

SCOTTISH LAW COMMISSION

(SCOT. LAW COM. No. 37)

**NINTH
ANNUAL REPORT
1973-74**

*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:

The Honourable Lord Hunter, V.R.D., *Chairman*

Mr A. E. Anton, C.B.E.

Professor J. M. Halliday, C.B.E.¹

Professor T. B. Smith, Q.C.

Mr Ewan Stewart, M.C., Q.C.

The Secretary of the Commission is Mr J. B. Allan. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh EH8 9BD.

¹ Professor Halliday ceased to be a Commissioner on 15 June 1974.

SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15th JUNE, 1974

TO: THE RIGHT HONOURABLE RONALD KING MURRAY, Q.C., M.P.,
Her Majesty's Advocate.

In accordance with the provisions of section 3(3) as read with section 6(2) of the Law Commissions Act 1965, as amended¹ we have the honour to submit this the ninth Annual Report of the Scottish Law Commission.

J. O. M. HUNTER,
Chairman

29th November, 1974

¹ The Transfer of Functions (Secretary of State and Lord Advocate) Order 1972 (S.I., 1972, No. 2002), removes the requirement to submit Reports to the Secretary of State for Scotland.

NINTH ANNUAL REPORT

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I. THE COMMISSION

1. The Scottish Law Commission, which was set up on 16 June 1965, consists of a full-time Chairman, three full-time Commissioners and one part-time Commissioner. They are :

The Honourable Lord Hunter, V.R.D., Chairman	(Full-time)
Mr A. E. Anton, C.B.E.	(Full-time)
Professor J. M. Halliday, C.B.E.	(Part-time) ¹
Professor T. B. Smith, Q.C.	(Full-time)
Mr Ewan Stewart, M.C., Q.C.	(Full-time)

The Secretary of the Commission is Mr J. B. Allan.

2. On 1 October 1973 Mr Anton, one of our part-time Commissioners, became a full-time Commissioner. On 15 June 1974 Professor Halliday's term of office came to an end and in view of his other heavy commitments he expressed a wish not to be reappointed. We deeply regret the departure of Professor Halliday who has been a Commissioner since the Commission was set up in 1965. We wish to record that his services have been of outstanding value to the Commission and to the law of Scotland. We express our gratitude to him for his great contribution to the cause of law reform. We are pleased that Professor Halliday will continue to assist the Commission in the capacity of a consultant.

STAFF

3. During this year there was one addition to our legal staff which now consists of two Parliamentary Draftsmen, one employed on a full-time basis and one part-time, our Secretary, and six other qualified lawyers. There was also one addition to our permanent non-legal staff which now number ten. During the 1973 summer vacation we employed five honours graduates in law in research work and we wish to thank them for their assistance to our work on Bankruptcy, Diligence and Obligations. In May 1974 we engaged a qualified lawyer as a temporary research assistant for a period of four months.

PREMISES

4. We still occupy premises in the Old College of Edinburgh University. As a result of the increase in our staff and the change from part-time to full-time Commissioners we have had to obtain additional accommodation which has been provided for us by the University of Edinburgh. We must record our thanks for the ready and most helpful co-operation we have received from the University in this matter.

MEETINGS

5. We continue to hold full meetings of the Commission twice a month. So far as is practicable we have devoted one meeting per month entirely to the consideration of one particular subject.

¹ Professor Halliday has been succeeded by Mr R. B. Jack, Solicitor, Glasgow.

II. GENERAL

6. It is disappointing to record that since the passage of the Prescription and Limitation (Scotland) Act 1973 and the Domicile and Matrimonial Proceedings Act 1973, both of which received the Royal Assent on 25 July 1973, there has been in the past year no further legislation resulting directly from the work of this Commission. We regret particularly that Parliamentary time has not yet been found to effect the very necessary reforms proposed in our *Report on the Law relating to Damages for Injuries causing Death*,¹ which, as we have noted elsewhere,² was published on 24 October 1973. The reforms proposed in that Report are, as we pointed out last year³, designed as immediate measures to correct serious defects and anomalies in the existing law of Scotland in an area of some social importance. We have also previously noted⁴ our concern that the future pattern of the Scottish Divorce Law has not yet been settled. This is inevitably having an effect on the Commission's priorities particularly in relation to our Programme work on Family Law. Fortunately it is not altogether a disadvantage to be able to observe how reforms in family law are working in practice in other countries, since this may enable us to develop our thinking both on principle and in matters of detail, but it is nevertheless important that the law of Scotland should not be allowed to lag seriously behind other systems of law not only in the realm of divorce but also in areas such as matrimonial property, aliment and financial provision on dissolution of marriage.

7. We are glad to be able to report substantial progress in our Second Programme of Consolidation and also in the work of Statute Law Revision, the latter of which we have continued to carry out in close collaboration with the Law Commission. We are particularly anxious that the Bill consolidating the enactments relating to Criminal Procedure in Scotland should pass into law early in the next session of Parliament⁵ and we would hope that it would be possible for one other major Scottish consolidation measure to find its way into the Statute Book during that session.

8. As we foreshadowed in our last Annual Report⁶ it is proving necessary to devote a very substantial proportion of our resources both of Commissioners and legal staff to work on Bankruptcy⁷. This is by far the largest exercise on which the Commission has so far advanced to the stage of preparing a Report with draft clauses, and the necessary concentration of resources on this one exercise will for some time to come inevitably affect progress on other work. It is, nevertheless, our intention to make as much progress as possible not only on other Programme subjects and on matters referred to us under section 3(1)(e) of the Law Commissions Act

¹ (1973) Scot. Law Com. No. 31.

² See para. 25.

³ (1974) Scot. Law Com. No. 33, para. 10.

⁴ (1974) Scot. Law Com. No. 33, para. 33.

⁵ On 5 November 1974 the Criminal Procedure (Scotland) Bill was introduced in the House of Lords by Lord Hughes.

⁶ (1974) Scot. Law Com. No. 33, para. 14.

⁷ See para. 19.

1965 but also on some smaller exercises which, because of their limited nature, can be taken up by Commissioners or members of legal staff who temporarily become available during a pause in other work. We will shortly be circulating two Memoranda¹ on relatively minor matters which we were able to prepare in this way.

9. We draw attention elsewhere in this Report² to the importance which we attach to the carrying out of social and economic research for the purposes of our Programme work on the Law of Diligence. The progress made by our Working Party on this subject during the past year has emphasised the present need for such research, and it is now clear that the Commission will, in due course, have to consider not only proposals for reform and modernisation of the many technical aspects of this branch of law and practice but also large questions relating to the future policy and administration of diligence. We believe that the social and economic research necessary to enable firm conclusions to be reached on these important matters would occupy several years and in these circumstances we are of opinion that the time has come to put in hand the appropriate studies and programmes for such research.

10. We noted in last year's Annual Report³ that the volume of work for which the Commission bear responsibility was continuing to increase and this increase, as will appear from the present Report, has continued during the past year. Moreover, the pressure on individual Commissioners and members of our legal staff has also tended to increase as a result of the work undertaken on behalf of Government Departments, Government Committees and other bodies, of which we give some details in Parts V and VIII of this Report. We believe that it is in the interests of the law of Scotland, and also incidentally of this Commission, that Commissioners and legal staff should be ready to undertake such duties when called upon to do so. But the variety and complexity of much of the work involved often demand considerable expenditure of time and effort and inevitably make inroads into the time which can be devoted to Programme work.

