

SCOTTISH LAW COMMISSION
(Scot Law Com No 139)



Twenty-Seventh Annual Report 1991-92

Laid before Parliament by the Lord Advocate
under Section 3(3) of the Law Commissions Act 1965

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

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Professor P N Love, CBE
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SCOTTISH LAW COMMISSION

Report for the year ended 15th June, 1992

To: The Right Honourable the Lord Rodger of Earlsferry, QC,
Her Majesty's Advocate

In accordance with section 3(3) as read with section 6(2) of the Law Commissions Act 1965, as amended,¹ we have the honour to submit this the Twenty-Seventh Annual Report of the Scottish Law Commission.

(Signed) C K DAVIDSON, *Chairman*
E M CLIVE
PHILIP N LOVE
IAIN MACPHAIL
W A NIMMO SMITH

KENNETH F BARCLAY, *Secretary*
18 December 1992

¹ Transfer of Functions (Secretary of State and Lord Advocate) Order 1972 (S.I. 1972, No. 2002).

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Part I Introduction

1.1 During the year under review we published reports relating to Statutory Fees for Arrestees, The Effect of Death on Damages, and Family Law. We published discussion papers on Confidentiality in Family Mediation, Mentally Disabled Adults and Mutual Boundary Walls. We also tendered advice on a variety of questions, sometimes as a matter of urgency, to Government departments.

1.2 The *Report on Family Law*¹ covers a wide range of topics and is divided into three parts, the first of these dealing with parental responsibilities and rights, guardianship and the administration of children's property, the second with various pre-consolidation reforms, and the third with the effects of cohabitation in private law. Once this report, together with that relating to the ground for divorce, has been implemented, the programme of systematic reform and restatement of Scots family law, which has occupied much of the Commission's time and resources over a period of about 20 years, will be virtually complete. Subsequent consolidation of family law, preferably one incorporating both public as well as private aspects of the subject, will mark a significant milestone in the progress towards modernising Scots private law. During its currency our programme for reform of family law has enjoyed a mixed reception. On the whole, we are satisfied that the recommendations, both those already implemented and those still awaiting parliamentary attention, represent a marked improvement on the previous, or existing, law and have won a wide measure of public support and acceptance. Further, in the light of experience in Scotland and elsewhere, we are satisfied that the decision to commit a large part of our resources to this topic was justified. A number of well publicised cases raising controversial issues in family law have stimulated widespread interest in Scotland, and have attracted close critical scrutiny of substantive and procedural aspects of our family law. Although the workings of some aspects of recent family law legislation have been criticised, we submit that, once it is fully implemented, our reformed family law will compare favourably with the family law regimes of other jurisdictions. Meantime, we will continue to keep the whole topic of family law under review as a programme subject.

1.3 In property law two main exercises currently in hand are reform of the feudal system and the law of the tenement. The response from consultees to our discussion papers on these topics has been constructive and helpful. Professor Philip Love, who has been closely concerned with both of these exercises as part of our property reform programme, has been appointed Vice Chancellor of Liverpool University with effect from 1 September 1992. We have pleasure in congratulating him on that appointment. We are grateful to Professor Love for delaying his departure from the Commission until the first part of 1993, by which time it is hoped that reports on the feudal system and the law of the tenement will be completed.

1.4 In July 1991 the Law Commission published Consultation Paper No 120 on *Restitution of Payments made under a Mistake of Law*. In our Twenty-Sixth Annual Report we explained that the need to harmonise the Scots and English rules in such areas as recovery of

¹ (1992) Scot Law Com No 135.

rates and taxes paid in error and mistaken payments to public authorities or under public law statutes made it desirable to prepare a discussion paper on the error in law rule in Scots law. Priority was given to preparation of this discussion paper at the expense of progress in our work on diligence. Our own discussion paper on this topic is in an advanced state of preparation. We anticipate that the task of achieving cross-border harmonisation of the legal rules in this area of law may be unusually difficult. In spite of the influence of English decisions upon the development of Scots law, the origins and development of the two respective systems have been significantly different. In addition, completion of our discussion paper has been delayed in order to incorporate reflections on the majority decision of the House of Lords in *Woolwich Equitable Building Society v Commissioners of Inland Revenue*.²

1.5 In recent reports we have expressed concern over the slow rate of implementation of our recommendations for law reforms. During the year under review the Carriage of Goods by Sea Bill 1992, which gave effect to the joint report of the two Commissions on *Rights of Suit in Respect of Carriage of Goods by Sea*,³ was presented to Parliament, but fell on the calling of the General Election. It was, however, reintroduced in the present Parliament, made swift progress through both Houses, and received the Royal Assent in July. In addition, the Damages (Scotland) Bill 1992, which implements our report entitled *The Effect of Death on Damages*,⁴ has been introduced in the House of Lords by Lord Macaulay of Bragar. When this report was published in March 1992 it met with immediate approval from Government which expressed the wish that the recommendations be given effect in legislation at an early date. In view of the urgent and tragic plight of asbestosis victims whose dependants will benefit from implementation of this proposed reform, we trust that the Bill will not be subjected to avoidable delays or obstacles during its passage through Parliament.

1.6 In March 1992 the Law Society of Scotland generously devoted a whole session of its Annual Conference at Gleneagles to consideration of the question "Law reform - who cares?". The speakers at the session were Lord Morton of Shuna, Lord Fraser of Carmyllie and our Chairman. The following points emerged from the discussion. Lack of time on the floor of the House of Commons was identified as being the root cause of delays, and it was noted that this lack has held up implementation of recommendations from both Law Commissions. The Law Commissions have welcomed the experimental step proposed by the Select Committee on the Committee work of the House of Lords whereby special Standing Committee procedure would be applied to additional Government Bills, such as those arising from certain recommendations of the Law Commissions. Consideration could also be given to Lord Morton's suggestion that law reform Bills which fail to complete all their stages during one session of Parliament should be carried forward automatically into the next session. Even if these suggested reforms are brought about, they are unlikely to accelerate progress on the five substantial reports listed in our last report which still await parliamentary consideration. One of the causes of delay is that these reports contain controversial recommendations. Although they are the product of detailed research and, as a result of extensive consultation, have met with a measure of public approval, they nevertheless require and deserve critical and informed examination on the floor of each House of Parliament. It is to be hoped that the impetus for swifter implementation given by the Law Society at their Conference and the reactivation of the Scottish Select Committee in

² [1992] 3 WLR 366, [1992] 3 All ER 737.

³ (1991) Law Com No 186, Scot Law Com No 130.

⁴ (1992) Scot Law Com No 134.

the current Parliament will lead to an early increase in the number of Scottish law reform measures introduced in the House of Commons.

Part II Progress of law reform projects

2.1 The present position in each of our current law reform projects is set out in more detail in this Part of our report. The main subject headings are presented in alphabetical order. Programmes subjects¹ are denoted by the use of an asterisk.

Administrative Law

2.2 In our last annual report,² we recorded our decision to postpone work on this topic and to review that decision in the Spring of 1992. As a result of our review we have now decided to resume work on the reference which was given to use in 1988.³ Because of current priorities, however, it is unlikely that staff resources will be available before the autumn of 1992. It is also possible that further delays may arise if new projects are undertaken in the interim.⁴ Subject to these contingencies, we hope to complete our first discussion paper on the topic during 1993.

2.3 It is our intention to begin with an examination of title and interest to sue for judicial review under the common law jurisdiction of the Court of Session. Title and interest rules in effect control access to the Court and are particularly important in the context of administrative law. Other rules which may result in a case being dismissed without a hearing on the merits are also important and may have to be examined as well. For example, certain rules require that any statutory remedies which may be available should first be exhausted before resorting to judicial review. These rules are complex and subject to many exceptions, so that predicting how they might apply in particular circumstances is not easy. We may also have to consider the rules which prevent an application being pursued where there has been undue delay in bringing it.

2.4 In a subsequent phase of the exercise it may be necessary to consider access to statutory procedures of appeal or review, whereby the acts and decisions of administrative authorities may be challenged before the sheriff or the Court of Session. In this area we would expect to benefit from current research on the impact of decisions of the sheriff on administrative authorities subject to his statutory powers of review.⁵ In a further phase we intend to examine remedies in administrative law, in particular the power of the courts to substitute their own decisions for decisions which are challenged and the availability of damages as a remedy against administrative authorities.

2.5 The timing and content of the various phases of our work cannot be fully determined at this stage. Much depends on the amount of the resources that we can bring to it. Much too may depend on how the work of the Law Commission develops in this area. We have

¹ First Programme, (1965) Scot Law Com No 1; Second Programme, (1968) Scot Law Com No 8; Third Programme, (1973) Scot Law Com No 29; Fourth Programme (1990) Scot Law Com No 126.

² Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, paras 1.10, 2.2-24.

³ See Twenty-Third Annual Report 1987-88, Scot Law Com No 114, para 2.4.

⁴ For example on the law of damages: see para 2.51 below.

⁵ The research is being carried out by Mr Gavin Little of the University of Dundee: see Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.4.

taken note of their intentions as announced in the Fifth Programme of Law Reform (Item 10).⁶ Some of the problems with which they are concerned are also problems in Scotland. Others are the product of the particular conditions and system of administrative law prevailing in England and Wales. Nevertheless, where problems are common it is clearly desirable that they should be addressed in both jurisdictions and that our respective rules should produce solutions which are in harmony.

Criminal Law

General

2.6 Our work in the criminal law field derives from proposals for law reform projects under section 3(1)(a) of the Law Commissions Act 1965 and references under section 3(1)(e) of that Act.

Forfeiture and confiscation

2.7 We have made progress in the preparation of a report on the powers of the courts to order the forfeiture of instruments used in the commission of crime and the confiscation of the proceeds of crime. Before finalising our recommendations on confiscation we intend to examine the Report upon Part VI of the Criminal Justice Act 1988 by the Home Office Working Group on Confiscation which introduced confiscation orders in relation to offences other than drug trafficking offences in criminal proceedings in England and Wales. The Working Group's report is to be published in the autumn of 1992.

Diligence*

(Second Programme, Item 8)

2.8 As forecast in our last annual report,⁷ we gave priority to our Report on *Statutory Fees for Arrestees*, the completion of which had had to be deferred pending a survey of arrestments carried out by the Scottish Office Central Research Unit in July 1991. This Survey was successfully carried out and provided extremely useful information on the scale of use of arrestments. Our report was submitted to your predecessor in 1991 and was published on 22 January 1992.⁸

2.9 Further work on the various diligence projects mentioned in our last annual report⁹ has been temporarily suspended because of diversion of resources to other more pressing commitments.

