



**Law
Commission**
Reforming the law

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The appointment of a Law Commissioner (Public Law and the law of Wales) 2023/4

Dear Colleague,

The Law Commission will be seeking to recruit a new Commissioner. The appointment process is led by Government and we expect details to be on our website and the Cabinet Office's public appointments website in early 2023. It is anticipated that the appointment will commence in late 2023/early 2024. The person appointed will take over as Commissioner for public law and the law of Wales.

In advance of that process, I would like to take this opportunity to explain a little about who we are and what sort of person we will be looking for and to explain how we are setting up a scheme whereby those who might be interested in applying can find out more about the role in an informal way.

What the Law Commission does

The Law Commission is an independent statutory body set up by the Law Commission Act 1965.

Our statutory task is (broadly) to keep under review all of the law in England Wales with a view to its systematic development and reform. We fulfil that function by carrying out detailed law reform projects examining particular areas of law. Every few years we draw up a programme of law reform and agree this with Government. In the 13th Programme, published in 2017, we identified 14 projects. There is an ongoing process to identify projects for a 14th Programme. In addition, we take on projects referred to us by the UK and Welsh Governments. Our work addresses some of the biggest and most complex issues of the day.

In recent years the Government has implemented a high percentage of our law reform proposals. At present we are working on a total of over 20 law reform projects covering a wide range of areas such as surrogacy, residential leasehold, arbitration, decentralised autonomous organisations, contempt of court, compulsory purchase orders and pilotless planes.

These are all projects with high social and/or economic significance. Our work is often cutting edge and can make a real difference.

We aim to produce recommendations which attract the widest possible consensus. We do this by proactive engagement with those affected before we even publish a consultation paper. Having consulted intensely we then gather in and analyse responses and prepare a report. In some cases, we produce an accompanying draft Bill.

The “selling point” of the Commission is its vigorous objectivity and independence coupled with the thoroughness and intellectual rigour we bring to each project. This is essential in that it enables our work to be trusted by Government and legislators of all persuasions as well as by all those whose lives or businesses might be affected by legislation we propose. We are sometimes seen as the best way in which a workable solution to a difficult social or commercial problem might be found.

What Law Commissioners do

Law Commissioners are instrumental in leading law reform in England & Wales. Each Commissioner is appointed for a five-year term. But this may be subject to reappointment for a further five-year term. In consequence a Commissioner may serve for up to ten years.

Our new appointment can be expected to play an important and influential part in the evolution of the law in England & Wales during a period of potentially unprecedented change.

The role of a Law Commissioner is not confined to the task of preparing consultation papers and reports. Much of the actual drafting is performed by the team of lawyers and researchers under your supervision. It is a much bigger job than just that. You will be directly involved in discussions with Ministers and officials and with Parliamentary Counsel and you will play an active role in the process of steering legislation through Parliament. You will take a leading role in engaging with the public and the press and media in relation to your projects at seminars, roundtables, conferences, during one-to-one meetings and on social media. You will liaise with the senior judiciary. You will participate in shaping the future strategy of the Commission and you will be instrumental in identifying possible new areas of law in need of reform.

You will participate in “peer review” exercises whereby all the Commissioners and the Chair discuss and agree the key policy issues arising in each and every project. It is a critical feature of our work that all Commission consultation papers and reports are published as the work of the Commissioners and the Chair collectively. The process of peer review involves drafts being circulated to Commissioners some weeks in advance of the peer review meeting. The draft is accompanied by a note from the team identifying the main issues. Commissioners then perform a detailed scrutiny of the draft and respond in writing, highlighting questions, queries, comments and doubts. The Commissioner and team responsible for the project then compile all the comments together and produce a Memorandum for peer review. Peer review might be likened to an extremely intensive PhD viva but it is always constructive and positive albeit challenging. The team is almost invariably sent away following peer review to reconsider a range of substantive and drafting issues.

Commissioners bring their experiences of many different areas of law to peer review and this in almost every case results in a significantly improved finished product.

You will also be good with people. Each Commissioner works closely with a Team Head, a senior lawyer who provides direction and support to the team of lawyers and research assistants, who in turn make up the individual teams working on each project. You will be closely involved in leading a body of exceptionally bright and talented lawyers and researchers who will look to you for on-going direction and support.

It should be obvious from the above that the four Commissioners and the Chair form a close-knit group. Collegiality is essential as is a pronounced sense of humour.

The position of Commissioner for Public Law and for Welsh Law

The remit of the new Commissioner will be public law and the law of Wales.

