



Scottish Law Commission

promoting law reform

(SCOT LAW COM No 265)

annual report | 2023





Scottish Law Commission

promoting law reform

The Commission was established under the Law Commissions Act 1965

Our function

To recommend reforms to improve, simplify and update the law of Scotland

Our role

To play a leading role in developing the law for the people of Scotland so that it is just, principled, responsive and easy to understand

annual report | 2023

Chair, Commissioners and Chief Executive



Lady Paton (Chair)



David Bartos



Professor Gillian Black



Professor Frankie McCarthy



Kate Dowdalls KC
(term ended 31 May 2023)

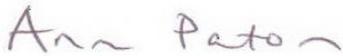


Charles Garland
(Interim Chief Executive)

Annual Report 2023

To: Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2023.



ANN PATON, *Chair*



DAVID BARTOS



GILLIAN BLACK



FRANKIE McCARTHY



Charles Garland, *Interim Chief Executive*
21 February 2024

Laid before the Scottish Parliament by the Scottish Ministers under section 3(3) of the Law Commissions Act 1965.

March 2024

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Scot Law Com No 265

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Chair's foreword



2023 has been an eventful year for the Scottish Law Commission.

There was much to celebrate in the context of implementation of Commission Reports. The Moveable Transactions (Scotland) Act 2023 (Scot Law Com No 249) received Royal Assent on 13 June 2023. The Trusts and Succession (Scotland) Act 2024 (Scot Law Com Nos 215 (in part), and 239), assisted by the continuing contribution of our former Chair Lord James Drummond Young, passed Stage 3 in the Scottish Parliament on 20 December 2023, and received Royal Assent on 30 January 2024. The Judicial Factors (Scotland) Bill (Scot Law Com No 233) was introduced on 5 December 2023, and is making progress through parliamentary procedure. The Commission is delighted to see these essential law reforms brought to fruition. We thank Siobhian Brown MSP, the Minister for Victims and Community Safety, the Convener and Members of the Delegated Powers and Law Reform

Committee, and all the officials concerned, for their work and support. Meanwhile in the Westminster Parliament, the Automated Vehicles Bill (Joint Report Scot Law Com No 258, Law Com No 404) has begun its parliamentary journey.

A major event in 2023 was the Commission's move from 140 Causewayside to newly refurbished premises at Parliament House. An area formerly used for storage and library books was transformed into a unique and well-appointed work space, with a conference room, offices, open-plan desking, library mezzanine, and an outdoor patio. Our thanks go to Michael Laurie, Architects; the Lord President and Lord Justice Clerk; the Scottish Government; and the Scottish Courts and Tribunals Service, for enabling such an attractive and suitable working space to be made available to the Commission. An opening party on 7 September 2023 was thoroughly enjoyed by all and provided a welcome opportunity to speak with many friends of the Commission.

2023 saw the publication in March of a Joint Report on Surrogacy (Scot Law Com No 262, Law Com No 411). Other publications included the Commission's Annual Report for 2022 and a third Discussion Paper on Heritable Securities concerning non-monetary obligations and sub-security arrangements. 2023 also marked the commencement of the Commission's Eleventh Programme, running from January 2023 until December 2027. Some projects have been continued from the Tenth Programme, namely Heritable Securities, Compulsory Owners' Associations (Tenements), Aspects of the Law of Leases, Homicide, Aspects of Family Law, and Damages for Personal Injury. There are four new projects, namely Execution of Documents, the Law of Limitation, Executry Law, and Consolidation of Nature Conservation Law.

Throughout 2023, contact with other jurisdictions and law reform bodies continued. In March 2023, the Commission participated in two conferences in Goa, India. In the Commonwealth Law Conference, I had the honour of chairing a session on Freedom of Religion. I also chaired the associated smaller conference held by the Commonwealth Association of Law Reform Agencies. Charles Garland, our interim Chief Executive, attended both conferences. We enjoyed not only the excellent seminars and exotic scenery and wildlife, but also the informal networking and successful social gatherings with other law reformers from across the Commonwealth, which were often as informative as the formal programme. Back in Scotland, remote conferencing continued to provide opportunities to liaise with countries abroad. Our thanks go to Sir Nicholas Green, the then Chair of the Law Commission of England and Wales (LCEW), for creating and co-ordinating regular "Round Table" remote meetings providing an international discussion-facility for law reform agencies from England and Wales, Scotland, Ireland, Australia, New Zealand, South Africa, and other jurisdictions. In addition, individual Commissioners kept in touch with stakeholders in other countries. Further multi-jurisdictional liaison took place at a law reform agencies conference which we hosted in Edinburgh in November 2023. Representatives from law reform bodies in England and Wales, Ireland, and Jersey, attended for the first in-person gathering since 2019. Guests enjoyed a visit to the Scottish Parliament; an evening dinner; a tour of the Commission's new premises; and a useful business meeting. The event was an ideal opportunity to meet the new Chair of the LCEW, Sir Peter Fraser.