⁶ Law Com No 200, published in June 1991: see Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 1.10.

⁷ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, paras 2.9 and 2.10.

⁸ Scot Law Com No 133.

⁹ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, paras 2.11 and 2.12.

Evidence*
(First Programme, Item 1)

Blood group tests, DNA tests and related matters

2.10 Our Report on *Blood Group Tests, DNA Tests and Related Matters*¹⁰ was submitted in August 1989 and published in October 1989. Its recommendations as to blood and other samples in civil proceedings were implemented by section 70 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Its remaining recommendations, as to prints, impressions and samples in criminal investigations, are to be implemented by clause 28 of the Prisoners and Criminal Proceedings (Scotland) Bill which is currently before Parliament.

Evidence of children and other potentially vulnerable witnesses

2.11 In our last annual report¹¹ we recorded that our Report on *The Evidence of Children and Other Potentially Vulnerable Witnesses*¹² had been implemented in part by the Memorandum by the Lord Justice-General on Child Witnesses and by sections 56, 59 and 60 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. The report's recommendations as to the video-recording of evidence on commission, and the use of screens in court, when a child's evidence is required in criminal proceedings are to be implemented by clauses 33 to 35 of the Prisoners and Criminal Proceedings (Scotland) Bill which is currently before Parliament.

Hearsay and related matters in criminal proceedings

2.12 In our last annual report¹³ we recorded that work was in hand on the preparation of a report. We have undertaken a comprehensive re-examination of the issues considered in our Discussion Paper No 77 on *Criminal Evidence: Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings*. These issues were: the admission of evidence by affidavit; the rule against hearsay; the admissibility of the prior statements of witnesses and accused persons; computer and other machine-generated evidence; and miscellaneous matters relative to documentary evidence. In the ordinary course of events we would have dealt with all these matters in a single report. In an opinion issued on 12 June 1992, however, the Lord Justice-General drew attention to the urgent need for statutory provisions for Scotland similar to those which in England and Wales apply to statements in documents in criminal proceedings.¹⁴ An opportunity for legislation on that subject was conveniently presented by the Prisoners and Criminal Proceedings (Scotland) Bill which is now before Parliament. We therefore gave priority to our work on the relevant parts of our report and made certain recommendations. Schedule 3 to the Bill now makes provision as to the admissibility in criminal proceedings of copy documents and of evidence contained in business documents.

2.13 We also gave further thought to the proposal in the discussion paper that affidavits might be admitted instead of oral evidence. Having considered the responses of our consultees, we reached the view that the suggested procedure would not achieve its aim of

¹⁰ (1989) Scot Law Com No 120.

¹¹ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, paras 2.13, 2.14.

¹² (1990) Scot Law Com No 125.

¹³ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.16.

¹⁴ *Lord Advocate's Reference (No 1 of 1992)* 1992 SCCR 724.

saving the time of the court and potential witnesses. We therefore devised instead a procedure based on suggestions in certain of the responses whereby facts which would not be disputed at the trial might be formally admitted beforehand. The object of the procedure is to reduce the inconvenience suffered by witnesses who are required to attend court to prove matters which are not in dispute. The procedure could also be used to agree statements in business documents which would be made admissible by virtue of Schedule 3 to the Prisoners and Criminal Proceedings (Scotland) Bill.

2.14 We have brought together our recommendations on all these matters in our Report on *Documentary Evidence and Proof of Undisputed Facts in Criminal Proceedings*¹⁵ which was submitted to you on 27 August 1992 and will be published later this year. The matters in the discussion paper on which we have yet to report are the extent to which the rule against hearsay might be further modified and, in particular, the extent to which the prior statements of witnesses and accused persons should be admissible. We intend to deal with these matters in a further report which we hope to publish in 1993.

Confidentiality in family mediation

2.15 As mentioned in last year's report¹⁶ we published Discussion Paper No 92 on *Confidentiality in Family Mediation* in April 1991. Family mediation has been established throughout Scotland over the past few years on a formal basis under the aegis of Family Conciliation Scotland (formerly the Scottish Association of Family Conciliation Services) who have promoted the development of, and co-ordinated, local family mediation services. In April 1990 Rules of Court came into force empowering the courts in actions of custody of, and access to, children to refer the parties to mediation. The use of mediation has led to concern that what the parties to the dispute said and did during mediation could be used as evidence against them if mediation failed to resolve the issues and the case returned to court. This lack of protection was felt to have an inhibiting effect on mediation and in our discussion paper we put forward various suggestions for dealing with these problems.

2.16 We have been considering the responses to our discussion paper and have prepared a report.¹⁷ In this report we recommend the introduction of new statutory rules to protect and encourage the mediation of family disputes. Effective mediation requires that the parties to the dispute should be able to discuss the issues frankly without fear that what they say may be used against them. The new rules should, we recommend, prevent information obtained from sessions conducted by approved mediators being admissible as evidence in subsequent civil proceedings. An approved mediator would be a person who was an accredited member of an organisation approved by the Lord President of the Court of Session or who had been individually so approved. The new inadmissibility rule should not be absolute, however. In our view it should not apply where other public interests should prevail. Such interests include the public interest in the detection and prosecution of crime and in the protection and welfare of children. The report therefore recommends that mediation information should be admissible in criminal proceedings and in children's hearings and other proceedings relating to the care and protection of children involving a body with statutory duties in that area. It should also be open to the parties to agree that

¹⁵ (1992) Scot Law Com No 137.

¹⁶ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.17.

¹⁷ The *Report on Evidence: Protection of Family Mediation* was submitted to you in July 1992 and will be published later this year.

otherwise inadmissible information should be admitted. Where they did so they could give evidence themselves, or require the mediator to give evidence, as to what occurred in a mediation session.

Family Law*
(Second Programme, Item 14)

Pre-consolidation reforms

The effects of cohabitation in private law

Parental responsibilities and rights, guardianship and the administration of children's property

2.17 In our last annual report¹⁸ we stated our preference for the amalgamation of three of our family law projects, namely, *Family Law: Pre-consolidation Reforms*,¹⁹ *The Effects of Cohabitation in Private Law*²⁰ and *Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property*.²¹ Accordingly, our *Report on Family Law*²² was submitted to you and laid before Parliament by you on 6 May 1992.

2.18 Very useful research undertaken on our behalf by the Central Research Unit of the Scottish Office into recent experience of judicial separation as a remedy enabled us to conclude that judicial separation should be abolished. Results of the research did not reveal any strong practical reason for seeking judicial separation where a divorce is not wanted, rather than seeking other remedies such as an award of aliment or orders relating to children. The research also confirmed that judicial separation actions have declined rapidly in number in recent years. In relation to a proposed recasting of Scottish family law in a new comprehensive statute or code²³ we felt that there was no room for such an unnecessary obsolescent remedy. Similarly, we recommend the abolition of marriage by cohabitation with habit and repute, of nullity for impotence and of declarators of freedom and putting to silence. We also recommend technical amendments to the Matrimonial Homes (Family Protection) (Scotland) Act 1981 to reduce the inconvenience which some of its provisions cause in conveyancing transactions and more substantial amendments to increase protection against domestic violence by extending the scope and availability of matrimonial interdicts with powers of arrest attached.

2.19 Our conclusion on cohabitation, after consultation, research and public meetings, was that there was room for some improvement in the law but that any change should be of a very cautious and modest nature. "It should neither undermine marriage, nor undermine the freedom of those who have deliberately opted out of marriage."²⁴ However, we felt that cohabitation, which exists on a large scale, can give rise to legal difficulties and injustices which should be tackled. With this in mind we recommend that any doubts about the validity of cohabitation contracts should be removed and that it should be made clear that cohabitants can take out life insurance policies in the same way as married couples can. Where a cohabitation comes to an end, otherwise than by death, we recommend that a

¹⁸ Twenty-Sixth Annual Report No 1990-91, Scot Law Com No 131, para 1.16.

¹⁹ Discussion Paper No 85.

²⁰ Discussion Paper No 86.

²¹ Discussion Paper No 88.

²² (1992) Scot Law Com No 135.

²³ See para 2.24 below.

²⁴ (1992) Scot Law Com No 135, para 16.1.

former cohabitant should be able to apply to a court for a financial award designed to redress certain unfair economic advantages or disadvantages. This would provide a statutory remedy, for example, for a cohabitant who had worked unpaid for many years helping to build up a business owned by the other partner. Where a cohabitation is ended by death we recommend that the surviving partner should be able to apply to a court for a discretionary provision out of the deceased's estate. We also suggest greater protection for cohabitants from domestic violence. We recommend that domestic interdicts with powers of arrest attached should be more widely available to cohabitants and should be available to former cohabitants. Our recommendations also deal with presumptions about the ownership of household goods and savings from a house-keeping or similar allowance.

2.20 In dealing with parental responsibilities and rights we propose a shift in emphasis from parental rights to parental responsibilities. In that connection we recommend that there should be a clear statutory statement of parental responsibilities which should include a responsibility to safeguard and promote the child's health, development and welfare, a responsibility to provide direction and guidance to the child in a manner appropriate to the child's stage of development, and, if not living with the child, to maintain personal relations and direct contact with the child on a regular basis, all in so far as practicable and in the interests of the child. We also wish it to be made clear that parents have parental rights in order to enable them to fulfil their parental responsibilities.

2.21 In relation to a parent's right to administer reasonable and moderate corporal punishment to his or her child, we feel that the law could make it much clearer that certain forms of punishment are legally unacceptable. We were confirmed in our view that belting or striking a child with any object ought to be prohibited by the results of a public opinion survey carried out for us in September 1991. This showed that the Scottish public drew a clear distinction between a safe smack with the open hand and the use of belts, sticks or other objects. Accordingly, we do not recommend that the safe smack should be outlawed. Our recommendation is that in any proceedings, whether criminal or civil, against a person for striking a child, it should not be a defence that the person struck the child in the purported exercise of any parental right if he or she struck the child with a stick, belt or other object, or in such a way as to cause, or to risk causing, injury, or in such a way as to cause, or to risk causing, pain or discomfort lasting more than a very short time. We also recommend changes to the Children and Young Persons (Scotland) Act 1937 which would enable section 12(7) of that Act to be repealed. Subsection (7) states that nothing in section 12 (which deals with cruelty to children) is to affect the right of a parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to him. It could give the misleading impression that even quite severe cruelty to children is justifiable if it takes the form of punishment.

