

STATES OF JERSEY

THE JERSEY LAW COMMISSION ANNUAL REPORT FOR 2016

**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, in summary, to:

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

The terms of reference specified for the Jersey Law Commission in the Proposition of the States of Jersey by which it was established are set out in Appendix A.

2016 is the twentieth year during which the Jersey Law Commission has been carrying out its functions.

The Commissioners during 2016 were:

Mr Clive Chaplin, Solicitor (Chairman)

Mr Malcolm Le Boutillier, Solicitor

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

Advocate Barbara Corbett

Ms Claire de Than, Deputy Director, Institute of Law

Mr Jonathan Walker, Solicitor

The Secretary is: Cairistiona Annan

The address of the Jersey Law Commission is:

c/o Institute of Law,

Law House,

1 Seale Street,

St Helier,

Jersey,

JE2 3QG

Contents of this Report

Foreword by the Chairman

PART I	2016 Overview
PART II	Topic reports and other issues considered by and projects undertaken by the Jersey Law Commission during 2016
PART III	The cost of the Jersey Law Commission
PART IV	The impact of the Jersey Law Commission
APPENDIX A	The role of the Jersey Law Commission
APPENDIX B	The working method of the Jersey Law Commission
APPENDIX C	Topic reports and other issues reported on by the Jersey Law Commission

The Jersey Law Commission

Annual Report 2016

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 2016.

Signed for on behalf of the Jersey Law Commission

Signed: ____[C.A. CHAPLIN]____

Clive Chaplin, Chairman

19th May 2017

PART I – 2016 Overview

Commissioners: The appointment of Advocate Barbara Corbett, Ms Claire de Than and Mr Jonathan Walker as Commissioners for a term of five years was confirmed in January 2016 by the States of Jersey. Advocate Alan Binnington retired as a Commissioner during 2016.

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, is Secretary to the Jersey Law Commission.

Communications and Media: the website for the Jersey Law Commission (<https://jerseylawcommission.org>), launched in 2015, contains information about all of the Jersey Law Commission's current projects and publications. The Commission also makes 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 2016 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 2016

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

Divorce Reform

The consultation in respect of the Jersey Law Commission's consultation paper¹, *Divorce Reform*, on the reform of the law of divorce in Jersey, published in December 2014, was completed. Responses were received to the consultation paper from practitioners in the area and other interested persons, in writing, at a consultation seminar and at individual meetings with the Topic Practitioner. In the light of the responses, the Jersey Law Commission published a topic report No. 1/2015/TR², *Divorce Reform*, in October 2015. A stakeholder meeting on divorce reform was arranged on 14 April 2016, by the Community and Constitutional Affairs Department to consider the proposals in the topic report, *Divorce Reform*³, at which the Topic Practitioner was able to provide more detail about the recommendations made in that report. A new marriage law informed by, amongst other matters, the consultation carried out by the Jersey Law Commission on the reform of the law of divorce in Jersey is being prepared.

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>

³ <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 paper⁴, *The Jersey Law of Contract*, identifying the problems of Jersey contract law 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 be more consistent and true to the origins of Jersey contract law.

In February 2004, a topic report No.10⁵, *The Law of Contract*, 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 academics 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. The Jersey Law Commission saw no further proposals in respect of this project during 2016 but it continues to be prepared to comment on proposals as they are made.

Administrative Justice and Redress

Work has continued on a wide-ranging project examining the different ways in which people and businesses 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.

It was important to consult broadly and deeply throughout the project. The research interviews provided good opportunities to discuss emerging issues with key stakeholders at a formative stage of the project. In April 2016, the Jersey Law Commission published an 86-page formal consultation paper, *Improving Administrative Redress in Jersey*, No.1/2016/CP⁶. This was available on the Jersey Law Commission website, print-on-demand copies could be requested by the States Assembly Information Centre, and copies were circulated by email and social media. Fifteen formal written responses were received. In June 2016, a consultation event was held at the Institute of Law. This was publicised via email and social media. Twelve people attended and gave useful feedback on various aspects of the project. The Channel Islands Financial Ombudsman (CIFO) also kindly invited the Jersey Law Commission to discuss a

⁴ <https://jerseylawcommission.files.wordpress.com/2015/06/2002-jersey-law-of-contract.pdf>

⁵ <https://jerseylawcommission.files.wordpress.com/2015/06/2004-topic-report-on-the-law-of-contract.pdf>

⁶ https://jerseylawcommission.files.wordpress.com/2016/04/jsylawcom_improvingadminredress_final.pdf

range of issues, especially those related to proposals for a Jersey public services ombudsman, with members of the CIFO board and staff.