In addition to contact with other jurisdictions, Commissioners kept a high profile within Scotland, with meetings, seminars, webinars, conferences, papers and articles concerning their individual projects.

2023 involved the Commission in two Royal Events. First, the Coronation of King Charles III in Westminster Abbey on 6 May 2023, and secondly the Honours Ceremony for the King in St Giles on 5 July 2023. Commissioner Professor Gillian Black in her role as Linlithgow Pursuivant Extraordinary participated in the Coronation, and both she and I (as a Senator of the College of Justice) were involved in the Honours Ceremony. These were truly memorable events.

In May 2023, we were sorry to lose Commissioner Kate Dowdalls KC, but delighted by her appointment as Sheriff Principal of South Strathclyde, Dumfries, and Galloway. We wish her well. Another loss in 2023 was Helen Stevenson, our Office Manager, whose administrative and financial skills are sorely missed. Then August 2023 saw the departure of our legal assistants who had been with us since September 2022. We thank them for their major contribution to our work. We were pleased to welcome four new legal assistants, namely Craig Dalziel, Alex Enaholo, Adam Nimmo, and Georgia McCuaig, who have already provided significant assistance with our projects.

Finally, throughout 2023 the Commission benefited greatly from the work of our library committee and the records management team who each assisted with the move to the new premises; and also from our social committee who organised events and kept morale high. We wish to record our gratitude and thanks. Thanks also to the Commissioners and all the staff at the Commission for their diligence and enthusiasm throughout an exciting and demanding year.

Ann Paton

The Rt Hon Lady Paton
Chair

Publications 2023

PUBLICATION	DATE OF PUBLICATION
Joint Report on Surrogacy (Scot Law Com No 262; Law Com No 411)	29 March 2023
Annual Report 2022 (Scot Law Com No 263)	21 April 2023
Eleventh Programme of Law Reform (Scot Law Com No 264)	31 May 2023
Discussion Paper on Heritable Securities: Non-monetary securities and sub-securities (DP No 175)	29 June 2023

Implementation of our Reports 2023

The Commission's statutory function is to provide independent advice to Government on the reform of Scots law. Our recommendations for reform are contained in Reports, which usually include a draft Bill that would give effect to our recommendations. Most of our Reports deal with matters devolved to the Scottish Parliament and are submitted to the Scottish Ministers. Where the subject matter involves areas of law reserved to the UK Parliament, our Reports are submitted to UK Ministers.

Implementation of Commission recommendations is a matter for the Scottish Government and the Scottish Parliament or, where appropriate, the UK Government and the UK Parliament. The following developments towards implementation took place in 2023.

Moveable Transactions

The Moveable Transactions (Scotland) Act 2023 received Royal Assent on 13 June 2023. Once commenced it will largely implement the recommendations in our Report on Moveable Transactions (Scot Law Com No 249; 2017). The passage of the Bill was supported by the Chair and two former lead Commissioners, Professor Gretton and Professor Steven.

Trusts and Succession

The Trusts and Succession (Scotland) Bill was introduced into the Scottish Parliament on 22 November 2022 and passed Stage 3 on 20 December 2023; it received Royal Assent on 30 January 2024. Once in force it will broadly implement the recommendations in our Report on Trust Law (Scot Law Com No 239; 2014), together with two recommendations on succession from our Report on Succession (Scot Law Com No 215; 2009). Former lead Commissioner Lord Drummond Young supported the passage of the Bill.

Judicial Factors

The Judicial Factors (Scotland) Bill was introduced into the Scottish Parliament on 5 December 2023. It will implement the recommendations in our Report on Judicial Factors (Scot Law Com No 233; 2013). Like the two Bills mentioned immediately above, it has been allocated to the Delegated Powers and Law Reform Committee as an SLC Bill.