2.22 In the absence of any court order regulating the position we recommend that both parents of a child should have parental responsibilities and rights whether or not they are or have been married to each other. This would remove the existing discrimination against unmarried fathers, who at present have to apply to the court if they wish to have parental responsibilities and rights. In relation to "custody" and "access" we recommend that these terms should be replaced by more fact-based, child-centred terms. Instead of making a custody order in favour of one party a court could make a residence order, regulating where the child is to live. Instead of making an access order in favour of one party a court could make a contact order regulating the arrangements to be made for maintaining personal relations and direct contact between a child and a parent or other person with whom the

child will not be living. It is hoped that the recommended terminology, which is similar to that now used in England under the Children Act 1989, will better reflect the policy that both parents, even after separation or divorce, normally have a continuing role to play in relation to the upbringing of the child. We also recommend that due consideration should be given to the views of the child, taking account of the child's age and maturity, by any person taking a major decision relating to the child in the exercise of any parental responsibility or right. Legal discrimination against children of parents who have never been married to each other has been gradually removed over the years. However, the empty legal status of illegitimacy still remains. It is still possible in Scotland to obtain a court declarator that someone is illegitimate, even though almost no legal consequences now attach to that status. Accordingly, we recommend the abolition of the legal status of illegitimacy.

2.23 The report also makes a number of recommendations designed to modernise the law on the guardianship of children and the administration of children's property. It also makes recommendations on the question of court orders on parental responsibilities and rights, guardianship and the administration of children's property. These recommendations are designed to continue and strengthen existing well-accepted policies, for example, that the welfare of the child should be the paramount consideration, that there should be wide access to the courts (including access by the child concerned) and that the court should not make unnecessary orders. The report contains recommendations as to the choice of the governing law where a question has links with two or more legal systems; these recommendations generally build on existing case-law or conclusions reached in earlier joint projects by the two Law Commissions.

2.24 If the draft Bill appended to our report were enacted, almost the whole of Scottish family law would be in modern up-to-date statutes which would be ripe for consolidation. If the statutory provisions on child care and protection, with any changes which may follow from recent or current reviews and enquiries (such as the Child Care Law Review and the Orkney inquiry), were to be included in the consolidation, the result would be comprehensive Scottish code of child and family law. The report sets out an outline of what such a code might contain. As the Family Law Report represents an important step forward for Scottish family law we hope that legislation on the various matters contained in it will be possible at an early date.

Obligations *
(First Programme, Item 14)

Corporeal moveables

2.25 No further work is being undertaken in this area for the time being.

The postal rule

2.26 We are considering this rule in the context of the law on the formation of contracts generally, with particular reference to the provisions in the Vienna Convention on Contracts for the International Sale of Goods.

Rights in security over moveable property

2.27 In our last annual report²⁵ we promised to keep an interest in this matter because the Department of Trade and Industry was preparing a Bill introducing new forms of security over moveables into Scots law. During the year under review no draft Bill was produced, and we carried out no work on this matter.

Carriage of goods by sea

2.28 A Private Member's Bill to implement the recommendations contained in our Joint Report with the Law Commission for England and Wales on *Rights of Suit in respect of Carriage of Goods by Sea*²⁶ was introduced into the House of Lords by Lord Goff of Chievely during the last Parliament. Although, unfortunately, the Bill was lost on the dissolution of Parliament for the General Election, it was subsequently re-introduced by Lord Goff, passed all its stages and received Royal Assent in July 1992.²⁷

Sale and supply of goods

2.29 As we indicated in our last annual report,²⁸ in conjunction with the Law Commission, we embarked on a further consultation exercise in connection with provisional proposals for the reform of section 16 of the Sale of Goods Act 1979. We have examined the possibility of an amendment which would enable a purchaser of a quantity of goods forming part of an identified bulk to acquire a property interest in the goods (by becoming a part-owner of the bulk) before the bulk is actually divided up. At present section 16 usually prevents the purchaser acquiring any property interests in the goods until actual delivery. Our further consultation among English and Scottish insolvency practitioners showed a general desire for a change in the law in this area to give a purchaser of a quantity of goods forming part of an identified bulk an increased facility to acquire a property interest in the goods. None of the proposed solutions is, however, altogether satisfactory and it is proving difficult to find a solution which is acceptable to all the Commissioners in both Commissions. Work, however, continues and we hope that it will be possible to submit a joint report during the course of 1993.

Supersession of missives

2.30 Work on this topic has been delayed but we hope to publish a short discussion paper during the course of 1993.

Unjustified enrichment: recovery of benefits conferred under error

2.31 As forecast in our last annual report,²⁹ we have been examining the law on the recovery of benefits conferred under error of law and similar matters. We have been working on the preparation of three discussion papers, namely: (1) a discussion paper on the recovery of *ultra vires* public authority receipts and disbursements; (2) a discussion paper on

²⁵ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.24.

²⁶ Law Com No 196, Scot Law Com No 130.

²⁷ 1992 c 50.

²⁸ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.27.

²⁹ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, paras 2.30 and 2.31.

the recovery of benefits conferred under error of law; and (3) a discussion paper on the recovery of money and goods transferred under error (*condictio indebiti*).

2.32 A first draft of the discussion paper on the recovery of *ultra vires* public authority receipts and disbursements was considered by this Commission in March 1992. The corresponding branch of English law was considered by the Law Commission in their Consultation Paper No 120 on *Restitution of Payments Made Under a Mistake of Law*, Parts 3 and 4, published in July 1991. Part 3 advanced provisional proposals to introduce in English law an automatic right to the recovery of *ultra vires* public authority receipts in consonance with the decision of the Court of Appeal in *Woolwich Equitable Building Society v IRC*.³⁰ That decision has been approved by the House of Lords.³¹ We have some reservations about this approach which we are discussing with the Law Commission.

2.33 We have made progress in preparing a discussion paper on the recovery of benefits transferred under error of law. This corresponds to Part 2 of the Law Commission's Consultation Paper which provisionally proposes the abolition of the rule precluding recovery of money paid under mistake of law.³² It is presently intended that our discussion paper will deal with the recovery not only of cash payments made under error of law, but also (differing in this respect from that Consultation Paper) of benefits in kind, heritable and moveable property transferred, and services rendered, under such error. We are greatly indebted to Mr D R Macdonald, Lecturer in the Department of Law, University of Dundee, for preparing a very valuable research paper on the matters to be covered by these discussion papers. Finally, progress has also been made in the preparation of a discussion paper on the recovery of money and goods transferred under error (*condictio indebiti*). This has no counterpart among the Law Commission's consultation papers.

Private International Law* **(Third Programme, Item 15)**

Extra-territorial effect of arrestments

2.34 As mentioned at paragraph 2.9 above, work on our various diligence projects has been temporarily suspended because of the diversion of our resources to other more pressing commitments. We intend to return this matter when resources permit.

Property Law* **(Fourth Programme, Item 16)**

Abolition of the feudal system

2.35 Our Discussion Paper No 93 on *Abolition of the Feudal System* was published in July 1991, as we mentioned in last year's report.³³ The consultation period has now ended and we have commenced analysis of the responses received. We have already identified several issues raised by consultees which may require additional consideration before we are in a position to report. We cannot, accordingly, give a firm indication of when our report will be submitted.

³⁰ [1991] 3 WLR 790 (CA).

³¹ [1992] 3 WLR 366, [1992] 3 All ER 737.

³² Consultation Paper No 120 on *Restitution of Payments Made Under a Mistake of Law*.

³³ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.36.

Law of the tenement

2.36 As we mentioned in last year's annual report,³⁴ our proposals for the reformulation of the common law rules comprising the law of the tenement in statutory form were published in Discussion Paper No 91 – *Law of the Tenement* – in December 1990. When we outlined our proposals in last year's report, we indicated that we anticipated that we might have to modify some of them in the light of responses received from consultees. This proved to be the case. We have subsequently undertaken a study of the approaches adopted to the management of buildings in several other jurisdictions with a view to recommending a suitable management regime for tenement property in Scotland. This study has now been completed and work on our report and draft Bill is now well in hand. We expect to be able to submit our report to you during the course of 1993.

Residential long leases

2.37 We mentioned in our last annual report³⁵ that we were preparing a discussion paper covering the topic of residential long leases which we hoped to publish during the current year. The discussion paper will consider the possibility of tenants of residential property held on certain long leases being given the right to convert their interests into rights of absolute ownership on certain conditions, including payment of compensation. Unfortunately, the need to give priority to other matters has delayed work on this project. We are, however, about to resume work and hope to publish this discussion paper during the early part of 1993.

Boundary walls

2.38 As envisaged in last year's annual report³⁶ we published a consultation paper in June 1992,³⁷ inviting comments on the need for a statutory rule allocating rights in and liability for mutual boundary walls. We have invited consultees to respond to us by August 1992 and we hope that any recommendations which we may make to you on this topic will be included in our Report on the Law of the Tenement.³⁸

Other Matters

Multi-party actions

2.39 We have now decided to take our work forward by two approaches. The first approach is to consider whether helpful changes can be introduced by relatively modest amendments, particularly in civil court rules and practices and in legal aid arrangements. Following informal consultation with the Faculty of Advocates, the Law Society of Scotland and the Scottish Legal Aid Board, we have set up a Working Party to consider such possibilities and to report to us. In connection with legal aid, we have noted the recent making in England and Wales of regulations which will enable the Legal Aid Board to

³⁴ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.37.

³⁵ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.39.

³⁶ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 139, para 2.40.

³⁷ Consultation Paper – *Mutual Boundary Walls*.

³⁸ Para 2.36 above.

provide civil legal aid by means of contracts with solicitors in a multi-party action which includes a claim in respect of personal injuries.³⁹

2.40 The other approach is the consideration of more far-reaching reform possibilities. This includes, in particular, the possible introduction in Scotland of some form of class or group action procedure. Such procedures exist in other common law jurisdictions, particularly the United States. Legislation⁴⁰ providing for such procedures has recently been passed by the Australian Parliament and introduced into the Ontario Legislature. This implements, with modifications, reports of the Law Reform Commission of Australia and the Ontario Law Reform Commission, respectively.

2.41 Our work will be assisted by research into Scottish multi-party actions being carried out by a team (Professor W W McBryde, Professor I D Willock, Dr J J McManus and Dr C R Barker) from the Department of Law of the University of Dundee and funded by a research grant provided by the Scottish Office Home and Health Department. This research builds on earlier work carried out by the Department into certain sudden mass disasters, such as the Chinook Helicopter crash, the Piper Alpha disaster and the Lockerbie air crash.⁴¹ The results of the current research are expected to be available in the first half of 1993 and we hope to issue our discussion paper at about the same time.

