

Scottish Law Commission

(SCOT. LAW COM. No. 55)

**THIRTEENTH
ANNUAL REPORT
1977-1978**

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

*Ordered by The House of Commons to be printed
6th February, 1979*

EDINBURGH
HER MAJESTY'S STATIONERY OFFICE
90p net

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.,
Mr. R. D. D. Bertram,
Mr. J. P. H. Mackay, Q.C.,
Professor T. B. Smith, Q.C.

The Secretary of the Commission is Mr. J. B. Allan. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15th JUNE, 1978

*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 amended,¹ we have the honour to submit this the Thirteenth Annual Report of the Scottish Law Commission.

J. O. M. HUNTER
Chairman

30 November 1978

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

THIRTEENTH 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, two full-time Commissioners and two part-time Commissioners. They are:

| | |
|--|-------------|
| The Honourable Lord Hunter, V.R.D., Chairman | (Full-time) |
| Mr. A. E. Anton, C.B.E. | (Full-time) |
| Mr. R. B. Jack ¹ | (Part-time) |
| Mr. J. P. H. Mackay, Q.C. | (Part-time) |
| Professor T. B. Smith, Q.C. | (Full-time) |

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

2. On 31 December 1977 Mr. R. B. Jack ceased to be a Commissioner on taking up an appointment as Professor of Mercantile Law at the University of Glasgow. We wish to express our appreciation of his contribution to our work since he joined us in June 1974. We are pleased to welcome the appointment of Mr. R. D. D. Bertram, Writer to the Signet, Edinburgh as his successor.

STAFF

3. Our legal staff consists of two Parliamentary Draftsmen, both on a part-time basis, our Secretary and eight other qualified lawyers. During the year we received assistance from Depute Procurators Fiscal who have been members of our Criminal Law Working Party and undertook research into criminal law matters. During the 1977 summer vacation we employed four graduates in law to assist with our research work. We wish to thank them for their assistance. Our non-legal staff remains at eleven.

PREMISES

4. We are in the process of building up a legal library but the space allocated for our existing library is now inadequate to meet present and future needs. Negotiations have taken place in order to obtain more accommodation to the rear of our existing premises to provide for future expansion.

MEETINGS

5. We continue to hold full Commission meetings twice a month.

II. GENERAL

6. During the year to 15 June 1978 we published two Law Reform Reports and two Memoranda. In our Report on *Damages for Personal Injuries: (1) Admissibility of Claims for Services; (2) Admissible Deductions* we put forward recommendations which would in many cases enable certain elements of compensation for personal injuries to be recovered on a fairer basis than under the existing law and which would at the same time remove difficulties and doubts about the procedure for recovering such elements. For example the Report recommends reforms in the law and procedure governing the recovery

¹To succeed Mr. Jack, Mr. R. D. D. Bertram has been appointed as Commissioner part-time as from 1 August 1978.

of damages in the very common situation where it is sought to obtain from the person responsible for an accident a sum for remuneration of a relative who has looked after the person injured in the accident during his incapacity. In this Report we also deal with questions whether the receipt of various benefits, including certain social security benefits, should or should not be taken into account in the assessment of damages. Such questions have caused numerous difficulties and doubts under the existing law.

7. In our Report on the *Married Women's Policies of Assurance (Scotland) Act 1880* we recommend changes so that a married woman may effect a policy under the Act for the benefit of her husband or children or any of them. We further recommend that the provisions of the Act should apply to unmarried persons contemplating marriage. We also advise clarification of certain of the existing provisions of the 1880 Act.

8. During the year under review we have found it practicable to concentrate a greater proportion of our available resources on programme subjects than we have found possible for some time. As will be seen from Part III of this Report, this concentration of resources has enabled us to make considerable progress on our systematic work of law reform, particularly in the realms of Family Law, Obligations, Bankruptcy, Diligence, Evidence and Private International Law.

9. In the realm of Family Law we would draw particular attention to our Memorandum¹ on *Occupancy Rights in the Matrimonial Home and Domestic Violence* which was published recently. The protection of spouses, whether wives or husbands, against violence and the right to occupy the matrimonial home are two factors which, in our society, are frequently inter-connected. Those with experience of dealing with disharmony between spouses and cohabiting couples and with its consequences, including divorce or separation on the ground of cruelty or unreasonable conduct, will be very conscious of the constantly recurring situation in which the weaker spouse will tolerate for long periods physical and other ill-treatment rather than leave the matrimonial home and, possibly also through force of circumstances, the children. While wide support may come from family lawyers and many other interests for the idea of conferring rights of occupancy by law in favour of the weaker spouse or partner, the difficulties presented to those with interests in property and also to conveyancers must be recognised. We have found it by no means easy in our provisional proposals to strike the right balance between the various social, economic and legal interests and to cater for the inevitable difficulties in the law of property and conveyancing. On these points we will greatly welcome assistance of those who have been consulted. It may be added that the work on Family Property Law, which has just been begun, will present even greater difficulties of this type and for this reason we would welcome social and economic research as an essential guide to solutions in that field.