Automated Vehicles

The Automated Vehicles Bill was introduced into the House of Lords at Westminster on 9 November 2023. It will implement the recommendations in our joint Report on Automated Vehicles (Scot Law Com No 258, Law Com No 404; 2022).

Future Bills

The Minister for Victims and Community Safety wrote to the Chair in September 2023 to indicate that, after initial consideration, Scottish Government officials will begin detailed work on three further SLC Reports, namely those on Contract Law (Scot Law Com No 252; 2018); Aspects of Leases: Termination (Scot Law Com No 260; 2022); and an Improved Scheme for Financial Provision on Cohabitation Breakdown (Scot Law Com No 261; 2022).

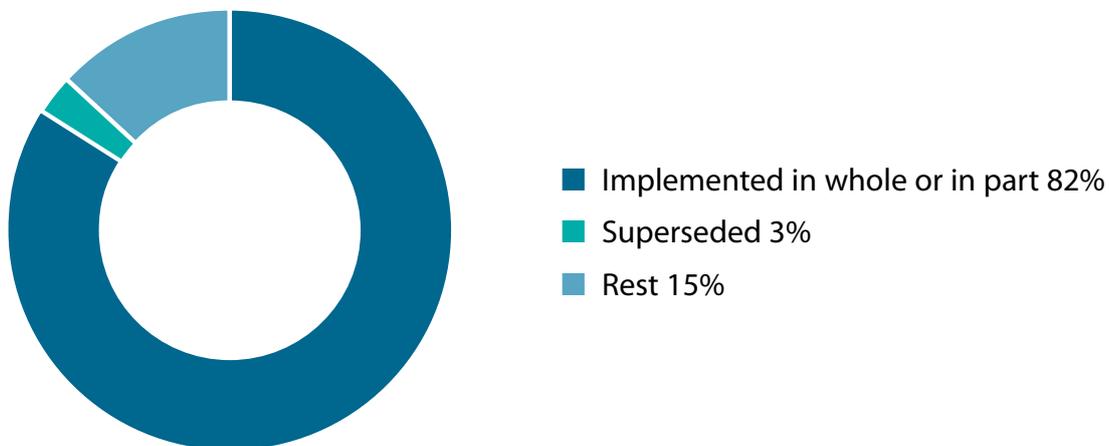
Overall implementation figures

The overall position on implementation of Scottish Law Commission Reports from 1965 to December 2023 is:

- Law reform Reports published: 194
- Implemented in whole or in part: 160 (82%)
- Superseded: 5 (3%)

A table providing information about implementation of our Reports can be found on the Publications page of our [Scottish Law Commission: Implementing legislation \(scotlawcom.gov.uk\)](https://www.scotlawcom.gov.uk)

Implementation rate of Commission Reports





Gathering of representatives of law reform bodies of UK, Ireland and Jersey (November 2023)



Our 2023-24 legal assistants
From left to right: Adam Nimmo, Georgia McCuaig, Craig Dalziel and Alex Enaholo

How we undertake our law reform projects

- Research into the existing Scots law and review of comparative law
- Analysis of problems with the current law
- Development of policies for reform
- Consultation on proposed reforms
- Consideration of consultation responses
- Review of policy in the light of consultation
- Publication of a Report to Ministers with recommendations for reform, including in most cases a draft Bill to implement the recommendations. Implementation of the recommendations in our Reports requiring legislation is taken forward in the Scottish Parliament or, in reserved areas of law, in the UK Parliament at Westminster.
- Role of advisory groups – to assist us with our projects we often set up advisory groups of people with expertise in the relevant areas of law. These small groups provide valuable assistance and guidance to our project teams.



Final Commission meeting at 140 Causewayside (30 May 2023)

From left to right: Charles Garland (interim Chief Executive), David Bartos, Lady Paton (Chair), Kate Dowdalls KC, Professor McCarthy and Professor Black

Law reform projects

The Commission's law reform work is based on our programmes of law reform and references from Scottish Ministers and from UK Ministers.