Fiduciary duties and regulatory bodies

2.42 As we mentioned in our last annual report⁴² we received in April 1990 from the Department of Trade and Industry a reference under section 3(1)(e) of the Law Commissions Act 1965 in the following terms:

"Certain professional and business activities are subject to public law regulation by statutory or self-regulatory control. The Scottish Law Commission is to consider the principles which should govern the effect of such controls on the fiduciary and analogous duties of those carrying on such activities, and to make recommendations. The inquiry will consider examples from differing areas of activity but will be with particular reference to financial services."

The Law Commission received a similar reference, and in consultation with the Scottish Law Commission issued a Consultation Paper No 124 in June 1992. This document with summary has been widely circulated in England and Scotland to those having an interest in this area. We have asked for comments by 30 September 1992.

Floating charges and receivers

2.43 As mentioned in our last annual report⁴³ further work on this topic has been suspended pending the action to be taken following Professor Diamond's Report on the *Review of Security Interests in Property* (see paragraph 2.27).

³⁹ The relevant provisions are: section 4(5) of the Legal Aid Act 1986; and Regulation 8 of The Civil Legal Aid (General) Amendment Regulations 1992 (SI 1992 No 590) which came into force on 1 April 1992.

⁴⁰ The legislation is: The Federal Court of Australia Amendment Act 1991; and An Act respecting Class Proceedings (which had its Second Reading in the Ontario Legislative Assembly on 18 November 1991).

⁴¹ Reported on by Professor McBryde and Dr Barker in article ("Solicitors' Groups in Mass Disaster Claims") in *New Law Journal* for 12 April 1991.

⁴² Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.44.

⁴³ Twenty-Sixth Annual Report 1990-91. Scot Law Com No 131, para 2.45.

Judicial factors, powers of attorney and guardianship of the incapable (Fourth Programme, Item 17)

2.44 This item replaced two separate law reform proposals made to us by the Law Society of Scotland on judicial factors and powers of attorney⁴⁴ and expanded those proposals by adding guardianship. Within this enlarged field of enquiry we have given priority to the management and control of the personal welfare and financial affairs of adults who lack the mental capacity to look after themselves. A wide-ranging Discussion Paper No 94 *Mentally Disabled Adults* was published in September 1991. Among the many topics discussed in the paper are:

- (a) Personal guardianship of mentally disabled adults. Amendments are proposed to improve the position of tutors-dative and guardians appointed under the Mental Health (Scotland) Act 1984. An alternative approach of replacing tutors and guardians by a new, more flexible, system of personal guardianship is also proposed.
- (b) Medical treatment and non-therapeutic research involving mentally disabled patients and the removal of organs for transplantation from them.
- (c) Management of the financial affairs and property of mentally disabled adults. A new system of financial managers with powers tailored to the individual adult's situation is proposed to replace curators *bonis*. Other matters considered are trusts for administration, management by hospital authorities of inpatients' money, obtaining access to bank accounts and similar items without legal proceedings, and public management of the estates of mentally disabled adults.
- (d) Powers of attorney enabling an attorney to make decisions in both the personal welfare and financial fields after the granter's incapacity. Various safeguards are suggested to minimise abuse.
- (e) Which body should have jurisdiction to appoint people to deal with the personal welfare and financial affairs of mentally disabled people? Courts, new tribunals, or new mental health hearings along the lines of children's hearings are considered.
- (f) Capacity of mentally disabled people to make financial or personal welfare decisions, make a will or get married. The effect of the appointment of a guardian, curator or financial manager on such capacity is considered.

2.45 Following publication of the discussion paper representatives of the Commission have taken part in many meetings and seminars. These events were organised by some of the bodies involved with the mentally disabled. We are very grateful to those bodies for their efforts. The meetings and seminars enabled us to gain valuable comments from those with practical experience of the problems and gave us an opportunity to publicise our proposals more extensively and explain the thinking behind them.

⁴⁴ Twenty-Second Annual Report 1986-87, Scot Law Com No 109, paras 2.46 and 2.48.

2.46 The discussion paper has produced a great many responses so far. Many more are expected. We will commence work on the preparation of a report in the near future.

Personal injuries: damages

2.47 On 30 January 1992 we submitted our Report on *The Effect of Death on Damages*⁴⁵ to the Secretary of State for Scotland in pursuance of the following reference:

"To consider the case for amending the law of damages in Scotland having regard to the possibility that there may be an incentive inherent in the present law for a defender to postpone making settlement or reaching proof until after the death of the pursuer in order to minimise the amount of any compensation to be paid."

Our main recommendations were welcomed by the Government immediately on the publication of the report. We expect that implementing legislation will be enacted in the course of the next Parliamentary session.⁴⁶

2.48 The issue addressed in our report arises because an injured person's right to claim damages (by way of solatium) for pain and suffering does not transmit to an executor. If the injured person dies, whether or not as a result of the injury, any unresolved claim for solatium falls. The deceased's close family is therefore deprived of any benefit from that claim, which can be quite substantial. It is true that individual members of the deceased's immediate family may qualify in their own right for a loss of society award where death is due to the injury. This is intended as compensation for the continuing loss of affection, companionship and guidance which the deceased might otherwise have provided. But in practice loss of society awards are modest and are unlikely ever to recoup the loss of the deceased's claim for solatium in cases of severe or prolonged suffering. Nor indeed are they intended to do so. The result, however, is that the compensation recoverable from a defender may be substantially reduced if the injured person dies before the claim can be resolved.

2.49 We concluded that this does indeed give defenders an incentive to resort to tactical delay where they have reason to anticipate the injured person's death. It was also clear from recent cases arising from exposure to asbestos dust in the workplace that intervening death before a claim could be resolved is not uncommon. We were therefore persuaded that the present rules are unsatisfactory. Even without evidence of actual exploitation, it appeared that the capricious nature of the rules in itself justified reform.

2.50 The main recommendation in our report was that vested rights to damages by way of solatium should transmit to an executor, as the corresponding rights in respect of patrimonial loss already do. This would bring the law in Scotland broadly into line with the law in England and Wales. In the case of claims arising from defamation and other injuries to reputation, which are somewhat special, we qualified our recommendation. We suggested that rights to damages in respect of such injuries for other than patrimonial loss should transmit only if the injured person has raised an action while alive. Finally, we took the opportunity to clarify the conditions under which non-patrimonial awards might be made to the deceased injured person's close relatives where death is due to the injury. We

⁴⁵ Scot Law Com No 134, published on 5 March 1992.

⁴⁶ A Private Member's Bill was introduced in the House of Lords by Lord Macaulay of Bragar on 16 July 1992.

also recommended that vested rights to such awards should transmit to a deceased relative's executor, as do rights to an award for loss of support under the present law.

2.51 With the publication of our report, the question arises whether we should undertake further work in this area of the law. We have taken note of the Law Commission's intention to examine the principles governing, and the effectiveness of, the present remedy of damages for monetary and non-monetary loss.⁴⁷ Among the matters to which specific consideration is to be given are bereavement damages, punitive or exemplary damages and global damages in connection with multi-party actions. We intend to consider whether a wider review of the law of damages is called for in Scotland and, if so, what aspects of our law may require special attention. For this purpose we shall be consulting the appropriate Government departments in order to ascertain their views.

Statute Law

Consolidation

2.52 As in previous reports we report under two heads: consolidation of legislation applying to Scotland only; and consolidation of legislation extending to other parts of the United Kingdom as well as to Scotland.

(a) *Scotland-only consolidations*

2.53 Work is proceeding on the consolidation of the Crofting and the Scottish Town and Country Planning legislation. The consolidation of the Crofting legislation will result in two new statutes and it is hoped that these Bills will be introduced during the course of the next Parliamentary session. Work on the Planning legislation will involve restructuring the legislation into four separate Bills. We do not anticipate that these will be ready for introduction until the end of 1993. Work on the consolidation of the Criminal Procedure legislation has been suspended temporarily pending a decision by the Secretary of State for Scotland on whether a review of the legislation be undertaken. Work is also proceeding on the consolidation of the National Health Service (Scotland) and Lands Clauses legislation.

(b) *United Kingdom and Great Britain consolidations*

2.54 During the course of our reporting year the following consolidation measures were enacted:

Social Security Contribution and Benefits Act 1992 (c 4)

Social Security Administration Act 1992 (c 5)

Social Security (Consequential Provisions) Act 1992 (c 6)

Taxation of Chargeable Gains Act 1992 (c 12)

Trade Unions and Labour Relations (Consolidation) Act 1992 (c 52)

Tribunals and Inquiries Act 1992 (c 53).

⁴⁷ Item 11 in the Fifth Programme of Law Reform, Law Com No 200, published in June 1991.

2.55 Bills on the following subjects are in the course of preparation:

Armed Forces
Clean Air
Merchant Shipping
Pensions Schemes
Radioactive Substances
Stamp Duties.

Statute law revision

2.56 Material is now being assembled for a Statute Law (Repeals) Bill which will be annexed to the two Commissions' Fourteenth Report on Statute Law Revision. The intention is that the Bill should be introduced into Parliament during the next Parliamentary session.

2.57 The Scottish contribution to the Bill is likely to be less significant than it has been in the past. This is because we have been unable to allocate the necessary resources to the work during the period since the enactment of the Statute Law (Repeals) Act 1989. The problem of resources for statute law revision is not a new one and it is likely to persist while law reform projects continue to make heavy demands on staff time. However, after the completion of the current joint report, we hope to allocate some additional staff resources to this work, but even then it is unlikely that we will be able to match the input of our more numerous colleagues in the Law Commission. We have continued to employ some of our temporary research assistants during the summer on this work.

Local legislation

2.58 The Joint Working Party on Local Legislation⁴⁸ has not met during the period covered by this report.

2.59 As recorded in previous annual reports,⁴⁹ we continue to support the Law Commission where we can in the work of producing a Chronological Table of Local and Personal Acts. While our contribution is necessarily limited, we attach considerable importance to the project, which will greatly benefit the users of local legislation in Scotland.

Database of statute law

2.60 In our last annual report,⁵⁰ we noted the progress which has been made by the Lord Chancellor's Department towards establishing a computer database of United Kingdom legislation. The project has continued to make progress and it is now hoped that the database will be operational by the autumn of 1993.

