



13th Programme of Law Reform Projects

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A Modern Framework for Disposing of the Dead

The law governing how we dispose of the bodies of our loved ones when they die is unfit for modern needs. New methods of disposal such as resomation (a process using alkaline hydrolysis to reduce the body to ash) and promession/cryomation (a process using liquid nitrogen to crystallise the body and vibration to disintegrate it into particles) which are used overseas are completely unregulated here.

The legislation governing more traditional methods of disposal – burial and cremation – is outdated, piecemeal and complex. And the law does not ensure that a person's own wishes as to the disposal of their remains are carried out, leading to disputes where family members disagree.

We want to create a single, clear, futureproof legal framework governing methods of disposing of the dead. This will bring the existing law into line with modern practices and enable safe and dignified new processes to be made available in England and Wales.

The project would also seek to provide greater certainty that a person's wishes about what happens to their body after death are respected, whilst ensuring that the public interest in this sensitive area of law is properly respected.

Administrative Review

Administrative reviews are when public bodies look again at a decision when someone complains that they have been treated unfairly by a decision. They determine the outcome of thousands of cases and can also be a prerequisite to appealing to a tribunal.

Effective internal review procedures reduce the number of appeals and promote confidence in administrative decision-making. However, recent independent reports have cast doubt on the efficacy of some of the review procedures presently in place.

Our project would seek to promote correct decisions, cheaper correction mechanisms, and public confidence in decision making. We would consider and assess the merits of the different procedures that are in place and make recommendations with a view to identifying best practice and generally improving them.

Automated Vehicles

Driverless cars and other automated vehicles are being trialled by tech experts across the world. But before technology races ahead, we need to make sure the law is on the right track.

With plans for significant public engagement, our three-year project will aim to promote public confidence in the safe use of automated vehicles, and to ensure the UK has a vibrant and world-leading automated vehicles industry.

We will undertake a far-reaching review of the regulatory framework for road-based automated vehicles, with a view to promoting their safe development and use by 2021. Our review will consider where there may be gaps or uncertainty in the law, and what reforms may be necessary to ensure the regulatory framework is fit for the future.

Electronic Signatures

Modern businesses have embraced technology to conduct transactions online and electronically.

However, there is no case law or legislation setting out explicitly that documents executed with an electronic signature satisfy statutory requirements for certain documents to be "in writing" or signed under hand.

That uncertainty is preventing businesses moving to fully electronic systems which would be faster, more efficient and could save consumers money. As a result we'll look to provide clarity around electronic signatures so that businesses can use them with confidence.

Employment Law Hearing Structures

The Civil Courts Structure Review noted that there is an “awkward area” of shared and exclusive jurisdiction in the fields of discrimination and employment law. This creates boundary issues between the courts and Employment Tribunal System which can mean both delays and that the best equipped judges aren’t appointed.

The project will seek to resolve problems caused by this allocation of jurisdiction, as well as investigating the outdated and in some respects arbitrary limits on the Employment Tribunal’s jurisdiction in the employment field.

The Ministry of Justice and the Department of Business, Energy, Innovation and Skills are in the process of reforming the Employment Tribunal system as part of modernisation work. They have indicated that there are no plans to consider radical structural change and as a result we will consider reform by other means.

Intermediated Securities

Shares and bonds are increasingly held through a system of “dematerialisation” and “intermediation”. In other words, paper certificates are being replaced by a system in which most investors “own” securities in the form of computerised credit entries. These are often held through a chain of intermediaries such as brokers and banks.

This system of intermediated shareholdings has made securities trading significantly quicker, cheaper and more convenient. But there are problems. Investors are often unable to assert voting or information rights relating to company shares they have paid for, but which are held by intermediaries. They may also be deprived of remedies they would have against the issuer of the shares if they held them directly. And it’s unclear how securities would be distributed where there is insolvency. And

Our initial work will produce a scoping study, providing a clear statement of the current law and considering the options available to government to create greater legal certainty for investors and banks.

Modernising Trust Law for a Global Britain

A trust is a way of managing assets. They are used widely by people and businesses. Trusts are a significant source of business for the City of London and many international corporations use English law and courts to govern their arrangements.

But English trust law hasn’t been reviewed since 1925. And places like Singapore and New Zealand have reformed their laws to try and secure a bigger share of the market. Other countries have come up with new trust and trust-like structures to meet demand.

The project will be a scoping study investigating English and Welsh trust law. The aim will be to see how the law can be modernised to benefit everyone. And to help ensure Global Britain’s trust services are competitive in the global market.