Public law is defined broadly and includes any area of law affecting the relationship between the individual and the state apart from purely criminal law. Recent examples of the work of this team include: elections; the legal framework for automated vehicles, the use of remote or AI controlled drones for commercial purposes, and compulsory purchase. The public law team is keen on exploring areas of law reform involving the use of AI, alongside discussing with Government a wide range of potential new work ranging from the environment to social care.

The reference to the law of Wales in the Commissioner’s job title reflects the importance to the Commission of its work in Welsh devolved law. When the founding Law Commissions Act 1965 was enacted the concept of Welsh devolved law was not foreseen. Today, the Law Commission has an important relationship with the Government of Wales and with the Senedd on the reform of devolved Welsh law. We are now in a very real sense the Law Commission of Wales. To perform this function, we seek to ensure that we are always engaged on Welsh law reform projects. The Government of Wales has a statutory power to refer projects to the Law Commission and we are working closely with the Government to develop a more structured way of working with them. Recent projects have included the creation of a tribunal system adjudicating upon disputes about Welsh law. We have also recently completed a project on a framework for regulating potentially fragile coal tips in Wales, a fascinating issue which raised some deep and novel questions of environmental law.

The scope of devolution to Wales has meant that the projects we have undertaken for Wales have been in the public law field, and this is likely to continue to be the case. In the event that the Government of Wales asks us to conduct a project falling within the remit of another Commissioner it is envisaged that the relevant Commissioner will supervise the project, with the Public Law Commissioner playing a supporting and facilitating role.

The position does not require you to be familiar with the whole of the existing body of Welsh devolved law, but you will need to develop a knowledge of the principles of devolved legislative competence. In other respects, the skills needed by the Commissioner are materially the same as that for other areas of law affecting both England and Wales.

Who are you?

We are anxious to look to as broad and diverse a pool of talent as we possibly can. The next few years will be challenging economically, socially, and technologically. The Law Commission must keep abreast of developments and remain relevant. You will be central to that task.

You will be a person of exceptional ability. You may well have particular areas of experience and expertise relevant to the work of the team, but equally, if not more, important is that you will be intellectually curious and relish the opportunity to turn your abilities to issues and areas of law you might not be familiar with.

Traditionally, Law Commissioners have been senior Professors, judges, top KCs or leading partners in law firms.

I want to stress that we will extend our search well beyond these traditional recruiting grounds. I would encourage those who might never have considered themselves to be “Law Commission” material to consider applying. You might be in Government or in a non-university academic setting. You might be someone on the cusp of senior status in your profession or in your academic institution but who wishes to change the direction of your career. You might be none of the above but nonetheless have the abilities and drive that we are looking for.

Please do not be deterred if the process of law reform is unfamiliar to you. Few candidates will demonstrate existing competences in this field. We seek individuals with potential, who will thrive on learning new skills on the job.

Can I bring to your attention the Commissioner Diversity Shadowing Scheme which might be of interest to some. Details are available in the “Opportunities” section of our website.

Ways of working

As the fulcrum around which your team will revolve you will need to be in London for at least part of the time but post-Covid we adopt flexible ways of working. Commissioners, like others, tend to mix working from home with being in the office. Commissioners are frequently out and about attending meetings in Whitehall and Parliament or with stakeholders across England & Wales. Typically a Commissioner will be in London 2 or 3 days per week. Two of our present Commissioners live outside London.

Having responsibility for Welsh law you would expect to be in Wales from time to time to meet Ministers and officials, attend and give evidence at Senedd Committees, and to consult with stakeholders.

Getting to know the Law Commission

To help you get to know us better we are putting in place an informal scheme whereby those who wish to consider applying and would like to find out more about us can speak to me, or to an existing Commissioner, or with a senior team lawyer. We will be flexible about how we achieve this. We can arrange telephone calls, MS Teams meetings or face to face meetings here in London, or with Commissioners and their teams.

We will have to match our limited human resources with demand, but we will wish to find a way to speak to as many of you as possible in a more relaxed manner.

By way of conclusion, I would like to say that being a Commissioner is an extraordinarily varied and interesting role. Commissioners become influential across the legal sphere and have a very direct and immediate ability to shape the law.

If you are interested, please do get in touch by contacting recruitment@lawcommission.gov.uk.

A handwritten signature in black ink, appearing to read 'Nicholas Green'.

Sir Nicholas Green

Chairman of the Law Commission of England & Wales