2.61 One of our staff is an active member of the Statute Law Database User Group and has attended the regular meetings of the Group in London during the last year. We have

⁴⁸ See Appendix I.

⁴⁹ See, for example, Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.56.

⁵⁰ Twenty-Sixth Annual Report 1990-91, Scot Law Com No 131, para 2.57.

also maintained liaison with other Government departments and libraries in Scotland. For example, in May 1992 we arranged for a technological team from the Lord Chancellor's Department to come to Edinburgh to demonstrate the facilities which will eventually be available on the database. Considerable interest was shown by the Scottish departments and we shall continue to monitor developments and ensure that they are kept informed. In due course we hope to explore with them the possibility of making the whole database available in Edinburgh for Scottish users, as an alternative to setting up individual arrangements for on-line access to the central database in London.

Part III General

3.1 In Part II of this report we have described the progress of the law reform projects on which we are presently working. While these projects take up most of the time of Commissioners and staff, they do not give a full picture of our work and there are a number of other calls on our time which may not be reflected in the publication of our discussion papers and reports but which add appreciably to our total workload. In this part of the report we mention these matters briefly.

Advice to government departments etc

3.2 As has been mentioned in previous reports, our views are sought by government departments on a number of matters. This falls within the functions of the Commission as provided in section 3(1)(e) of the Law Commissions Act 1965 (c 22). Sometimes this is done as part of a formal consultation exercise undertaken by a department. On other occasions our advice is sought informally and even confidentially. We also, where appropriate, respond to consultation exercises carried out by other bodies where we are of the view that to do so would help promote the cause of law reform. We do not think that it is necessary to give an exhaustive list of the matters which we have dealt with but examples include the Office of Fair Trading's Paper concerning *Restrictions on the Ways in which Services are Provided by Scottish Solicitors and Advocates* and the National Health Service in Scotland's Management Executive's Consultation Paper on *Arbitration for Medical Negligence Claims*. We also spent considerable time studying and thereafter commenting on the Legal Risk Review Committee's Consultation Paper.

Proposals for law reform

3.3 During the year we received from members of the public and organisations proposals for the reform in particular areas of law. Consideration of these matters often requires some preliminary research. Again, we do not think it necessary to give an exhaustive list but included were proposals concerning the law relating to fatal accident inquiries.

Departmental committees and other bodies

3.4 Our Commissioners and legal staff are from time to time appointed to serve on government departmental committees and as members of other bodies concerned with the development and reform of the law. Our Chairman is a member of the Advisory Committee on Statute Law which advises the Lord Chancellor in connection with his responsibilities in relation to the revision, modernisation and production of the Statute Book to ensure that it is in readily accessible form so that citizens may know by what laws they are bound.

Conferences, seminars, etc

3.5 During the year Commissioners and legal staff of the Commission participated in a number of conferences and seminars. We consider such participation to be an important

part of our work in enabling us to keep the law under review and to assist us in obtaining comments on our published discussion papers.

3.6 As mentioned earlier,¹ as part of the consultation exercise on our Discussion Paper No 94, *Mentally Disabled Adults*, representatives of the Commission took part in many meetings and seminars held throughout Scotland. We found this to be a particularly useful exercise in publicising our proposals, allowing us to explain the thinking behind them, and to obtain comments.

3.7 Among the conferences and seminars at which we were represented were:

International Association for Procedural Law, 9th World Congress, Coimbra and Lisbon, August 1991.

Society of Public Teachers of Law, Annual Conference, Aberdeen, September 1991.

Scottish Consumer Council, Conference on Small Claims Procedure, Glasgow, November 1991.

Law Society of Scotland, Annual Conference, Gleneagles, March 1992.

Family Mediators Association, Conference on the Development of Family Mediation. London, March 1992.

NATO Advanced Study Institute, Conference on "The Child Witness in Context", Tuscany, May 1992.

BAAF Scottish Legal Group, Stirling, June 1992.

Scottish Child Law Centre, Annual General Meeting, June 1992.

Indo-British Legal Forum, London, June 1992.

Consultation

3.8 We continue to have close co-operation with the Law Commission for England and Wales. During the year under review we have continued to work together on various matters, including fiduciary duties and regulatory bodies,² the reform of section 16 of the Sale of Goods Act 1979³ and on unjustified enrichment: recovery of benefits conferred under error.⁴ We are grateful to the Law Commission for continuing to keep us informed of the progress of its work on topics of interest to us and for affording us the opportunity of commenting from time to time on the possible implications for Scotland of certain of its projects.

3.9 We have maintained our contacts with law reform organisations in various parts of the world and continue to exchange papers with them. We also have met with representatives of some of these organisations during their visits to this country.

Media

3.10 On publication of our reports and the issue of our discussion papers it is normal for the Commission to issue a news release and to hold a news conference. Such news

¹ Para 2.45.

² See para 2.42.

³ Para 2.29.

⁴ Para 2.31.

conferences are normally well attended by members of the media, including representation from the daily and weekly newspapers and radio and television. During the year under review we have had good coverage of these news conferences and we are most grateful to the members of the media for attending and for reporting on the matters covered at the conferences. Commissioners and staff members have also given interviews to the press and have participated in radio and television programmes. We are also grateful to the coverage given to our work by the editors of various legal journals. The publicity given continues to result in an increased demand from members of the public and individual members of the legal profession for copies of our discussion papers.

Part IV Miscellaneous

Commissioners

4.1 The Commission consists of a full-time Chairman, two full-time Commissioners, and two part-time Commissioners. The present Commissioners are:

The Honourable Lord Davidson, <i>Chairman</i>	(Full-time)
Dr E M Clive	(Full-time)
Professor P N Love, CBE	(Part-time)
Sheriff I D Macphail, QC	(Full-time)
Mr W A Nimmo Smith, QC	(Part-time)

Staff

4.2 Our legal staff consists of one full-time and two part-time Parliamentary Draftsmen, our Secretary and eight other qualified lawyers. During the summer vacation of 1990 we employed five honours graduates in law to assist with our research work. We wish to thank them all for their assistance. Our complement of non-legal staff remains at eleven. We wish to thank them all for their assistance.

4.3 At the date of preparation of this report the principal members of staff were:

Parliamentary draftsmen

Mr J F Wallace, QC	(Full-time)
Mr G S Douglas, QC	(Part-time)
Mr W C Galbraith, QC	(Part-time)

Secretary

Mr K F Barclay

Grade 5 Solicitors

Mr R Bland
Mr N R Whitty

Other members of legal staff

Mrs A F Bevan¹
Mr J M Dods
Mr J G S Maclean
Dr D I Nichols
Mr J B St Clair
Mrs G B Swanson

¹ Mrs A F Bevan is no longer with the Commission.

Librarian

Mr N G T Brotchie

Chief Clerk

Mr J Dodson

The legal and other professions, etc

4.4 We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. In this regard, we have held informal meetings with representatives of the Faculty of Advocates and the Law Society of Scotland and have found these meetings most useful. As in previous years, we wish to record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have assisted us in various ways.

4.5 We are also most grateful for the help we continue to receive from the Librarian and staff of the Edinburgh University Library, Edinburgh University Law Library, the Centre of European Governmental Studies, the National Library of Scotland, the Advocates' Library, the Signet Library and the Institute of Advanced Legal Studies, London.

4.6 Membership of working parties appears in Appendix I. The Working Party on Contract Law has not meet during the year under review. In Appendix II we list reports, consultative memoranda/discussion papers and other documents prepared by the Commission. These lists include certain consultative documents which were given restricted circulation. The extent to which our proposals have been incorporated by legislation is indicated in Appendix III.

Appendix I

Membership of Working Parties

Joint Working Party on Local Legislation

The Hon Mr Justice Peter Gibson (Chairman)	Law Commission for England and Wales
The Hon Lord Davidson (Chairman)	Scottish Law Commission
Mr H W Gamon, CBE MC	Society of Parliamentary Agents
Mr J G S Maclean (as alternate for Lord Davidson)	Scottish Law Commission
Mr R J B Morris	Chief Executive and Town Clerk, Northampton Borough Council
Mr D Rippengal, CB QC	Counsel to Chairman of Committees
Mr R H Streeten CBE	Law Commission for England and Wales
Mr M J Ware, CB QC	Solicitor, Department of the Environment

Secretary: Mr A M Rowland, Law Commission for England and Wales

Working Party on Contract Law

Professor P N Love, CBE (Chairman)	Scottish Law Commission
Professor R Black, QC	University of Edinburgh
Mr M G Clarke, QC	Faculty of Advocates
Professor W W McBryde	University of Dundee

Secretary: Mrs A F Bevan, Scottish Law Commission

Appendix II

1 Scottish Law Commission – Reports, Etc Published by Her Majesty's Stationery Office

	<i>Commission No</i>	
1965	1	First Programme of Law Reform
1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66
1967	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd 3223)
	6	Divorce – The Grounds Considered (Cmnd 3256)
	6A	*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish – Sea Fisheries (Shellfish) Bill (Cmnd 3267)
	7	Second Annual Report 1966-67
1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967-68
1969	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968 – Trustee Savings Banks Bill (Cmnd 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts – First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968-69
1970	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd 4336)
	15	Reform of the Law Relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd 4542)
	17	Fifth Annual Report 1969-70

* Produced jointly with the Law Commission for England and Wales.

Commission	No	
	18	*Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd 4544)
	19	*Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd 4547)
1971	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic - Road Traffic Bill (Cmnd 4731)
	23	Sixth Annual Report 1970-71
1972	24	Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland - Town and Country Planning (Scotland) Bill (Cmnd 4949)
	25	Family Law - Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
	26	*Statute Law Revision - Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd 5108)
1973	27	Second Programme of Consolidation and Statute Law Revision
	28	Seventh Annual Report 1971-72
	29	Third Programme of Law Reform
	30	Report on Liability for Antenatal Injury (Cmnd 5371)
	31	Report on the Law relating to Damages for Injuries Causing Death
	32	*Statute Law Revision - Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd 5493)
1974	33	Eighth Annual Report 1972-73
	34	Report on Presumption of Death
	35	*Friendly Societies Bill - Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd 5634)
	36	*Statute Law Revision - Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd 5792)

* Produced jointly with the Law Commission for England and Wales.

