



Scottish Law Commission  
*promoting law reform*

(SCOT LAW COM No 236)

annual report | 2013





# Scottish Law Commission

*promoting law reform*

The Commission was established under the Law Commissions Act 1965

## Our function

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

## Our role

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

annual report | 2013



Commissioners and Chief Executive

Dr Andrew J M Steven, Ms Laura J Dunlop QC, Professor Hector L MacQueen (back row, left to right)

Patrick Layden QC TD, The Rt Hon Lady Clark of Calton (Chairman), Malcolm McMillan (Chief Executive) (front row, left to right)

## Annual Report 2013

To: Kenny MacAskill MSP, Cabinet Secretary for Justice

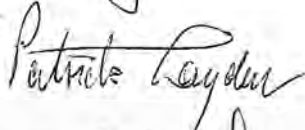
We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2013.



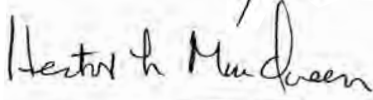
LYNDA CLARK, Chairman\*



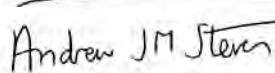
LAURA J DUNLOP



PATRICK LAYDEN



HECTOR L MACQUEEN



ANDREW J M STEVEN



Malcolm McMillan, Chief Executive  
18 February 2014

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

March 2014

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\* The Rt Hon Lady Clark of Calton demitted office as the Chairman of the Commission on 31 December 2013.

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## Chairman's foreword



It is my honour to present the Scottish Law Commission's Annual Report for 2013. An Annual Report is required by the provisions of the Law Commissions Act 1965, and this is the 48<sup>th</sup> such Report.

This is my last Annual Report to Scottish Ministers as Chairman of the Commission. Last year I was appointed as a judge of the First Division of the Inner House of the Court of Session. It is generally considered that the demands of working in the Inner House cannot be combined with continuing with the duties of the Chairman of the Commission. That being the case, I gave notice to terminate my appointment as Chairman and I demitted office at the end of 2013. It is with great regret that I move on from my post as Chairman of the Commission. It has been a great privilege to hold this appointment and lead the Commission in promoting law reform for Scotland.

My successor as Chairman of the Commission, the Hon Lord Pentland, was appointed with effect from the beginning of January 2014. I wish him every success as he leads the Commission into the next stage of developing the law of Scotland. Lord Pentland's extensive experience will be of great value to the work of the Commission in seeking to

modernise Scots law. I strongly support the tradition of the Commission having a judge as Chairman, with the Chairman continuing to carry out judicial duties on a part-time basis. This means that the Chairman can bring to bear upon the law reform work his or her experience of the application of the law in practice, and of the issues that are brought before the courts.

During 2013, the Commission was working towards the last stage of the Eighth Programme of Law Reform. A number of major reports in that Programme had already been completed, while a number of other substantial projects are due to be completed by the close of the Eighth Programme at the end of 2014.

The Commission is most grateful to my predecessor as Chairman, the Rt Hon Lord Drummond Young, who has continued to lead the Commission's project on the law of trusts as well as carrying out his full-time judicial duties. The project to reform trust law is shortly coming to a conclusion, and the Commission has benefited greatly from Lord Drummond Young's expertise in this important area.

In 2013 the Commission published three significant Reports. The first was a Report on Formation of Contract: Execution in Counterpart, part of our ongoing review of contract law. The second was a Report on the Consolidation of Bankruptcy Legislation in Scotland, with a consolidation Bill attached. Lastly a Report was issued on Judicial Factors, thereby completing our work on this long-standing project.

The Commission also published during 2013 two joint Reports with the Law Commission for England and Wales. First, a substantial Report on Level Crossings was published. Second, a Report on Consolidation of the legislation relating to Co-operative and Community Benefit Societies was issued. Then, also published during 2013 jointly with the Law Commission for England and Wales, was Advice to the Department for Business, Innovation and Skills on Unfair Terms in Consumer Contracts.

Progress on implementation of Commission recommendations is of course of great interest to the Commission. As regards legislative activity to implement Commission reports by the United Kingdom Parliament, two Acts taking forward Commission recommendations received Royal Assent in 2013. The Statute Law (Repeals) Act 2013 gave effect to a draft Bill contained in the joint Report by the Law Commission for England and Wales and the Scottish Law Commission on Statute Law Repeals, published in April 2012.

Further, and significantly, the Partnerships (Prosecution) (Scotland) Act 2013 was passed by the Westminster Parliament and received Royal Assent in April 2013. The Act is based on a draft Bill attached to the Commission's Report on Criminal Liability of Partnerships, published in December 2011. I am grateful in particular to the Advocate General for Scotland, Lord Wallace of Tankerness QC, and to the Scotland Office, for working with the Commission to bring forward legislation in the UK Parliament to implement the Commission's Report on the Criminal Liability of Partnerships. The Bill was introduced in the House of Lords, using a special procedure for Law Commission Bills. This was the first occasion on which the procedure had been used for a Bill for Scotland recommended by the Scottish Law Commission alone. I was pleased to mark the significance of this by hosting jointly with the Advocate General for Scotland an event for Peers at Dover House in London. I hope that there will be an opportunity to take forward other suitable Bills for Scotland, such as the Commission's Bill relating to Unincorporated Associations, in the future.

A joint Commission Bill was also introduced in the Westminster Parliament in 2013, namely the Co-operative and Community Benefit Societies Bill. This Bill takes forward the joint Report of the Law Commission for England and Wales and the Scottish Law Commission on the consolidation, published in December 2013.

As regards legislative activity in the Scottish Parliament, no Bills recommended by the

Commission were introduced in the Scottish Parliament in 2013. Similarly no Acts based on Commission reports were passed by the Scottish Parliament in 2013.

In September 2013, however, the First Minister announced the Scottish Government's Programme for Government for 2013-2014, and I was pleased to note that the Government intend to introduce three Bills taking forward Commission reports. The Programme includes a Bill on aspects of the law of damages on the basis of proposals which pick up recommendations from a number of Commission reports; a Bill to consolidate the legislation on bankruptcy; and a Bill on conclusion of contracts, taking forward the Commission's recent Report on Formation of Contract: Execution in Counterpart.

I particularly welcome an announcement by the Scottish Parliament in 2013 putting in place a new process for certain Commission Bills at Holyrood. This involved an extended remit for a Committee, now called the Delegated Powers and Law Reform Committee, to take the lead in relation to such Commission Bills. This is a significant development for the Commission and for law reform, and equally so for the Government and the Parliament. Some time ago the Commission raised concerns about the rate of implementation of our Bills, and encouraged ways to be found to improve the position; including, as one measure, increasing the Parliament's legislative capacity for law reform. The Commission is grateful for the work of Scottish Ministers and of Government officials, and of the Scottish Parliament, including MSPs and officials, in responding to our concerns and bringing about this achievement. This development has been noted by others with an interest in increasing parliamentary capacity for law reform Bills, for example in relation to Wales and in provinces in Canada.