Programmes of law reform

In May 2023 we published our Eleventh Programme. This covers the period of five years from the start of 2023 to the end of 2027. It outlines our current and future law reform projects, and was published following extensive consultation with the legal profession and other interested parties including members of the public. The Programme was approved by Scottish Ministers and laid before the Scottish Parliament. It can be found on our website: www.scotlawcom.gov.uk

Projects included in our Eleventh Programme of Law Reform

Item 1 – Tenement law: compulsory owners' associations

Project Team



Professor Frankie McCarthy, Commissioner
Stephen Crilly, Project Manager
Georgia McCuaig, Legal Assistant

On 10 January 2022 the Commission received a reference from Scottish Ministers in relation to the establishment of compulsory owners' associations in Scottish tenement properties.

This reference followed from the Final Recommendations Report of the Scottish Parliamentary Working Group on the Maintenance of Tenement Scheme Property published in June 2019.

Our project forms part of a large programme of Scottish Government work detailed in its Housing to 2040 strategy. We have maintained regular contact with Scottish Government officials on the work of the project in order that both parties are aware of ongoing, interrelated work.

Since receipt of the reference we have carried out an initial literature review, including material on the policy background to the Working Group recommendations, and have examined primary and secondary legal sources. This resulted in the production of a list of key issues which the project will seek to address. The list is available to view on the project webpage.

A series of scoping meetings with key stakeholders were held throughout the spring and summer of 2022, and an advisory group of legal experts to support our work on the project has been put in place.

An initial phase of comparative research culminated in a series of three comparative law webinars which took place in the autumn of 2022. These were delivered by legal academics across six different jurisdictions and were open to the public to attend. Recordings of the webinars are available on the SLC YouTube channel.

In the early part of 2023 work proceeded on reviewing a large number of title deeds to identify common tenement management burdens across a broad range of property types, ages and geographical locations. In the second half of the year the team has worked on drafting a discussion paper for the project. We hope to publish that paper for public consultation in spring 2024. We estimate that a Report on this project will be published in spring 2026.

Item 2 – Heritable securities

Project Team

Professor Frankie McCarthy, Commissioner

Stephen Crilly, Project Manager

Georgia McCuaig, Legal Assistant

The reform of the law of heritable securities, first mooted in our Eighth Programme of Law Reform, was begun in our Tenth Programme and has been carried over to our Eleventh Programme.

It is a major project aimed at reviewing the law of security over heritable property (land, and associated rights).

The law was last systematically reformed by the Conveyancing and Feudal Reform (Scotland) Act 1970, and that remains the main legislation. It created the standard security over land, sometimes termed a 'mortgage'. The Act was a great improvement, but is not without difficulty. The rules about enforcement are complex and hard to understand, and a section-by-section review of the Act also reveals numerous technical problems.

In addition, there has been considerable societal and economic change since 1970. The law should develop where that is needed to help ensure the efficient operation of the economy and of property markets.

We decided to approach the project in a number of phases. Our first discussion paper, published in June 2019, was on pre-default matters. We received around 20 responses from a range of stakeholders. A second discussion paper, on default and post-default issues, was published in December 2021 with a similar number of responses received.

The focus of the team in the early part of 2023 was on drafting the third discussion paper and promoting the public consultation following publication. That paper, published in June 2023, deals with two complex technical issues: (i) standard securities in respect of non-monetary obligations where the remedy sought is performance; and (ii) sub-security arrangements where a standard security is taken over a standard security. While this is competent under the 1970 Act it raises a number of conceptual and practical issues which are set out in the discussion paper. We received 16 responses to this paper.

During the consultation period the team undertook a number of activities including: the publication of an article in the Journal of the Law Society of Scotland; two online webinars which were open to the public and presenting a paper at Central Law Training's Annual Conveyancing Conference in October. A recording of Professor McCarthy's presentation from one of our online webinar events is available on our YouTube channel.

The team also undertook policy development work including an analysis of the responses to parts of the first discussion paper and the preparation of a policy paper which was considered by Commissioners in October 2023.

Our intention is to draw together the results of consultation in respect of all three papers in a single Report and draft Bill, which we aim to publish in 2025.

Item 3 – Aspects of leases

Project Team



David Bartos, Commissioner
Alastair Smith and Julie Bain,
 Project Managers
Craig Dalziel, Legal Assistant

A project on leases has formed part of our Ninth, Tenth and now Eleventh Programmes of Law Reform. In order to focus efforts on specific areas of difficulty within the current law we have chosen to concentrate on commercial leases, as residential and agricultural leases are considered to be more fully provided for under the present law.

