



## **14TH PROGRAMME OF LAW REFORM**

Issued 30 July 2021

ICAEW welcomes the opportunity to comment on the 14th Programme of Law Reform published by Law Commission on 24 March 2021, a copy of which is available from this [link](#).

We value the work of the Law Commission and agree that the reform themes it has identified are important. Simplification of the law is particularly important in the interests of rule of law and economic efficiency and merits the attention it is getting in this consultation and government's consultation on reforming the better regulation framework and related initiatives.

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**ICAEW**

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK  
T +44 (0)20 7920 8100 F +44 (0)20 7920 0547 [icaew.com](http://icaew.com)

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)  
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

This ICAEW response of 30 July 2021 is made by ICAEW **Business Law Department** following consultation with the Business Law Committee and others on the topic. The Business Law Committee includes representatives from public practice and the business community.

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## SUPPORT FOR WORK OF LAW COMMISSION

1. ICAEW is a firm supporter of the work of the Law Commission. It is important that an independent and skilled body exists to scrutinise our legal environment for the good of business and wider society; we have found the Commission's research into, and explanations of, complex areas of law to be very informative.

## CRITERIA FOR LAW REFORM PROJECTS

2. The criteria for the Law Commission agreed with the Lord Chancellor seem reasonable in general terms.
3. However, we believe that some projects should not be subject to opinion of Ministers, Whitehall and Parliament at any given time, but should be pursued on a long-term basis by successive governments (regardless of political persuasion). This applies, for instance, to simplification of law on which we comment in more detail under 'possible themes' below. It may be that an independent body such as the Law Commission could have a useful role to play in that context.

## POSSIBLE THEMES INCLUDING SIMPLIFICATION OF THE LAW

4. We agree that the suggested themes outlined in the paper are likely to drive many of the suggestions for topics. Two of them - the environment and use of technology and data - are also key themes for ICAEW's future strategy. Another ICAEW theme is building trust in the profession, and we believe that trust in business might usefully be added as a theme for Law Commission projects.
5. We agree that simplifying the law should be a key theme and note that it is one of the founding principles of the Commission. This is a constant issue raised by our members when commenting on proposed changes in law. Undue complexity makes it harder for businesses and individuals to understand the law, and so to comply with it. This undermines rule of law and justice. The costs of undue complexity may be difficult to quantify but we believe they are substantial and often not well reflected in government impact assessments. They include the costs required to obtain professional advice and the costs of bodies such as ours (which are ultimately passed on to our members and their clients) who seek to make law and regulation more comprehensible by producing explanatory guidance or the like. This is therefore a matter of high importance for the economy too.
6. We note that government this month published a consultation: **Reforming the framework for better regulation** which builds on recommendations made by the **Taskforce for Innovation, Growth and Regulatory Reform** and explains more fully the need for reform in this area and some possible approaches. We trust that government will include the Law Commission's findings from this consultation in its deliberations.
7. Initiatives on better regulation seem to come and go and do not seem to have worked. For instance, 'one in, two out', increased rather than reduced complexity in some cases. The increase in volume of regulation seems inexorable, but we question whether its quality or effectiveness has improved. We believe that there may be a role for an independent body, such as the Law Commission, to ensure that principles of good regulation are adhered to on a consistent and long-term basis (ie over successive parliaments and irrespective of party politics).

## AREAS OF REFORM PROPOSED BY LAW COMMISSION

8. We comment here only on the topics suggested by Law Commission that are of most direct relevance to us.

## Execution of Deeds

9. We would welcome a review on the law of execution of deeds. Such a review should encompass the current restrictions on who may prepare deeds; we cannot see a logic in this being a reserved legal service (when for instance, preparing contracts, rightly, is not).