Museum Collections

Britain's museums are envied the world over, with a rich heritage of informing each new generation of the past. But museums face significant problems dealing with objects where acquisition records are hard to come by.

That means museums are reluctant to transfer artefacts to other museums because of the risk of breaking the law. What's more, there's no clarity as to when and how they can discard unused and unneeded items.

We want to address these problems in the law so that museum collections will be able to manage their works more effectively without having to seek expensive, specialist legal advice. Or incur unnecessary storage costs for items that have no continuing heritage value.

Registered Land and Chancel Repair Liability

Chancel repair liability is an obligation on a landowner to pay for certain repairs to a local church. It has its origins in the feudal system and is rarely enforced, but when it is the liability can be huge.

As a result, home buyers and land purchasers spend around £20 million each year on searches and insurance to help protect themselves from unexpected costs.

Our project will ensure that chancel repair liability does not bind purchasers of land, unless it is registered – and therefore visible – to purchasers. It will avoid the need for purchasers to undertake chancel repair searches, or to pay for insurance – potentially saving millions.

Residential Leasehold

There are over 4.2 million leasehold homes in England and the way a leaseholder can obtain a lease extension or purchase the freehold is extremely technical and costly. Some managing agents also charge high fees.

An alternative, Commonhold, which would avoid many of the difficulties created by leasehold, has also failed to gain any traction.

As a result, and complementing DCLG's leasehold work, we will look to simplify the law and improve fairness and transparency in leaseholds for everyone.

Simplifying the Immigration Rules

Hundreds of thousands of decisions are made annually under the Immigration Rules. Decisions which can be life changing for those seeking entry or leave to remain in the UK and their families.

But the Rules are widely criticised for being long, complex, and difficult to use. On 1 May 2017, the Rules totalled 1096 pages in length and their drafting is poor. Many

provisions are duplicated, cross references are often incomplete and some parts are incomprehensible.

Our project will not involve any substantive policy changes or any new legislation. It will instead aim redraft the Rules to make them simpler and more accessible to the user.

The review will not impact the legal basis on which a person has leave to enter or remain in the UK.

Smart Contracts

A smart contract is a self-executing contract, written in computer code, which automatically triggers various processes according to its terms.

Whilst still emerging, smart contracts are expected to increase trust, efficiency and certainty in business, changing the way that parties contract.

Our project will review the law to make sure it is sufficiently flexible to allow for automated contracts, and help keep English law as the best choice for business.

Summary Procedures in Arbitration

Users of the English arbitration process complain that, where one party submits a meritless claim or defence, it is unclear whether the Arbitration Act 1996 allows arbitrators to make a summary award without a full hearing.

We were told that arbitrators are reluctant to deploy these summary procedures for fear that their award will be overturned on a challenge or that enforcement in another jurisdiction will be refused.

This means the parties are forced to go through disclosure, exchange of evidence, written submissions and an oral hearing before an award can be made. This is time consuming and expensive.

Without this procedure, London could be at risk of losing its status as a centre for international arbitrations. So, our project would be focussed on whether the 1996 Act should be amended to give arbitrators express powers to adopt summary procedures.

Surrogacy

Surrogacy is where a woman bears a child on behalf of someone else or a couple who intend to become the child's parent or parents. Over the past 10 years the use of surrogacy has risen, but the law in the UK is outdated and unclear and requires comprehensive reform to keep up with the modern world.

The project will consider the legal parentage of children born via surrogacy, and the regulation of surrogacy more widely.

It will take account of the rights of all involved, including the question of a child's right to access information about their origin and the prevention of exploitation of children and adults.

Trust Law Arbitration

London is a world-leading centre for dispute resolution, including arbitration. However, where trust law and arbitration meet, the English and Welsh jurisdiction is lagging behind its international competitors. At present, a clause in a trust instrument requiring disputes to be arbitrated rather than taken to court is not binding.

Our project would address this gap in the justice system enabling disputes to be taken out of court and dealt with by arbitrators with specific expertise in trust matters.

It would also develop a new area of professional services business in England and Wales and help cement Britain's strong international reputation for dispute resolution.

Unfair Terms in Residential Leasehold

There are over 4.2 million leasehold homes in England but campaigners say that there are many who have potentially unfair terms in their leases. They say that there are cases where ground rents increase exponentially, high-fixed service charges and fees on assignment.

It may be possible to use unfair terms law to counter this. But at present, only the original leaseholder can effectively challenge a term under unfair terms law, and not a subsequent leaseholder who buys the property

Our project will consider whether, each time a lease is assigned, this should be seen as creating a new contract between the landlord and leaseholder. The effect would be that the court could then decide whether these were unfair terms.