



Scottish Law Commission
promoting law reform

(SCOT LAW COM No 205)

annual report | 2006





Scottish Law Commission

promoting law reform

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 | 2006



Professor George Gretton, Professor Gerry Maher, Colin Tyre (seated), Michael Lugton, Lord Drummond Young and Professor Joe Thomson



Scottish Law Commission

promoting law reform

Annual Report 2006

To: Cathy Jamieson MSP, Minister for Justice

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2006.

James Drummond Young JAMES DRUMMOND YOUNG, *Chairman*

George Gretton GEORGE GRETTON

Gerard Maher GERARD MAHER

Joseph M Thomson JOSEPH M THOMSON

Colin Tyre COLIN TYRE

Michael Lugton.

Michael Lugton, *Chief Executive*
19 February 2007

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

March 2007

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Chairman's foreword



I am honoured to have been appointed Chairman of the Scottish Law Commission in succession to Lord Eassie on his elevation to the Inner House of the Court of Session. My term of office runs from the beginning of 2007; consequently this Annual Report covers the last year of Lord Eassie's leadership.

It is clear to me that the Commission is in very good heart, and that over the past year it has made substantial progress on the Seventh Programme and on the several Ministerial references that it has received.

During the year our Reports on Interest on Debt and Damages and Conversion of Long Leases were submitted to Scottish Ministers and substantial discussion papers were published on Limitation in Personal Injury Actions, Rape and Other Sexual Offences and the Nature and Constitution of Trusts. Work is also under way on a new project on Damages for Wrongful Death; this results from a reference from the Scottish Ministers in September.

An important development in the structure of the Commission is the recent appointment of Gregor Clark CB as Parliamentary Counsel. Mr Clark was previously a senior member of the Office of the Scottish Parliamentary Counsel in the Scottish Executive, on which we continue to rely for some of our legislative drafting requirements. The greater drafting resources that are now available to the Commission will assist in our work generally, and facilitate consolidation and statute law revision. I hope that, with the support of the Scottish Executive, progress may be made in preparing a programme of consolidation of legislation in the Scottish Parliament.

Under my predecessor's distinguished chairmanship, Commissioners continued in 2006 to advance the cause of law reform in Scotland. Since my appointment as Chairman I have quickly come to appreciate the dedication, ability and enthusiasm of my fellow Commissioners and of all the staff at the Commission. I look forward to working with them over the coming years.

James Drummond Young

THE HON LORD DRUMMOND YOUNG
Chairman

Publications 2006

During 2006 we published the following reports and discussion papers.

TITLE	PUBLICATION DATE
Discussion Paper on Rape and other Sexual Offences DP No 131	30 January 2006
Discussion Paper on Personal Injury Actions: Limitation and Prescribed Claims DP No 132	27 February 2006
Annual Report 2005 Scot Law Com No 201	8 March 2006
Parliamentary Costs Bill: Report on the Consolidation of the legislation relating to Parliamentary Costs (Joint Report with the Law Commission) Scot Law Com No 202	14 June 2006
Report on Interest on Debt and Damages Scot Law Com No 203	26 September 2006
Discussion Paper on the Nature and the Constitution of Trusts DP No 133	26 October 2006
Report on Conversion of Long Leases Scot Law Com No 204	21 December 2006

In addition three papers on insurance contract law, which are not included in our numbered series, were published jointly with the Law Commission: Joint Scoping Paper, published January 2006, Issues Paper 1: Misrepresentation and Non-Disclosure, published September 2006, and Issues Paper 2: Warranties, published November 2006.

Copies of all these publications are available on our website www.scotlawcom.gov.uk

Law reform projects

Seventh Programme of Law Reform

The topics which form the main part of our law reform work are outlined in our Seventh Programme of Law Reform, published in February 2005.

The programme, which covers the period up to the end of 2009, lists the projects on which we are currently working including those on property law, succession, trusts and judicial factors. It refers also to projects on which work has yet to begin: unincorporated associations; provocation, self-defence, coercion, and necessity; and assignation of, and security over, incorporeal moveable property.

References from Ministers

In addition to projects under our Seventh Programme, we undertake work in response to references from Ministers in areas of law where there may be specific problems.

References have always formed a key part of our work, but since devolution they have taken on greater significance and occupied more of our resources. These projects tend to focus on fairly narrow legal issues which in Ministers' view need urgent examination, often in response to concern from the public or the Scottish Parliament. For this reason, work on references generally has to be completed within a shorter timescale and may involve some adjustment to the timetable for our programme work.

