

STATES OF JERSEY

THE JERSEY LAW COMMISSION ANNUAL REPORT FOR 2015

**Presented to the States of Jersey
by the Chief Minister**

STATES GREFFE

REPORT

The Jersey Law Commission

The Jersey Law Commission was set up by a Proposition laid before the States of Jersey and approved by the Assembly of the States of Jersey on 30 July 1996. It was established to carry out research and conduct consultations with a view to:

- identifying:
 - anomalies in Jersey legislation; and
 - obsolete or redundant legislation; and
- making recommendations to simplify and modernise the law of Jersey.

A more detailed statement of the purposes for which the Jersey Law Commission was established is set out in Appendix A.

2015 is the nineteenth year during which the Jersey Law Commission has been carrying out its functions.

The Commissioners during 2015 were:

Mr Clive Chaplin, Solicitor (Chairman)

Mr Malcolm Le Boutillier, Solicitor

Professor Andrew Le Sueur, Barrister, Professor of Constitutional Justice, University of Essex

Mr Jonathan Walker, Solicitor (nominated 2015)

Advocate Barbara Corbett (nominated 2015)

Ms Claire de Than, Deputy Director, Institute of Law (nominated 2015)

Mr David Lyons, English Solicitor (retired 2015)

Mr Peter Hargreaves, Chartered Accountant (retired 2015)

The Secretary is: Cairistiona Annan (appointed 2015)

The address of the Jersey Law Commission is:

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The Jersey Law Commission

Annual Report 2015

Foreword

To the Chief Minister of the States of Jersey

I have the honour to present to you, on behalf of the Jersey Law Commission, pursuant to the Proposition to establish the Jersey Law Commission approved by the States of Jersey on 30 July 1996, our Annual Report covering the activities of the Jersey Law Commission in the calendar year 2015.

Signed for on behalf of the Jersey Law Commission

Signed: _____
Clive Chaplin, Chairman
October, 2016

PART I - 2015 Overview

Commissioners: Mr David Lyons and Mr Peter Hargreaves retired from the Jersey Law Commission. Advocate Barbara Corbett, Ms Claire de Than and Mr Jonathan Walker were selected and nominated for appointment as Commissioners of the Jersey Law Commission. The selection was made following an interview process of a number of candidates and their appointment as Commissioners for a term of five years was confirmed in January 2016 by the States of Jersey.

Premises and Support: the Institute of Law in Jersey has enabled the Jersey Law Commission to establish a permanent base for its work within the premises of the Institute of Law in St Helier and the Commissioners express their thanks to the Institute of Law for this generous provision. Ms Cairistiona Annan, the Assistant Manager at the Institute of Law, was appointed to take on the role of Secretary to the Jersey Law Commission following the retirement of Ms Juliet Karugahe as Secretary to the Jersey Law Commission. The Commissioners are grateful to Ms Juliet Karugahe for the support that she gave to the Jersey Law Commission as its Secretary.

Communications and Media: a new website for the Jersey Law Commission (<https://jerseylawcommission.org>) was launched, containing expanded information about all of the Jersey Law Commission's current projects and publications. The Commission also started to make use of social media (Twitter) to publicise consultations and progress on projects.

Consultations, Topic Reports and Projects: the issues considered by the Jersey Law Commission during 2015 and projects undertaken by it are described in Part II.

PART II – Topic Reports and other issues considered by and projects undertaken by the Jersey Law Commission during 2015

Completed Projects

A list of publications by the Jersey Law Commission from the date of its establishment in 1996 until the year of this Annual Report is set out in Appendix C

Law of Divorce

The consultation in respect of the Jersey Law Commission's consultation paper on the reform of the law of divorce in Jersey¹, published in December 2014, was completed. Formal representations in response to the consultation paper were received from practitioners in this area and a consultation seminar on the subject of the reform of the law of divorce was well attended. The Topic Practitioner also received responses to the consultation paper in individual meetings with interested persons. A Topic Report was published in October 2015².