Commission		
		<i>No</i>
1975	37	Ninth Annual Report 1973-74
	38	*Supply Powers Bill – Report on the Consolidation of Enactments relating to Supply Powers (Cmnd 5850)
	39	*Exemption Clauses - Second Report
	40	*Statute Law Revision – Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd 6303)
1976	41	Tenth Annual Report 1974-75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
1977	43	Eleventh Annual Report 1975-76
	44	*Statute Law Revision - Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd 6719)
	45	*Report on Liability for Defective Products (Cmnd 6831)
1978	46	Third Programme of Consolidation and Statute Law Revision
	47	Twelfth Annual Report 1976-77
	48	*Statute Law Revision - Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd 7189)
	49	Electricity (Scotland) Bill – Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd 7178)
	50	Adoption (Scotland) Bill – Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd 7187)
	51	Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions
	52	Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Cmnd 7245)
	53	*Interpretation Bill – Report on Interpretation Act 1889 and Certain other Enactments relating to the Construction and Operation of Acts of Parliament and other Instruments (Cmnd 7235)
	54	*Customs and Excise Management Bill - Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd 7418)
1979	55	Thirteenth Annual Report 1977-78
	56	Fourteenth Annual Report 1978-79

* Produced jointly with the Law Commission for England and Wales.

*Commission
No*

1980	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd 7688)
	59	Report on Powers of Judicial Factors (Cmnd 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979-80
	62	*Judicial Pensions Bill - Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd 8097)
	63	*Statute Law Revision - Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd 8089)
1981	64	Report on Section 5 of the Damages (Scotland) Act 1976
	65	*Trustee Savings Banks Bill - Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd 8257)
	66	*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd 8318)
	67	Family Law - Report on Aliment and Financial Provision
	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation
	69	Report on the Law of Incest in Scotland (Cmnd 8422)
	70	Sixteenth Annual Report 1980-81
1982	71	Fourth Programme of Consolidation and Statute Law Revision
	72	Family Law - Report on Financial Provision after Foreign Divorce
	73	Seventeenth Annual Report 1981-82
1983	74	Prescription and the Limitation of Actions - Report on Personal Injuries Actions and Private International Law Questions
	75	Report on Irritancies in Leases (Cmnd 8760)
	76	Family Law - Report on Outdated Rules in the Law of Husband and Wife
	77	*Medical Bill - Report on the Consolidation of the Medical Acts 1956 to 1978 and certain related provisions (Cmnd 8839)
	78	Evidence - Report on Evidence in Cases of Rape and Other Sexual Offences

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<i>Commission</i>		
		<i>No</i>
	79	Obligations - Report on Rectification of Contractual and Other Documents
	80	Report on the Mental Element in Crime (Cmnd 9047)
	81	Eighteenth Annual Report 1982-83
1984	82	Family Law - Report on Illegitimacy
	83	*Amendment of the Companies Acts 1948-1983 - Report under section 116 of the Companies Act 1981 (Cmnd 9114)
	84	*Dentists Bill - Report on the Consolidation of the Dentists Acts 1957 to 1983 (Cmnd 9119)
	85	*Road Traffic Regulation Bill - Report on the Consolidation of the Road Traffic Regulation Act 1967 and certain related enactments (Cmnd 9162)
	86	Family Law - Report on Matrimonial Property
	87	*Further Amendments of the Companies Acts 1948-1983 - Report under section 116 of the Companies Act 1981 (Cmnd 9272)
	88	*Private International Law - Report on Recognition of Foreign Nullity Decrees and Related Matters (Cmnd 9341)
	89	Nineteenth Annual Report 1983-84
	90	Report on Breach of Confidence
1985	91	*Family Law - Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Cmnd 9419)
	92	Obligations - Report on Negligent Misrepresentation
	93	Report on Art and Part Guilt of Statutory Offences (Cmnd 9551)
	94	*Report on the Consolidation of the Housing Acts - Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Cmnd 9515)
	95	Report on Diligence and Debtor Protection
	96	*Private International Law - Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Cmnd 9595)
	97	Obligations - Report on Civil Liability in relation to Animals
	98	Twentieth Annual Report 1984-85
	99	Statute Law Revision - Twelfth Report: Draft Statute Law (Repeals) Bill (Cmnd 9648)
1986	100	Evidence - Report on Corroboration, Hearsay and Related Matters in Civil Proceedings
	101	Twenty-First Annual Report 1985-86

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<i>Commission</i>		
		<i>No</i>
1987	102	Report on Child Abduction (Cm 64)
	103	Housing (Scotland) Bill – Report on the Consolidation of Certain Enactments relating to Housing in Scotland (Cm 104)
	104	*Report on Sale and Supply of Goods (Cm 137)
	105	*Private International Law – Report on Choice of Law Rules in Marriage
	106	Report on Computer Crime (Cm 174)
	107	*Private International Law – Report on the Law of Domicile (Cm 200)
	108	Report on the Scottish Term and Quarter Days (Cm 208)
	109	Twenty-Second Annual Report 1986-87
	110	Report on the Legal Capacity and Responsibility of Minors and Pupils
	1988	111
112		Report on Requirements of Writing
113		*Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill - Report on the Consolidation of Certain Enactments relating to Road Traffic (Cm 390)
114		Twenty-Third Annual Report 1987-88
115		Report on Civil Liability – Contribution
1989	116	Report on Reform of the Ground for Divorce
	117	*Statute Law Revision – Thirteenth Report: Draft Statute Law (Repeals) Bill (Cm 671)
	118	Report on Recovery of Possession of Heritable Property
	119	*Extradition Bill – Report on the Consolidation of Legislation relating to Extradition (Cm 712)
	120	Evidence: Blood Group Tests, DNA Tests and Related Matters
	121	*Opticians Bill – Report on the Consolidation of Legislation relating to Opticians (Cm 738)
	122	Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Cm 790)
	123	Twenty-Fourth Annual Report 1988-89
1990	124	Report on Succession
	125	Report on the Evidence of Children and Other Potentially Vulnerable Witnesses
	126	Fourth Programme of Law Reform

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*Commission**No*

	127	Report on the Passing of Risk in Contracts for the Sale of Heritable Property
	128	Twenty-Fifth Annual Report 1989-90
	129	*Private International Law – Choice of Law in Tort and Delict
1991	130	Rights of Suit in Respect of Carriage of Goods by Sea
	131	Twenty-Sixth Annual Report 1990-91
	132	*Social Security Contributions and Benefits Bill, Social Security Administration Bill, Social Security (Consequential Provisions) Bill – Report on the Consolidation of the Legislation relating to Social Security (Cm 1726)
1992	133	Report on Statutory Fees for Arrestees
	134	Report on The Effect of Death on Damages (Cm 1848)
	135	Report on Family Law

2 Scottish Law Commission – Consultative memoranda/Discussion papers circulated for comment and criticism

			<i>No of Resulting Report</i>
1966	Memorandum No 1	Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964	
	Memorandum No 2	Expenses in Criminal Cases	
1967	Memorandum No 3	Restrictions on the Creation of Liferents	
	Memorandum No 4	Applications for Planning Permission	
	Memorandum No 5	Damages for Injuries Causing Death	
	*Memorandum No 6	Interpretation of Statutes	11
1968	*Memorandum No 7	Provisional Proposals Relating to Sale of Goods	12
	Memorandum No 8	Draft Evidence Code - First Part	

* Produced jointly with the Law Commission for England and Wales.

			<i>No of Resulting Report</i>
1969	Memorandum No 9	Prescription and Limitation of Actions	15
	Memorandum No 10	Examination of the Companies (Floating Charges) (Scotland) Act 1961	14
	Memorandum No 11	Presumptions of Survivorship and Death	34
	Memorandum No 12	Judgments Extension Acts	
1970	Memorandum No 13	Jurisdiction in Divorce	25
1971	Memorandum No 14 *Memorandum No 15	Remedies in Administrative Law The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses for the Supply of Services and other Contracts	39
	Memorandum No 16	Insolvency, Bankruptcy and Liquidation	68
1972	Memorandum No 17	Damages for Injuries Causing Death	31 and 64
1974	Memorandum No 18	Liability of a Paramour in Damages for Adultery and Enticement of a Spouse	42
	Memorandum No 19	Powers of Judicial Factors	59
1975	*Memorandum No 20	Liability for Defective Products	45
	Memorandum No 21	Damages for Personal Injuries - Deductions and Heads of Claim	51
1976	Memorandum No 22	Aliment and Financial Provision (2 Vols)	67
	*Memorandum No 23	Custody of Children - Jurisdiction and Enforcement within the United Kingdom	91
	Memorandum No 24	Corporeal Moveables - General Introduction and Summary of Provisional Proposals	
	Memorandum No 25	Corporeal Moveables - Passing of Risk and of Ownership	
	Memorandum No 26	Corporeal Moveables - Some Problems of Classification	

* Produced jointly with the Law Commission for England and Wales.

		<i>No of Resulting Report</i>
	Memorandum No 27	
	Corporeal Moveables - Protection of the Onerous <i>bona fide</i> Acquirer of Another's Property	
	Memorandum No 28	
	Corporeal Moveables - Mixing, Union and Creation	
	Memorandum No 29	57
	Corporeal Moveables - Lost and Abandoned Property	
	Memorandum No 30	
	Corporeal Moveables - Usucapion or Acquisitive Prescription	
	Memorandum No 31	
	Corporeal Moveables - Remedies	
	Memorandum No 32	
	Comments on White Paper ' <i>Our Changing Democracy: Devolution to Scotland and Wales</i> '	
	Appendix - Devolution, Scots Law and the Role of the Commission	
	Memorandum No 33	
	Law of Rights in Security - Company Law - Registration of Charges: Scotland	
1977	Memorandum No 34	
	Constitution and Proof of Voluntary Obligations - General Introduction and Summary of Provisional Proposals	
	Memorandum No 35	
	Constitution and Proof of Voluntary Obligations - Unilateral Promises	
	Memorandum No 36	
	Constitution and Proof of Voluntary Obligations - Formation of Contract	
	Memorandum No 37	
	Constitution and Proof of Voluntary Obligations - Abortive Constitution	
	Memorandum No 38	
	Constitution and Proof of Voluntary Obligations - Stipulations in Favour of Third Parties	
	Memorandum No 39	112
	Constitution and Proof of Voluntary Obligations - Formalities of	
	Constitution and Restrictions on Proof	
	Memorandum No 40	90
	Confidential Information	

* Produced jointly with the Law Commission for England and Wales.