Projects under our Seventh Programme

Land registration

Project Team

Professor George Gretton, Commissioner
John Dods, Project Manager
John MacLeod, Legal Assistant
John Glover, Registers of Scotland

In view of the complexity of the topic, we decided to publish three separate discussion papers on different aspects of reform.

The first paper - on Void and Voidable Titles (published in February 2004) - examined the legal policy issues underlying land registration. The second - on Registration, Rectification and Indemnity (published in August 2005) - considered the provisions of the Land Registration (Scotland) Act 1979.

The third discussion paper - on Miscellaneous Issues (published in December 2005) - dealt with topics such as descriptions and boundaries, servitudes, overriding interests, and decision-making by the Keeper of the Registers of Scotland.

We have been considering the proposals in view of the comments received from consultees. There are some issues where further consideration is required. Some new issues have also emerged.

Work is now progressing on preparation of our report and draft Bill which we aim to publish during 2008.

We are grateful to the Registers of Scotland for their continued assistance with the project.

Leasehold tenure

Project Team

Professor George Gretton, Commissioner
John Dods, Project Manager
John MacLeod, Legal Assistant

Leasehold tenure is another topic included in our Seventh Programme. The project was to examine whether some categories of long lease should be converted into ownership.

Work on the project was completed in December 2006 with the publication of our Report. If enacted, our recommendations for reform would be an appropriate follow-up to the Abolition of Feudal Tenure etc. (Scotland) Act 2000. That Act removed most of the hierarchical nature of land tenure in Scotland. The present recommendations would complete that process while allowing the continued use of leases of reasonable duration.

A significant number of ultra-long leases exist in Scotland, with terms such as 999 years. Although in many respects a tenant resembles an owner, the law does not recognise that. There are a number of problems with these types of leases, not least the fact that in some cases there is a risk of unilateral termination by the landlord without compensation, for breaches of the terms of the lease, such as non-payment of rent.

The main recommendation of the report is that tenants of ultra-long leases should be entitled to have their rights converted into ownership. An ultra long lease in this context is a lease which is granted for more than 175 years and which still has more than 100 years to run. The draft Bill included in our report contains a scheme for the automatic conversion of leases into ownership, modelled on the scheme which was contained in the 2000 Act for the conversion of feus into outright ownership.

Succession

Project Team

Professor Joe Thomson, Commissioner
David Nichols, Project Manager
Maria Theodossiou, Legal Assistant

We have examined aspects of succession law before. Our wide-ranging report, published in 1990, dealt with intestacy, legal rights and protection from disinheritance, making and revocation of wills, survivance and many other topics. The report has not been implemented.

Following suggestions made to us during consultation on a draft of our Seventh Programme, it was decided to include a limited re-examination of succession law to ensure that it reflects current social attitudes and deals with the types of relationship which have become fairly common in Scotland over the last few years.

One part of the project is focusing on the rights of surviving spouses, civil partners, cohabitants, children and stepchildren on intestacy. The other part is considering whether these relatives should be protected against disinheritance and how such protection is best achieved. Following concerns expressed by members of our advisory group, we are also considering whether executors-dative appointed by the court in intestate estates should continue to be required to find caution.

During the year the team had a number of useful meetings with interested parties in connection with preparation of our discussion paper, which we are aiming to publish in the summer of 2007.

Trusts

Project Team

Professor Joe Thomson, Commissioner
Colin Tyre QC, Commissioner
David Nichols, Project Manager
Diana Tansley, Legal Assistant

This is a long-term project, which may need to be carried forward into our next programme of law reform.

At the beginning of the project we decided to approach our work in two main stages: the first dealing with trustees and the second with trusts. To date we have published five discussion papers. Two were published in September 2003 - on breach of trust, and on apportionment of trust receipts and outgoings. The third paper - dealing with trustees and trust administration - was published at the end of 2004 and the fourth - on variation and termination of trusts - was published in December 2005.

We published our fifth discussion paper in the series - on the Nature and the Constitution of Trusts - in October 2006. It considered the dual patrimony theory, the possibility of conferring legal personality on trusts and what juridical acts were required to constitute a trust between the truster and the trustee/beneficiary, and as between the truster and third parties. It also dealt with latent trusts of heritable property.

We are aiming to publish our report on variation and termination of trusts in the spring of 2007 and reports covering the matters in the other discussion papers in the trust law series in 2008.

Judicial factors

Project Team

Professor Gerry Maher QC, Commissioner
Gillian Swanson, Project Manager
Diana Tansley, Legal Assistant

Judicial factors are officers appointed by the court to collect, hold and administer property in difficult circumstances, for example, where there is a dispute about property or nobody else to administer it.