## Data sharing and information law

10. We agree that there should be a review of the principles of information sharing between public bodies. This could reduce unnecessary duplication of effort and potentially lead to more efficient government, eg, in the realm of law enforcement.
11. However, it is also important that individuals (and businesses) know who has access to what information and for what purpose. This goes to the theme of trust, and it applies to government as much as business. It is also relevant to the theme of simplicity of law because government's ability to aggregate data will put it in a powerful position to enforce legal requirements in a way that might be unfair where those requirements are not easily known and understood by the population. We believe that there are already aspects of law that are beyond the comprehension of many they affect, eg, the lifetime pensions allowance. It is hard to know whether that is because government deliberately wants to confuse or otherwise, but we think it inherently undesirable for society.

## Family law - will writing

12. We note that consideration of will writing by the Law Commission has been delayed (from the 12<sup>th</sup> Law Reform Programme). We would like that to be included in the current initiatives. In our view it should be a regulated activity (but should not be an activity reserved solely to regulated lawyers).

## The UK statute book - clarity and coherence

13. As noted above, we think that simplifying and improving UK law should be a major priority for this country. This goes beyond reviewing areas of retained EU law and applies not only to statutes, but also to statutory instruments and how laws are published and amended.

## ICAEW SUGGESTIONS FOR ADDITIONAL PROJECTS

14. We have a long list of laws impacting our members (and society) that we think could be improved one way or another. We have, for instance, advocated simplification of the tax code for many years. We understand that the Law Commission has limited resource and is constrained by government priorities, so we mention below only a selection of them which appear to fit the chosen themes or which may be of general interest.

## Corporate criminal liability

15. In line with our strategic theme of increasing trust we believe that the law on corporate criminal liability should be reviewed to ensure that corporations, and relevant individuals through which they act, can be held to account where appropriate. We note that the Law Commission has launched a separate project to consider this subject, which we welcome.

## Distributable profits (dividends)

We note that BEIS has proposed possible changes to the law on dividends in its White Paper on Corporate Governance and Audit reform. While we have generally welcomed these proposed changes, we note that there remains a case for a more extensive review of the regime, potentially replacing it with something simpler. We also note that the proposed changes will result in increased regulation (and complexity of regulation). We appreciate that BEIS have decided not to pursue wider reform at this time, but we nevertheless believe that it

would be useful for the Law Commission to undertake a review of the options and make recommendations for future reference by any government.

### Regulation of legal services etc

16. We believe that regulation of some services unnecessarily restricts our members (who are regulated) from providing certain services to the detriment of competition and the public interest. This includes certain legal services, certain claims management activities and debt advice (from insolvency practitioners licensed by us). This is perhaps part of a wider theme that could merit review by the Law Commission as part of the simplification theme - the proliferation of regulators and risk of overlapping powers.

### Payment Services Regulations

17. The Payment Services Regulations strike us a prime example of EU law being transposed into UK law to poor effect. The drafting is tortured (circular at times) and it is difficult to know whether certain activities would or would not be caught. This has been of concern not only to some accounting bodies (including ICAEW), but also payroll and tax professional bodies. In our view, the FCA's guidance does not overcome these difficulties.
18. We give this as an example for review under the theme of simplification and leaving the EU.

### Residential Service Charge Accounts

19. We note that some projects in the 13th Law Reform Programme have not yet been taken forward, including Unfair Terms in Residential Leasehold.
20. In that context we note that there is no regulation of residential leasehold service charge accounts. We think this is a case where additional regulation would be merited (and might enable other related areas of regulation to be simplified). Draft regulations were prepared by government, but ultimately not taken forward. ICAEW and others have attempted to bring about consistent and fair practices through guidance to participants in the sectors but do not have jurisdiction to require compliance by all involved. We would like to see this included in the current initiative.
21. As is so often the case, there is a 'complicated legislation' issue here too. As of the date of this response, the version of the Landlord and Tenant Act 1985 available on the official on-line version of the law (<https://www.legislation.gov.uk>) is, we believe, incorrect. It appears to reflect amendments from amending legislation (in 2002 and 2008) that are not yet in force. This is just an example of a broader theme regarding shortcomings of how legislation and changes in it are made and published.