The Cabinet Secretary for Justice indicated that the proposed Government Bill on conclusion of contracts would be put forward as a candidate Bill for this new process. The Commission supports this proposal. We consider that the Bill attached to our Report on

Judicial Factors and the Bill attached to our Report in 2012 on Prescription and Title to Moveable Property would both be suitable candidates for this process.

During 2013 the Commission was asked to take on further law reform projects. After discussion with the Commission, and the consent of the Commission which we were pleased to give, the Cabinet Secretary for Justice, Mr Kenny MacAskill, announced his intention to refer to the Commission in due course a review of the not-proven verdict.

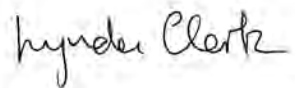
I also agreed on behalf of the Commission to a new reference from Scottish Ministers on section 53 of the Title Conditions (Scotland) Act 2003. The background to this is that the Justice Committee of the Scottish Parliament carried out an Inquiry into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003, and in their Report the Committee called on the Scottish Government to invite the Commission to take forward a review of section 53. The Commission is pleased to assist the Cabinet Secretary for Justice, and the Justice Committee, by taking on this work. We agreed to this on the basis that, given our existing commitments to other property law projects, the work would most likely commence early in our next Programme of Law Reform which begins in 2015.

The Commission continues to enjoy strong links with other law reform bodies around the world. This is particularly the case with the Law Commissions in England and Wales, Northern Ireland, Ireland and Jersey. I was delighted to host a successful annual law reform conference of these bodies in Edinburgh in 2013. The Lord President of the Court of Session hosted a reception at Parliament House for those attending the conference, and for other guests who support our work. I am grateful to the Lord President for that, and for his continuing support of the Commission.

The Commission carries out joint work with Commissioners and officials from the Law Commission for England and Wales, and latterly from the Northern Ireland Law Commission, in relation

to our joint projects. It has been a pleasure to work with these Commissions. I am very grateful in particular to the Chairman of the Law Commission, The Rt Hon Lord Justice Lloyd Jones, for his co-operation and assistance on our joint work.

To conclude, I would like to thank my fellow Commissioners, and the Chief Executive and the legal and administrative staff of the Commission for their hard work and dedication to the Commission and to our law reform work. I commend them all for the considerable support that I received during my time as Chairman.



THE RT HON LADY CLARK OF CALTON  
Chairman

## Publications 2013

PUBLICATION	DATE OF PUBLICATION
Annual Report 2012 (Scot Law Com No 230)	14 March 2013
Review of Contract Law – Report on Formation of Contract: Execution in Counterpart (Scot Law Com No 231)	25 April 2013
Report on the Consolidation of Bankruptcy Legislation in Scotland (Scot Law Com No 232)	14 May 2013
Report on Judicial Factors (Scot Law Com No 233)	29 August 2013
Report on Level Crossings (Joint Report with the Law Commission for England and Wales) (Scot Law Com No 234)	25 September 2013
Report on the Consolidation of legislation relating to Co-operative and Community Benefit Societies (Joint Report with the Law Commission for England and Wales) (Scot Law Com No 235)	19 December 2013

### Other publications

We also published the following paper during 2013. This paper is not included in our numbered series of printed discussion papers and reports but is available in electronic form on our website.

#### **Unfair Terms in Consumer Contracts**

In March 2013 we published our joint Advice, along with the Law Commission for England and Wales, to the Department for Business, Innovation and Skills on Unfair Terms in Consumer Contracts.

Please see our website for further information about our publications  
[www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)



## Implementation of our reports 2013

Under the Law Commissions Act 1965, our statutory function is to provide independent advice to Government on the reform of Scots law. Our recommendations are contained in reports, usually accompanied by a draft Bill containing provisions which would give effect to our recommendations. Our reports are submitted to the Scottish Ministers, or to UK Ministers where the subject matter involves areas of law reserved to the UK Parliament.

Implementation of the draft Bills annexed to our reports is a matter for the Scottish Government and Scottish Parliament or, where appropriate, the UK Government and UK Parliament.

### Acts passed by the Scottish Parliament in 2013

There were no Acts passed by the Scottish Parliament in 2013 implementing Commission Bills.

### Bills introduced in the Scottish Parliament in 2013

There were no Bills introduced in the Scottish Parliament in 2013 implementing Commission Bills.

### Acts passed by the United Kingdom Parliament in 2013

#### Statute Law (Repeals) Act 2013

The Statute Law (Repeals) Act 2013 received Royal Assent on 31 January 2013. The Act gave effect to the draft Bill contained in the joint Report by the Law Commission and the Scottish Law Commission on Statute Law Repeals, published in April 2012.

#### Partnerships (Prosecution) (Scotland) Act 2013

The Partnerships (Prosecution) (Scotland) Act 2013 received Royal Assent on 25 April 2013. The Act is based on the draft Bill contained in the Commission's Report on Criminal Liability of Partnerships, which was published in December 2011.

### Bills introduced in the UK Parliament in 2013

#### Co-operative and Community Benefit Societies Bill

The Co-operative and Community Benefit Societies Bill was introduced in the House of Lords on 18 December

2013. The Bill consolidates the legislation relating to co-operative and community benefit societies and in particular the Industrial and Provident Societies Act 1965. The Bill also gives effect to some changes to the law recommended by the Law Commission and the Scottish Law Commission in the joint Report on the consolidation, published in December 2013.

### Government responses to our recommendations

#### Prescription and Title to Moveable Property

The Commission submitted a Report on Prescription and Title to Moveable Property in May 2012. The Minister for Community Safety and Legal Affairs responded with a letter dated 30 July 2013. The Minister indicated that legislation in this area would bring clarity and economic benefit. The Government considered however that it would carry out its own consultation for which, given the cross-cutting nature of the issues raised, it is not possible to allocate resources at this time.

### Scottish Government: Programme for Government 2013-14

In September 2013 the First Minister announced the Scottish Government's Programme for Government, setting out the proposals for legislation for 2013-14. The Government intends to introduce a Bill in the Scottish Parliament to reform aspects of the law relating to damages for personal injuries; a bankruptcy consolidation Bill; and a Bill on conclusion of contracts.

As regards a Bill on aspects of the law relating to damages for personal injuries, the Government has carried out a consultation on proposals that would build on recommendations from three Commission Reports: a Report in 2004 on Damages for Psychiatric Injury; a Report in 2007 on Personal Injury Actions: Limitation and Prescribed Claims; and outstanding recommendations in a Report in 2008 on Damages for Wrongful Death.

A bankruptcy consolidation Bill would take forward the Commission's Report in May 2013 on the consolidation of the law on bankruptcy.

A Bill on conclusion of contracts would take forward the Commission's recommendations in the Report in April 2013 entitled Review of Contract Law – Report on Formation of Contract: Execution in Counterpart.

### Citations in 2013 of Commission work

There are further indications of the impact and value of the Commission's work, aside from implementation of our recommendations. The Commission's work is widely quoted in court judgments, in academic journals and in the media.

During 2013 our monitoring service picked up 22 UK court judgments citing or discussing Commission publications; and 65 citations in articles in legal journals.