11. One exercise which involved some considerable diversion of effort by the Commission during the past year was the assistance which we endeavoured to give to the Departmental Committee on One-Parent Families. Having regard to the fact that this Departmental Committee considered and made recommendations with regard to important and distinctive areas of Scots law and of the Scottish legal system, it appears most unfortunate in retrospect that the Committee did not have amongst its members any Scots lawyer although it included two English lawyers and also an experienced commentator on the English legal system. This Commission, at the invitation of the Departmental Committee, prepared at somewhat short notice a factual memorandum⁴ covering particular matters on which the Committee sought information, but experience in this instance suggests that the pro-

¹ See paras. 33 and 70.

² See para. 27.

³ (1974) Scot. Law Com. No. 33, para. 16.

⁴ See para. 63.

vision of assistance to a Departmental Committee by this Commission in such circumstances is unlikely to be a proper and adequate substitute for the presence on the Departmental Committee itself of a member qualified and experienced in the law of Scotland and able to make a direct contribution to the Committee's work and conclusions.

12. We have experienced during the past year a substantial increase in our work in the international and European fields. This is not confined to our Third Programme (Private International Law)¹ but extends into numerous other areas of our work and some details may be found in Parts V, VI and VIII of this Report. We have in our work in this field noticed a tendency for ideas which are put forward in one international body to be reproduced in other such bodies considering the same or a similar subject matter, with the result that proposals may in this way be gradually formulated which, either directly or indirectly, will in due course come to affect or influence the law of Scotland. We therefore regard it as important that the Commission should be able to observe and, if possible, influence the formulation of such proposals in international or European bodies, particularly in situations where the proposals may in due course come to affect areas of our law on which the Commission may be carrying out work in the future. Injudicious unification or assimilation of law, whether in the European or any other context, may in effect sometimes be irreversible, and it is therefore important for Scots lawyers to play their full part in all discussions which are designed to achieve unification, harmonisation or approximation of laws.

13. We consider it proper in concluding this general part of our Report to draw attention to the increasing difficulty which we have experienced in carrying out scrutiny of Bills. This is due partly to constant increases in the quantity of legislation in recent years and partly to the demands made on our legal staff by other work. We are conscious that in certain very important areas of legislation we have not been able to react and make effective comments in the time available. Moreover in the case of some very important Great Britain and United Kingdom measures, particularly those having a large policy content, it is not in any event easy for the Commission to influence presentation and drafting in an endeavour to achieve greater clarity and simplicity of legislation or to secure changes designed to remove or at any rate reduce incongruities with the law of Scotland. The Consumer Credit Bill (now the Consumer Credit Act 1974) presented serious difficulties of this sort and, without in any way criticising the social policies to which this legislation gave effect, we regret that a measure of such importance should be vulnerable to criticism on the ground that many of its provisions cannot readily be understood by ordinary members of the Scottish public, including small traders, however acceptable its contents and drafting may have been to large organisations enjoying skilled legal advice and to courts of law relying on the pilotage of counsel through the intricacies of its provisions. The Consumer Credit Bill was only one example out of many where we would have wished to be able to exert

¹ See paras. 35-39.

greater Scottish influence on legislation not only in the mercantile and commercial fields but in others. It is, however, difficult to see how the Commission with its present resources can hope to scrutinise effectively more than a small proportion of the large number of Bills on a great variety of subjects which reach us from day to day during the Parliamentary Session.

III. LAW REFORM PROGRAMMES

1. FIRST PROGRAMME¹

Item 1 : Evidence

14. In our last Annual Report² we indicated that we were using the services of an experienced advocate to assist us in our examination of this subject. The first drafts of Parts I, II and III of his Report have been considered by us and are in the course of being revised. We hope to receive the first drafts of Parts V and VI in the autumn and we understand that the draft of Part IV will probably be completed early in the New Year.

Item 2: Obligations

(a) Comprehensive Review

15. In our last Annual Report³ we mentioned that we had decided to concentrate initially on areas which were unsatisfactory to the practitioner, and that we had accordingly prepared a scheme of work to deal with voluntary obligations, delict, unjustified enrichment and *negotiorum gestio* and corporeal moveables. Work is progressing on the acquisition of title to corporeal moveables⁴ and it is anticipated that Memoranda dealing with a number of important aspects, relating to the law of obligations and to the law of corporeal moveable property, will be completed during the coming year. Work is also proceeding with a view to the preparation of a Memorandum on constitution and proof of obligations, and research is being conducted into that area of the law which deals with defective contracts. Progress on the other subjects referred to in the scheme of work will depend largely on what resources are available: most of the resources which are currently available have, during the past year, been devoted to exemption clauses.

(b) Exemption clauses

16. On 27 September 1971 we published, jointly with the Law Commission, a Paper⁵ containing provisional proposals relating to (i) the exclusion of liability for negligence in the sale of goods and (ii) exemption clauses in contracts for the supply of services and other contracts. A large number of comments have been received and have been studied by the two

¹ (1965) Scot. Law Com. No. 1.

² (1974) Scot. Law Com. No. 33, para. 19.

³ (1974) Scot. Law Com. No. 33, para. 20.

⁴ See para. 66.

⁵ Circulated as Scottish Law Commission Memorandum No. 15 and Law Commission Working Paper No. 39.

Commissions. Work on the preparation of a Report has now reached an advanced stage and it is anticipated that the Report will be submitted to Ministers during the coming year.

Item 3 : Prescription and Limitation of Actions

17. The Prescription and Limitation (Scotland) Act 1973 implements the great majority of the recommendations contained in our *Report on the Reform of the Law Relating to Prescription and Limitation of Actions*¹. One of our Memoranda examining Aspects of the Law Relating to Corporeal Moveables will include a section dealing with Positive Prescription (Usucapion) of Moveables².

18. In our last Annual Report³ we mentioned that some further work may have to be done in the domain of limitation. We are contemplating further action in this field of law in the near future and will take the opportunity to review the special limitations imposed by statute, including in particular the largely consolidating provisions contained in Part II of the Prescription and Limitation (Scotland) Act 1973, which are a legacy of the time limits introduced into Scots Law by the much amended and much criticised Law Reform (Limitation of Actions Etc.) Act 1954. In this latter connection we will be considering, amongst other matters, the recently published Twentieth Report of the Law Reform Committee entitled *Interim Report on Limitation of Actions: In Personal Injury Claims*⁴ which dealt only with the law applicable to England and Wales⁵. It will be necessary for Scottish interests to be consulted fully on any proposals for changes in the domain of limitation, particularly in the important area of time limits for raising actions of damages in respect of personal injuries or death.

2. SECOND PROGRAMME⁶

Item 6 : Insolvency, Bankruptcy and Liquidation

19. As we indicated in our last Annual Report⁷, the comments received from the various bodies or individuals on the provisional proposals contained in our published Memorandum No. 16 on *Insolvency, Bankruptcy and Liquidation* are now being studied by our Bankruptcy Team and during the year under review progress has been made by the Team in the preliminary work involved in the preparation of our Report to you on this subject. As we foreshadowed, this has involved a detailed examination of the draft Convention prepared by the Commission of the European Communities relating to Bankruptcy, Compositions and Analogous Proceedings with a view to determining what areas of our domestic law are likely to be affected by the provisions of the Convention if and when it is signed and ratified by the United Kingdom.

