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Sir David Bean
Chairman of the Law Commission

By email: programme@lawcommission.gsi.gov.uk

20th October, 2016

Dear Sir David

13th Programme

JUSTICE welcomes the opportunity to comment on your ideas for potential projects for the 13th Programme as published on your website. We are broadly supportive of all the projects. Our focus, however, is on reform of legal systems rather than reform of substantive law, so we are only in a position to comment on two areas. These are listed below.

Inquiries

JUSTICE understands the need for efficiency and cost cutting in the present economic climate. However, we would urge the Law Commission not to overlook the important public functions that inquiries play. These functions include: providing a sense of closure or vindication for those aggrieved by decisions or events; restoring public confidence in organs of the state; and improving public services by learning from mistakes. Inquiries can also be an important part of fulfilling our obligations under international law, particularly where Articles 2 and 3 of the European Convention on Human Rights are engaged. We suggest that the crucial question which the Law Commission should focus on is not whether the law can be reformed so as to save costs but how best to deliver such public functions transparently, fairly, in such a way as to promote accountability, yet also efficiently.

We would also urge the Law Commission to include within its examination the issue of eligibility for legal aid and, more generally, how to encourage and enable the effective participation of affected members of the public in inquiries.

Codification, Streamlining and Consolidation

Though these are listed separately we deal with them together as they each touch on the issue of the accessibility of the law.

Ensuring that the law itself is available, navigable and understandable (i.e. access to the law) is indeed a fundamental requirement of the rule of law. Every person is subject to the law and should be able to understand the legal consequences of their actions. In particular, people engaged in a legal dispute without legal representation ("litigants-in-person") need to be able to access legislation in an understandable form. This is especially important following the reduction in the availability of legal aid. Yet, as the Law Commission has observed in its recent report on the form and accessibility of the law in Wales, the law in both England and Wales is fragmented, complex and difficult to understand.

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UK Section of the International Commission of Jurists

JUSTICE would generally support projects aiming to codify, streamline or consolidate the law as these would have significant benefits for the accessibility of the law:

- Such projects would provide a single, simple and authoritative legislative text governing a particular area of law. The process of consolidating numerous fragmented pieces of legislation would reduce the volume of legislation and lead to more easily navigable statutes. Citizens (including legal professionals) would not have to attempt to piece together multiple sources of rules on a particular issue in order to determine what the law is. Reducing the volume of legislation would also make it easier for the National Archives to keep the website www.legislation.gov.uk up to date, thereby ensuring that there is a freely available source of accurate legislation. This would not only reduce the volume of legislation but also gather and arrange legislation in logical order.
- Such projects would also provide opportunities for reforming the substance of the law, highlighting anomalies and inconsistencies in the present law. Reforming whilst consolidating legislation could make the law more easily understandable by simplifying complex language and removing anomalies and inconsistencies. Where the law is uncertain, these processes can clarify it. Ensuring written rules have a clearer meaning would make it easier to identify the relevant rules which govern a particular situation.

Such projects would incur benefits for both users and promulgators of legislation. Improving access to legislation will particularly assist litigants-in-person. It will be easier for people involved in a legal process to find out how the law applies to their circumstances, and what procedures they need to follow. Moreover, accessible law will make it more straightforward for charities and third sector organisations to provide simple guidance and other advice for litigants-in-person and citizens subject to legal processes. Equally, businesses and other non-legally qualified professionals will find it easier to understand how the law applies to them. This will increase certainty and facilitate confident decision making, avoiding costly mistakes. There are also benefits for Government, and the legislature. Policy makers can also look to a single coherent code or streamlined legislation in order to understand what the current legislative regime is, and this would provide a simpler starting point for developing the law.

With respect to codification generally, we would encourage the Law Commission to look more widely than the law in Wales. There are areas of law in England that would, no doubt, benefit from codification such as immigration and nationality law and the sentencing of offenders. Having something approaching a penal code to make clear the available and appropriate sentencing options for each crime will make our criminal process easier for the public to understand and its place confidence in.

Producing such codification need not be a cost intensive exercise for the State. Clearer legal provisions are in the interests of all, including law students. A project that engages universities in the codification exercise as part of undergraduate study would minimise Government resources while capturing a substantial volume of legislation.

If we can be of any further assistance, please do not hesitate to get in touch.

Yours sincerely,



Jean-Benoit Louveaux
Head of Administrative Justice