In the UK national and regional newspapers there were 20 references to the Commission and our work; and we received TV coverage of our joint Report on Level Crossings.

While any views expressed may or may not support the Commission and our recommendations, this information does reflect the level of attention given to the Commission in these contexts.

Further information about implementation of our Reports can be found on the Publications page of our website  
[www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

## Law reform projects

The Commission's law reform work stems from our programmes of law reform and references from Ministers. We also undertake projects jointly with the Law Commission for England and Wales, and with the Northern Ireland Law Commission, where the subject matter relates to Scotland as well as other parts of the United Kingdom.

### Projects included in our Eighth Programme of Law Reform

During 2013 work continued on projects under our Eighth Programme of Law Reform which covers the period from 2010 to the end of 2014.

#### Item 1 - Moveable transactions

##### Project Team

**Dr Andrew Steven**, Commissioner

**Lesley Mure**, Project Manager

**Grant Barclay**, Legal Assistant

This is a medium-term project in our Eighth Programme of Law Reform.

The project involves a review of the law on (i) outright transfer (assignment) of incorporeal moveable property (ii) security over incorporeal moveable property and (iii) security over corporeal moveable property. Thus book debts (money owed but unpaid), loan books (sums due on mortgage, credit cards, car loans etc), intellectual property rights (patents etc), stock in trade, and equipment (vehicle fleets etc) all fall within the scope of the project. The project does not cover the transfer of corporeal moveable property, a subject that is mainly covered by the Sale of Goods Act 1979.

All three areas (assignment, security over incorporeal moveable property, and security over corporeal moveable property) are important to the smooth running of the Scottish economy but in all three areas Scots law appears to be out of date and insufficiently business-friendly. This may place Scottish businesses

at a competitive disadvantage and lead to the loss of legal, financial and commercial business to England and elsewhere.



Dr Andrew Steven

We published a Discussion Paper on Moveable Transactions in June 2011. The Paper considered the current law, identified its shortcomings, and suggested possible ways forward. Other legal systems were looked at, including the model that originated in the USA (Article 9 of the Uniform Commercial Code) and which has now been adopted (with some variations) in a number of other countries including Australia, Canada and New Zealand. Although the Discussion Paper concluded that a wholesale adoption of this model would not be appropriate, it was suggested that Scots law would benefit from adopting some of its ideas.

The Discussion Paper proposed that there should be a new type of security right that could cover both corporeal and incorporeal moveable property. There would be a new online Register of Moveable Transactions, in which the security right would be registered. The new register could also be used to register transfers of financial rights, for example in securitisations and factoring.



Nearly 40 responses were received to the Discussion Paper. Following the end of the consultation period, we have conducted a number of meetings with interested parties to discuss the issues raised by the consultation responses. These discussions, together with the consultation responses themselves, are informing the report and draft Bill on which we are currently working. We expect to complete the project in early 2015.

## Item 2 – Trusts

### Project Team

**The Rt Hon Lord Drummond Young**, Consultant

**Charles Garland**, Project Manager

**Stephen Bailey**, Legal Assistant

Our project on the reform of trust law is coming to a conclusion. Since the publication of our final Consultation Paper in 2012 we have been preparing a Report and draft legislation.

The Bill will replace the current legislation, including the Trusts (Scotland) Act 1921, with a new statute designed for the modern era.

Our publications, which include eight Discussion Papers and two short Consultation Papers, cover a wide range of topics within the field of trust law.

Our aim has been to take account not only of the traditional situations in which trusts are – and have long been – used, such as for the transmission of property within a family, but also to monitor developments in leading trusts jurisdictions round the world to identify areas which might usefully be incorporated into Scots law. Examples of the latter, many of which are used in commercial settings, include private purpose trusts (where trust property is primarily held not for specified beneficiaries but for a specific purpose) and the offices of protector and enforcer (whom we prefer to term a supervisor). In our view Scots law requires to be open to such developments in order to remain competitive and to attract inward business.

Our Report will also discuss some areas of trust law which have largely been left to the common law, often with the result that – because Scotland is a relatively small jurisdiction – there is comparatively little judicial authority. For instance, we may recommend that the duty on trustees to provide information about the trust to beneficiaries and others be clarified and we may also suggest reform of the regime applicable to *ex officio* trustees.

We have been assisted throughout our work by a number of different advisory groups whose support we value greatly.

It is clear to us that there is considerable demand for a review and reform of this area of the law. Many of the leading trusts jurisdictions keep their legislation up to date every few years and we consider that Scotland would also benefit from a similar approach.

## Item 3 - Judicial factors

### Project Team

**Patrick Layden QC TD**, Commissioner

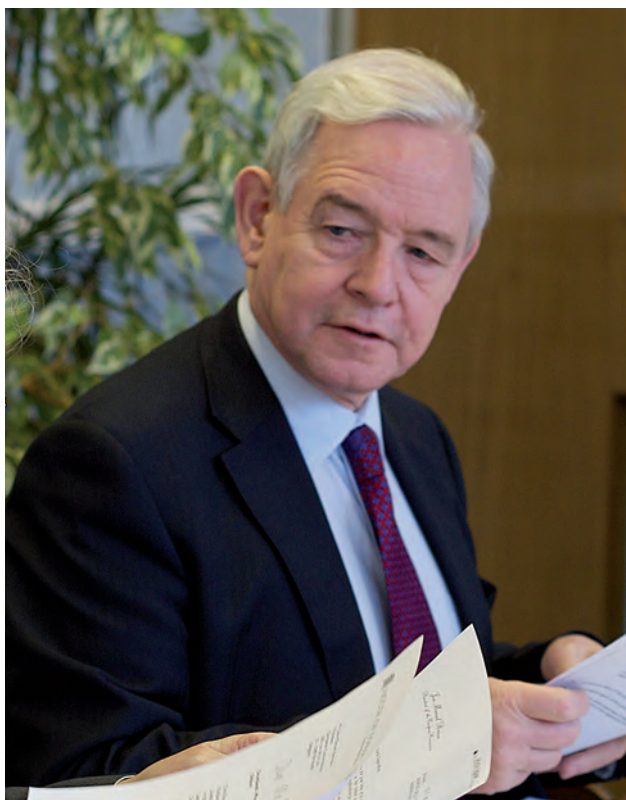
**Gillian Swanson**, Project Manager

Our project on judicial factors was completed in 2013.

A judicial factor is someone appointed by the court to look after or to ingather and distribute property belonging to someone else. Anyone can be appointed as a judicial factor although the majority taking up the role tend to be accountants or solicitors. The appointment can be made in a variety of circumstances such as at the instance of the Law Society of Scotland to firms of solicitors where there has been a breach of professional practice and the firm's liabilities exceed, or appear likely to exceed, its assets. Other examples include those appointed where a partnership is in dispute or where those running a charity appear to have been managing it inappropriately.