10. The publication of our Memorandum² on *Defective Consent and Consequential Matters* confirms the steady progress on our work on the law of Obligations but this work may suffer some interruption in the near future owing to changes in our legal staff. In this Memorandum we discuss circumstances in

¹Memorandum No. 41.

²Memorandum No. 42 (2 Vols.).

which a person should be released from a contract, for example because of error or mistaken belief, whether or not induced by the other party; coercion or threat; fraud; or undue influence. In our proposals we seek to strike a just balance between the goal of maintaining in general the stability and enforceability of legal obligations and the equally desirable end of ensuring that a party is not held to a contract which is seriously tainted by his genuine and reasonable error or misapprehension. Meanwhile, as an aspect of our Obligations programme, our Working Party on Security over Moveable Property are continuing to do work of great value in an extremely difficult and important area of law which has widespread commercial and consumer implications both nationally and internationally.

11. The preparation of our Report on Bankruptcy has absorbed a considerable proportion of our resources and will for some time ahead continue to occupy a major proportion of full Commission meetings. In view of the fact that two of our Commissioners are now part-time, it is not practicable to increase the frequency of full meetings and this is now tending to be a major limiting factor on progress of work.

12. It is particularly satisfactory to us that the social research initiated by the Central Research Unit of the Scottish Office in connection with our programme work on Diligence is beginning to make good progress. We are much indebted to those who have been responsible for the detailed planning of the various research projects, details of which are given later in this Report.¹ It appears probable that the results of the research will be of substantial assistance in the development of social and legal policies in this important field, particularly in relation to collection and enforcement of debt. It is satisfactory to know that some of this research is also likely to be of value to Departments of Government, who have interests in the fields covered.

13. In relation to the law of Evidence we wish to record our gratitude to Sheriff I. D. Macphail whose substantial research paper on the law of Evidence has now been completed and brought up-to-date. We intend to publish this paper in the early part of 1979 and to follow it with a shorter consultative memorandum which is in course of preparation.

14. In the field of Private International Law considerable progress has been made with the EEC draft Convention on Private International Law applicable to Contractual Obligations.² Work on this draft Convention has involved much activity by the Joint Working Group of the two Law Commissions and by individual members of the Group. We are particularly grateful to Lord Maxwell, Professor Diamond and Mr. Newman for the contributions which they have made to the deliberations of the Group. Part VI contains an account of our considerable involvement in EEC and other international matters which fall outwith the scope of our Third Programme of Law Reform. The variety of the work, the extensive nature of these international proposals for reform and the serious implications which some of these proposals may have for the law of Scotland make expertise in this field indispensable.

¹Para. 37.

²See paras. 46-47.

15. We are pleased to note that two statutes resulting from two of our earlier Reports have now come into force. The first of these was the Unfair Contract Terms Act 1977 which emerged from a Joint Report¹ of the two Commissions and came into force on 1 February 1978. This measure has wide general importance. The second statute was the Presumption of Death (Scotland) Act 1977 which came into force on 1 March 1978. This Act has effect in a relatively narrow field but simplifies existing procedure.

16. In Parts V to VIII inclusive of this Report we record the progress made in our work covered by other statutory functions. Such work continues to be of considerable importance and the intervention of the Commission is often necessary if an appropriate Scottish contribution is to be made to the solution of problems whose dimensions are cross-border or international. In particular, we wish to mention two current aspects of our non-programme work, both of some importance. The first of these is our reference on Jurisdiction and Enforcement of Custody Orders. As we explained in our last Annual Report,² we issued on 26 August 1976 a consultative document³ dealing, as a first stage, with Jurisdiction and Enforcement within the United Kingdom, proposing *inter alia* common grounds of jurisdiction within the United Kingdom. We had intended to review concurrently the international aspects of custody orders. The Council of Europe and the Commonwealth Secretariat, however, are at present examining custody respectively in a European and in a Commonwealth context and child abduction has recently been placed on the agenda of the Hague Conference on Private International Law in each case with a view to the preparation of an International Convention. While it is unfortunate from a Scottish point of view that these developments may delay final consideration of solutions to cross-border custody questions, it seems inevitable that the two Commissions should participate in the formulation of United Kingdom policy in relation to the proposed Conventions and should pause to take account of solutions reached at an international level before reaching firm conclusions on their approach to the cross-border problems. The second area of non-programme work which we would mention here is that on Criminal Law. This arises from various sources, including consultation by the Law Commission (in connection with their work on a criminal code) and by Scottish Departments, proposals and, more recently, a reference. It is our view that the Commission has a useful function to perform in this very important branch of law, and we welcome the assistance which we have received in this connection from members of the Procurator Fiscal service.