The first topic to be considered has been the termination of commercial leases. We published a discussion paper in May 2018 and our Report on Aspects of Leases: Termination, incorporating a draft Bill, in October 2022.

The Report concluded that further consideration and consultation was required before we could recommend any reform of *confusio* and the Tenancy of Shops (Scotland) Act 1949.

During the course of 2023 we began a new phase of this project focusing on the Tenancy of Shops (Scotland) Act 1949. We considered the previous work and responses regarding the Act, and agreed the scope of this aspect of the project. We formed a legal advisory group, including lawyers, academics, sheriffs and advocates. We also formed an advisory group which represented tenants' interests, including members from groups such as the Federation of Small Businesses and the Scottish Grocers Federation. We met with the advisory groups and also spoke with landlord stakeholders to discuss how the Act operates in practice and how it might be reformed.

The team also carried out comparative research into the approach taken in other jurisdictions.

We are preparing a Discussion Paper which considers the need for the Act, problems that appear to be associated with the Act, and possible options for reform. We anticipate that the Paper will be published in spring 2024.



Project Managers

From left to right: Mariel Kaney, Julie Bain, Stephen Crilly, Alastair Smith, Graham McGlashan and Lorraine Stirling

Item 4 – Homicide

Project Team



The Rt Hon Lady Paton, Chair
Graham McGlashan, Project Manager
Adam Nimmo, Legal Assistant

This medium-term project to review the law on the mental element in homicide was announced in our Tenth Programme of Law Reform and is continued into the Eleventh Programme.

During 2023 we continued work on the project, developing policy in light of responses to the consultation on our Discussion Paper on the Mental Element in Homicide (DP No 172), which closed on 15 October 2021. In addition, we have the findings of some limited public opinion research conducted by BritainThinks in late 2022 which also informed our policy development.

By the end of 2023 we have made good progress in drafting a Report with recommendations for law reform in this area and working on a draft Bill to accompany that. We hope to be in a position to publish our final Report and draft Bill by the end of 2024.

Item 5 – Aspects of family law

Project Team



Professor Gillian Black, Commissioner
Lorraine Stirling, Project Manager
Alex Enaholo, Legal Assistant

The Aspects of family law project began at the start of our Tenth Programme of Law Reform, and it has continued into the Eleventh Programme. The project has been approached in phases, due to the number of aspects of family law suggested as in need of reform.

Phase 1, led by Commissioner Kate Dowdalls KC (now Sheriff Principal for South Strathclyde, Dumfries and Galloway) examined the rights of cohabitants on the breakdown of their relationship. It was completed in November 2022, with the publication of the Report on Cohabitation (Scot Law Com No 261).

Professor Gillian Black took over as Commissioner for the Aspects of Family Law project in June 2023, and is leading phase 2, a review of the law of civil remedies for

domestic abuse (remedies such as: exclusion orders, interdicts, and non-harassment orders).

The family law team spent much of 2023 scoping this phase of the project. We met with stakeholders, including members of domestic abuse support groups, practitioners, and sheriffs, to find out the difficulties with the law in this area.

We established an advisory group of experts in the field, both lawyers and non-lawyers, to advise us throughout this phase of the project, which met for the first time in Autumn 2023.

As part of our research into the law of civil remedies for domestic abuse, we have been carrying out some comparative research, looking at the law in this area in England and Wales, New Zealand, Ireland, and Illinois for example.

We are in the process of drafting our discussion paper, which considers the complexity of the law in this area, the efficacy of the existing remedies, and possible options for reform, and which will seek views on how best to reform the law. We hope to publish the discussion paper in the summer of 2024.

Item 6 – Surrogacy

Project Team

Professor Gillian Black, Commissioner
Alastair Smith, Project Manager
Nic Vetta, Legal Assistant

In March 2023, we completed a joint project on surrogacy with the Law Commission of England and Wales. As surrogacy is a reserved matter in terms of the Scotland Act 1998, the Department of Health and Social Care asked us to undertake the project as a reference and to work alongside the Law Commission.

For further details please see page 20 under “Joint projects”.

Item 7 – Damages for personal injury

Project Team



The Rt Hon Lady Paton, Chair
Mariel Kaney, Project Manager
Adam Nimmo, Legal Assistant

The Damages for personal injury project formed part of our Tenth Programme of Law Reform, and it has continued into the Eleventh Programme.