The legislation relating to judicial factors is archaic and no longer fit for purpose. Accordingly, in August

2013, we published a Report and draft Bill which, if implemented, would put in place an updated and comprehensive regime which would bring clarity, accessibility and efficiency to this vital but outmoded area of the law. Furthermore, the flexibility introduced by the regime would mean that the solution of appointing a judicial factor could become more attractive in a wider range of circumstances. We recommended that the grounds for the appointment of a judicial factor should be that there is property which requires to be managed properly and (a) that it appears to the court that it is not possible, or not practicable, or not sensible, for those responsible for it to manage it; or (b) that there would otherwise be benefit in having it managed by a judicial factor.



Patrick Layden QC TD

Further recommendations include requirements for a judicial factor to prepare a management plan which must be agreed with the Accountant of Court and, where the parties responsible for managing the property are in disagreement, to mediate or otherwise to

attempt to persuade them to come to an agreement. Where it proves impossible to persuade the parties to resolve their differences, the factor must prepare a scheme for resolution of the difficulty. We also recommended simplified processes for bringing a judicial factory to an end. Under the new regime, it would continue to be the function of the Accountant of Court to audit the factor's annual accounts and to supervise the conduct of judicial factors.

#### Item 4 – Homicide

##### *Project Team*

**Patrick Layden QC TD**, Commissioner

**Dr Heike Gading**, Project Manager

Our Eighth Programme includes a review of the law on homicide. We have started researching the law of Scotland as well as the law of other countries with a view to working on a discussion paper but due to other priorities, work on this project has had to be postponed.

#### Item 6 - Law of contract in the light of the Draft Common Frame of Reference

##### *Project Team*

**Professor Hector MacQueen**, Commissioner

**Charles Garland**, Project Manager

**Stephen Bailey**, Legal Assistant

Our review of contract law is a long-term project under our Eighth Programme.

We began by publishing a Discussion Paper on Interpretation of Contract (2011), followed by a Discussion Paper on Formation of Contract (2012). One of the topics contained in that Paper was "execution in counterpart", which is the term used for the process whereby parties or their agents give legal effect to a written agreement by each party signing (or executing) their own copy (or counterpart) of the agreement and then delivering it

to the other party or parties involved. We were told that this procedure, which is common under English law and in many other jurisdictions round the world, was not one which Scots law practitioners generally use, largely because of doubts as to whether it is legally effective. Instead, a signing ceremony is more commonly used, whereby parties or their agents meet to sign the agreement.

Practitioners explained that the lack of confidence in the legal efficacy of execution in counterpart leads to difficulties in practice and makes Scots law appear out of step with modern commercial life. On occasion, contracts which would otherwise be made subject to Scots law are written under English law in order to permit execution in counterpart, for example where it is inconvenient for parties or their agents to meet.

These representations encouraged us to take forward work on a short Report and draft Bill on execution in counterpart, which was published in April 2013. The other matter we included was a new option to allow a signed document to be delivered electronically. Many documents require to be delivered in order to take legal effect; counterparts which are signed as described just above are one example, but many others, including contracts relating to land, also require to be delivered. Those whom we consulted were in full agreement that the option of electronic delivery, for instance by fax or email attachment, would be a welcome and useful development. The draft Bill attached to our Report provides for this, and we are delighted that the First Minister announced in September 2013 that a Conclusion of Contracts etc. (Scotland) Bill will be introduced in the Scottish Parliament as part of the current legislative programme. The Cabinet Secretary for Justice indicated that the Bill will be put forward as a candidate for a new Parliamentary procedure whereby the Delegated Powers and Law Reform Committee takes the lead.

We have also made good progress on a Discussion Paper on Third Party Rights, which we aim to publish before Easter 2014. We have been assisted by a number of advisory groups and look forward

to hearing during consultation from a range of interested parties. Once that paper is ready for publication we will resume work on a Discussion Paper on Remedies for Breach of Contract, on which work was suspended in order to concentrate on our Report on Execution in Counterpart.

### Item 7 - Adults with incapacity

#### Project Team

**Ms Laura Dunlop QC**, Commissioner

**Dr Heike Gading**, Project Manager

**Susan Robb**, Solicitor

As part of our Eighth Programme, we are continuing to develop recommendations for reform of the law on adults with incapacity, currently set out in the Adults with Incapacity (Scotland) Act 2000, to include legal processes for specific authorisation of measures amounting to deprivation of liberty. The impetus for this project is the need to ensure compliance with Article 5 of the European Convention on Human Rights (right to liberty and security).

After considering the responses to our Discussion Paper, we resolved to develop statutory provisions dealing with adults lacking capacity to consent to measures amounting to a deprivation of liberty in two areas: those who are to receive medical treatment which is not primarily for mental disorder and those who are living in care settings for which the State is responsible.

The issue of how to define deprivation of liberty, which has proved troublesome within the English system of Deprivation of Liberty Safeguards, was brought further into focus in the Supreme Court in October 2013 in the hearing in the conjoined cases of *P (by his litigation friend the Official Solicitor) (FC) (Appellant) v Cheshire West and Chester Council (Respondent)* and *P and Q (by their litigation friend, the Official Solicitor) (Appellants) v Surrey County Council (Respondent)*. We have paid close attention to these appeals. For the

Scottish provisions on deprivation of liberty, we seek to devise reasonably straightforward processes and to define with as much clarity as possible the situations in which each process is to apply.

Towards the end of 2013 we had further input from interested parties on aspects of our proposed new scheme for Scotland. We are working towards publishing a final Report with a draft Bill during the course of 2014.



Ms Laura Dunlop QC

## Item 8 - Compulsory purchase

### *Project Team*

**Patrick Layden QC TD**, Commissioner

**Dr Andrew Steven**, Commissioner

**Lucy Galloway**, Project Manager

**Ewan McCaig**, Legal Assistant

The Eighth Programme includes a long-term project to examine the law and practice of compulsory purchase in Scotland.

In Scotland the underlying legislation in relation to compulsory purchase is generally considered to be antiquated and obscure, with much of it dating from the 19th century. There are several difficult issues relating to both the procedure for compulsory purchase and compensation. There is widespread agreement that change is needed.

In 2011 the Scottish Government published updated guidance on the existing procedures in two circulars on compulsory purchase orders and the disposal of surplus government land under what are known as the Crichton Down rules.

Various reforms have been made to the law of compulsory purchase in England and Wales, most recently by the Localism Act 2011.

Following preliminary work on our project in 2011, we started work in earnest in 2012 and we have continued with that work in 2013. For the first half of 2013 the team members were primarily involved in other projects but in February we attended a conference for local authority officials involved in compulsory purchase orders and Mr Layden was a guest at the Compulsory Purchase Association's annual event in London.

In August 2013 work on the project resumed, and we prepared our proposed list of the topics to be included and considered how best to proceed. An outline was prepared setting out topics to be

covered and our suggested approach. These were discussed and generally agreed with a group of experts in November. The group was largely positive about the suggested outline of topics. It was agreed that it would be possible to proceed with more than one discussion paper, but ideally there should be one final report and draft Bill which would repeal the original 1845 legislation and restate the law of compulsory purchase in Scotland. We also sought views on the proposed outline and approach from other practitioners and academics, who were content with these too.

We have greatly appreciated and benefited from the ongoing support for the project from practitioners and academics during 2013. We will continue to make progress with preparation of a discussion paper.