¹ (1970) Scot. Law Com. No. 15.

² See para. 66.

³ (1974) Scot. Law Com. No. 33, para. 8.

⁴ Cmnd. 5630.

⁵ Cmnd. 5630, para. 19.

⁶ (1968) Scot. Law Com. No. 8.

⁷ (1974) Scot. Law Com. No. 33, para. 24.

20. The work carried out by the Bankruptcy Team in analysing the comments received has revealed several important questions of principle, the implications of which were not fully examined by the Working Party in their Report to us and upon which, in consequence, we now wish to obtain further views. This has been done by the preparation and circulation, on a restricted basis to those principally interested in the subject, of a Consultation Paper. It is hoped to obtain comments on this Consultation Paper by the autumn and, after weighing up the views of those who comment, we will require to take decisions on the various matters raised in the Paper which are of fundamental importance to the preparation of our Report on Bankruptcy.

21. In view of the extent of the Bankruptcy exercise we have decided to strengthen the resources devoted to it and it is estimated that approximately one-third of our whole resources will have to be devoted to this one Programme subject for some considerable time.

Item 7: Succession

22. In our last Annual Report¹ we stated that we had decided to produce for limited circulation a Memorandum commenting on the Succession (Scotland) Act 1964 and also canvassing the method and implications of a scheme of major reform. Owing to the commitment of our resources to other exercises (in particular to Bankruptcy) no substantial progress can be made at present on our consideration of this Programme subject. In any event it may be desirable to await our consideration of such connected matters as matrimonial property, aliment, and financial provision on dissolution of marriage before issuing our proposed Memorandum on succession.

Item 8 : Diligence

23. Since our last Annual Report² the Working Party have made some welcome progress and have completed their consideration of a number of papers on arrestment and poinding. The history and development of policy considerations underlying the law of diligence in Scotland has been investigated and analysed. A paper on this has been completed. A further paper which is to examine in detail the implications of these policy considerations under modern conditions and the possible solutions which might be considered in the present circumstances is being prepared. The Working Party have continued to press for the carrying out of social and economic research, the necessity for which has during the past year assumed increasing urgency. Without such research the Working Party will be handicapped in its consideration both of general and detailed policy. It is therefore disappointing to record that authority for the type of research mentioned in last year's Annual Report² has not been given. This authority was refused on the ground that at this stage of the exercise we had not made the case that the information sought was essential for the Working Party to reach conclusions and therefore that a social research design study was

¹ (1974) Scot. Law Com. No. 33, para. 25.

² (1974) Scot. Law Com. No. 33, para. 26.

not meanwhile justified. It will probably be necessary for us to revert to this matter in the near future, since social and economic research of the nature required would take several years to complete. This might well affect the timing of a consultative memorandum by the Commission.

Item 9 : Reciprocal Enforcement of Judgments

24. Our work on this subject has been overtaken by events, in particular, the entry of the United Kingdom into the European Communities. In terms of Article 3 of the Act annexed to the Treaty of Accession new Member States undertook to accede to the Conventions provided for in Article 220 of the EEC Treaty. These include the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. When the United Kingdom accedes to this Convention, major changes will be required in the legislation relating to jurisdiction and the enforcement of judgments in the legal systems of the United Kingdom, which are at present under consideration by the Government. It has been decided, therefore, that no Report will follow on Memorandum No. 12.

Item 10 : Damages arising from Personal Injuries and Death

25. We completed and submitted to your predecessor on 19 July 1973 our *Report on the Law relating to Damages for Injuries causing Death*¹, together with draft clauses.

Item 11 : Presumption of Death

26. Our Report² and draft Bill on this subject were submitted to you on 20 March 1974.

Item 12: Legal Capacity of Minors and Pupils

27. In our last Annual Report³, we mentioned that we had a choice between issuing a limited Memorandum on legal capacity of minors and pupils or, alternatively, widening the scope of the Memorandum to include modernisation and reform of the categories, functions and appointment of guardians (i.e. tutors and curators) and of judicial factors administering the assets of minors and pupils. We have decided that reform of the law of guardianship is an essential concomitant of any major change of the age of minority. We have also been influenced by our Working Party's desire that the statute law relating to guardianship should be harmonised with the common law. We have therefore widened the scope of our research.

28. The Guardianship Act 1973 came into operation on 8 May 1974⁴. Among other things, this Act gives a mother the same rights and authority as the law of Scotland allows to a father over their legitimate children, so that both parents not only have joint custody but in principle act as

¹ This Report was published as Scot. Law Com. No. 31 on 24 October 1973.

² This Report was published as Scot. Law Com. No. 34 on 3 September 1974.

³ (1974) Scot. Law Com. No. 33, para. 30.

⁴ Guardianship Act 1973 (Commencement No. 2) Order 1974, (S.I. 1974/836).

joint tutors to pupils and joint curators to minors. The introduction of the principle of sex-equality in this field will be generally welcomed but commentators have indicated problems which seem to require examination and our Memorandum on Minors and Pupils provides the opportunity for such an examination in the light of the practical experience gained in operating the Act.

Item 13 : Criminal Procedure

29. In our Second Programme of Law Reform¹ we recommended that criminal procedure in Scotland should be examined by a Departmental Committee. We continue to keep in touch with the Committee that was set up under the Chairmanship of Lord Thomson. Mr Stewart is a member of this Committee which has held numerous meetings and we understand that its main report may be presented early in 1975.

Item 14 : Family Law

(a) General

30. We have continued our work in Family Law. We reiterate the point, made repeatedly in previous Annual Reports², that it is highly desirable that the future pattern of divorce law should be settled not only because of the intrinsic importance of divorce but also because of its importance for other sectors of family law. We refer elsewhere in this Report to our work on certain other topics which may properly be regarded as forming part of family law³. In the course of the year, the Domicile and Matrimonial Proceedings Act 1973, which implements recommendations in our *Report on Jurisdiction in Consistorial Causes Affecting Matrimonial Status*⁴ received the Royal Assent and came into operation on 1 January 1974.

(b) Divorce

31. In 1974 Mr William Hamilton M.P. introduced another Private Member's Bill in the House of Commons⁵, which was substantially the same as the three previous Private Members' Bills to which we referred in our last Annual Report⁶. As with previous Bills, we were associated with the preparation of the new Bill. The Bill, which was introduced under the ten minute rule, failed to get a Second Reading. We mentioned in last year's Annual Report⁶ that we had consulted medical and legal interests on the place of incurable mental illness in divorce. As a result of these consultations we took the view that incurable mental illness should not form a separate, nominate "fact situation" evidencing breakdown of marriage. Mr Hamilton's Bill took account of this view and the omission of the relevant provisions formed the only difference from last year's Bill.

¹ (1968) Scot. Law Com. No. 8.

² (1974) Scot. Law Com. No. 33, para. 33.

³ See paras. 38, 39, 49, 63 and 67.

⁴ (1972) Scot. Law Com. No. 25.

⁵ Divorce (Scotland) Bill, [Bill 44], ordered by the House of Commons to be printed 14 May 1974.

⁶ (1974) Scot. Law Com. No. 33, para. 34.