¹ <https://jerseylawcommission.files.wordpress.com/2015/06/2015-divorce-law.pdf>

² <https://jerseylawcommission.files.wordpress.com/2015/06/2015-topic-report-on-divorce.pdf>

Current Projects

Law of Contract

In December 2002, the Jersey Law Commission published a consultation paper identifying the problems of Jersey contract law³ and reviewing the pros and cons of three general solutions: codification; incorporation of English contract law by legislation; and a suggestion that the Jersey courts could perhaps be more consistent and true to the origins of Jersey contract law.

In February 2004, a topic report⁴ by the Jersey Law Commission recommended that a statutory framework be adopted for the Jersey law of contract model incorporating, where necessary, those aspects of our existing law which are peculiar to Jersey as opposed to England and which are found to be worthy of retention.

The Jersey Law Commission's report was a significant contribution to the debate among legal practitioners, judges and academic about the future direction of Jersey contract law. The debate has continued, including at a conference organised by the Institute of Law in October 2010.

In October 2015, we were made aware that the Institute of Law in conjunction with the government of Jersey was seeking to examine the current and future position of the Jersey Law of Contract and to examine in particular what opportunities a re-statement of the Jersey law of contract could present for Jersey.

The Commissioners agreed that, as there were indications that the government of Jersey would seek to progress this topic themselves, the Jersey Law Commission would hold a watching brief and be prepared to comment on any proposals put forward by the Jersey government.

Administrative Justice and Redress

During 2015, work continued on a wide-ranging project examining the different ways in which people and business can complain about administrative decisions of public bodies. More than 20 research interviews were conducted to identify problem areas and identify possible reforms. A comprehensive analysis of relevant Jersey legislation was also carried out. In April 2016 the Jersey Law Commission published a consultation paper⁵ dealing with internal complaints procedures, tribunals, appeals to Ministers, the States of Jersey Complaints Panel, proposals for a public services ombudsman, the role of the Royal Court, and the scope for using alternative dispute resolution techniques such as mediation.

Criminal Appeals

Work began on the Criminal Appeals project in autumn 2015, investigating whether reform is necessary to the Criminal Appeals Law 1961. As part of the project, which is led by Claire de Than, the issue was debated at the Institute of Law's Conference in November 2015.

Future Projects

³ <https://jerseylawcommission.files.wordpress.com/2015/06/2002-jersey-law-of-contract.pdf>

⁴ <https://jerseylawcommission.files.wordpress.com/2015/06/2004-topic-report-on-the-law-of-contract.pdf>

⁵ https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom_improvingadminredress_final.pdf

Succession

The Jersey Law Commission is considering undertaking a review into the law relating to testate and intestate succession in relation to movable property.

Insurance

An initial review of the law relating to insurance in Jersey was undertaken and has indicated that this may be a topic that will justify a full review and consultation in due course.

PART III – The Cost of the Jersey Law Commission

Resources are made available to the Jersey Law Commission by the States of Jersey through the Office of the Chief Minister. No fixed budget is available from or agreed with the States of Jersey, but expenses likely to be incurred, including the fees of Topic Practitioners, are agreed in advance with the Chief Minister's office. Topic Practitioners are experts (often Jersey lawyers) who assist the Commission to develop proposals.

The principal costs incurred during the year covered by this Report were fees paid to the University of Essex for the use of Professor Le Sueur's time in conducting research on the administrative redress project in place of a Topic Practitioner.

Prior to her appointment as a Commissioner, fees were paid to Advocate Corbett's firm in respect of her time spent as a Topic Practitioner on the consultation paper relating to the reform of divorce law.

Pursuant to arrangements with the Chief Minister's Office, the Secretary to the Jersey Law Commission from time to time is remunerated on an agreed hourly rate basis. The total annual cost of the Secretary's services is unlikely to exceed £1,500 in any one year.