17. The fact that full-time membership of the Commission has been reduced, coupled with considerable absences of our Chairman on other duties, has inevitably created very considerable difficulties during the year under review. Moreover, for half of the period owing to delay in making an appointment we were reduced in strength to three full-time Commissioners (including the Chairman) and one part-time Commissioner. These difficulties have resulted in undue strain over a considerable period on the two effectively full-time members of the Commission, and have in a number of respects had adverse effects on the

¹(1975) Scot. Law Com. No. 39; Law Com. No. 69.

²(1978) Scot. Law Com. No. 47, para. 59.

³Scottish Law Commission Memorandum No. 23; Law Commission Working Paper No. 68.

work of the Commission, which seem likely to continue for some time. We think it necessary to draw express attention to this situation.

18. In conclusion we would wish to record our deep sense of loss at the death of Sir Samuel Cooke whose period of office as Chairman of the Law Commission proved so fruitful. His qualities as a lawyer, his invariable courtesy and his skill and tact in the management of joint projects will remain in our memories and he will be greatly missed.

III. LAW REFORM PROGRAMMES

1. FIRST PROGRAMME¹

Item 1: Evidence

19. The paper prepared by Sheriff I. D. Macphail has been updated to reflect the law as at 1 June 1978. The paper extends to twenty-five chapters, and though its length has presented certain problems in publication we hope to publish it in the early part of 1979 and to follow it with a consultative memorandum eliciting comment on the issues of policy it raises.

Item 2: Obligations

20. We continue to make progress on various matters falling within this Programme subject which in many respects is interrelated with the law of Property. Our ultimate objective is comprehensive reform and restatement of this chapter of the law.

(a) *Corporeal Moveables*

21. On 31 August 1976 we published a series of Memoranda² on the law relating to Corporeal Moveables. The individual Memoranda deal with

- (1) General introduction and summary of provisional proposals
- (2) Passing of risk and of ownership
- (3) Some problems of classification
- (4) Protection of the onerous *bona fide* acquirer of another's property
- (5) Mixing, union and creation
- (6) Lost and abandoned property
- (7) Usucapion or acquisitive prescription
- (8) Remedies

We have started the preparation of a report on the last six of these Memoranda. At present, however, we consider it would be premature to draft a report on Memorandum No. 25, which deals with the passing of risk and of ownership, principally because our Working Party on Security over Moveables³ is examining *inter alia* reservation of ownership clauses in contracts of sale which are intended to operate by way of security.

¹(1965) Scot. Law Com. No. 1.

²Scottish Law Commission Memoranda Nos. 24-31.

³See para. 23.

(b) Exemption Clauses

22. The Unfair Contract Terms Act 1977, which implemented with a few modifications the recommendations contained in the Joint Report on *Exemption Clauses: Second Report*¹ received the Royal Assent on 26 October 1977 and came into force on 1 February 1978.

(c) Security over Moveables

23. Our Working Party on Security over Moveable Property,² who are at present considering the implications of the introduction into Scots law of a system of security over moveable property based upon Article 9 of the Uniform Commercial Code of the United States of America, have met six times during the year under review. They are at present framing their provisional views on the questions so far considered by them.

24. We would like to record our indebtedness to the Working Party for the considerable assistance they gave us in the preparation of comments on an EEC Working Paper and Questionnaire³ in connection with the possible harmonisation of the laws of the Member States relating to security over moveable property.

(d) Constitution and Proof of Voluntary Obligations

25. On 10 March 1977 we published a series of Memoranda⁴ containing provisional proposals relating to the constitution and proof of voluntary obligations, and invited commentators to submit their views before 30 September 1977. The individual Memoranda deal with

- (1) General introduction and summary of provisional proposals
- (2) Unilateral promises
- (3) Formation of contract
- (4) Abortive constitution
- (5) Stipulations in favour of third parties
- (6) Formalities of constitution and restrictions on proof.

The comments we have received on this series of Memoranda are now being analysed.

(e) Defective Consent and Consequential Matters

26. On 1 June 1978 we published a Memorandum⁵ on the scope and effect in law of defects of will or consent such as error, force and fear, and fraud. Among the consequential matters considered are delictual liability for misrepresentation, money as a surrogatum for restitution, and procedure for securing judicial authority to annul obligations. We have asked for comments to be submitted by 30 November 1978.

¹(1975) Scot. Law Com. No. 39; Law Com. No. 69.

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

³See para. 74.

⁴Scottish Law Commission Memoranda Nos. 34-39.

⁵Scottish Law Commission Memorandum No. 42 (2 Vols.).

(f) *Penalties and Irritancies*

27. Further research has been carried out on the general law relating to irritancies, penalty clauses and liquidated damages clauses in contracts. A memorandum will be drafted when resources permit.