The law in this area is in need of radical overhaul to make it fit for the 21st century. There has been no primary legislation dealing with judicial factors since the Judicial Factors Acts came into force over a hundred years ago. The legislation is now in need of modernisation and simplification. Our preliminary research has shown that the legislation does not reflect current practice and the procedures involved in setting up a judicial factory are cumbersome. Similarly, the procedure for formal discharge is time-consuming and expensive. The functions, powers and duties of a judicial factor need to be clarified and modernised.

Last year we reported that we were aiming to publish a discussion paper in 2006. Work has been done on preparation of a discussion paper, but it has not been possible to complete it due to the need for us to give priority to other projects, in particular the major criminal law project, which Professor Maher is leading. Our aim is to publish the discussion paper in 2007.

Unincorporated associations

This topic was suggested to us by the WS Society in response to consultation on the possible content of our programme. Some initial research has been done, but we intend to undertake further research in the early part of 2007, with a view to preparing a discussion paper.

Provocation, self-defence, coercion, and necessity

Following on from our project on insanity and diminished responsibility, which we completed in 2004, we decided to undertake a review of the law of provocation, self-defence, coercion, and necessity in criminal law, as part of our Seventh Programme. The decision was prompted in part by the case of *Drury v HM Advocate* (2001 SCCR 583) in which the court commented that the law of provocation should be reformed and restated in statutory form. As the law of self-defence, coercion and necessity is also unclear, we have decided to examine these defences at the same time.

We plan to start work on this project in 2007 once we have completed our current project on rape and other sexual offences.

Assignment of, and security over, incorporeal moveables

This topic was suggested to us by a number of consultees, including the Law Society of Scotland. This will be a substantial project which is likely to be carried forward into the next programme. We intend to start work on the project once we have completed our current review of land registration.

References from Scottish Ministers

Rape and other sexual offences

Project Team

Professor Gerry Maher QC, Commissioner
Alastair Clyde, Project Manager
(until November 2006)
David Massaro, Legal Assistant

This project arises from a reference from Scottish Ministers inviting us to review the law relating to rape and other sexual offences and the evidential requirements for proving such offences.

The project was initiated following two widely-reported cases in 2004 and concern expressed by professionals and academics working in this area, as well as the general public, that the law was unclear.

Substantial reviews of sexual offences have been carried out in other jurisdictions, including England, but this project is the first-ever systematic review of Scots criminal law on sexual offences.

We published our discussion paper in January 2006 following extensive research and discussions with the project advisory group.

The discussion paper examined a number of key issues: redefining rape to cover both sexes; ensuring protection for vulnerable people and addressing the question as to how legislation should define the meaning of consent to sex. It also considered whether, as a matter of proof, corroboration should continue to be required for sexual offences. The discussion paper emphasised the need for legislation on sexual offences to apply to men and women equally.

To encourage debate about these issues a number of publicity events took place around the time of publication of the discussion paper. The project team

met the Law Society of Scotland's Criminal Law Committee, and attended a seminar held by the Faculty of Advocates' Criminal Bar Association. Team members also attended a workshop organised by the University of Edinburgh on reforming the law of rape.

The consultation period ended on 1 May. We received more than 80 responses from organisations and individual members of the public. We are currently working on our report which we aim to publish during 2007.

Interest on debt and damages

Project Team

Colin Tyre QC, Commissioner
Alastair Clyde, Project Manager

The reference for this project was received from Scottish Ministers in November 2003.

Our Report on Interest on Debt and Damages was published in September, completing our work on this project.

Scottish Ministers had asked us to-

"examine the law of Scotland relating to interest on claims for payment of money arising from contractual and other obligations, including claims within the jurisdiction of tribunals and courts or submitted for decision to arbitration, adjudication or some other form of dispute resolution."

At present, only business to business debts attract interest on late payment unless a court action is raised, in which case interest runs from the date when the action is begun.

The Report's main recommendation is that there should be a statutory right to interest throughout the period from the date when a claimant loses the use of money. This entitlement would extend to

late payments of wages and rent, and to aliment and other non-contractual debts. As regards insurance claims, we recommend that interest should begin to run 30 days after the date when a claim is intimated to the insurer.

The new statutory right to interest would not apply in circumstances where legislation already makes provision for interest, for example interest on unpaid tax. Parties would also remain free to agree that interest should run on a different basis or that no interest should be payable. Scottish Ministers would be given power to exclude specific debts from the scope of the statutory interest scheme.