#### Item 9 - Heritable securities

##### Project Team

**Dr Andrew Steven**, Commissioner

**Lesley Mure**, Project Manager

**Grant Barclay**, Legal Assistant

A heritable security is a security over heritable property (such as land and buildings) in respect of a debt. (The equivalent term in English law, "mortgage", is often encountered.)

The law of heritable security is governed mainly by the Conveyancing and Feudal Reform (Scotland) Act 1970. The Act has been amended over the years, most notably by the Mortgage Rights (Scotland) Act 2001 and by the Home Owner and Debtor Protection (Scotland) Act 2010. But many shortcomings with the 1970 Act have come to light and remain unreformed. The Supreme Court's decision in *Royal Bank of Scotland plc v Wilson* highlights one such area of difficulty.

We intended to begin a review of the law of heritable securities during our Eighth Programme. However,

other priorities have meant that starting work on this project will be carried forward to our Ninth Programme.

#### Item 10 - Prescription and title to moveable property

##### Project Team

**Dr Andrew Steven**, Commissioner

**Alastair Smith**, Project Manager

Our Report on Prescription and Title to Moveable Property was published in May 2012.

We received the Scottish Government's initial response in July 2013. It recognised that reform of this area of the law would bring clarity and economic benefit and that our Report provided a strong basis for such a reform. However the Scottish Government considered that it would have to carry out its own consultation before any reform could be undertaken. Due to other more pressing priorities, it has not allocated resources to such a consultation to date.



Our current legal assistants (left to right)

Ewan McCaig, Grant Barclay, Tom Watret and Stephen Bailey

## References from Scottish Ministers

### Reference on section 53 of the Title Conditions (Scotland) Act 2003

In September 2013 the Cabinet Secretary for Justice referred to the Commission a review of section 53 of the Title Conditions (Scotland) Act 2003 in the context of part 4 of the Act. The Commission accepted this reference, on the basis as agreed with the Scottish Government that the review would most likely commence early in our next Programme of Law Reform. That Programme commences in 2015.

This reference arises from an Inquiry by the Justice Committee of the Scottish Parliament into the effectiveness of the provisions of the Title Conditions (Scotland) Act 2003. In their Report, the Committee noted concern expressed about the operation of section 53, and that there was no consensus as to how the issues should be addressed; and called upon the Scottish Government to invite the Commission to take forward a review of the section.

### Reference on not proven verdict

In June 2013 the Cabinet Secretary for Justice, after discussion with the Commission, announced that in due course he intended to refer to the Commission a review of the not proven verdict.

## Joint projects with the Law Commission for England and Wales

We continued work during 2013 on a number of joint projects with the Law Commission for England and Wales. The projects relate mainly to areas of the law which are reserved to the United Kingdom Parliament in terms of the Scotland Act 1998.

### Insurance contract law

#### *Project Team*

**Professor Hector MacQueen**, Commissioner

**Gillian Swanson**, Project Manager

**Tom Watret**, Legal Assistant

We are assisting the Law Commission with a major project on insurance contract law which they are carrying out under their Eleventh Programme of Law Reform. The project began by turning its attention to consumer insurance reform (where there was a very clear impetus for reform) and our recommendations in that regard have already been implemented by the Consumer Insurance (Disclosure and Representations) Act 2012 which came into force in April 2013.

The Act applies only to consumers and deals with the issue of what a consumer must tell an insurer before entering into or varying an insurance contract. It abolishes the consumer's duty to volunteer material facts. Instead, consumers must take reasonable care to answer their insurer's questions fully and accurately. If consumers do volunteer information, they must take reasonable care to ensure that the information is not misleading.

The Act also sets out the insurer's remedies where it has been induced by a misrepresentation to enter into an insurance contract. The insurer's remedy will depend on whether the misrepresentation was honest and reasonable; careless; or deliberate or reckless. For example, if the misrepresentation was careless, the insurer will have a compensatory remedy based upon what the insurer would have done had the consumer

taken care to answer the question accurately; if the insurer would have excluded a certain illness, the insurer will not be required to pay claims which would fall within the exclusion but will be required to pay all other claims; or, if the insurer would have charged more for the policy, it will be required to pay a proportion of the claim.



Professor Hector L MacQueen

Throughout 2013, we have been developing our policy, in the light of consultees' comments, on several of the issues covered by our joint Consultation Papers on Post Contract Duties and other Issues (2011) and on the Business Insured's Duty of Disclosure and the Law of Warranties (2012) with a view to publishing a further report, with draft legislation, in summer 2014. The topics covered will include damages for late payment, insurers' remedies for fraud, the business insured's duty of disclosure and the law of warranties. Thereafter, the aim is to publish a third and final report before the end of 2014. It will set out the views of consultees on remaining issues such as policies and premiums in marine insurance.

## Level crossings

### Project Team

**Dr Andrew Steven**, Commissioner

**Susan Sutherland**, Project Manager

**Susan Robb**, Solicitor

In September 2013 we completed work on our joint project with the Law Commission for England and Wales on reform of the law relating to level crossings, with the publication of our joint Report.

Much of the relevant legislation applies to Scotland as well as to England and Wales. For that reason the project was undertaken jointly by the Commissions.

The law governing level crossings is complex. The project involved consideration of Victorian legislation relating to the railways as well as more recent legislation on health and safety, planning, roads, compulsory purchase and access to land. It also involved matters relating to property and land law.

The Report recommended reform of the law aimed at-

- Improving the safety regime for level crossings by bringing it into line with that of the railway generally, while making such special provision as is necessary;
- Providing a new procedure to allow for the compulsory closure of level crossings; and
- Clarifying the law relating to rights of way across railways.

The Report included a draft Bill and draft Regulations to give effect to the Commissions' recommendations. We expect to receive a formal response from Government to our recommendations in the first half of 2014.

## Unfair terms in consumer contracts

### Project Team

**Professor Hector MacQueen**, Commissioner

**Gillian Swanson**, Project Manager

This project is now complete. It stemmed from a joint reference from the Department for Business, Innovation and Skills to this Commission and the Law Commission for England and Wales. Our Advice to the Department was published in March 2013.

The reference asked us to carry out two tasks. The first was to review and update our 2005 joint Report on Unfair Terms in Contracts in so far as it affects contracts made between businesses and consumers; the second was to consider, in particular, one problematic area, namely the exemption for main subject matter and price set out in Regulation 6(2) of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR).

Currently, two pieces of legislation deal with unfair contract terms. The Unfair Contract Terms Act 1977 (UCTA) sets out the traditional UK approach while the UTCCR implement an EU Directive, the Unfair Terms Directive (UTD). The co-existence of these two overlapping schemes has long been criticised for its complexity and obscurity and, in 2005, we recommended reform to simplify the law. In an Issues Paper (July 2012) we asked whether consultees still supported the relevant recommendations we made at that time and asked if there were any areas where updating was required.