(g) *Illegality*

28. Work is proceeding on the preparation of a memorandum.

(h) *Civil Liability in relation to Animals*

29. Research has been undertaken with a view to the preparation of a memorandum on this subject.

(i) *Economic Loss*

30. A research paper has been prepared which surveys, and examines the possibility of reform of, the present law of Scotland on the subject of the damages which may be awarded in contractual and delictual actions in respect of economic loss not, or not necessarily, associated with physical damage to person or property. However, recent developments in this area of the law, as a result of judicial decision, indicate that this would not be an appropriate time to put forward even tentative proposals for legislation.

Item 3: Prescription and Limitation of Actions

(a) *Limitation of Actions in Personal Injury Claims*

31. A research paper was prepared for us which surveyed the present law in Scotland and England on the subject of limitation of actions and personal injury claims, and examined the possibility of reform. Some preliminary consideration has been given to a draft memorandum which is at present being revised.

(b) *Acquisitive Prescription*

32. During the next year we shall be preparing a report on *inter alia* acquisitive prescription in our review of the law of Corporeal Moveables. This subject was discussed in Memorandum No. 30.¹

2. SECOND PROGRAMME²

Item 6: Insolvency, Bankruptcy and Liquidation

33. We stated in our last Annual Report³ that our Bankruptcy Team were still engaged in the preparation of a draft report. This work continues and a considerable part of the report has now been submitted to, and reviewed by, us. Certain issues of policy remain, including questions relating to the appropriate approach to 'consumer insolvency', questions which also have implications for our Diligence exercise.⁴ Once the draft Bankruptcy Report has been reviewed as

¹Corporeal Moveables: Usucapion or Acquisitive Prescription.

²(1968) Scot. Law Com. No. 8.

³(1978) Scot. Law Com. No. 47, para. 32.

⁴As explained in paragraph 36(2) below, we intend to publish shortly a Memorandum on *Wage-earners' debt arrangement schemes*.

a whole by us, the work on a draft Bill will commence. This will be a major task since the Bill will be a species of Bankruptcy Code.

34. In our last Annual Report¹ we mentioned that Mr. Jack had been appointed as an observer to the Insolvency Law Review Committee. It became evident that the work of this Insolvency Law Review Committee would have implications for the law of Bankruptcy in Scotland. Since our own examination is unlikely to cover all aspects of insolvency law and particularly in regard to corporate bankruptcy, in September 1977 we received your permission to set up a Consultative Committee to ensure that Scottish views are ascertained and can be fully taken into account when Government consider in due course whether and how to give effect to the recommendations of the Insolvency Law Review Committee. We have to inform you that the composition of this Consultative Committee² has now been settled. We are grateful for the co-operation of various interests who suggested suitable persons for service on this Committee.

Item 7: Succession

35. Due to commitment of resources to other subjects no work is being done on this subject at present.

Item 8: Diligence

36. As mentioned in our last Annual Report,³ we have taken over from our Working Party responsibility for the preparation of consultative memoranda on Diligence. In the course of the year, work has progressed on the preparation of these and it is currently intended to issue seven memoranda dealing with the following topics:

- (1) *An Introductory Memorandum* surveying the field to be covered; giving a general outline of the scope and purpose of the memoranda to follow thereon; and setting diligence in the wider context of debt recovery.
- (2) *A Memorandum on wage-earners' debt arrangement schemes*. The object of such schemes is to help ordinary wage earners in multiple debt situations to arrange for the orderly and regular payment of their debts (in whole or in part) to their several creditors free from a succession or race of diligences.
- (3) *A Memorandum on arrestment and judicial transfer of earnings*. This memorandum will seek views on the possible introduction in Scots law of one or other of two new forms of diligence against earnings, namely extended arrestment and earnings transfer orders. The object is to ensure that the amounts of wages exempt from attachment are reasonably sufficient for the debtor and his family to subsist and to deal with the problem of repeated arrestments. Extended arrestments would endure for a limited period while earnings transfer orders would have effect until the debt was repaid or until further order. The memorandum will seek views on whether either or both of these diligences should be introduced and, if both should be introduced, what debts should be enforceable by each.

¹(1978) Scot. Law Com. No. 47, para. 33.

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

³(1978) Scot. Law Com. No. 47, para. 36.

(4) *A Memorandum on poidings and warrant sales.* Though less than 300 diligences of charge, poiding and warrant sale proceed to a sale every year compared with an annual number of 55,000 to 60,000 charges or thereby, this diligence has attracted recent criticisms on a variety of grounds, including the distress and humiliation inflicted on debtors, low valuations of poided goods, and the expense involved which may be out of proportion to the debt. The memorandum will consider a large number of questions including whether expense can be reduced by changes in procedure; whether sales in the debtor's home and the associated advertisements are justified; increased judicial control; and increased exemptions of household goods. The social research referred to below should be of considerable significance in this context.