Interest would run during the same period and at the same rate irrespective of whether the claim is for payment of a contractual debt, a non-contractual debt, or damages. The rate of interest would be set at a level which adequately compensates the claimant but not at a rate which punishes the debtor for late payment. In line with the rate at which businesses and consumers can borrow, we recommend that the rate should fluctuate by a fixed percentage (1.5%) above the Bank of England Base Rate. Although consideration was given to a proposal to make statutory interest compound interest, the Report recommends that statutory interest should be calculated as simple interest.

The Report also includes recommendations for change to the law relating to interest on damages. The court's present discretionary power (and its duty in personal injury actions) to award interest from or after the date when the right of action arose would be replaced by an entitlement to interest on each head of loss from the date when the loss was sustained.

The Report includes a draft Bill, which, if implemented by the Scottish Parliament, would give effect to our recommendations.

Personal injury actions: limitation and prescribed claims

Project Team

The Hon Lord Drummond Young Commissioner
Susan Sutherland, Project Manager
Maria Theodossiou, Legal Assistant

This project arises from two references from Scottish Ministers.

The first reference invited us to review the provisions of the Prescription and Limitation (Scotland) Act 1973 which deal with the limitation period in personal injury actions and the court's discretion to allow otherwise time-barred actions to proceed if it is equitable to do so.

The second reference from Scottish Ministers invited us to consider the position of people whose claims in respect of personal injury had been extinguished by prescription prior to 26 September 1984. This reference arose following concern about the position of people who may have suffered abuse while they received education or care in institutions run by local authorities or religious orders or other bodies, but whose claims for damages prescribed before September 1984.

As both references relate to claims for damages for personal injury and the consequences of the passage of time, we decided that they should be taken forward as one project.

Our Discussion Paper on Personal Injury Actions: Limitation and Prescribed Claims, was published in February 2006. It considered the provisions of the 1973 Act relating to the knowledge test, the length of the limitation period and the judicial discretion to allow time-barred cases to proceed. It went on to examine a number of matters relating to practice and procedure. Finally, the issues arising under the second reference were analysed. Comments on the proposals were invited by 31 May 2006.

We received a number of helpful responses which indicated that consultees were generally in favour of our proposals.

Work is progressing on our report and draft Bill, which we aim to publish later in 2007.

Sharp v Thomson

Project Team

Professor George Gretton, Commissioner
John Dods, Project Manager
John MacLeod, Legal Assistant

This project stems from a reference from Scottish Ministers in September 2000 following the decision in the case of *Sharp v Thomson* 1997 SC (HL) 66. The case concerned a floating charge which crystallised after the debtor company had granted a disposition of a flat but before the disposition had been registered. Despite the absence of registration, the House of Lords held that the flat was no longer part of the "property and undertaking" of the company and as a result it was not attached by the floating charge.

In our discussion paper (published in July 2001) we suggested that the approach adopted by the House of Lords was unsatisfactory and should be replaced by other provisions aimed at protecting the interests of purchasers. Most of our consultees agreed. However, our main proposal was largely overtaken by the House of Lords' decision in *Burnett's Trustee v Grainger* 2004 SC (HL) 19.

Section 17 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 has now implemented another of our proposals, designed to increase the protection given to *bona fide* purchasers.

Following these developments, we need to bring the project to a conclusion and submit a report to Scottish Ministers. We intend to do this during the course of 2007.

Damages for Wrongful Death

Project Team

Professor Joe Thomson, Commissioner
Susan Sutherland, Project Manager
Fraser Gough, Trainee Solicitor

In September 2006 we were asked by Scottish Ministers to-

"consider the law relating to damages recoverable in respect of deaths caused by personal injury and damages recoverable by relatives of an injured person; and to make any appropriate recommendations for reform."

The reference was prompted in part by the Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill which seeks to amend the law of damages as it applies to mesothelioma sufferers and their families.

The regime for damages in cases of wrongful death is contained in the Damages (Scotland) Act 1976. The Act provides that certain classes of relatives are entitled to recover damages for loss of support and their grief, distress, sorrow and other intangible losses brought on by the death of their relative. But relatives are entitled to claim damages only where the deceased had not successfully pursued his or her own, frequently smaller, claim for damages prior to death.

In some instances this can lead to people with only a few months to live being faced with a difficult choice - whether to claim damages for themselves, or defer their own claim to benefit their relatives after their death.

The Bill seeks to remove this difficult dilemma for mesothelioma sufferers by making it possible for their relatives to make a claim for non-patrimonial loss even where the sufferer has already obtained damages.