The policy set out in the Advice was developed in light of consultees' responses. Under Regulation 6(2) of the UTCCR, terms cannot be assessed for fairness if they relate to the "main subject matter of the contract" or to "the adequacy of the price or remuneration as against the goods or services supplied in exchange". These phrases have generated considerable litigation, most notably over bank charges. Our Advice recommended reform of

the exemption. With regard to price terms, we recommended confining the exemption to only one aspect of a price term, the amount. For main subject matter terms, we recommended that the exemption should apply to terms which specify the main subject matter. The exemption should apply only to terms which are transparent and prominent.

We also advised that the new legislation should specifically state that terms on the grey list (that is, the indicative list of terms in the Annex to the UTD which may be regarded as unfair) are assessable for fairness. Furthermore, we advised that the list should be copied out from the UTD subject to some specific changes and additions, for example that new paragraphs should be added to cover early termination charges and terms which give the trader discretion to decide the amount of the price or the subject matter of the contract after the consumer has become bound by the contract.

In addition, we advised that the UTD should be copied out into the law of the UK rather than rewritten, subject to specific recommendations made elsewhere in the Advice, and that the fairness test as set out in Articles 3(1) and 4(1) of the UTD should be replicated in the new legislation. Furthermore, we advised that UCTA should no longer regulate business to consumer contracts, even in the case of a business dealing as a consumer, following consolidation of consumer provisions in the forthcoming Consumer Bill of Rights. In response to the Government consultation on the draft Consumer Bill of Rights which took place in the late summer of 2013, we submitted a short paper on services contracts.

The Consumer Rights Bill was introduced into the UK Parliament in January 2014, and we are pleased that it includes the topics of unfair terms in consumer contracts and remedies for faulty goods. We will continue to monitor the progress of this important Bill against the Commissions' recommendations in the Advice on Unfair Terms in Consumer Contracts and the Commissions'



earlier (2009) recommendations on consumer remedies for faulty goods. We understand that the current intention is that the Commissions' recommendations on consumer redress for misleading and aggressive practices (2012) will be implemented by regulations which are to be introduced in the course of 2014.

## Joint projects with the Law Commission for England and Wales and the Northern Ireland Law Commission

### Regulation of health care professionals

#### *Project Team*

**Patrick Layden QC TD**, Commissioner

**Ewan McCaig**, Legal Assistant

During 2013, the Scottish Law Commission team continued to work closely with the Law Commission for England and Wales and the Northern Ireland Law Commission on a review of the UK legislation relating to the regulation of health care professionals. This project originated from a reference to the Law Commission for England and Wales by the Secretary of State for Health in September 2010, and is the first tripartite project which the three Commissions have undertaken. Work on the project is being led by the Law Commission for England and Wales.

The current regulatory framework governing the 9 regulators within the scope of the project, and the Professional Standards Authority which oversees them, is considered to be fragmented, inconsistent and poorly understood. Following extensive public consultation, a consultation analysis was published on 20 February 2013. The consultation process significantly informed the Commissions' consideration of the issues, and as a result many of the Commissions' preliminary views were revised.

Work then continued on the preparation of a report and draft Bill to implement the Commissions' agreed policies. Throughout this process, ongoing discussions were held with the Department of Health to ensure the Commissions were aware of developing Government policy. Meetings also took place between the Commissions and the Devolved Administrations.

The Commissions' report and draft Bill is expected to be published towards the end of March 2014. The basic proposal is that there should be a single Act of Parliament to provide an overarching framework

for the 9 regulators and the Professional Standards Authority. This statute will impose consistency across the regulators where this is necessary in the public interest. Otherwise, the regulators will be given greater autonomy to adopt their own approach to regulation in the light of their circumstances and resources.

We cannot anticipate what decisions the Government may make as to the legislative programme, but the draft Bill will be available to the Department of Health from March 2014. In our view the Bill, if passed, would result in a much-needed reform of an area of statutory regulation which holds great significance in ensuring public safety.

Such an outcome would also be a highly satisfactory conclusion to the first project involving the three Law Commissions.

## Electoral Law

### Project Team

**The Rt Hon Lady Clark of Calton**, Chairman

**Gillian Swanson**, Project Manager  
(from November 2013)

**Tom Watret**, Legal Assistant  
(from November 2013)

We are working with the Law Commission for England and Wales and the Northern Ireland Law Commission on a joint law reform project to review UK legislation in relation to electoral law. It stems, following a scoping exercise, from a reference to the Commission from the UK Cabinet Office as regards reserved areas of Scots law, and from Scottish Ministers as regards devolved areas.

The review is necessary as electoral law in the UK has become complex and fragmented. The aims of the project are, accordingly, to ensure that (i) electoral law is presented within a rational, modern legislative framework, governing all elections and referendums; and (ii) the law governing the conduct

of elections and referendums is modern, simple, and fit for purpose.

We have been engaging further with stakeholders as part of the process of beginning to formulate proposals for reforming this area of the law. The aim is to produce a detailed consultation paper with proposals for reform but this will not be published until after the Scottish referendum on independence in September 2014. The reform recommendations will be published in a report in autumn 2015. The final phase of the project, if given formal approval, will be the drafting of legislation to implement the recommendations. The aim then would be to publish a draft Bill and final report by February 2017 thereby enabling legislation to be in place prior to the 2020 general election.



The Rt Hon Lady Clark of Calton

## Assistance to the Law Commission for England and Wales

We have also been pleased to assist the Law Commission with its projects on Fiduciary Duties of Investment Intermediaries and Groundless Threats in Patent, Trade Mark and Design Litigation, both by organising and taking part in seminars in Edinburgh to encourage Scottish input in relation to the projects, and by providing research and text on relevant aspects of Scots law for incorporation in the Law Commission's publications on these topics.

Further information about our law reform projects is available on the law reform projects page on our website  
[www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

## Progress on our law reform projects: summary

### Projects under our Eighth Programme

Project	Publications in 2013	Position at the end of 2013
<b>Moveable transactions</b> (Eighth Programme, item 1)		Working on report and draft Bill, to be published early 2015
<b>Trusts</b> (Eighth Programme, item 2)		Working on report and draft Bill, to be published in 2014
<b>Judicial factors</b> (Eighth Programme, item 3)	Report on Judicial Factors (Scot Law Com No 233) published August 2013	Project completed August 2013
<b>Homicide</b> (Eighth Programme, item 4)		Some preliminary work undertaken
<b>Criminal liability of partnerships</b> (Eighth Programme, item 5)		Project completed December 2011
<b>Law of contract in the light of the DCFR</b> (Eighth Programme, item 6)	Review of Contract Law – Report on Formation of Contract: Execution in Counterpart (Scot Law Com No 231) published in April 2013	Working on discussion papers on third party rights in contract, and breach of contract, to be published in 2014
<b>Adults with incapacity</b> (Eighth Programme, item 7)		Working on report and draft Bill, to be published by the end of 2014
<b>Compulsory purchase</b> (Eighth Programme, item 8)		Working on discussion paper to be published by the end of 2014
<b>Heritable securities</b> (Eighth Programme, item 9)		Some preliminary work undertaken
<b>Prescription and title to moveable property</b> (Eighth Programme, item 10)		Project completed May 2012