(5) *A Memorandum on collection and enforcement of aliment and periodical allowance on divorce.* In this area, the main focus of concern changes from protecting debtors to assisting a particular class of creditors, namely wives and unmarried mothers seeking aliment and ex-wives seeking periodical allowance. It is necessary to reconsider the system of collecting officers proposed by the McKechnie Report¹ in the light of criticisms made of the English system of magistrates court collecting officers by the Finer Report² and a number of other developments. We are, however, considering the possibility of submitting a report on collection without further consultation.

(6) *A Memorandum on the administration of the system of diligence and related matters.* This memorandum will consider the appointment, training and organisation of officers of court (messengers-at-arms and sheriff officers); their discipline, control and standards of conduct, including the role of court officers in debt collection; their remuneration and the cost of diligence; the problems of the remote areas and related matters. Regard will be had to other systems such as the system of salaried county court bailiffs in England and Wales, the Enforcement of Judgments Office in Northern Ireland, and the system of *huissiers* in France.

(7) *A Memorandum on miscellaneous topics, not falling under the foregoing* for example diligence against heritable property and arrestment on the dependence.

37. In addition to the research which we have ourselves undertaken, the Central Research Unit of the Scottish Office have initiated a programme of work to provide information on the social aspects of diligence. The following studies (foreshadowed in the Central Research Unit interim report referred to in our last Annual Report) have been commenced, namely (i) a survey of the nature and scale of the use of diligence in Scotland; (ii) a survey of the use of the summary and ordinary cause procedures for the recovery of debts and property; (iii) a review of creditors' policies; (iv) a study (by the Department of Social Administration, Edinburgh University) of the social impact of diligence on debtors, examining the experience of about 100 persons who have had the final stages of diligence done against them; and (v) a survey (by the Office of Population Censuses and Surveys) of the social characteristics and circumstances of

¹(1958) Cmnd. 456.

²(1974) Cmnd. 5629.

persons who have experienced the first stages of legal action.¹ In addition at our request, the Central Research Unit have recently begun investigations concerning (vi) reports of warrant sales executed in 1977; (vii) the employers' interest in arrestments of wages; and (viii) the role of helping organisations in providing an advisory and counselling service for debtors. All the foregoing research initiated by the Central Research Unit should be completed by the end of 1979.

Item 10: Damages Arising from Personal Injuries and Death

38. Our Report on *Damages for Personal Injuries: (1) Admissibility of Claims for Services; (2) Admissible Deductions*,² following upon Memorandum No. 21, was submitted to you on 20 April 1978.

Item 11: Presumption of Death

39. The Presumption of Death (Scotland) Act 1977 (which gives effect to the recommendations in our Report on *Presumption of Death*³) received the Royal Assent on 22 July 1977 and came into operation on 1 March 1978.

Item 12: Legal Capacity of Minors and Pupils

40. The work still remains suspended but as stated in our Twelfth Annual Report⁴ we intend to recommence work on this item as soon as our staff resources allow.

Item 13: Criminal Procedure

41. On 20 January 1978 we were invited by the Scottish Home and Health Department to comment on the recommendations contained in *Criminal Appeals in Scotland (Third Report)*.⁵ We submitted our comments to that Department on 9 May 1978.

Item 14: Family Law

(a) *Aliment and Financial Provision*

42. Work is continuing on the preparation of a report.

(b) *Occupancy Rights in the Matrimonial Home and Domestic Violence*

43. On 17 April 1978 we issued our Memorandum No. 41—*Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence* in which we advanced proposals for the introduction of statutory occupancy rights for spouses in the matrimonial home; improved remedies to protect a spouse and children from the violence of the other spouse; and also remedies to protect a partner to an extra-marital cohabitation relationship from the violence of the other partner. The Memorandum was circulated to a wide range of interested bodies and individuals and we found that there was a widespread demand for further copies. We asked for comments to be submitted by 31 October 1978.

¹See for fuller details the Register of Research of the Central Research Unit of the Scottish Office (1978) pp. 22–23.

²This Report was published on 18 July 1978.

³(1974) Scot. Law Com. No. 34.

⁴(1978) Scot. Law Com. No. 47, para. 39.

⁵(1977) Cmnd. 7005.

(c) *Family Property Law*

44. Work on this subject has been undertaken by Professor Clive of Edinburgh University but it is not yet possible to estimate when his paper will be completed.

3. THIRD PROGRAMME¹

Item 15: Private International Law

45. The Steering Committee,² comprising members of both Commissions, continues to supervise the consideration of matters covered by the Third Programme. This Steering Committee recommended that the EEC draft Insurance Services Directive be referred to the Joint Working Group examining the draft Convention on Contractual Obligations. Work on this Directive is referred to later in this Report.³

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

46. The Joint Working Group on Private International Law⁴ set up by the Law Commission for England and Wales and ourselves continues to assist the United Kingdom delegation⁵ to the EEC Group of Experts in Brussels in their consideration of the EEC draft Convention on the law applicable to Contractual Obligations and Non-Contractual Obligations. In the year under review, the Joint Working Group has prepared several memoranda and re-drafts of various Articles of the draft Convention for submission to the Brussels Group.