Work on the project began in the summer of 2019 and we published a discussion paper in February 2022. The paper covered four topics, three of which related to provisions in Part II of the Administration of Justice Act 1982, namely: (i) awards of damages in respect of services provided to and by an injured person (sections 8 and 9) and specifically whether the restriction to relatives should continue to apply; (ii) what deductions should be made from awards of damages (section 10); and (iii) whether there is a problem with the way that awards of provisional damages operate in the context of asbestos-related disease claims and, if so, how this may be resolved.

The fourth topic covered by the discussion paper is the management of awards of damages made for the benefit of children.

The discussion paper received 32 responses from a range of individuals and stakeholders, including legal professionals, insurers, organisations, academics, politicians, and members of the public.

The damages team spent much of 2023 developing policy on the basis of the responses we received to the discussion paper and further information gathered from key stakeholders. A paper outlining the policy direction of the project was prepared and considered by Commissioners in September 2023. We hope to be in a position to finalise and publish a Report and draft Bill by the end of summer 2024.

Items 8 to 11

Work on items 8 to 11 has not yet commenced. Those projects are, respectively: Execution of documents; Limitation; Executory law; and Consolidation: nature conservation.



From left to right:
David Bartos, Lady Paton (Chair), and Professor Gillian Black



From left to right:

David Bartos, Lady Paton (Chair), Professor Gillian Black and Charles Garland (interim Chief Executive)

References from Scottish Ministers

In addition to our work on topics included in our programmes of law reform, we also sometimes undertake work in response to references from Ministers. Our project on tenement law, described above, was received as a reference.

Joint projects

The Commission also undertakes joint law reform projects with the Law Commission of England and Wales.

Joint projects with the Law Commission of England and Wales

Surrogacy

A joint project on surrogacy was carried over from our Tenth Programme and now forms item 6 of our Eleventh Programme of Law Reform. Our work was carried out under the terms of a reference from the Department of Health and Social Care.

Surrogacy describes the situation where a surrogate bears a child on behalf of another person or persons who intend to become the child's parent or parents for all purposes. Currently, the intended parents can become the legal parents of the child born to the surrogate by obtaining a parental order from a court after the child has been born.

In March 2023, we published a joint Report and draft Bill on surrogacy: "Building Families through Surrogacy – a New Law". The recommendations in the Report were the product of a consultation exercise in 2019, which generated 680 responses, including 30 from Scottish respondents. Following this consultation exercise, the joint team worked closely together to develop policy based on the available evidence, and instructed Counsel to draft a Bill reflecting this policy.

The main recommendation in the Report is a new pathway to parenthood which better reflects the intention of the surrogates and the intended parents, and the purpose of the surrogacy arrangement. Under the new pathway, intended parents would be recognised as the legal parents of the child born through surrogacy from the time of birth, without going through the current judicial process of seeking a parental order. Our recommendations also provide for important pre-conception screening and safeguarding to protect the interests of any child born of the surrogacy arrangement, the surrogate, and the intended parents. The parental order route would still remain available, and we made recommendations for reform of some elements of this process, reflecting evidence submitted during consultation.

Further details about the suite of recommendations and the draft Bill can be found in the joint Report and accompanying summary.

On 8 November 2023, the Minister, Maria Caulfield MP, Parliamentary Under Secretary of State, Department of Health and Social Care, wrote to the Chair of the Law Commission of England and Wales with the Government's interim response. This stated that the Government is working to review our Report's recommendations, that a full response will be published in due course, and that parliamentary time does not allow for the recommended changes to be taken forward at the moment. We await the Government's full response to our recommendations.

Insurance contract law

The Consumer Insurance (Disclosure and Representations) Act 2012, and the Insurance Act 2015 as amended by the Enterprise Act 2016, Part 5, have given effect to all of our recommendations to date in our joint project on insurance with the Law Commission of England and Wales.

As noted in recent Annual Reports, there is one remaining issue which the Commissions wished to address, namely insurable interest in the context of life-related insurance. In 2018 we consulted on a working draft of a Bill the aim of which was to address issues in the current law of insurable interest which appear to be hindering the development of socially useful life-related insurance products. Since then, competing priorities at the lead Commission, the Law Commission of England and Wales, have meant that it has not yet been possible to bring this project to a conclusion. We will consider the continued case for this work as and when conditions and resources allow.