			<i>No of Resulting Report</i>
1978	Memorandum No 41	Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence (2 Vols)	60
	Memorandum No 42	Defective Consent and Consequential Matters (2 Vols)	92
1979	Memorandum No 43	Defective Expression and its Correction	79
1980	Memorandum No 44	The Law of Incest in Scotland	69
	Memorandum No 45	Time-Limits in Actions for Personal Injuries	74
	Memorandum No 46	The Law of Evidence	78 and 100
	Memorandum No 47	First Memorandum on Diligence: General Issues and Introduction	95
	Memorandum No 48	Second Memorandum on Diligence: Poidings and Warrant Sales	95
	Memorandum No 49	Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings	95
	Memorandum No 50	Fourth Memorandum on Diligence: Debt Arrangement Schemes	95
	Memorandum No 51	Fifth Memorandum on Diligence: Administration of Diligence	95
	Memorandum No 52	Irritancies in Leases	75
1982	Memorandum No 53	Family Law: Illegitimacy	82
	Memorandum No 54	Some Obsolete and Discriminatory Rules in the Law of Husband and Wife	76
	Memorandum No 55	Civil Liability in relation to Animals	97
	*Memorandum No 56	Polygamous Marriages (Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage)	96
1983	Memorandum No 57	Matrimonial Property	86
	*Memorandum No 58	Sale and Supply of Goods	104

* Produced jointly with the Law Commission for England and Wales.

			<i>No of Resulting Report</i>
1984	Memorandum No 59	Recovery of Possession of Heritable Property	118
	Memorandum No 60	Mobbing and Rioting	
	Memorandum No 61	Attempted Homicide	
	*Memorandum No 62	Private International Law: Choice of Law in Tort and Delict	129
1985	*Memorandum No 63	Private International Law: The Law of Domicile	107
	*Memorandum No 64	Private International Law: Choice of Law Rules in Marriage	105
	Memorandum No 65	Legal Capacity and Responsibility of Minors and Pupils	110
	Memorandum No 66	Constitution and Proof of Voluntary Obligations and the Authentication of Writings	112
	Memorandum No 67	Child Abduction	102
1986	Memorandum No 68	Computer Crime	106
	Memorandum No 69	Intestate Succession and Legal Rights	124
	Memorandum No 70	The Making and Revocation of Wills	124
	Memorandum No 71	Some Miscellaneous Topics in the Law of Succession	124
	Memorandum No 72	Floating Charges and Receivers	
	Memorandum No 73	Civil Liability - Contribution	115
1987	Discussion Paper No 74	Prescription and Limitation of Actions (Latent Damage)	122
1988	Discussion Paper No 75	The Evidence of Children and Other Potentially Vulnerable Witnesses	125
	Discussion Paper No 76	The Ground for Divorce - Should the Law be Changed?	116
	Discussion Paper No 77	Criminal Evidence - Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings	
	Discussion Paper No 78	Adjudications for Debt and Related Matters	

* Produced jointly with the Law Commission for England and Wales.

		<i>No of Resulting Report</i>	
	Discussion Paper No 79 Discussion Paper No 80	Equalisation of Diligences Blood Group Tests, DNA Tests and Related Matters	120
1989	Discussion Paper No 81	Passing of Risk in Contracts for the Sale of Land	127
	Discussion Paper No 82 Discussion Paper No 83	Forfeiture and Confiscation Bulk Goods: Section 16 of the Sale of Goods Act 1979 and Section 1 of the Bills of Lading Act 1885	130
	Discussion Paper No 84	Diligence on the Dependence and Admiralty Arrestments	
1990	Discussion Paper No 85	Family Law: Pre-Consolidation Reform	135
	Discussion Paper No 86	The Effects of Cohabitation in Private Law	135
	Discussion Paper No 87	Statutory Fees for Arrestees	133
	Discussion Paper No 88	Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property	135
	Discussion Paper No 89 Discussion Paper No 90	The Effect of Death on Damages Extra-Territorial Effect of Arrestments and Related Matters	134
	Discussion Paper No 91	Law of the Tenement	
1991	Discussion Paper No 92 Discussion Paper No 93	Confidentiality in Family Mediation Property Law - Abolition of the Feudal System	
	Discussion Paper No 94	Mentally Disabled Adults - Legal Arrangements for Managing their Welfare and Finances	

* Produced jointly with the Law Commission for England and Wales.

3 Scottish Law Commission – Other published documents

- 1974 *Private International Law – Consultative Document on EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations
- 1979 Research Paper on the Law of Evidence of Scotland by Sheriff I D Macphail
- 1984 Research Paper on Actions of Ejection and Removing by Mr A G M Duncan
- 1986 Report of Working Party on Security over Moveable Property
- 1988 Research Paper on Evidence from Children – Alternatives to In-court Testimony in Criminal Proceedings in the United States of America by Kathleen Murray
- 1990 Report on the Effect of the Execution of Diligence on the Operation of Prescription.

4 Scottish Law Commission – Consultative documents not published and with restricted circulation

- 1969 Married Women's Policies of Assurance (Scotland) Act 1880 – Working Paper
- 1973 Consultation Paper on Divorce for Incurable Insanity
- 1974 Insolvency, Bankruptcy and Liquidation in Scotland – Consultative Paper
- 1978 Consultation Document - Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive
- 1979 Consultation Paper - Bankruptcy: *Gibson v Hunter Home Designs Ltd*
Consultative Note on section 5(6) of the Damages (Scotland) Act 1976
- 1980 Consultation Paper - Prescription and Limitation in Private International Law
- 1981 Consultation Paper - Financial Provision after Foreign Divorce
- 1982 Consultation Paper - Exchange of Standard Term Forms in Contract Formation
Consultation Paper - Breach of Confidence

* Produced jointly with the Law Commission for England and Wales.

- 1983** Consultation Paper - Custody of Children: Jurisdiction and Enforcement within the United Kingdom: Jurisdiction of the Sheriff Court
 Supplementary Consultation Paper - Conflicts of Jurisdiction affecting the Custody of Children
 Consultation Paper - Illegitimacy and the Guardianship Acts
 *Consultation Paper - Recognition of Foreign Nullity Decrees and Related Matters
- 1984** Consultation Paper - Art and Part Guilt of Statutory Offences
- 1986** Consultation Paper - The Scottish Term and Quarter Days: A Statutory Definition (Resulting Report - Scot Law Com No 108)
 Consultation Paper - Termination of Leases: Contracting Out of the Statutory Notice Provisions
- 1990** Arrestments of Ships Securing Claims against Demise Charterers
 Consultation Paper - The Effect of the Execution of Diligence on the Operation of Prescription
- 1991** *Supplementary Consultation Paper - Sale of Goods Forming Part of a Bulk

5 Scottish Law Commission - Unpublished Confidential Documents

- 1975** *Interim Report on the EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations

* Produced jointly with the Law Commission for England and Wales.

Appendix III

Statutory Provisions relating to the Scottish Law Commission's Proposals

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
(a) <i>Memoranda</i>		
Restrictions on the Creation of Liferents (Memorandum No 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 18.
Applications for Planning Permission (Memorandum No 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c 30), section 97.
(b) <i>Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot Law Com No 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 9.
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot Law Com No 5) (Cmnd 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c 22), Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 5.
Divorce - The Grounds Considered (Scot Law Com No 6) (Cmnd 3256)	12.5.67	Divorce (Scotland) Act 1976 (c 39).
*Sea Fisheries (Shellfish) Bill (Scot Law Com No 6A) (Cmnd 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c 83).
*Trustee Savings Banks Bill (Scot Law Com No 10)	17.4.69	Trustee Savings Banks Act 1969 (c 50).
*Interpretation of Statutes (Scot Law Com No 11)	11.6.69	None.
*Exemption Clauses in Contracts - First Report: Amendment to the Sale of Goods Act 1893 (Scot Law Com No 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c 13).

* Produced jointly with the Law Commission for England and Wales.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
The Companies (Floating Charges) (Scotland) Act 1961 (Scot Law Com No 14) (Cmnd 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c 67).
Reform of the Law Relating to Prescription and Limitation of Actions (Scot Law Com No 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c 52).
*Hague Convention on Recognition of Divorces and Legal Separations (Scot Law Com No 16) (Cmnd 4542)	1.12.70	Recognition of Divorce and Legal Separations Act 1971 (c 53).
*Coinage Bill (Scot Law Com No 18) (Cmnd 4544)	26.11.70	Coinage Act 1971 (c 24).
*Vehicles (Excise) Bill (Scot Law Com No 19) (Cmnd 4547)	2.12.70	Vehicles (Excise) Act 1971 (c 10).
*National Savings Bank Bill (Scot Law Com No 20) (Cmnd 4574)	13.1.71	National Savings Bank Act 1971 (c 29).
*Taxation of Income and Gains derived from Land (Scot Law Com No 21) (Cmnd 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c 41).
*The Road Traffic Bill (Scot Law Com No 22) (Cmnd 4731)	26.7.71	Road Traffic Act 1972 (c 20).
Town and Country Planning (Scotland) Bill (Scot Law Com No 24) (Cmnd 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c 52).
Family Law – Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot Law Com No 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c 45).
*Statute Law Revision - Fourth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 26) (Cmnd 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c 39).

* Produced jointly with the Law Commission for England and Wales.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on Liability for Antenatal Injury (Scot Law Com No 30) (Cmnd 5371)	30.8.73	None required.
Report on the Law Relating to Damages for Injuries Causing Death (Scot Law Com No 31)	24.10.73	Damages (Scotland) Act 1976 (c 13).
*Statute Law Revision - Fifth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 32) (Cmnd 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c 22).
Report on Presumption of Death (Scot Law Com No 34)	3.9.74	Presumption of Death (Scotland) Act 1977 (c 27).
*Friendly Societies Bill (Scot Law Com No 35) (Cmnd 5634)	27.6.74	Friendly Societies Act 1974 (c 46).
*Statute Law Revision - Sixth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 36) (Cmnd 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c 10).
*Supply Powers Bill (Scot Law Com No 38) (Cmnd 5850)	6.1.75	Supply Powers Act 1975 (c 9).
*Exemption Clauses - Second Report (Scot Law Com No 39)	2.10.75	Unfair Contract Terms Act 1977 (c 50).
*Statute Law Revision - Seventh Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 40) (Cmnd 6303)	8.12.75	Statute Law (Repeals) Act 1976 (c 16).
Family Law - Report on Liability for Adultery and Enticement of a Spouse (Scot Law Com No 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c 39).
*Statute Law Revision - Eighth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 44) (Cmnd 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c 18).