On 16 August 2016, the Chairman and Topic Commissioner attended a meeting of the Privileges and Procedures Committee of the States Assembly to discuss the consultation report, especially the findings and interim recommendations of the Jersey Law Commission relating to the States of Jersey Complaints Panel.

Work continues on preparation of the final report, which the Jersey Law Commission intends to publish in 2017.

Criminal Appeals

Continuing the work begun in autumn 2015 investigating whether reform is necessary to the Criminal Appeals Law 1961, a consultation scoping paper No. 2/2016/CP⁷, *Criminal Appeals Against Conviction*, was published in July 2016 and responses were received from both local stakeholders and international academics. Responses have been analysed and strongly support reform, so the next stages of the project are being determined.

Future Projects

Assisted Reproduction and Surrogacy

A scoping paper was prepared in respect of assisted reproduction and surrogacy. There is currently no law in relation to these matters in Jersey but an increasing use of both concepts. The Jersey Law Commission expects to issue a consultation paper in relation to assisted reproduction and surrogacy during 2017.

Prescription and Limitation

The Jersey Law Commission reviewed issues of Prescription and Limitation under the law of Jersey in its consultation paper No 1/2008/CP⁸, *Prescription and Limitation*, issued in March 2008. There was a limited response only to that consultation. The Jersey Law Commission has concluded that this is an area of Jersey law that it may be possible to develop and reform and proposes to consult further upon it.

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 Office of the Chief Minister. Topic Practitioners are experts (often Jersey lawyers) who assist the Commission to develop proposals.

Fees have been 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 Office of the Chief Minister, 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.

⁷ https://jerseylawcommission.files.wordpress.com/2016/07/jsylawcom_criminalappeals_cp2_2016.pdf

⁸ <https://jerseylawcommission.files.wordpress.com/2015/06/2008-prescription-and-limitation.pdf>

PART IV – The 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 contributed to research, carried out consultations, issued reports and made recommendations.

Divorce Reform

It had been hoped that the proposed legislation in respect of equal marriage would encompass the reforms proposed in the topic report No 1/2015/TR⁹, *Divorce Reform*. It is disappointing to the Jersey Law Commission that it seems that this is unlikely to be the case. The new marriage law as proposed appears to be inconsistent in the provisions for same-sex and opposite sex marriage with the corollary risk of creating anomalies and opening the door to challenges on the basis of Jersey's human rights legislation.

Corroboration

In 2008 and 2009 the Jersey Law Commission recommended that the mandatory requirement of corroboration warnings in criminal offences trials should be abolished. The Commission's consultation paper and topic report No. 2/2009/TR¹⁰, *Corroboration of Evidence in Criminal Trials*, were cited in the Criminal Justice (Miscellaneous Provisions) (No.3) Law 2012, which adopted the recommendations of the Jersey Law Commission. Further relevant work is being undertaken on the modernisation of sexual offences law, with a draft law imminent.

Rights Of Beneficiaries

The 1998 topic report No 1/1998/TR¹¹, *The rights of beneficiaries to information regarding a trust*, made recommendations to deal with an ambiguity in the then Article 25 (now Article 29) of the Trusts Law (Jersey) 1984 concerning whether a trust instrument may expressly limit beneficiaries' rights to information. The Chief Minister's Department issued a consultation paper in April 2016 that, amongst other matters, quoted the Jersey Law Commission's topic report and proposals; the subsequent work is continuing.