The effect of the Bill will be to create an inconsistency in the way the law treats deaths from mesothelioma and deaths caused by other wrongful acts or omissions. In the longer term such a difference is, arguably, undesirable and therefore developing a generally applicable solution to this problem will be among the primary aims of this project.

We will also be considering the law as it applies to wrongful death cases generally. The 1976 Act implemented our Report on the Law Relating to Damages for Injuries Causing Death, published in 1973. We considered the operation of the Act in the context of wrongful deaths in our Report on The Effect of Death on Damages, published in 1993 and recommended reforms which were substantially implemented by the Damages (Scotland) Act 1996. The current project will consider the effect of the 1996 amendments and whether further reform is needed.

We have undertaken preparatory research and have had a useful meeting with the project advisory group to discuss current issues. We are now preparing a discussion paper which we aim to publish in the summer of 2007.

Joint project with the Law Commission

Insurance contract law

Project Team

Colin Tyre QC, Commissioner
Gillian Swanson, Project Manager
Fraser Gough, Trainee Solicitor

We are assisting the Law Commission in London with this project which is included in their Ninth Programme of Law Reform.

Insurance law is criticised as being outmoded and in some cases unfair to policy holders. For example,

anyone applying for an insurance policy is obliged to disclose all "material facts" to the insurer, even if not specifically asked to do so. If such a failure to disclose induces the contract, the insurer may, on discovery of the non-disclosure, seek to have the policy set aside as from the outset and may refuse to meet a claim even if it has no connection with the matter which was not disclosed.

The Commissions published a joint scoping paper in January 2006 inviting views on which areas of insurance contract law cause potential difficulties. After analysis of the helpful comments submitted in response to that paper, it was concluded that, amongst others, the project should include the following topics

- non-disclosure
- misrepresentation
- warranties
- insurable interest, and
- unjustifiable delay.

The teams have produced two issues papers – one on misrepresentation and non-disclosure and the other on warranties – which were discussed at seminars in London in September and December. The series of issues papers does not represent the policy of either Commission but is intended as a vehicle for sharing the teams' initial thinking with interested parties.

As the project covers a very wide range of issues relating to insurance law, the Commissions have decided to publish two consultation papers. The first – which it is hoped will be published in the summer of 2007 - will deal with non-disclosure, misrepresentation and breach of warranty. The second one will cover the remaining topics and is likely to be published in 2008.

Summary of progress on our law reform projects

Projects under our Seventh Programme	Publication of Discussion Paper/Report	Current position
Land registration	Discussion Papers on- Land Registration: Void and Voidable Titles (No 125) published February 2004 Land Registration: Registration, Rectification and Indemnity (No 128) published August 2005 Land Registration: Miscellaneous Issues (No 130) published December 2005	Working on report (due to be published in 2008)
Leasehold tenure	Discussion Paper on Conversion of Long Leases (No 112) published April 2001 Report on Conversion of Long Leases (Scot Law Com No 204) published December 2006	Project completed
Succession		Working on discussion paper (due to be published summer 2007)
Trusts	Discussion Papers on- Breach of Trust (No 123) published September 2003 Apportionment of Trust Receipts and Outgoings (No 124) published September 2003 Trustees and Trust Administration (No 126) published December 2004 Variation and Termination of Trusts (No 129) published December 2005 The Nature and the Constitution of Trusts (No 133) published October 2006	Working on report on variation and termination of trusts (due to be published spring 2007)
Judicial factors		Working on discussion paper (due to be published in late 2007)
Unincorporated associations		Work due to start in 2007

Projects under our Seventh Programme	Publication of Discussion Paper/Report	Current position
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Provocation, self-defence, coercion, and necessity		Work due to start once Report on Rape and Sexual Offences published
Assignment of, and security over, incorporeal moveables		Work due to start once Report on Land Registration published

References from Ministers	Publication of Discussion Paper/Report	Current position
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Rape and other sexual offences	Discussion Paper on Rape and Sexual Offences (No 131) published January 2006	Working on report (due to be published in 2007)
Interest on debt and damages	Discussion Paper on Interest on Debt and Damages (No 127) published January 2005 Report on Interest on Debt and Damages (Scot Law Com No 203) published September 2006	Project completed
Personal injury actions: limitation and prescribed claims	Discussion Paper on Personal Injury Actions: Limitation and Prescribed Claims (No 132) published February 2006	Working on report (due to be published in 2007)
Sharp v Thomson	Discussion Paper on Sharp v Thomson (No 114) published July 2001	Report due to be published in 2007
Damages for Wrongful Death		Working on discussion paper (due to be published in 2007)

Joint projects with the Law Commission	Publication of Joint Consultation Paper	Current position
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Insurance contract law		First consultation paper due to be published in summer 2007
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Consolidation and statute law revision

Consolidation

Team members

The Hon Lord Drummond Young, Commissioner
Susan Sutherland, Project Manager
David Massaro, Legal Assistant

In addition to our law reform work we also undertake work on consolidation of legislation. Consolidation involves bringing together a number of statutes on a particular area of law into a single Act, with the aim of modernising the language and simplifying the provisions.