(c) *Aliment and Financial Provision*

32. In the context of the reform of the law of divorce, we have been conscious of the need to examine the Scottish rules relating to financial provision on dissolution of marriage: but that problem is only a facet of wider questions relating to alimentary obligations within the family and also to family property. The task, however, of examining these questions is a major one for which no members of our staff are at present available. In those circumstances, we consider ourselves fortunate to have secured, in the course of the year, the services of Dr Eric M. Clive, Senior Lecturer in Scots Law in the University of Edinburgh, to assist us with this work, particularly in the domain of aliment and financial provision. Dr Clive has placed at our disposal the results of research which he has already undertaken in the relevant law both of Scotland and of other legal systems, and he has prepared for us papers which will be the basis of a consultative memorandum proposing reforms in this important branch of the law.

(d) *Damages for adultery and enticement*

33. In our last Annual Report¹ we mentioned that we had begun work on considering possible reform of a number of actions which may be thought archaic or anomalous and require abolition or reform, and that these actions included actions of damages for adultery, enticement of spouses or children and breach of promise of marriage. Work has been proceeding on the preparation of a Memorandum² which we hope to issue shortly on the *Liability of a Paramour in Damages for Adultery and Enticement of a Spouse*. We do not propose to consider at present the possible liability under Scots law for the enticement of a child, since this raises different issues which are more appropriately considered in the context of the law relating to the custody of children.

(e) *Miscellaneous*

34. As we mentioned in our last Annual Report³, projected work on Family Law cannot make substantial progress until our work on a consultative memorandum on minors and pupils has been completed. Partly for this reason, we have suspended work meantime on certain family law topics which we referred to in our last Annual Report⁴ and upon which we had carried out preliminary work. These topics include actions of declarator relating to matrimonial status and actions for breach of promise of marriage.

3. THIRD PROGRAMME⁵

Item 15 : Private International Law

(a) *General*

35. In our Third Programme⁵ we undertook to keep under review matters which are subject to negotiation or agreement between member states of

¹ (1974) Scot. Law Com. No. 33, para. 38.

² This was circulated as Memorandum No. 18 on 24 September 1974.

³ (1974) Scot. Law Com. No. 33, para. 15.

⁴ (1974) Scot. Law Com. No. 33, paras. 37 and 38.

⁵ (1973) Scot. Law Com. No. 29.

the European Economic Community and of the Hague Conference on Private International Law. During the year under review we have become considerably involved in this work, of which we give an outline in the following paragraphs. The Steering Committee¹, comprising members of both Commissions, will continue to supervise the consideration of matters covered by the Third Programme and will set up Joint Working Parties as and when this is considered appropriate.

(b) EEC Convention on the Law Applicable to Contractual and Non-Contractual Obligations

36. The Joint Working Party¹ referred to in our last Annual Report² have been considering the draft Convention on the law applicable to contractual and non-contractual obligations. They were of the opinion that it was essential that legal and commercial interests in the United Kingdom should be consulted and have prepared a Consultative Document³ which will be circulated shortly.

(c) Proposed EEC Convention on the Law Applicable to Corporeal and Incorporeal Property

37. The European Working Group has not made much progress on this proposed Convention and it seems unlikely that a draft Convention will be produced before the end of 1974. In the circumstances there has been no reason for the Joint Working Party¹ to meet during the year under review.

(d) Hague Conference: Conflict of Laws in respect of Marriage

38. One of the subjects placed on the Agenda of the 1976 Hague Conference is "The conflict of laws in respect of marriage and the revision of the Convention on the Conflict of Law Relating to Marriage of 12 June 1902", including "questions relating to the recognition abroad of decisions in respect of the existence or validity of marriages". The United Kingdom will be participating in the Conference and the Law Commissions have been invited to brief the United Kingdom delegation. We have agreed with the Law Commission to set up a Joint Working Party¹ who will consider and prepare answers to the Questionnaire⁴ when it is issued by the Permanent Bureau at the Hague and thereafter prepare the brief for the United Kingdom delegation.

(e) Hague Conference: Law Applicable to Matrimonial Property

39. We examined a Questionnaire with Commentary, prepared by the Permanent Bureau of the Hague Conference, on the law applicable to matrimonial property and commented as necessary upon its accuracy as regards the statement of the law of Scotland. The Law Commission carried out a similar exercise in England. We co-operated with them in the preparation of a joint reply to the Questionnaire, which took account of both English law and Scots law.

¹ A list of members of the Steering Committee and the Working Parties appears in Appendix I to this Report.

² (1974) Scot. Law Com. No. 33, para. 39.

³ This Document was circulated on 12 September 1974.

⁴ This Questionnaire was issued on 2 August 1974.

IV. CONSOLIDATION AND STATUE LAW REVISION

1. CONSOLIDATION

40. As in previous Reports we comment on current progress under the following heads :

(a) Consolidation of enactments applying to Scotland only, and consolidation separately for Scotland of enactments which apply to other parts of the United Kingdom as well as to Scotland.

Second Programme

(1) Education (Scotland) Acts—Work is proceeding on the preparation of a Bill.

(2) Enactments relating to the functions of the Scottish Electricity Boards—The instructions to the Parliamentary draftsman are almost complete and it is hoped to make a start in the autumn.

(3) National Health Service (Scotland) Acts—Work on the preparation of a Bill is well advanced.

(4) Enactments relating to criminal procedure in Scotland—A Criminal Procedure (Scotland) Bill² will be ready for introduction at the beginning of the next session of Parliament.

(b) Consolidation of enactments applying to other parts of the United Kingdom as well as to Scotland.

(1) Bills³ on the following subjects are before Parliament:

Friendly Societies Bill

Solicitors Bill (The provisions of subsection (4) of section 4—admission of overseas solicitors—and subsection (3) of section 5—restriction on admission of overseas solicitors—extend to Scotland)

Insurance Companies Bill

(2) Bills on the following subjects are being prepared:

House of Commons (Disqualification)

Ministers of the Crown

Ministers of the Crown (Transfer of Functions)

Police Pensions

Restrictive Trade Practices

Social Security

Supply Powers

(3) Work is in progress on :

Reserve and Auxiliary Forces

Countryside enactments (including National Parks).

¹ (1973) Scot. Law Com. No. 27.

² This Bill was introduced into the House of Lords on 5 November 1974.

³ All these Bills received the Royal Assent on 31 July 1974.

2. STATUTE LAW REVISION

41. All the proposals for repeals which we have received have been or are in course of being examined and consultations on these proposals are being conducted with interested representative bodies and with Government Departments.

42. The Statute Law (Repeals) Bill produced jointly with our English colleagues, which was referred to as under preparation in our last Annual Report¹, is awaiting the Royal Assent².

43. In conjunction with our English colleagues material is now being assembled for another Bill.

3. STATUTE LAW COMMITTEE

44. Our Chairman continues to serve on the Statute Law Committee and continues as a member of the Editorial Board³, which body is responsible for the production of the new perpetually renewable edition of "The Statutes in Force".

4. PRIVATE ACTS

45. The Law Commission have begun work on a chronological index of Private Acts presented since 1539, and have asked us to co-operate with them. We intend to consult Scottish interests concerned before reaching a decision on this project⁴.

V. OTHER STATUTORY FUNCTIONS

1. ADVICE TO GOVERNMENT DEPARTMENTS AND OTHER BODIES

46. We continue to give advice to Government Departments and other bodies under section 3(1)(e) of the Law Commissions Act 1965 and some of the matters on which we have advised are mentioned in the following paragraphs. In the first seven of these paragraphs we report progress on the subjects that have been formally referred to us for advice under that section.

