final report and draft Bill on the reform of easements, covenants and profits a prendre; Law Com. No. 327. This was summarised in the ChBA newsletter dated 8th June 2011.

The proposed areas of reform.

The Report contains 14 diverse areas where law reform may well be desirable, ranging from Charity law, through misconduct in public office, to Taxis.

There are three proposed areas of reform in the Eleventh Programme which no doubt will be of interest to ChBA members.

1. Conservation Covenants.
2. Rights to Light.
3. Charity law – selected issues.

Taking each in turn, the proposals, in summary, will be as follows.

(1) Conservation Covenants.

- (i) The proposal and the reasons for it are at pp. 10 -11 of the Report; paras. 2.7 – 2.12.
- (ii) The proposal is to enable "conservation covenants" (eg. those designed to protect habitats, or buildings where conservation interests are key) to be created so as to be enforceable by persons, or bodies without an interest in neighbouring land. The aim is also to see if the current, rather piecemeal, categories of covenants which may be enforced under special statutory provisions (eg. Ancient Monuments and Archaeological Areas Act 1979) should be incorporated into a wider and purpose built regime.
- (iii) The case whether a "conservation covenant" should be a new form of statutory interest in land is, no doubt, a major question to be considered; see the Report at para. 2.8.
- (iv) The timetable set out at para. 2.6 of the Report states that commencement of the project is to be in 2012, with a consultation paper being published in 2013. After a period of

further review, a final report and draft Bill is envisaged in 2015.

(v) Needless to say, these dates are at present some way off. But, in the meanwhile, no doubt members may want to start thinking about the issues which arise here; particularly where specific cases throw up problems with the enforcement of certain covenants and where the present statutory regime may be inadequate.

(2) Rights to Light.

(i) This is a very “topical” subject, as no doubt members will be aware from recent High Court and Court of Appeal decisions on injunctions and damages in rights of light disputes.

(ii) The proposed matters to be considered under this part of the Programme are at p. 19 of the Report; paras. 2.65 – 2.71.

(iii) The question of what remedy should be granted in the slightly unusual context of many rights of light disputes is the crucial one. It is suggested that the key to this area of proposed reform is at para. 2.70 which states:-

“In particular, it [sc. the project] will investigate whether the current law by which rights to light are acquired and enforced provides an appropriate balance between those benefiting from the rights and those wishing to develop land in the vicinity. It will examine the interrelationship between the planning system and rights to light, and it will examine whether the remedies available to the courts are reasonable, sufficient and proportionate.”

(iv) The time table set out at para. 2.71 is similar to that under the conservation covenants project, with consultation in 2013 and a final report and draft Bill in late 2014 or early 2015.

(v) As is the case under the conservation covenants project, the dates in the timetable are some way off at present. But no doubt members will want to start marshalling any thoughts now as to how reform might be proposed, so that the consultation period will prove beneficial.

(3) Charity law – selected issues.

(i) The proposal and the reasons for it are at pp. 9 -10 of the Report; paras. 2.2 – 2.6.

(ii) The project will examine a range of issues concerning the constitution and regulation of charities and their activities, including in particular the status of charitable corporations and issues relating thereto. The content of the rest of the project will be informed by the forthcoming review of the Charities Act 2006.

(iii) The timetable set out at para. 2.6 of the Report states that commencement of the project is to be in late 2012, with a consultation paper being published in late 2013. After a period of further review, a final report and draft Bill is envisaged by late 2015.

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2nd Sept 2011

Extract from Law Commission Paper No. 330.

RIGHTS TO LIGHT

2.65 A “right to light” is an easement that gives a landowner the right to receive light through defined apertures (most commonly windows) in buildings on their land. As with all easements, a right to light can be said to benefit the property that receives the light and burden one or more other properties over which the light passes. The owners of the burdened properties cannot substantially interfere with the right – for example by erecting a building on their land in a way that blocks the light – without the consent of the benefiting owner.

2.66 Rights to light will often have been acquired by prescription; in other words, over time and without a formal grant. The enjoyment of the light through a window, without interruption or consent, for a period of 20 years will, in most cases, give rise to the right.

2.67 Rights to light are valuable: they give landowners, and their purchasers, certainty that natural light will continue to be enjoyed by their properties – increasing its utility, value and amenity. However, because they can arise by prescription, it may be that those burdened by them (and indeed those benefiting from them) are unaware of their existence.

2.68 The existence of a right to light is most often an issue where a burdened landowner develops, or plans to develop, the property. Where a development interferes, or would, if constructed, interfere with a neighbour’s right then the benefiting owner is likely to be able to prevent its construction or, in some circumstances, to have the development demolished. Where a development has taken place, but a court does not order its demolition, the court may award substantial damages to the benefiting owner instead. These remedies are available regardless of whether the development has planning permission.

2.69 We examined the general law of easements in our recent project, “Making Land Work: Easements, Covenants and Profits à Prendre”. This project will examine specific issues arising in relation to rights to light.

2.70 In particular, it will investigate whether the current law by which rights to light are acquired and enforced provides an appropriate balance between those benefiting from the rights and those wishing to develop land in the vicinity. It will examine the interrelationship between the planning system and rights to light, and it will examine whether the remedies available to the courts are reasonable, sufficient and proportionate.

2.71 We intend to commence this project in early 2012, publishing a consultation paper in early 2013. We will, in discussion with the Department for Communities and Local Government, review how the project should be taken forward at the time of publishing our preliminary proposals and after analysing the responses to our consultation. If both the Commission and Government agree that further work is appropriate, we will aim to produce a final report, with draft bill, in late 2014 or early 2015. If either party decides at an earlier stage that the project should not continue, we will produce a narrative report of our conclusions.