Further information about our law reform projects is available on the law reform projects page on our website www.scotlawcom.gov.uk



Executive Assistants
Wilma Campbell and Scott Macdonald

Progress on our law reform projects: summary

Projects under our Eleventh Programme

PROJECT	POSITION AT THE END OF 2023
Tenement law: compulsory owners' associations (Eleventh Programme, item 1)	Significant work has been undertaken on a draft discussion paper which we estimate will be published in spring 2024.
Heritable securities (Eleventh Programme, item 2)	Following publication of two earlier discussion papers in June 2019 and December 2021, a third discussion paper, on non-monetary securities and sub-securities, was published in June 2023. Policy development work continues with a view to the publication of a Report in 2025.
Aspects of leases (Eleventh Programme, item 3)	Preparation of a discussion paper on reform options relating to the Tenancy of Shops (Scotland) Act 1949 was undertaken during 2023 and we aim to publish it in spring 2024.
Homicide (Eleventh Programme, item 4)	Good progress is being made in drafting a Report with recommendations for law reform in this area and we are working on an accompanying draft Bill. We hope to be in a position to publish our final Report and draft Bill by the end of 2024.
Aspects of family law (Eleventh Programme, item 5)	A scoping exercise for Phase 2 of the Aspects of Family Law project (a review of the law of civil remedies for domestic abuse) began in early 2023. We are currently in the process of drafting a discussion paper, working towards publication in summer 2024.
Surrogacy (Eleventh Programme, item 6)	See table below under "Joint projects with the Law Commission of England and Wales".
Damages for personal injury (Eleventh Programme, item 7)	Our discussion paper was published in February 2022 we are now working towards publication of a Report and draft Bill by the end of summer 2024.

References from Scottish Ministers

The project on compulsory owners' associations in tenements was received as a reference in January 2022. It now forms item 1 of our Eleventh Programme.

Joint projects with the Law Commission of England and Wales

PROJECT	POSITION AT THE END OF 2023
Surrogacy	A joint Report and draft Bill was published in March 2023.
Insurance contract law	Work is suspended due to other priorities at the Law Commission of England and Wales.

Consolidation and statute law repeals

Consolidation

<i>Project Team</i>
The Rt Hon Lady Paton, Chair

Consolidation is an important way of tidying up the statute book. Work on consolidation involves preparing a draft Bill to bring together earlier enactments on an area of law with the aim of making the legislation easier to use.

Any consolidation project undertaken by the Commission requires agreement with the Scottish Government, including in particular the provision of support and resources for any project. A Government policy lead is required to provide policy direction and guidance on the area being consolidated; and a significant legislative drafting resource has to be provided to prepare any Bill.

The Commission did not carry out any work this year on consolidation of legislation, but our Eleventh Programme contains a project on consolidation of nature conservation legislation.

Statute law repeals

Project Team

The Rt Hon Lady Paton, Chair

One of the Commission's functions is to recommend the repeal of obsolete legislation. We undertake this work jointly with the Law Commission of England and Wales.

The purpose of repealing obsolete legislation is to modernise and simplify the statute book, reduce its size and make it easier for people to use. This in turn helps to avoid unnecessary costs. It also helps to avoid people being misled by outdated legislation that appears to be current law.

The Commissions present their proposals to Government as statute law repeals Reports, published with a draft Bill.

Since 1965, 19 such Bills have been enacted, repealing more than 3,000 Acts. The Commissions last published a Report, the Twentieth Report and Draft Statute Law (Repeals) Bill, on 3 June 2015. The Report proposes the repeal of more than 200 old laws that are cluttering up the statute book.

The Bill awaits implementation by the UK Government. The Commission is not in the meantime carrying out any further statute law repeal work.

Move of premises

After almost exactly 47 years in our offices at 140 Causewayside we moved in June 2023 to newly refurbished premises in Parliament House. The new well-located space provides us with convenient and modern facilities suitable for contemporary ways of working while allowing us to retain features such as an excellent library.



The Commission's Conference Room (before and after renovation)

Promoting law reform

The Commission works to promote law reform, not only in Scotland and the UK but internationally.

As the independent law reform body for Scotland we liaise closely with Scottish Ministers: in particular the Cabinet Secretary for Justice and Home Affairs, the Minister for Victims and Community Safety, and the Minister for Parliamentary Business; and with Scottish Government officials. We assist them in the implementation of Commission recommendations in devolved areas.