(1) Administrative Law

47. Due to priority being given to other Programme work we deferred our examination of the comments we received on our Memorandum No. 14 on Remedies in Administrative Law⁵ which was issued on 23 August 1971. This Memorandum consists of a Paper prepared by Professor Bradley, Professor of Constitutional Law in the University of Edinburgh, who has

¹ (1974) Scot. Law Com. No. 33, para. 46.

² The Royal Assent was granted on 27 June 1974.

³ A list of members of the Board appears in Appendix I to this Report.

⁴ We have agreed to associate ourselves with this project.

⁵ (1971) Memorandum No. 14.

acted as special consultant, along with a series of questions prepared by the Consultative Committee¹ which was set up to assist us in the examination of this subject. It is possible that we may be able to start work on the preparation of a Report later this year but progress will depend on the availability of resources.

(2) *Foreign Money Liabilities*

48. There have been no meetings of the Working Party² set up by us and the Law Commission to examine problems which may arise if a sum of money is due in a currency other than that of the place of payment the place where payment is sought. Mr Anton who had previously acted as the Scottish consultant to this Working Party became a member when he became a full-time Commissioner in October 1973.

(3) *Conflicts of Jurisdiction affecting the custody of children*

49. Work on the remit³ to the Joint Working Party² set up by ourselves and the Law Commission, under the Chairmanship of Lord Justice Scarman, has continued. The Working Party has reached the stage of drafting a consultative memorandum/working paper. Both our representatives attended a meeting with Mr M. H. Van Hoogstraten (Secretary General of the Hague Conference) and Mr G. A. L. Droz which was convened to discuss The Hague Convention of 1961. Some members of the Working Party attended a meeting of the Council of Europe's Committee of Experts on the Legal Representation and Custody of Minors, whose remit includes the recognition and enforcement of custody decrees.

(4) *Mental Element in Crime*

50. We indicated in our last Annual Report⁴ that we hoped in due course to submit our advice on the appropriateness of the application to Scotland of the proposals contained in the Law Commission's Working Paper No. 31 on *The Mental Element in Crime*. This Working Paper has been referred to the Working Party² mentioned later in this Report⁵

(5) *Products Liability*

51. In October 1971 we were asked by your predecessor "to consider whether the existing law governing compensation for personal injury, damage to property or any other loss caused by defective products is adequate, and to recommend what improvements, if any, in the law are needed to ensure that additional remedies are provided and against whom such remedies should be made available". Since the Law Commission had also received a similar request from the Lord Chancellor, we agreed with them that our examination should be a joint one, and accordingly a Joint Working Party² was set up for this purpose.

¹ A list of members of this Committee appears in Appendix I to this Report.

² A list of members of this Working Party appears in Appendix I to this Report.

³ For the full remit, see our Seventh Annual Report (1973) Scot. Law Com. No. 28, para. 39.

⁴ (1974) Scot. Law Com. No. 33, para. 52.

⁵ See para. 82.

52. At the end of 1972 a Royal Commission on Civil Liability and Compensation for Personal Injuries was set up under the Chairmanship of Lord Pearson to consider, *inter alia*, products liability. There is thus an overlap between the respective remits of the Royal Commission and of the two Law Commissions. We were doubtful whether we should proceed with this reference which might involve some duplication of work leading to wasteful use of our resources but, after some consideration, it has been agreed with Lord Pearson and our respective Ministers that the two Law Commissions should continue on their references.

53. The Joint Working Party's initial task has been to seek evidence from interested parties by means of a questionnaire, and replies to this questionnaire are now being examined. Our Chairman and Mr Macdonald, a member of our legal staff, are our representatives on this Working Party, which also contains one other Scottish member. It is expected that regular meetings of the Working Party will commence later this year.

(6) *Breach of Confidence*

54. In June 1973 we were asked by your predecessor, "with a view to the protection of privacy—

- (1) to consider the law of Scotland relating to breach of confidence and to advise what statutory provisions, if any, are required to clarify or improve it;
- (2) to consider and advise what remedies, if any, should be provided in the law of Scotland for persons who have suffered loss or damage in consequence of the disclosure or use of information unlawfully obtained, and in what circumstances such remedies should be available".

We have held several meetings to consider our approach to the remit and a Memorandum is in the course of preparation.

(7) *Hague Convention on the International Administration of the Estates of Deceased Persons*

55. The Convention concerning the International Administration of the Estates of Deceased Persons was signed on behalf of the United Kingdom on 2 October 1973. On 22 November 1973 we were asked by your predecessor to examine this Convention with a view to advising him on the legislation that would be needed to give effect to the Convention in Scotland. We hope to make some progress soon.

(8) *Consumer Credit*

56. We examined the White Paper on *Reform of the Law on Consumer Credit*¹ and the two Bills which followed thereon. Representations were made to the Lord Advocate's Department both on the form of the Consumer Credit Bill and on a large number of points arising therefrom, some of which, in our view, were likely in a number of respects to have unfortunate consequences for the law of Scotland.

¹ (1973) Cmnd. 5427.

(9) Dean of Guild Courts

57. In our last Annual Report¹ we explained that if two clauses in the Local Government (Scotland) Bill were enacted certain of the anomalies and difficulties concerning Dean of Guild Courts would be removed. With the enactment of the Local Government (Scotland) Act 1973 we have decided not to proceed further with our study of the questions relating to Dean of Guild Courts and Building Authorities.

(10) Estate Duty

58. The Consultative Group² set up by both Law Commissions to examine proposals relating to the administration and collection of estate duty, with a view to facilitating the consolidation of estate duty legislation, has now completed its task and on 21 November 1973 submitted its Report³.

(11) Green Paper on Land Tenure Reform in Scotland

59. In our last Annual Report⁴ we indicated that we had in February 1973 submitted detailed comments upon the various proposals in the Green Paper on *Land Tenure Reform in Scotland* published in 1972 and thereafter had discussion and correspondence with the Scottish Home and Health Department about matters of detail and principle arising from our comments. In July 1973 we submitted further comments relating to residential leases.

(12) Clayson Report on Scottish Licensing Law

60. We were asked for our views on the recommendations contained in the Report of the Clayson Committee on Scottish Licensing Law⁵ and we submitted comments on two of the recommendations. These related to persons to whom a certificate may be granted and to the question of vicarious criminal liability of the certificate holder.

(13) Rehabilitation of Offenders Bill

61. At the request of the Scottish Home and Health Department we submitted comments on the provisions of the Rehabilitation of Offenders Bill⁶.

(14) Law Reform Committee's Report on Conversion and Detinue

62. At the request of the Scottish Home and Health Department we submitted our comments on the proposed new legislation to implement the Law Reform Committee's Report on *Conversion and Detinue*. We advised that we thought that the Disposal of Uncollected Goods Act 1952 should be repealed but that the proposed new legislation should not be extended to Scotland.

¹ (1974) Scot. Law Com. No. 33, para. 58.

² A list of members of the Consultative Group appears in Appendix I to this Report.

³ This Report will not be published.

⁴ (1974) Scot. Law Com. No. 33, para. 60.

⁵ (1973) Cmnd. 5354.

⁶ This Bill received the Royal Assent on 31 July 1974.