PART IV – Impact of the Jersey Law Commission

During the period covered by this report, legislation has been enacted or proposed on the following matters on which the Jersey Law Commission has issued Reports and made recommendations.

Jersey Children's Property

In the summer of 2015 the States of Jersey published a draft law entitled the Children's Property and Tuteurs (Jersey) Law. This law, inter alia, proposes to reform the law relating to the creation of tutelles, which have to be created when a minor inherits or otherwise becomes entitled to moveable property. The Jersey Law Commission submitted comments on this draft law, noting in particular that it advances a number of recommendations made by the Jersey Law Commission in its report on the law of tutelles⁶, published in 2002.

⁶ <https://jerseylawcommission.files.wordpress.com/2015/06/2002-topic-report-on-law-of-tutelles.pdf>

APPENDIX A

The role of the Jersey Law Commission

The Jersey Law Commission is a body established by the States of Jersey. It works in consultation with the Legislation Advisory Panel and the Chief Minister's Office but the Jersey Law Commission is an independent body whose reports will be made available, unaltered, to the public.

The role of the Jersey Law Commission is defined in its terms of reference, which are set out as follows in the proposition establishing it:

It shall be the duty of the Commission to identify aspects of Jersey law which it considers should be examined with a view to their development and reform, including in particular the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law, and to those ends:

- (a) to receive and consider any proposals for the reform of the law which may be made or referred to them;*
- (b) to prepare and submit to the Legislation Advisory Panel from time to time programmes for the examination of different branches of the law with a view to reform; and*
- (c) to undertake, pursuant to any such recommendations approved by the Legislation Advisory Panel, the examination of particular branches of the law, such consultation thereon as the Commission shall think fit, and the formulation by means of draft bills or otherwise of proposals for such reform.*

APPENDIX B

The working method of the Jersey Law Commission

Upon accepting a topic for review the Jersey Law Commission appoints one of its members to act as the Topic Commissioner to conduct and co-ordinate all of the Jersey Law Commission's work on that topic. On his or her recommendation the Jersey Law Commission seeks to appoint a Jersey lawyer currently practising in that field as Topic Practitioner to assist him or her generally and to ensure that the work of the Jersey Law Commission remains relevant to the issues actually arising in day-to-day practice. The Topic Commissioner is not paid by the Jersey Law Commission unless also acting as Topic Practitioner. The Jersey Law Commission typically pre-agree a fee with the Topic Practitioner who then recovers that fee direct from the States of Jersey. Any necessary legal research will usually be carried out by others: either by professional researchers under contract or by experts willing to give their time as a public service.

The procedure for the review of each topic will commonly fall into the following steps:

- 1 finding out whether there is a problem, and if there is, defining exactly what it is;
- 2 researching and summarising the existing law relevant to the topic;
- 3 suggesting how the relevant law might be changed to solve the problem;
- 4 preparing and publishing a consultation document based on items 1, 2 and 3;
- 5 receiving and discussing representations made in response to the consultation document;
- 6 preparing and publishing a final report.

APPENDIX C

Topic Reports and other issues reported on by the Jersey Law Commission

From its establishment in 1996 until the end of 2015 (the year covered by this Annual Report) the Commission has issued reports on the following:

- The Rights of Beneficiaries to Information Regarding a Trust
- The Best Evidence Rule
- The Jersey Law of Real Property
- Dobson v Public Services Committee of the States of Jersey
- Jersey Rules of Légitime
- The Law on Tutelles
- The Law of Contract
- The Jersey Law of Partnership
- The Law of Charities
- The Law on Security over Immoveable Property
- Prescription and Limitation
- Trusts of Jersey Immovable Property
- Executors and Immoveable Property
- Corroboration in Criminal Trials
- Voisinage
- Bankruptcy (Désastre) (Jersey) Law 1990 "Social Désastre"
- Divorce Law

All papers published by the Jersey Law Commission can be found on the Jersey Law Commission's website under Publications (<https://jerseylawcommission.org/reports/>)