47. The EEC Group of Experts met in Dublin in September, in Luxembourg in December 1977, in Berlin in March and in Edinburgh in June 1978. Future meetings have been arranged for September (in Brussels) and for November 1978 and February 1979 (in Luxembourg). At their March 1978 meeting the Group decided that the draft Convention (which originally extended to both contractual and non-contractual obligations) should be limited to contractual obligations. It is intended that the final draft of the convention on contractual obligations will be completed by February 1979. However, the Group agreed that at a later date negotiations should be resumed with a view to preparing a separate convention on non-contractual obligations.

IV. CONSOLIDATION AND STATUTE LAW REVISION

1. CONSOLIDATION

48. 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 for Scotland.*

¹(1973) Scot. Law Com. No. 29.

²A list of members of the Steering Committee appears in Appendix I to this Report.

³See para. 62.

⁴A list of members of the Working Group appears in Appendix I to this Report.

⁵The United Kingdom delegates are the Hon. Lord Maxwell, Mr. K. M. H. Newman, Professor A. L. Diamond and Mr. A. Akbar.

Second Programme¹

- (1) *Education (Scotland) Acts*—Work is proceeding on the consolidation of this legislation and we hope to have a Bill ready for the next Parliamentary session. A report containing our recommendations relative to this consolidation Bill is under preparation.
- (2) *Enactments relating to the functions of the Scottish Electricity Boards*—The Electricity (Scotland) Bill² was introduced into the House of Lords on 25 May 1978. A report³ containing our recommendations relative to this consolidation Bill was published on 23 May 1978.
- (3) *National Health (Scotland) Acts*—The National Health (Scotland) Bill⁴ was introduced into the House of Lords on 25 May 1978.
- (4) *Enactments relating to Solicitors in Scotland*—Work has now been resumed on the preparation of a first print of a Bill.

Third Programme⁵

On 3 November 1977 we submitted to you our Third Programme of Consolidation and Statute Law Revision which was published on 22 February 1978. In this Programme we listed eleven items suitable for consolidation. Progress has been made on three of the items.

- (1) *Adoption*—The Adoption (Scotland) Bill⁶ was introduced in Parliament on 3 May 1978. A Report⁷ containing our recommendations relative to this consolidation was published on 3 May 1978.
- (2) *Interpretation*—The Interpretation Bill⁸ was introduced in Parliament on 24 May 1978. A Joint Report⁸ containing the recommendations of both Law Commissions relative to this consolidation Bill was published on 8 June 1978.
- (3) *Water*—Work is proceeding on the preparation of a first print of a Bill.

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

- (1) During the year under review the following Acts were passed:
Commonwealth Development Corporation Act 1978
Refuse Disposal (Amenity) Act 1978
- (2) Bills on the following subjects are before Parliament:
Employment Protection (Consolidation)⁹
Export Guarantees and Overseas Investment¹⁰
Oaths¹⁰

¹(1973) Scot. Law Com. No. 27.

²This Bill was not considered by the Joint Committee on Consolidation Bills and will be re-introduced this session.

³(1978) Scot. Law Com. No. 49.

⁴This Bill received the Royal Assent on 20 July 1978.

⁵(1978) Scot. Law Com. No. 46.

⁶This Bill received the Royal Assent on 20 July 1978.

⁷(1978) Scot. Law Com. No. 50.

⁸(1978) Scot. Law Com. No. 53; Law Com. No. 90.

⁹This Bill received the Royal Assent on 31 July 1978.

¹⁰This Bill received the Royal Assent on 30 July 1978.

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

Agricultural Statistics
Alcoholic Liquor Duties
Capital Gains Tax
Child Care
Civil Aviation
Clean Air
Countryside
Customs and Excise (General Relief)
Customs and Excise Management
Exchange Equalisation Account
Excise Duties (Surcharges or Rebates)
Foster Children
Hydrocarbon Oil Duties
International Monetary Fund
Matches and Mechanical Lighters Duties
Prices and Charges
Public Health (Control of Disease)
Representation of the People
Reserve Forces
Trade Union and Employers' Association
Tobacco Products Duty
Trustee Savings Bank
Value Added Tax
Wages Councils

2. STATUTE LAW REVISION

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

50. We co-operated with the Law Commission in producing a Ninth Report¹ on Statute Law Revision which was published on 11 May 1978. The Statute Law (Repeals) Bill,² implementing the recommendations of this Report will be introduced into Parliament shortly. In conjunction with our English colleagues material is now being assembled for another Report and Statute Law (Repeals) Bill.

3. PRIVATE ACTS

51. We endorse the work being done by the Law Commission of England and Wales on the preparation of an authoritative Chronological Table of all private Acts (including local and personal Acts) passed since 1539.³ The table, a basic

¹(1978) Scot. Law Com. No. 48; Law Com. No. 87.