Most of our current work on consolidation is on joint projects with the Law Commission in London who take the lead in preparing the draft Bill. Our role is to assist the Law Commission team and to consult with interested parties in relation to Scottish provisions.

Parliamentary Costs

During 2006 we assisted the Law Commission in completing our joint Report and Bill on the consolidation of the legislation relating to parliamentary costs. The Report, which included the draft Bill, was published in June.

Wireless Telegraphy

We also assisted the Law Commission with finalising the Bill to consolidate the legislation relating to wireless telegraphy. This project did not involve the publication of a report by the Commissions as no recommendations were required for amendments to the legislation.

Representation of the people

We are currently assisting the Law Commission in London with work on a Bill to consolidate the legislation relating to representation of the people. Some work was done a few years ago, but the

project was suspended in December 2003 to enable UK Ministers to consider fully the Electoral Reform Commission's Report on *Voting for Change*.

The Bill is being amended to take account of changes to electoral law since 2003. A number of issues have emerged and as a consequence no final decision has been made on the timetable for the project.

Consolidation of primary legislation

We have not as yet prepared a programme setting out proposals for consolidation of primary legislation for implementation by the Scottish Parliament. The absence of a programme is due in part to the need for us to give priority to other law reform projects, particularly references from Scottish Ministers, and also to the fact that the Scottish Executive has been unable to allocate resources to assisting with the policy aspects involved in consolidation.

Consolidation of regulations

We have continued to assist the Executive with preparation of draft statutory instruments to consolidate a number of Regulations relating to the National Health Service in Scotland.

Statute law revision

Team members

The Hon Lord Drummond Young, Commissioner
Susan Sutherland, Project Manager
David Massaro, Legal Assistant

In addition to consolidation of legislation, our functions include undertaking work on statute law revision. This work involves making recommendations for the repeal of legislation which has become obsolete or otherwise unnecessary, with a view to making the statute book easier for those using it.

Most of our work on statute law revision is undertaken jointly with the Law Commission in London, who are responsible for drafting a repeals Bill. Seventeen such Bills have been prepared by the Commissions, all of which have been implemented.

Eighteenth statute law (repeals) Bill

Work is progressing on preparation of an eighteenth statute law repeals Bill. During 2006 we consulted with interested bodies in Scotland on a number of repeal proposals identified by the Law Commission team, including those relating to the armed forces and taxes and duties.

The aim is to complete a joint report and Bill around the end of 2007 with a view to introduction of the Bill in the UK Parliament in 2008.



David Massaro and Diana Tansley

Implementation of our reports

During 2006, our project teams provided assistance to the Scottish Executive and to Whitehall Departments during the Parliamentary stages of a number of Bills.

We regard our assistance to Departments with implementation of our recommendations as an important part of our overall function, although on occasions it requires us to re-schedule work on our current law reform projects to allow time to advise officials and comment on draft provisions. We hope to continue our close relationship with the Executive and Whitehall Bill teams in the future.

Bankruptcy and Diligence etc. (Scotland) Act 2007

The Bankruptcy and Diligence etc. (Scotland) Act 2007 implemented recommendations in our Report on Diligence on the Dependence and Admiralty Arrestments, published in 1998 and our Report on Diligence, published in 2001.

The Act also implemented provisions relating to the law of floating charges as recommended in our Report on Registration of Rights in Security by Companies, published in 2004. Further provisions relating to the recommended Register of Floating Charges were included in the Companies Act 2006.

As a result of amendments made towards the end of November 2006, provisions were also included to give effect to proposal 4 in our Discussion Paper on *Sharp v Thomson*. Our property law team provided detailed advice to the Scottish Executive on a number of aspects of the Bill including land attachments.

Parliamentary Costs Act 2006

The consolidation Bill annexed to our joint Report with the Law Commission on Parliamentary Costs was introduced in the UK Parliament to coincide with publication of the Report in June 2006. The Act, which received Royal Assent on 8 November 2006, consolidates the legislation, dating back to Victorian times, relating to charges for Parliamentary agents and solicitors in bringing forward or opposing private Bills in the UK Parliament.