Law Of Charities

The Jersey Law Commission published a consultation paper in 2004 on the law of charities, *The Jersey Law of Charities*¹², and a revised consultation paper on the law of charities in 2006¹³. A topic report No 1/2009/TR¹⁴, *The Jersey Law of Charities*, was published in 2009. The 2004 consultation paper proposed reform to the doctrine of *cy-pres*, and this was enacted by the Trusts (Amendment No. 4) (Jersey) Law. The 2009 topic report recommended a suite of reforms that included the introduction of a new Jersey Charities Law and a Jersey Charities Commission, definitions of the core concepts of public benefit and charitable purpose. These reforms were reflected in the Charities Law 2014, which is in the process of being brought into force in stages.

⁹ <https://jerseylawcommission.files.wordpress.com/2015/06/2015-topic-report-on-divorce.pdf>

¹⁰ <https://jerseylawcommission.files.wordpress.com/2015/06/2009-topic-report-on-corroboration-of-evidence-in-criminal-trials.pdf>

¹¹ <https://jerseylawcommission.files.wordpress.com/2015/06/1998-topic-report-on-rights-of-beneficiaries-to-information-regarding-a-trust.pdf>

¹² <https://jerseylawcommission.files.wordpress.com/2015/06/2004-jersey-law-of-charities.pdf>

¹³ <https://jerseylawcommission.files.wordpress.com/2015/06/2006-jersey-law-of-charities-revised.pdf>

¹⁴ <https://jerseylawcommission.files.wordpress.com/2015/06/2009-topic-report-on-jersey-law-of-charities.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 Office of the Chief Minister but the Jersey Law Commission is an independent body whose reports will be made available, in the form determined by the Jersey Law Commission, to the public.

The role of the Jersey Law Commission is defined in its terms of reference, set out as follows in the Proposition of the States of Jersey by which the Jersey Law Commission was established:

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 expert support from lawyers practising in the field or academics learned in the subject 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 arising in relation to the topic. The Topic Commissioner is not paid in respect of the work undertaken for the Jersey Law Commission unless also acting as Topic Practitioner. The Jersey Law Commission typically agree a fee with the Topic Practitioner who then recovers that fee direct from the States of Jersey. Requisite legal research may 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 2016 (the year covered by this Annual Report) the Commission has issued the following reports. All papers published by the Jersey Law Commission can be found on the Jersey Law Commission's website under Publications (<https://jerseylawcommission.org/reports/>)

Consultation papers (seeking input into the reform process)

- 2016 Scoping consultation report on Criminal Appeals Against Conviction
- 2016 Improving Administrative Redress In Jersey
- 2015 Divorce Reform
- 2010 Voisinage
- 2010 Bankruptcy (Désastre) (Jersey) Law 1990 "Social Désastre"
- 2009 Topic report on Corroboration Of Evidence In Criminal Trials
- 2008 Prescription And Limitation
- 2008 The Jersey Law Of Partnership
- 2006 The Prohibition On Trusts Applying Directly To Jersey Immovable Property
- 2006 Security On Immoveable Property
- 2006 The Jersey Law Of Charities (revised)
- 2004 The Jersey Law Of Charities
- 2002 The Jersey Law Of Real Property
- 2002 The Jersey Law Of Contract
- 2002 The Law Of Tutelles
- 1999 Best Evidence Rule In Civil Proceedings
- 1998 Dégrèvement
- 1998 The Rights Of Beneficiaries To Information Regarding A Trust

Final topic reports (containing recommendations)

- 2015 Topic report on Divorce Reform
- 2011 Topic report on Voisinage
- 2011 Topic report on Bankruptcy (Désastre) (Jersey) Law 1990 "Social Désastre"
- 2010 Topic report on The Jersey Law Of Partnership
- 2009 Topic report on Corroboration Of Evidence In Criminal Trials
- 2009 Topic report on The Jersey Law Of Charities
- 2008 Topic report on Security On Immoveable Property
- 2004 Topic report on The Law of Contract

2002 Topic report on The Best Evidence Rule In Civil Proceedings

2002 Topic report on The Law Of Tutelles

1999 Topic report on Dégrèvement

1998 Topic report on The Rights Of Beneficiaries To Information Regarding A Trust

Contributions to JGLR (and other publications) during 2016

- Does Jersey Need a Criminal Code? (Claire de Than, JGLR, June 2016)
- Divorce Law Reform (Barbara Corbett, JGLR, October 2016)