²This Bill received the Royal Assent on 31 July 1978.

³Up to this year there is no official distinction between public and private Acts. The distinction between public general Acts and public local and personal Acts starts in 1797. The *Chronological Table of the Statutes* gives no information as to private Acts passed after 1539 or public local and personal Acts passed after 1797; it also omits information as to public general Acts regarded as being of a local or personal *nature*, an unofficial and unsatisfactory classification which defies definition.

tool for anyone concerned with the preparation of legislation, will show to what extent individual Acts have been repealed, amended or otherwise affected by subsequent legislation of all types including public general legislation and statutory instruments and will complement the existing Chronological Table of the Statutes.¹ That publication shows the current position concerning Acts regarded as being of a public general nature and also shows, in a separate table, the effect of legislation passed since 1974 on private Acts. No publication adequately² shows the effect of legislation passed between 1539–1974 on private Acts and the work now being done is designed to fill the gap. The preparation of the table is a massive undertaking. For the purposes of publication it is proposed to handle work in stages, the first being planned to cover approximately the 50 years prior to 1974.

V. OTHER STATUTORY FUNCTIONS

1. ADVICE TO GOVERNMENT DEPARTMENTS AND OTHER BODIES

52. 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 eight of these paragraphs we report progress on the subjects which have been formally referred to us for advice under that section.

(1) *Foreign Money Liabilities*

53. The Joint Working Party,³ set up by the Law Commission for England and Wales and ourselves to examine the problems which may arise when money is due in a currency other than that of the place of payment or the place where payment is sought, has not met during the year under review. The principles laid down by the House of Lords in *Miliangos v. George Frank (Textiles) Ltd.*⁴ are in the process of being developed and extended by the courts in both England and Scotland. It is our intention to undertake consultations on this topic in due course but we think it would be inappropriate to do so at this stage when the law on this subject is still undergoing judicial development.

(2) *Conflicts of Jurisdiction affecting the Custody of Children*

54. The comments received on the Joint Working Paper/Memorandum on *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*⁵ have been considered. The Law Commission are reconsidering their approach

¹This work is prepared by the Statutory Publications Office under the supervision of the Statute Law Committee. It has been published annually since 1870.

²The Index to Local and Personal Acts, 1801–1947 gives a limited amount of information as to the effect of post-1900 legislation.

³The membership of the Joint Working Party appears in Appendix I to this Report.

⁴[1976] A.C. 443.

⁵Scottish Law Commission Memorandum No. 23; Law Commission Working Paper No. 68.

on the proposed common grounds of jurisdiction and have prepared an alternative scheme which is at present under consideration by us. We hope to resume joint discussion on this scheme.

55. In our last Annual Report¹ we referred to the fact that further negotiations are contemplated at an international level to deal with conflicts of jurisdiction affecting the custody of children. Following an initiative taken by the Commonwealth Law Ministers at their Conference in Winnipeg in August 1977, we and the Law Commission for England and Wales have undertaken to assist the Commonwealth Secretariat in a forthcoming study of the subject by producing a policy paper suggesting what might be generally acceptable principles for the recognition and enforcement of custody orders. A draft convention is in course of preparation by a Committee of Experts for the Council of Europe; the topic will be further discussed at the Hague Conference on Private International Law in 1980. In view of these future international developments within the Commonwealth, the Council of Europe and at the Hague Conference on Private International Law the preparation of a second Joint Working Paper/Memorandum on the enforcement of custody orders outside the United Kingdom has for the time being been deferred.

(3) *Mental Element in Crime*

56. In our last Annual Report² we reported that the Law Commission's draft Report on the *Mental Element in Crime* was being considered by the Working Party under the Chairmanship of Lord Cameron. Following upon our consideration of the report of that Working Party and the publication by the Law Commission of their Report,³ we have decided to undertake a review of the Law Commission's Report in order to ascertain its implications for Scots Criminal Law.

(4) *Breach of Confidence*

57. 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.'

58. On 14 April 1977 we circulated our Memorandum No. 40—*Confidential Information* with a request for comments to be submitted by 31 October 1977. We have received an encouraging response to this Memorandum. However, work in this field is complicated by a number of parallel investigations, including that of the Data Protection Committee set up by the Home Office, and we are unlikely to commence work on the drafting of a report in the immediate future.

¹(1978) Scot. Law Com. No. 47, para. 60.

²(1978) Scot. Law Com. No. 47, para. 93.

³(1978) Law Com. No. 89 published on 21 June 1978.

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

59. We are keeping in touch with the Law Commission for England and Wales but in view of the commitment of our resources to other work we are not in a position to indicate when our Report will be completed.