Wireless Telegraphy Act 2006

The Wireless Telegraphy Act 2006 consolidates a number of Acts dealing with the radio spectrum, dating back to 1949. The Act was the result of joint work with the Law Commission team in London who took the lead in preparing the draft Bill, which was introduced in the UK Parliament and received Royal Assent on 8 November 2006.

Further information about implementation of our reports is available on our website: www.scotlawcom.gov.uk

Promoting law reform

Throughout 2006 we continued our links with the Scottish Executive, the Law Society of Scotland, the Faculty of Advocates, other professional bodies and the university law schools. In addition to working with the Law Commission on our joint projects, we maintained close contact on general matters relating to our law reform work.

International links, conferences and other events in 2006

Our former Chairman, Lord Eassie, and Michael Lugton, our Chief Executive, attended a meeting of Chairmen and Chief Executives of all Law Reform Bodies of the British Isles in London in February, to discuss a number of challenges common to all law reform bodies.

In March, Professor Maher and one of our former legal assistants travelled to the National University of Ireland in Galway to talk to post-graduate students about the process of law reform.

The Chief Executive represented the Commission at the Australasian Law Reform Agencies Conference held in Sydney from 10 – 12 April.

During the year we were pleased to welcome a number of visitors to the Commission.

Catherine Munyao of the Kenya Law Reform Commission came to the Commission in March during her visit to Scotland. She met the project teams and the Chief Executive to discuss current law reform work and the management of projects.

Fiona Kalemba of the Ministry of Justice in Malawi visited us as part of her placement with the Office of the Scottish Parliamentary Counsel.

Prue Vines of the University of New South Wales visited the Commission as part of her official visit to Strathclyde University Law School. She met Professor Thomson to discuss our current projects on succession and damages.

Commissioners, management and staff

Commissioners

At the end of December 2006 the Hon Lord Drummond Young was appointed as Chairman of the Commission, succeeding the Rt Hon Lord Eassie, who took up appointment to the Inner House of the Court of Session. Lord Drummond Young has been appointed on a part-time basis for five years until the end of 2011. He will combine his role as Chairman with his judicial duties.

Professor George Gretton joined the Commission in May 2006 for a five year period from the University of Edinburgh. He succeeded Professor Kenneth Reid whose term of appointment ended in December 2005.

Colin Tyre QC was reappointed as a Commissioner for a further three years until 30 September 2009.

Commission management and staff

Commissioners are assisted by the Chief Executive and by legal and non-legal staff.

Parliamentary Counsel

In November, Gregor Clark joined the Commission on a part-time basis as Parliamentary Counsel. He was previously a senior member of the Office of the Scottish Parliamentary Counsel. He is responsible for drafting the Commission's Bills which are intended to implement the recommendations in our reports.

Project managers

The project managers are qualified lawyers and are members of the Government Legal Service for Scotland (GLSS). They are responsible for managing the projects and allocating work to the legal assistants as well as for contributing to the substantive law reform work. We currently have four project managers:

John Dods
David Nichols
Susan Sutherland
Gillian Swanson

Legal assistants

The legal assistants are graduates in law who are employed on fixed-term contracts, usually for one year. Some of them come to us from University while others join the Commission after qualifying as solicitors and gaining experience in private practice with firms of solicitors. Their main responsibilities are to carry out research in connection with preparation of our discussion papers, to assist with analysing responses to our consultation exercises and to provide support to the teams in connection with our reports and draft Bills.

At present we have four legal assistants:

John MacLeod
David Massaro
Diana Tansley
Maria Theodossiou

Trainee solicitor

We have continued our practice of taking on trainee solicitors for six month periods as part of their training with the GLSS. Our current trainee is Fraser Gough.



John MacLeod, Maria Theodossiou and Fraser Gough

Administrative and typing services staff

In addition to the legal staff we currently have a qualified librarian and six members of staff who provide administrative, IT, secretarial and typing services.

Nick Brotchie, Librarian

Joan Melville

Jackie Palkowski

Iain Ritchie

Heather Ryan

Gordon Speirs

Lesley Young, Office Manager

Website

During the year we added a further 37 older Commission publications comprising joint reports from the period 1969 - 1995 to our website.

Environmental strategy

We have published a revised environmental strategy document on our website, in line with our obligations under the Nature Conservation (Scotland) Act 2004. In the first phase of the new strategy we have been gathering data in the areas of our office operations where we have set targets – consumption of paper, water and energy and waste disposal/recycling. The aim is to reduce our consumption of resources where possible, and we will be using the data collected to set further specific targets for 2007/2008.