(15) Departmental Committee on One-Parent Families

63. In November 1973 we were invited by the Committee on One-Parent Families (set up by the Department of Health and Social Security under the Chairmanship of Mr Justice Finer) to provide a Memorandum on the law of Scotland and the main features of the Scottish legal system so far as these matters had a bearing upon the relationship between the public law obligation of maintenance and private law obligation of aliment and financial provision. This document, the preparation of which involved considerable research and substantial use of our resources, was published as Appendix 6 to the Committee's Report¹.

2. OTHER MATTERS DEALT WITH UNDER SECTION 3(1)

64. As part of our duty we have to examine the law for anomalies and defects; consider the simplification and modernisation of the law; and consider proposals for law reform. In fulfilment of this duty the following matters have been or are being examined.

(1) Proposals

65. We continued to receive at various times throughout the year proposals for changes in the law. Each proposal has been brought under consideration by us with a view to deciding what action should be taken. In subsequent paragraphs we describe action being taken by us in relation to certain of the proposals received by us during the last and preceding years.

(2) Acquisition of Title to Corporeal Moveables

66. We had hoped to issue last year a Memorandum on Property in Corporeal Moveables. The researches we have carried out disclosed that the necessary field of study was more extensive than we had anticipated. In the light of the papers resulting from this research we have reconsidered the order in which various items under this topic should be handled. We now propose to issue two Memoranda, each dealing with problems relating to Corporeal Moveables.

(3) Married Women's Policies of Assurance (Scotland) Act 1880

67. Since we published our last Annual Report² there have been several reported decisions of the Scottish courts in cases relating to estate duty claims arising under the Finance Act 1894 on the proceeds of policies issued under the provisions of the Married Women's Policies of Assurance (Scotland) Act 1880. We have reconsidered our approach to this item and in view of the fact that earlier consultation has already taken place on a paper prepared by A. M. Johnston, Q.C., (Lord Dunpark) and notwithstanding the uncertainty about the effect on the use of the Act of the proposed new forms of capital taxation we have decided to proceed to the issue of a Report. This Report is in the course of preparation and we

¹ See *Report of the Departmental Committee on One-Parent Families*, Vol. 2 Appendices, (1974) Cmnd. 5629—1, pages vi-x and 152-257.

² (1974) Scot. Law Com. No. 33.

hope to be in a position to issue it during the coming year, although the date of publication may depend on the progress of certain current litigation and the disclosure of further details of the proposed Capital Transfer Tax and Wealth Tax.

(4) Powers of Attorney

68. In our last Annual Report¹ we mentioned that we had received a proposal that the subject of Powers of Attorney should be examined, and that we had decided to study the subject with a view to circulating in due course a Memorandum containing tentative proposals for amendment of the law. Research is currently being carried out, and it is hoped to issue a Memorandum during the course of the coming year.

(5) Agricultural Holdings

69. In our last Annual Report² we mentioned that our attention had been drawn to the unsatisfactory working of the provisions of the legislation relating to the termination of tenancies of agricultural holdings and that we had decided to examine those provisions which have come under criticism with a view to incorporating the results of our examination in a Memorandum. It is unlikely that resources will be available to proceed with the preparation of this Memorandum for some considerable time.

(6) Powers of Judicial Factors

70. In our last Annual Report³ we stated that we had decided to examine the desirability of amending legislation to facilitate the exercise by judicial factors of the powers conferred on them by the Trusts (Scotland) Act 1921. We will shortly be issuing a Memorandum⁴ containing our provisional views on an amendment which might be made to achieve the desired result.

(7) Interim Interdict

71. We completed our preliminary examination of the existing procedure whereby a court may grant interim interdict to one party without the party against whom interdict is sought being heard (unless he has lodged a caveat) and decided that this procedural point was one for consideration by the Rules Council of the Court of Session to whom the proposal was referred.

VI. FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

72. We submitted to the Foreign and Commonwealth Office our views on a preliminary study on the subject of Penalty Clauses in Private Law prepared by UNIDROIT at the request of the Council of Europe. The Council of Europe decided to set up a Committee of Experts to examine this subject and Professor Smith is our representative on this Committee.

¹ (1974) Scot. Law Com. No. 33, para. 65.

² (1974) Scot. Law Com. No. 33, para. 66.

³ (1974) Scot. Law Com. No. 33, para. 68.

⁴ This was circulated as Memorandum No. 19 on 10 October 1974.

73. We submitted comments to the Lord Chancellor's Office on a Questionnaire issued by the Permanent Bureau of the Hague Conference on the possibility of general studies on the unification of rules of conflict relating to contracts and torts being undertaken by the Hague Conference and we were later consulted by the Lord Chancellor's Office about the terms of a proposed United Kingdom reply to the Permanent Bureau of the Hague Conference.

74. We submitted to the Lord Advocate's Department our comments on the draft Uncitral Convention on Prescription (Limitation) in the International Sale of Goods which was the subject of a Diplomatic Conference in New York from 20 May to 14 June 1974.

75. We submitted comments to the Department of Trade and Industry (now the Department of Trade) on the EEC Draft Directive on Commercial Agents. The Department of Trade continue to keep us informed on the progress of the negotiations with the EEC officials.

76. Professor Smith presided at a further meeting of the Committee of Governmental Experts convened by UNIDROIT to formulate a draft Uniform Law on the Protection of the *bona fide* Purchaser of Corporeal Moveables which was held in Rome from 17 to 21 December 1973.

77. A member of our legal staff attended the third, fourth and fifth meetings of the Council of Europe Committee of Experts on the Liability of Producers which were held in Strasbourg from 25 to 29 June 1973, 7 to 11 January 1974 and 13 to 15 May 1974.

78. A member of our legal staff attended a meeting of the Council of Europe Committee of Experts on the Legal Representation and Custody of Minors which was held in Strasbourg from 22 to 26 April 1974.

VII. CONSULTATION

THE LAW COMMISSION

79. We have maintained our close co-operation with the Law Commission. In addition to our joint exercises on such matters as Exemption Clauses, Conflicts of Jurisdiction affecting the Custody of Children, and Products Liability, the attention of both Commissions has also been devoted to those exercises undertaken jointly under our Third Programme¹.

80. Our annual joint meeting was held in Edinburgh on 23-24 April 1974 and most of the meeting was devoted to considering a draft of the Joint Report on Exemption Clauses. We wish to record our appreciation of the hospitality provided by Edinburgh University on the occasion of this joint meeting.

¹ (1973) Scot. Law Com. No. 29.

81. We submitted comments on the Law Commission's Working Paper No. 51 on *Transfer of Land: "Subject to Contract" Agreements* and will be submitting comments' on the Law Commission's Working Paper No. 49 —*Transfer of Land: Rentcharges*.

82. We have set up a Working Party² to examine Working Papers, Draft Reports and Reports produced by the Law Commission under their Programme subject 'Codification of the Criminal Law', dealing with (a) General Principles of the Criminal Law and (b) certain specific offences; to prepare draft comments for consideration by us and to identify matters which might result in proposals for legislation affecting or having a possible bearing on the law of Scotland. All Working Papers of the Law Commission on Criminal Law have been referred to this Working Party.

OTHER LAW REFORM ORGANISATIONS

83. We continue to inform the Northern Ireland Office of the Legislative Draftsmen on matters of common interest.

84. We have maintained our contact with law reform organisations in other parts of the world and are pleased to welcome members of these organisations who come to visit us.

THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

85. We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. We have also continued to hold informal quarterly meetings with representatives of the Law Society of Scotland and the Faculty of Advocates and we believe that the exchange of views on these occasions has been of considerable advantage both to them and ourselves. 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, especially those whom we invited to write papers on particular branches of the law, and by others who have served on our Working Parties. We trust that there is increasing public awareness of the time and effort freely devoted to work on Law Reform by practising members of the legal profession and by academic lawyers in Scotland.

86. We are also most grateful for the help we continue to receive from the librarian and staff of the University Library, University Law Library, Centre of European Governmental Studies, the National Library of Scotland and the Signet Library.

SEMINARS, COLLOQUIA, ETC.

87. Mr Anton attended a Council of Europe Colloquy on the Representation and Custody of Minors which was held in Vienna from 5 to 7 March 1974.

¹ These comments were submitted to the Law Commission on 9 September 1974.

² A list of members of this Working Party appears in Appendix I to this Report.

88. Mr Stewart attended a Seminar on Inchoate Offences—Conspiracy and Attempt—which was held at All Souls College, Oxford, on 5 and 6 April 1974.

VIII. MISCELLANEOUS

DEPARTMENTAL AND OTHER COMMITTEES

89. Our Commissioners serve on various Government and Departmental Committees some of which are referred to in the following paragraphs.

(1) European Judgments Convention

90. In our last Annual Report¹ we mentioned that Mr Anton was a member of the Committee under the Chairmanship of the Rt. Hon. Lord Kilbrandon set up on 23 March 1972 to advise on the negotiations incidental to the United Kingdom's accession to the European Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments. The final Report of the Committee has been submitted to Ministers.

(2) Committee on the Preparation of Legislation

91. Mr Stewart and Sir John Gibson continue to serve as members of the Committee on the Preparation of Legislation set up in May 1973 by the Lord President of the Council under the Chairmanship of the Rt. Hon. Sir David Renton to review the form in which public Bills are drafted with a view to achieving greater simplicity and clarity in statute law and to consider any consequential implications for Parliamentary procedure.

(3) Advisory Committee on the EEC Bankruptcy Convention

92. Mr Anton is a member of the Committee set up by the former Department of Trade and Industry under the Chairmanship of Mr Kenneth Cork to consider the terms of the draft EEC Bankruptcy Convention, to advise on the effect of its implementation and to recommend such modifications as they consider necessary and practical. This Committee are engaged in preparing a Consultative Paper which will be issued to all interested bodies.

(4) Scottish Council on Crime

93. Our Chairman continues to serve as the Chairman of the Scottish Council on Crime, which was set up in 1972 and has met regularly during the past year. Our Chairman described the work of the Scottish Council on Crime in a Paper delivered to the Third Commonwealth Magistrates Conference at Nairobi, Kenya on 28 August 1973.

(5) Boundary Commission for Scotland

94. Our Chairman continues to serve as Deputy Chairman of the Boundary Commission for Scotland.

¹ (1974) Scot. Law Com. No. 33, para. 84.

(6) Scottish Records Advisory Council

95. Our Chairman continues to serve as a member of the Scottish Records Advisory Council.

COMPUTERS

96. We continue to be represented on the Executive Committee of the Scottish Legal Computer Research Trust by one of our legal staff.

SCRUTINY OF BILLS

97. It is becoming increasingly difficult to find the resources required to scrutinise Bills in Parliament because of the volume of legislation being enacted and of the increase in the amount of the Commission's other work. However, although the time available is often insufficient, we do attempt to scrutinise Bills so far as our resources permit. Reference is made elsewhere in this Report to certain of the Bills that have been scrutinised¹.

98. Amongst the Bills that we examined was the Protection of Environment Bill. We were seriously concerned about the principle and effect of Clause 36 and would have submitted representations if this clause had not been withdrawn after opposition in the House of Lords. This Bill became a casualty of the dissolution of Parliament in February 1974.

APPENDICES

99. Membership of the various Working Parties etc. mentioned in this Report appears in Appendix I. A list of papers which have been prepared by the Commission and made public appears in Appendix II. We have now included in this Appendix certain consultative documents, some published and some unpublished, which were given restricted circulation. The extent to which our proposals have been incorporated and implemented in legislation is given in Appendix III.

¹ See paras. 56 and 61.

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

Working Party on Diligence

The Hon. Lord Hunter, V.R.D. (Chairman)	Scottish Law Commission
Professor J. M. Halliday, C.B.E. (Vice-Chairman) ¹	Scottish Law Commission
Mr J. A. Anderson	Law Society of Scotland
Mr J. M. Bell	Society of Messengers-at-Arms and Sheriff Officers
Mr J. R. Cowie	Sheriff-Clerk, Dumbarton
Mr J. Donald	Society of Messengers-at-Arms and Sheriff Officers
Mr J. G. Gray	Scottish Chamber of Commerce
Mr J. A. D. Hope	Advocate, Edinburgh
Mr A. C. Macpherson	Solicitor, Glasgow
Secretary: Mr D. E. Fisher, Scottish Law Commission	

Steering Committee on Private International Law

The Hon. Lord Hunter, V.R.D.	}	Joint	Scottish Law Commission
The Hon. Mr Justice Cooke	}	Chairmen	Law Commission
Mr A. E. Anton, C.B.E.			Scottish Law Commission
Mr A. L. Diamond			Law Commission
Joint Secretaries:			
Mr J. B. Allan			Scottish Law Commission
Mr J. M. Cartwright Sharp			Law Commission

Joint Working Party on Private International Law (Corporeal and Incorporeal Property)

The Hon. Lord Hunter, V.R.D.	}	Joint	Scottish Law Commission
The Hon. Mr Justice Cooke	}	Chairmen	Law Commission
Mr A. E. Anton, C.B.E.			Scottish Law Commission
Miss F. Carmichael			Representative for Scottish Departments
Mr J. A. E. Davies			Law Commission
Mr A. L. Diamond			Law Commission
Mr H. S. A. Hart			Department of Trade
Mr T. S. Legg			Lord Chancellor's Office
Dr F. A. Mann			Solicitor, London
Mr I. K. Mathers			Foreign and Commonwealth Office
Mr K. M. H. Newman			Lord Chancellor's Office
Mr W. J. Sandars			Solicitor, London
Mr L. V. Wellard			Department of Trade
Secretary: Miss J. Richardson, Law Commission			

Joint Working Party on Private International Law (Obligations)

The Hon. Lord Hunter, V.R.D.	}	Joint	Scottish Law Commission
The Hon. Mr Justice Cooke	}	Chairmen	Law Commission
Mr A. E. Anton, C.B.E.			Scottish Law Commission
Miss F. Carmichael			Representative for Scottish Departments
Mr J. A. E. Davies			Law Commission
Mr A. L. Diamond			Law Commission
Mr R. J. Holmes, Q.C.			Law Commission
Dr F. A. Mann			Solicitor, London
Mr I. K. Mathers			Foreign and Commonwealth Office
Mr K. M. H. Newman			Lord Chancellor's Office
Mr W. J. Sandars			Solicitor, London
Mr L. V. Wellard			Department of Trade
Secretary: Miss J. Richardson, Law Commission			

¹Professor Halliday ceased to be Vice-Chairman of the Working Party on 15 June 1974 when he demitted office as a Commissioner.