* Produced jointly with the Law Commission for England and Wales.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Liability for Defective Products (Scot Law Com No 45) (Cmnd 6831)	15.6.77	None.
*Statute Law Revision - Ninth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 48) (Cmnd 7189)	11.5.78	Statute Law (Repeals) Act 1978 (c 45).
Electricity (Scotland) Bill (Scot Law Com No 49) (Cmnd 7178)	23.5.78	Electricity (Scotland) Act 1979 (c 11).
Adoption (Scotland) Bill (Scot Law Com No 50) (Cmnd 7187)	3.5.78	Adoption (Scotland) Act 1978 (c 28).
Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot Law Com No 51)	18.7.78	Administration of Justice Act 1982 (c 53), Part II.
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot Law Com No 52) (Cmnd 7245)	27.7.78	Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980 (c 56).
*Interpretation Bill (Scot Law Com No 53) (Cmnd 7235)	8.6.78	Interpretation Act 1978 (c 30).
*Customs and Excise Management Bill (Scot Law Com No 54) (Cmnd 7418)	7.12.78	Customs and Excise Management Act 1979 (c 2).
Report on Lost and Abandoned Property (Scot Law Com No 57)	16.1.80	In part by the Civic Government (Scotland) Act 1982 (c 45), Part VI.
Education (Scotland) Bill (Scot Law Com No 58) (Cmnd 7688)	2.4.80	Education (Scotland) Act 1980 (c 44).
Report on Powers of Judicial Factors (Scot Law Com No 59) (Cmnd 7904)	3.7.80	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c 55), section 8.
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot Law Com No 60)	17.7.80	Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c 59).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Judicial Pensions Bill (Scot Law Com No 62) (Cmnd 8097)	27.11.80	Judicial Pensions Act 1981 (c 20).
*Statute Law Revision – Tenth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 63) (Cmnd 8089)	10.12.80	Statute Law (Repeals) Act 1981 (c 19).
Report on Section 5 of the Damages (Scotland) Act 1976 (Scot Law Com No 64)	29.4.81	Administration of Justice Act 1982 (c 53), Part II.
*Trustee Savings Banks Bill (Scot Law Com No 65) (Cmnd 8257)	11.6.81	Trustee Savings Banks Act 1981 (c 65).
*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Scot Law Com No 66) (Cmnd 8318)	28.7.81	None required.
Family Law - Report on Aliment and Financial Provision (Scot Law Com No 67)	5.11.81	Family Law (Scotland) Act 1985 (c 37).
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot Law Com No 68)	26.2.82	Bankruptcy (Scotland) Act 1985 (c 66).
Report on the Law of Incest in Scotland (Scot Law Com No 69) (Cmnd 8422)	23.12.81	Incest and Related Offences (Scotland) Act 1986 (c 36).
Report on Financial Provision after Foreign Divorce (Scot Law Com No 72)	28.10.82	Matrimonial and Family Proceedings Act 1984 (c 42), Part IV.
Prescription and Limitation of Actions – Report on Personal Injuries Actions and Private International Law Questions (Scot Law Com No 74)	10.2.83	Prescription and Limitation (Scotland) Act 1984 (c 45).

* Produced jointly with the Law Commission for England and Wales.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on Irritancies in Leases (Scot Law Com No 75) (Cmnd 8760)	17.2.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73) .
Family Law - Report on Outdated Rules in the Law of Husband and Wife (Scot Law Com No 76)	12.5.83	Law Reform (Husband and Wife) (Scotland) Act 1984 (c 15).
*Medical Bill (Scot Law Com No 77) (Cmnd 8839)	24.3.83	Medical Act 1983 (c 54).
Report on Evidence in Cases of Rape and Other Sexual Offences (Scot Law Com No 78)	21.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Report on Rectification of Contractual and Other Documents (Scot Law Com No 79)	28.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
The Mental Element in Crime (Scot Law Com No 80)	23.11.83	None required.
Family Law - Report on Illegitimacy (Scot Law Com No 82)	26.1.84	Law Reform (Parent and Child) (Scotland) Act 1986 (c 9).
*Amendment of the Companies Acts 1948-1983 (Scot Law Com No 83) (Cmnd 9114)	21.12.83	Companies Acts (Pre-Consolidation Amendments) Order 1983 (S.I. 1983/134) Companies Act 1985 (c 6).
*Dentists Bill (Scot Law Com No 84) (Cmnd 9119)	18.1.84	Dentists Act 1984 (c 24).
*Road Traffic Regulation Bill (Scot Law Com No 85) (Cmnd 9162)	21.2.84	Road Traffic Regulation Act 1984 (c 27).
Family Law - Report on Matrimonial Property (Scot Law Com No 86)	21.6.84	Family Law (Scotland) Act 1985 (c 37).
*Further Amendments of the Companies Acts 1948-1983 (Scot Law Com No 87) (Cmnd 9272)	25.6.84	Companies Acts (Pre-Consolidation Amendments) (No 2) Order 1984 (S.I. 1984/1169) Companies Act 1985 (c 6).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Private International Law – Report on Recognition of Foreign Nullity Decrees and Related Matters (Scot Law Com No 88) (Cmnd 9341)	19.9.84	Family Law Act 1986 (c 55).
Report on Breach of Confidence (Scot Law Com No 90)	20.12.84	None required.
*Family Law - Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Scot Law Com No 91) (Cmnd 9419)	15.1.85	Family Law Act 1986 (c 55).
Obligations - Report on Negligent Misrepresentation (Scot Law Com No 92)	24.1.85	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Report on Art and Part Guilt of Statutory Offences (Scot Law Com No 93) (Cmnd 9551)	18.7.85	Criminal Justice (Scotland) Act 1987 (c 41).
*Report on the Consolidation of the Housing Acts – Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Scot Law Com No 94) (Cmnd 9515)	10.5.85	Housing Associations Act 1985 (c 69).
Report on Diligence and Debtor Protection (Scot Law Com No 95)	14.11.85	In part by Debtors (Scotland) Act 1987 (c 18).
*Private International Law – Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Scot Law Com No 96)	8.8.85	None.
Obligations – Report on Civil Liability in relation to Animals (Scot Law Com No 97)	8.11.85	Animals (Scotland) Act 1987 (c 9).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Statute Law Revision - Twelfth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 99) (Cmnd 9648)	14.11.85	Statute Law (Repeals) Act 1986 (c 12).
Evidence - Report on Corroboration, Hearsay and Related Matters in Civil Proceedings (Scot Law Com No 100)	22.5.86	Civil Evidence (Scotland) Act 1988 (c 32).
Report on Child Abduction (Scot Law Com No 102) (Cm 64)	12.2.87	None.
Housing (Scotland) Bill (Scot Law Com No 103) (Cm 104)	17.3.87	Housing (Scotland) Act 1987 (c 26).
*Report on Sale and Supply of Goods (Scot Law Com No 104) (Cm 137)	28.5.87	None.
*Private International Law - Report on Choice of Law Rules in Marriage (Scot Law Com No 105)	2.7.87	Foreign Marriage (Amendment) Act 1988 (c 44).
Report on Computer Crime (Scot Law Com No 106) (Cm 174)	23.7.87	In part by Computer Misuse Act 1990 (c 18).
*Private International Law - Report on the Law of Domicile (Scot Law Com No 107) (Cm 200)	3.9.87	None.
Report on the Scottish Term and Quarter Days (Scot Law Com No 108) (Cm 208)	29.10.87	Term and Quarter Days (Scotland) Act 1990 (c 22).
Report on the Legal Capacity and Responsibility of Minors and Pupils (Scot Law Com No 110)	17.12.87	Age of Legal Capacity (Scotland) Act 1991 (c 50).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Court of Session Bill - Report on the Consolidation of Certain Enactments and the Repeal of Other Enactments relating to the Court of Session (Scot Law Com No 111) (Cm 315)	9.3.88	Court of Session Act 1988 (c 36).
Report on Requirements of Writing (Scot Law Com No 112)	13.7.88	None.
*Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill - Report on the Consolidation of Certain Enactments Relating to Road Traffic (Scot Law Com No 113) (Cm 390)	6.6.88	Road Traffic Act 1988 (c 52), Road Traffic Offenders Act 1988 (c 53), Road Traffic (Consequential Provisions) Act 1988 (c 54).
Report on Civil Liability - Contribution (Scot Law Com No 115)	15.12.88	None.
Report on Reform of the Ground for Divorce (Scot Law Com No 116)	28.4.89	None.
*Statute Law Revision - Thirteenth Report - Draft Statute Law (Repeals) Bill (Scot Law Com No 117) (Cm 671)	4.5.89	Statute Law (Repeals) Act 1989 (c 43).
Report on Recovery of Possession of Heritable Property (Scot Law Com No 118) (Cm 724)	25.8.89	None.
*Extradition Bill - Report on the Consolidation of Legislation Relating to Extradition (Scot Law Com No 119) (Cm 712)	27.6.89	Extradition Act 1989 (c 33).
Evidence: Blood Group Tests, DNA Tests and Related Matters (Scot Law Com No 120)	19.10.89	Partial implementation, section 70 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40).

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Opticians Bill – Report on the Consolidation of Legislation Relating to Opticians (Scot Law Com No 121) (Cm 738)	11.7.89	Opticians Act 1989 (c 44).
Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Scot Law Com No 122) (Cm 790)	12.10.89	None.
Report on Succession (Scot Law Com No 124)	25.1.90	None.
Report on the Evidence of Children and Other Potentially Vulnerable Witnesses (Scot Law Com No 125)	15.2.90	Partial implementation in sections 56, 59 and 60 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40).
Report on the Passing of Risk in Contracts for the Sale of Heritable Property (Scot Law Com No 127)	18.10.90	None.
*Private International Law – Choice of Law in Tort and Delict (Scot Law Com No 129)	12.12.90	None.
*Rights of Suit in Respect of Carriage of Goods by Sea (Scot Law Com No 130)	20.3.91	Carriage of Goods by Sea Act 1992 (c 50).
*Social Security Contributions and Benefits Bill, Social Security Administration Bill, Social Security (Consequential Provisions) Bill – Report on the Consolidation of the Legislation relating to Social Security (Scot Law Com No 132) (Cm 1726)	5.11.91	Social Security Contributions and Benefits Act 1992 (c 4); Social Security Administration Act 1992 (c 5); Social Security (Consequential Provisions) Act 1992 (c 6).
Report on Statutory Fees for Arrestees (Scot Law Com No 133)	23.1.92	None.

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on The Effect of Death on Damages (Scot Law Com No 134) (Cm 1848)	5.3.92	None.
Report on Family Law (Scot Law Com No 135)	7.5.92	None.

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