Recruitment

As part of our recruitment process for legal assistants, we took part in the law fairs at Aberdeen, Dundee and Glasgow Universities in October and more recently at Edinburgh and Strathclyde Universities.

Equality and diversity

We aim to ensure that principles of equality and diversity are integrated into everything we do, both in our law reform work and in relation to our personnel policy and practices.

Law reform publications planned for 2007

We plan to publish discussion papers for consultation on-

- Damages for Wrongful Death
- Succession
- Judicial Factors

We also plan to publish a Joint Consultation Paper with the Law Commission on-

- Insurance Contract law: Non-disclosure, misrepresentation and breach of warranty

We plan to publish Reports containing our recommendations for reform on-

- Rape and Sexual Offences
- Personal Injury Actions: Limitation and Prescribed Claims
- Variation and Termination of Trusts
- Sharp v Thomson

Project advisory groups

We are grateful to the members of our advisory groups for the assistance they have given us with our law reform projects during 2006

Rape and other sexual offences

Sandy Brindley, *Rape Crisis Scotland*
James Chalmers, *University of Aberdeen*
Brian Dempsey, *Outright Scotland and SCOLAG*
Iain Fleming, *Solicitor*
Janette de Haan, *Glasgow Women's Support Project*
Tim Hopkins, *Equality Network*
Louise Johnson, *Scottish Women's Aid*
Frances McMenamin QC
Stephanie Whitehead, *Brook*

Personal injury actions

Robert Carr, *Solicitor*
David Johnston QC
Ranald Macdonald, *Scottish Health Service Central Legal Office*
Robert Milligan, *Advocate*
Fiona Moore, *Solicitor*

Land registration

Professor Stewart Brymer, *Solicitor*
Professor Roderick Paisley, *University of Aberdeen*
Professor Kenneth Reid, *University of Edinburgh*
Professor Robert Rennie, *University of Glasgow*

Leasehold tenure

Professor Stewart Brymer, *Solicitor*
Dr Angus McAllister, *University of Paisley*
Somered Notley, *Solicitor*
Professor Robert Rennie, *University of Glasgow*

Trusts

Alan Barr, *Solicitor, University of Edinburgh*
Robert Chill, *Solicitor*
Andrew Dalgleish, *Solicitor*
Frank Fletcher, *Solicitor*
Alexander McDonald, *Solicitor*
Simon A Mackintosh, *Solicitor*
James McNeill QC
Allan Nicolson, *Solicitor*
Professor Kenneth Norrie, *University of Strathclyde*
Scott Rae, *Solicitor*
Mark Stewart, *Solicitor*
Alister Sutherland, *Consultant Solicitor*

Succession

Alan Barr, *Solicitor, University of Edinburgh*
John Kerrigan, *Solicitor*
Ross Macdonald, *University of Dundee*
Iain Maclean, *Advocate*
Christopher McGill, *Secretary, Society of Trust and Estate Practitioners (Scotland)*
Professor Michael Meston, *University of Aberdeen*
Malcolm Strang Steel, *Solicitor*
Eilidh Scobbie, *Solicitor*
Scott Rae, *Solicitor*
Gordon Wyllie, *Solicitor*

Running costs

The Commission is funded by the Scottish Executive Justice Department. Our running costs for 2006 were offset by payment received from Skills for Justice and the Royal Commission on the Ancient and Historic Monuments of Scotland for use of part of our office accommodation.

EXPENDITURE	YEAR TO 31 DECEMBER 2006		YEAR TO 31 DECEMBER 2005	
	£000	£000	£000	£000
Salaries – Commissioners (including national insurance contributions, superannuation payments and pensions to former Commissioners)	542.0		580.6	
Salaries – Chief Executive and legal staff (including national insurance contributions, superannuation payments and consultants' fees and expenses)	570.1		539.7	
Salaries – administrative staff (including national insurance contributions and superannuation payments)	171.8	1283.9	154.5	1274.8
Accommodation (including maintenance, rates and utilities)		60.3		60.3
Printing and publishing (including costs of binding, library purchases, binding, machinery maintenance, photocopying, reprographic services and stationery)		94.8		68.5
Telephone and postage		12.2		18.9
Travel and subsistence		12.6		10.7
Miscellaneous (including training, office services and hospitality)		21.1		7.9
Total		£1484.9		£1441.1

Our law reform work involves-

- **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 some cases in the UK Parliament at Westminster

For more information about the Commission please contact:

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It may also be purchased from TSO Scotland Bookshop.

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