Joint Working Party on Private International Law (Conflict of Laws in respect of Marriage)

Mr A. E. Anton, C.B.E. (Chairman)	Scottish Law Commission
Mr John Churchill	Law Commission
Dr E. M. Clive	University of Edinburgh
Mr A. Cope	Law Commission
Mr A. L. Diamond	Law Commission
Mr I. A. Saunders	Queen Mary College
Mr J. A. C. Watherston	Lord Chancellor's Office
Secretary: Mrs C. A. Haley, Law Commission	

Editorial Board of the Statutes in Force (Official Revised Edition)

The Rt. Hon. Lord Justice Scarman, O.B.E. (Chairman)	
The Hon. Lord Hunter, V.R.D.	Scottish Law Commission
The Hon. Mr Justice Cooke	Law Commission
Sir Henry Ware, K.C.B.	Treasury Solicitor
Sir Derek Hilton, M.B.E.	Past President, The Law Society
Sir John Gibson, C.B., Q.C.	
Mr A. B. Lyons	Statutory Publications Office
Sir Anthony Stainton, K.C.B.	First Parliamentary Counsel
Editorial Director and Secretary: Mr M. L. Dunlap, Law Commission	

Consultative Committee on Administrative Law

The Hon. Lord Hunter, V.R.D. (Chairman)	Scottish Law Commission
The Hon. Lord Fraser	
Mr A. L. Bushnell, C.B.E.	County Clerk, Perth
Mr J. S. Dalgetty	formerly Solicitor to the Secretary of State for Scotland
Mr C. E. Jauncey, Q.C.	Faculty of Advocates
Mr J. Mellick, O.B.E.	Solicitor, Glasgow
Professor J. Bennett Miller	University of Glasgow
Mr Ewan Stewart, M.C., Q.C.	Scottish Law Commission
Secretary: Mr H. R. M. Macdonald, Scottish Law Commission	

Working Party on Foreign Money Liabilities

Mr A. L. Diamond (Chairman)	Law Commission
Mr A. E. Anton, C.B.E.	Scottish Law Commission
Mr R. K. Batstone	Foreign and Commonwealth Office
Mr R. Cassels	The Royal Bank of Scotland
Mr J. A. E. Davies	Law Commission
Mr L. Gretton	Department of Trade
Mr R. J. Holmes, Q.C.	Law Commission
Mr M. W. Parkington	Law Commission
Secretary: Miss J. Richardson, Law Commission	

Joint Working Party on Conflicts of Jurisdiction affecting the Custody of Children

The Rt. Hon. Lord Justice Scarman, O.B.E. (Chairman)	
The Hon. Mr Justice Cooke	Law Commission
Mr G. P. H. Aitken	Scottish Courts Administration
Mr A. E. Anton, C.B.E.	Scottish Law Commission
Mr R. K. Batstone	Foreign and Commonwealth Office
Mr D. A. Bennet	Scottish Office
Mr M. C. Blair	Lord Chancellor's Office
Mr John Churchill	Law Commission
Mr R. L. Jones	Home Office
Mr W. J. Pickering	Principal Registry of the Family Division
Mr N. R. Whitty	Scottish Law Commission
Mr J. W. Wilson	Assistant Secretary to the Supreme Court of Northern Ireland
Secretary: Mr A. Akbar, Law Commission	

Joint Working Party on Products Liability

Mr A. L. Diamond (Chairman)
The Hon. Lord Hunter, V.R.D.
Mr J. A. E. Davies
Mr P. N. Legh-Jones
Mr H. R. M. Macdonald
Mr M. W. Parkington
Mr T. N. Risk
Mr M. J. Rogers

Law Commission
Scottish Law Commission
Law Commission
Barrister
Scottish Law Commission
Law Commission
Solicitor, Glasgow
Chief Executive, Common Market Secretariat, Lloyds

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APPENDIX II

1 SCOTTISH LAW COMMISSION—PAPERS PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE
(as at 31 October 1974)

Commission

No.

1965	1	First Programme of Law Reform
<hr style="width: 20%; margin: 10px auto;"/>		
1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66
<hr style="width: 20%; margin: 10px auto;"/>		
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
<hr style="width: 20%; margin: 10px auto;"/>		
1968	8	Second Programme of Law Reform
	9	Third Annual Report 1968-68
<hr style="width: 20%; margin: 10px auto;"/>		
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
<hr style="width: 20%; margin: 10px auto;"/>		
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
	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)
<hr style="width: 20%; margin: 10px auto;"/>		
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

*Produced jointly with the Law Commission

Commission

- No.*
- 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
- 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)

2 SCOTTISH LAW COMMISSION—MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM

- 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
- 1968 *Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
- Memorandum No. 8—Draft Evidence Code—First Part
- 1969 Memorandum No. 9—Prescription and Limitation of Actions
- Memorandum No. 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961
- Memorandum No. 11—Presumptions of Survivorship and Death
- Memorandum No. 12—Judgments Extension Acts
- 1970 Memorandum No. 13—Jurisdiction in Divorce
- 1971 Memorandum No. 14—Remedies in Administrative Law
- *Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses in Contracts for the Supply of Services and other Contracts
- Memorandum No. 16—Insolvency, Bankruptcy and Liquidation
-

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- 1972 Memorandum No. 17—Damages for Injuries Causing Death
- 1974 Memorandum No. 18—Liability of A Paramour in Damages for Adultery and Enticement of a Spouse
Memorandum No. 19—Powers of Judicial Factors
- 3 SCOTTISH LAW COMMISSION—PUBLISHED CONSULTATIVE DOCUMENTS CIRCULATED FOR COMMENT AND CRITICISM
- 1974 *Private International Law—EEC Preliminary Draft Convention on the law applicable to Contractual and Non-Contractual Obligations
- 4 SCOTTISH LAW COMMISSION—CONSULTATIVE PAPERS NOT PUBLISHED AND WITH VERY 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

*Produced jointly with the Law Commission

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 31 October 1974)

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restrictions on the Creation of Life-rents (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 79.
<i>(b) 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	None.
Sea Fisheries (Shellfish) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c.83).
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 10) (Cmnd. 4004)	17.4.69	Trustee Savings Banks Act 1969 (c.50).
Interpretation of Statutes (Joint Report with the Law Commission) (Scot. Law Com. No. 11)	11.6.69	None.
Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893 (Joint Report with the Law Commission) (Scot. Law Com. No. 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c.13).
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 (Joint Report with the Law Commission) (Scot. Law Com. No. 16) (Cmnd. 4542)	1.12.70	Recognition of Divorces and Legal Separations Act 1971 (c.53).
Coinage Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 18) (Cmnd. 4544)	26.11.70	Coinage Act 1971 (c.24).
Vehicles (Excise) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 19) (Cmnd. 4547)	2.12.70	Vehicles (Excise) Act 1971 (c.10).
National Savings Bank Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 20) (Cmnd. 4574)	13.1.71	National Savings Bank Act 1971 (c.29).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Taxation of Income and Gains derived from Land (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (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 (Joint Report with the Law Commission) (Scot. Law Com. No. 26) (Cmnd. 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c.39).
Report on Liability for Antenatal Injury (Scot. Law Com. No. 30)	30.8.73	None.
Report on the Law relating to Damages for Injuries causing Death (Scot. Law Com. No. 31)	24.10.73	None.
Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (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	None.
Friendly Societies Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 35) (Cmnd. 5634)	27.6.74	Friendly Societies Act 1974 (c.46).

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