In relation to reserved areas of Scots law we liaise with UK Ministers, the Office of the Secretary of State for Scotland, and with the Advocate General for Scotland and his officials.

The Commission has strong links with the Scottish Parliament. Briefings on our recommendations are regularly provided by the Commission to Committees of the Parliament and their officials. For example, members of the Delegated Powers and Law Reform Committee visited us at our new premises in Parliament House in November 2023; and in May 2023 our Chair and the former lead Commissioner, Lord Drummond Young, gave evidence to the Committee on the Trusts and Succession (Scotland) Bill.

The Commission continues to engage closely with the legal profession in Scotland, in particular the Law Society of Scotland and the Faculty of Advocates. We also derive much assistance from academics and others with an interest in our project work. We are very grateful to all who serve as members of our advisory groups on law reform projects, and to those who respond to our consultations. Their contributions significantly enhance the law reform process.

The Commission has a close relationship with the Law Commission of England and Wales with whom we carry out joint law reform projects. We also liaise regularly with law reform bodies in Northern Ireland, Ireland and Jersey, and hosted the annual conference of all these bodies in November 2023. This was the first in-person meeting of the group since 2019, and the format allowed exchanges of useful information and ideas. In addition the Commission maintains links with law reform bodies throughout the world, and the Commonwealth in particular. In March 2023 the Chair and interim Chief Executive participated actively in the conference of the Commonwealth Association of Law Reform Agencies (CALRAs) and of the Commonwealth Law Association, both held in Goa. One matter of significant international interest was the procedure for SLC Bills before the Scottish Parliament.

Publications planned for 2024

In 2023 we commenced work under the Eleventh Programme of Law Reform. A number of ongoing projects from the Tenth Programme are being continued. We also continued work with the Law Commission of England and Wales on joint law reform projects referred to us by UK Ministers.

The Commission aims to publish:

- a discussion paper on the Tenancy of Shops (Scotland) Act 1949 (in spring 2024);
- a discussion paper on tenement law: compulsory owners' associations (in spring 2024);
- a discussion paper on the civil remedies for domestic abuse (in summer 2024);
- a Report and draft Bill on damages for personal injury (by the end of summer 2024); and
- a Report and draft Bill on the mental element in homicide (by the end of 2024).

Commissioners and staff

(as at 31 December 2023)

Commissioners

The Rt Hon Lady Paton, *Chair**

David Bartos

Professor Gillian Black

Professor Frankie McCarthy

*Vacancy** (following the end of Kate Dowdalls' term in May 2023)

Interim Chief Executive

Charles Garland

Project Managers (Solicitors)

Julie Bain*

Stephen Crilly

Mariel Kaney

Graham McGlashan

Alastair Smith*

Lorraine Stirling

Legal Assistants

Craig Dalziel

Alex Enaholo

Georgia McCuaig

Adam Nimmo

Librarian

Emma McLarty

Executive Assistants

Wilma Campbell

Scott Macdonald

Administrative Staff

Gordon Speirs

* Part-time Commissioner or staff member

The Commission's running costs 2023

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2023 were offset by payments received from Historic Environment Scotland for use of part of our office accommodation (until our move to new premises in Parliament House). In addition to the expenditure figures below we report our spending on matters such as public relations, overseas travel, hospitality and entertainment, and external consultancy on our website as required by section 31 of the Public Services Reform (Scotland) Act 2010.

EXPENDITURE	YEAR TO 31 DECEMBER 2023
Salaries – Commissioners (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£621,959.00
Salaries – Chief Executive and legal staff (including national insurance contributions and superannuation payments)	£846,729.00
Salaries – Administrative staff (including national insurance contributions and superannuation payments)	£131,529.00
Accommodation (including maintenance, rates and utilities)	£79,751.00
Printing and publishing (including costs of library purchases and database subscriptions, binding, maintenance of equipment, publishing costs, photocopying and stationery)	£23,378.00
IT, telephone and postage (including the provision and maintenance of the IT system)	£29,019.00
Travel and subsistence	£5,941.00
Miscellaneous (including training of staff, office services, hospitality, and the move of premises from 140 Causewayside to Parliament House)	£52,611.00
Total	£ 1,790,917.00

Scottish Law Commission www.scotlawcom.gov.uk

For more information about the Commission please contact:

Charles Garland, Interim Chief Executive

Scottish Law Commission

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This Report is available on our website.





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