### Joint projects and advice with the Law Commission for England and Wales

Project	Publications in 2013	Position at the end of 2013
<b>Insurance contract law</b> (Joint project with the Law Commission for England and Wales)		Working on report and draft Bill, to be published in 2014
<b>Level crossings</b> (Joint project with the Law Commission for England and Wales)	Report on Level Crossings (Scot Law Com No 234) published September 2013	Project completed September 2013
<b>Unfair terms in consumer contracts</b> (Joint advice with the Law Commission for England and Wales)	Advice to Department for Business, Innovation and Skills published on our website March 2013	Advice completed March 2013

### Joint projects with the Law Commission for England and Wales and the Northern Ireland Law Commission

Project	Publications in 2013	Position at the end of 2013
<b>Regulation of health care professionals</b> (Joint project with the Law Commission for England and Wales and the Northern Ireland Law Commission)		Working on joint report and draft Bill, to be published in 2014
<b>Electoral Law</b> (Joint project with the Law Commission for England and Wales and the Northern Ireland Law Commission)		Working on joint consultation paper to be published in autumn 2014

### Assistance to the Law Commission for England and Wales

Project	Publications in 2013	Position at the end of 2013
<b>Fiduciary Duties of Investment Intermediaries</b> (Law Commission for England and Wales project)		Assistance and advice provided for report, to be published in 2014
<b>Groundless Threats in Patent, Trade Mark and Design litigation</b> (Law Commission for England and Wales project)		Assistance and advice provided for report, to be published in 2014

# Consolidation and statute law repeals

## Consolidation

### Project Team

**The Rt Hon Lady Clark of Calton**, Chairman

**Susan Sutherland**, Project Manager

**Susan Robb**, Solicitor

One of our statutory functions is to undertake work on consolidation of primary legislation. This work involves preparing a draft Bill to bring together earlier enactments on an area of law with the aim of making the legislation easier to use. Consolidation is an important way of tidying up the statute book.

### Bankruptcy legislation in Scotland

In our Eighth Programme of Law Reform, published in February 2010, we stated that we were undertaking a project to consolidate the legislation relating to bankruptcy in Scotland. The project followed a suggestion by the Accountant in Bankruptcy which was supported by the Scottish Government.

Most of the law concerned is contained in the Bankruptcy (Scotland) Act 1985. But that Act has been heavily amended on many occasions, most notably by the Bankruptcy and Diligence etc. (Scotland) Act 2007. As a result, some of its provisions have become extremely unwieldy and difficult to use.

In May 2013 we published our Report recommending a number of amendments to the Bankruptcy (Scotland) Act 1985 to facilitate the consolidation. The changes relate to matters of technical detail and are intended to remove anomalies and omit provisions that no longer serve any purpose.

The Report included a draft consolidation Bill and Tables of Destinations and Derivations relating to the provisions. It also included a draft Order which we envisage would be made under section 104 of the Scotland Act 1998 so as to give effect to certain provisions of the Bill in other parts of the UK. The

making of such an order would be a matter for UK Ministers and for the UK Parliament.

The consolidation Bill has not yet been introduced in the Scottish Parliament. This is because it will require to be amended to take account of changes to bankruptcy legislation provided for in the Bankruptcy and Debt Advice (Scotland) Bill which was introduced in the Scottish Parliament in June 2013. Among other things, that Bill implements almost all of the recommendations for changes to the 1985 Act contained in the Commission's Report.



Gregor Clark CB, Parliamentary Counsel (Consultant)

The Scottish Government's Programme for Government for 2013-2014 announced the intention to bring forward a Bill to consolidate bankruptcy legislation. The intention is to introduce the consolidation Bill shortly after the Bankruptcy and Debt Advice (Scotland) Bill has completed its passage through the Scottish Parliament.

### Co-operative and Community Benefit Societies

During 2013 we participated in a project with the Law Commission for England and Wales to consolidate the legislation relating to co-operative

and community benefit societies (formerly known as industrial and provident societies).

The project was originally proposed by the Prime Minister in a speech in January 2012. It was taken forward by the Law Commission for England and Wales and the Treasury. After undertaking some initial work, the Law Commission asked us to assist with the project as the legislation concerned extends to Scotland as well as to England and Wales.

The legislation relating to co-operative and community benefit societies has its origins in the 19th century and has some features in common with the original legislation on other forms of mutual society (such as friendly societies, building societies and credit unions). The law has been consolidated before, most recently in the Industrial and Provident Societies Act 1965. That Act has been heavily amended and supplemented by a number of subsequent Acts and Statutory Instruments altering the law relating to these societies. The significant legislative activity has partly been due to the need to keep up with developments in company law, changes to the regulation of financial services and changes to EU law.

The Bill seeks to reproduce the effect of the current legislation, while putting the law into a more logical, accessible, clear and modern form. This includes using gender neutral language and altering archaic language wherever possible. The only substantive changes to the law which may be included in the Bill are those recommended by the Law Commissions in order to facilitate a satisfactory consolidation.

In September 2013 the Commissions published for consultation drafts of the Bill, the Table of Origins, Drafter's Notes to the Joint Committee and some possible Law Commission recommendations, inviting comments by 15 November 2013. Comments were received from a few interested bodies and these were taken into account in finalising the Bill and Report.

The Commissions published their joint Report in December 2013. The Report makes a number of

recommendations for changes to the legislation to facilitate the production of a satisfactory consolidation.

The UK Government introduced the Bill in the House of Lords on 18 December 2013. The Bill gives effect to the Commissions' recommendations. The Bill also takes account of some changes to the law that are planned to be made by statutory instrument, including changes to implement provisions of the Co-operative and Community Benefit Societies Act 2010, among other things. It is expected that those changes will be made while the consolidation Bill is in the UK Parliament.

The Bill received its Second Reading on 13 January 2014. Following detailed scrutiny by the Joint Committee on Consolidation Bills it is expected that the Bill will be enacted before the end of the current Session of the UK Parliament.

## Statute law repeals

### *Project Team*

**The Rt Hon Lady Clark of Calton**, Chairman

**Susan Sutherland**, Project Manager

**Susan Robb**, Solicitor

One of the Commission's functions is to recommend the repeal of obsolete legislation. This work is undertaken jointly with the Law Commission for England and Wales.

The aim of our work is to remove obsolete and otherwise unnecessary legislation from the statute book. This process helps to simplify and modernise our law, making it more intelligible. It also saves time and costs for lawyers and others working with legislation.

The work involves detailed research of possible statutory provisions which may be suitable for repeal, followed by consultation with interested parties to obtain their agreement to the repeals. We undertake consultation in Scotland on the Scottish proposals for repeal. The Law Commission team then prepares a draft Bill for inclusion in a Report to Government. Since 1965 there have been 19 such Reports including Statute Law Repeals Bills, all of which have been enacted by the UK Parliament.

The last joint Report was published in April 2012. The Bill annexed to the Report was introduced in the UK Parliament in October 2012 and received Royal Assent on 31 January 2013. Work is now underway on the next joint report.



## Promoting law reform

The Commission continued to maintain strong links in 2013 with other bodies and organisations, as part of our role in promoting law reform. We enjoy close relations in particular with the Law Commission for England and Wales and the Northern Ireland Law Commission, with whom we carry out joint law reform projects.

In June 2013 the Commission hosted in Edinburgh the annual conference of the law reform bodies of Scotland, England and Wales, Ireland, Northern Ireland and Jersey. The Lord President of the Court of Session hosted a reception for the conference delegates, and for other guests, at Parliament House. This was followed the next day by the conference, with each Commission providing an update on their own activities followed by general discussion of the preparation of programmes of law reform, and special parliamentary procedures for law reform Bills.



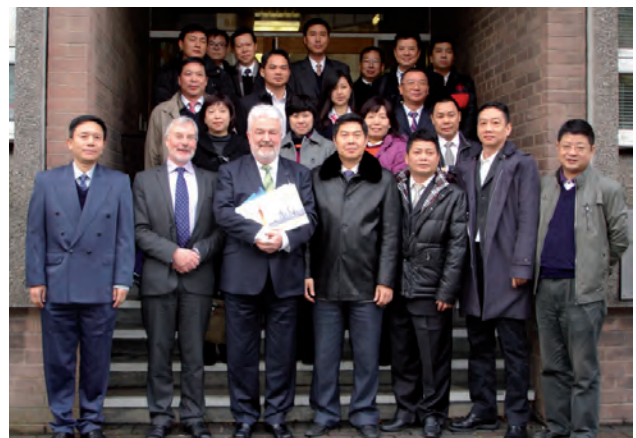
Delegates at the law reform conference in Edinburgh in June 2013

A reception for peers and others was held at Dover House, London in May 2013, jointly with the Advocate General for Scotland, Lord Wallace of Tankerness QC, following the enactment of the Partnership (Prosecution) (Scotland) Act 2013. The Act was based on the Commission's Report in 2011 on the Criminal Liability of Partnerships. The procedure in the House of Lords for Law Commission Bills was used for this Bill, the first use of the procedure for a Bill for Scotland promoted by this Commission alone.



The Advocate General for Scotland, the Rt Hon the Lord Wallace of Tankerness QC, The Rt Hon Lady Clark of Calton and Patrick Layden QC TD

The Commission continues to receive visitors from other jurisdictions and law reform bodies across the world. In November, for example, the Commission hosted a visit by a group of 20 Chinese Government delegates from Guangzhou local authorities in China who were making a study visit to the UK. Professor MacQueen addressed this group on matters relating to intellectual property law in particular.



Malcolm McMillan and Professor Hector MacQueen with the delegation from Guangzhou in China

In November, the Commission was also pleased to welcome Mr Satyajit Boolell, SC, Director of Public Prosecutions of Mauritius, together with Mr Pierre Rosario Domingue, Chief Executive Officer, Law Reform Commission of Mauritius. The visitors met Mr Layden to discuss aspects of criminal law reform, for the purposes of their review of the criminal

justice system in Mauritius; and they met Malcolm McMillan, the Chief Executive, to discuss general law reform issues.



Mr Satyajit Boolell SC, Patrick Layden QC TD,  
Mr Pierre Rosario Domingue, and Ewan McCaig

In 2015, the biennial Conference of the Commonwealth Association of Law Reform Agencies will be held in Scotland. The Commission, as the law reform body of the host jurisdiction, will play a significant part in organising the conference. The Commission is pleased to have this opportunity to host an international law reform conference. The Chief Executive, Malcolm McMillan, represented the Commission at the 2013 conference in Cape Town, South Africa in April, and invited delegates to Scotland in 2015.



Delegates at the 2013 conference in Cape Town, South Africa

The Commission continues to have a link with our sister law reform body in Malawi, the Malawi Law Commission. The Scottish Government's Programme on Capacity Building for Justice in Malawi, which provided funding for this and similar links between bodies in Scotland and Malawi in the justice sector, has however now come to an end.

During 2013 the Commission made a donation of surplus library stock to libraries in Zambia. This followed a review of the Commission's library which identified stock for disposal, mostly comprising bound volumes of old law reports and journals where the material is now available online. Contact was made by our Librarian, Emma McLarty, with the Roma Information Centre, Lusaka, who organise the collection and transport of books from the UK to libraries in Zambia. 275 boxes of books were collected from the Commission and are bound for Zambia, including to a library available to law students there.



Emma McLarty, the Commission's Librarian

## Future law reform publications

The Commission aims to make progress on our current law reform projects in the course of 2014, in particular by issuing publications on certain of these projects. The rate of progress we make depends on the priorities accorded to the respective areas of work; on the resources available to us; and on the extent to which the Commission is asked to take on other work.

We expect to publish further discussion papers within the next year on third party rights in contract, and breach of contract, as part of our continuing review of contract law; and on compulsory purchase law.

Certain projects will be completed during this period by the submission of a report and draft Bill to Scottish Ministers for consideration. We are aiming to issue reports on trust law; and adults with incapacity; and, in early 2015, on moveable transactions.

As regards our joint work with the Law Commission for England and Wales, we expect to submit a joint report on insurance contract law. On our tripartite law reform projects, with both the Law Commission for England and Wales and the Northern Ireland Law Commission, we expect to issue a joint report in 2014 on the regulation of health care professionals; and a joint consultation paper on electoral law.

# Commissioners and staff (as at 31 December 2013)

## Commissioners

The Rt Hon Lady Clark of Calton, *Chairman*

Ms Laura Dunlop QC

Patrick Layden QC TD

Professor Hector MacQueen

Dr Andrew Steven

## Chief Executive

Malcolm McMillan

## Parliamentary Counsel (Consultant)

Gregor Clark CB

## Project Managers (Solicitors)

Heike Gading

Lucy Galloway

Charles Garland

Lesley Mure

Susan Sutherland

Gillian Swanson

## Solicitor

Susan Robb

## Legal Assistants

Stephen Bailey

Grant Barclay

Ewan McCaig

Tom Watret

## Librarian

Emma McLarty

## Office Manager

Susan Cutsforth

## Personal Secretaries

Jacqueline Berry

Joan Melville

## Administrative Staff

Iain Ritchie

Gordon Speirs

## The Commission's running costs 2013

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2013 were offset by payments received from Skills for Justice and the Royal Commission on the Ancient and Historic Monuments of Scotland for use of part of our office accommodation.

Expenditure	Year to 31 December 2013
<b>Salaries – Commissioners</b> (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£561,922
<b>Salaries – Chief Executive and legal staff</b> (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£640,405
<b>Salaries – Administrative staff</b> (including national insurance contributions and superannuation payments)	£119,341
<b>Accommodation</b> (including maintenance, rates and utilities)	£80,640
<b>Printing and publishing</b> (including costs of books and library purchases, binding, maintenance of equipment, printing costs of publications, photocopying and stationery)	£57,613
<b>Telephone and postage</b>	£4,015
<b>Travel and subsistence</b>	£11,128
<b>Miscellaneous</b> (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£68,723
<b>Total</b>	£1,543,787

### How we undertake our law reform projects

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

### For more information about the Commission please contact:

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