(6) *Irritancies in Leases*

60. On 16 September 1976 we received from the Secretary of State for Scotland a reference in the following terms:

‘Without prejudice to the Commission’s freedom to offer advice on any possibilities of reform of the branch of the law I should be glad if the Commission would in the light of *Dorchester Studios (Glasgow) Limited v. Stone and Another* 1975 S.L.T. (H.L.) 153 and the observations made in the judgments in that case consider and advise on the operation of irritancy clauses in leases of commercial and industrial property (including leases of land for commercial or industrial development) and on related matter.’

Work has continued on the preparation of a memorandum which we hope will be issued in 1979.

(7) *Law of Incest in Scotland*

61. On 9 February 1977 we received from you a reference in the following terms:

‘To review the law of Scotland on incest, to consider what changes in that law may be desirable, to report their findings, and to make recommendations to the Secretary of State for Scotland on possible legislation to reform the law on incest.’

Extensive research has been carried out on this reference and a first draft of a memorandum is being prepared.

(8) *Draft EEC Insurance Services Directive*

62. On 17 May 1978 you asked us to

‘consider and advise on the implications of the draft second EEC Directive on the co-ordination of insurance laws and the provision of services in relation to choice of law rules both current and proposed under the draft EEC Convention on Contractual Obligations’.

The Lord Chancellor made a similar request to the Law Commission for England and Wales. The two Commissions referred this matter to the Joint Working Group which has been advising the United Kingdom delegation to the EEC Group of Experts considering the draft EEC Convention on Contractual Obligations.¹ The Joint Working Group are in the course of preparing a consultative document² which will be given restricted circulation to professional, academic and other expert and interested bodies.

¹See para. 46.

²This document was circulated on 4 August 1978.

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

63. As part of our functions 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 function the following matters have been or are being examined.

(1) *Proposals*

64. We continue to receive at various times throughout the year proposals for changes in the law. We take under consideration all such proposals and in subsequent paragraphs we mention what action is being taken in relation to some of them.

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

65. On 21 April 1978 we submitted to you our Report¹ on the *Married Women's Policies of Assurance (Scotland) Act 1880* which we understand will be published soon.²

(3) *Powers of Attorney*

66. Work has recommenced on this item with a view to publishing a memorandum during 1979.

(4) *Powers of Judicial Factors*

67. We stated in our last Annual Report³ that we hoped to issue a report on our proposals for amendment of the *Trusts (Scotland) Act 1921 and 1961* to facilitate the exercise by judicial factors of certain of their statutory powers. We intend to submit this Report to you early in 1979.

(5) *Agricultural Holdings*

68. Resources are still not available to proceed with the preparation of a memorandum.

(6) *Companies (Floating Charges and Receivers) (Scotland) Act 1972*

69. The comments received on Memorandum No. 33—*Law of Rights in Security: Company Law: Registration of Charges: Scotland* have been collated and summarised. Some of the comments received have opened up further questions that require consideration.

(7) *Criminal Law*

(a) *Insanity*

70. Our Working Party on Criminal Law,⁴ under the Chairmanship of Lord Cameron, when dealing with normal aspects of insanity, examined the availability in criminal proceedings of the defence of insanity where self induced (as by the voluntary taking of drugs) and in May 1978 submitted their report which has still to be considered by us.

¹(1978) Scot. Law Com. No. 52.

²This Report was published on 27 July 1978.

³(1978) Scot. Law Com. No. 47, para. 75.

⁴A list of members of this Working Party appears in Appendix I to this Report.

(b) *Conspiracy—Mobbing and Rioting*

71. Due to priority being given to other work we have not resumed our examination of the proposal that we should review the law relating to conspiracy (including the law relating to mobbing and rioting).

(8) *Criminal Legal Aid*

72. We have been informed by the Scottish Home and Health Department that, after giving considerable thought to the possibility of the introduction of a contribution element into Criminal Legal Aid Scheme in Scotland, on the lines of that which operates in civil cases, they are not convinced that this is practicable and that they propose taking no further action pending the Report of the Royal Commission on Legal Services in Scotland. We have decided to reconsider this matter after the publication of that Report.

(9) *Actions of Ejection and Removings*

73. Mr. A. G. M. Duncan, Senior Lecturer, Department of Scots Law, University of Edinburgh is continuing his research into the law of ejection and removing.

VI. FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

(1) *EEC Working Paper and Questionnaire relating to Security over Moveable Property*

74. On 5 December 1977 we were invited by the Department of Trade to comment on a Working Paper and Questionnaire by the EEC Commission on the harmonisation of the laws of the Member States relating to security over moveable property. We sent our comments¹ to that Department on 26 April 1978.

(2) *EEC Draft Insurance Directive: Contract Law*

75. On 9 March 1978 we were invited by the Department of Trade and Industry to comment on a draft Directive on the Laws, Regulations and Administrative Provisions relating to Insurance Contracts. We have asked our Working Party² on Contract Law under the Chairmanship of Professor Smith to examine this draft Directive and to report to us.

(3) *UNIDROIT—Draft Convention on Hotelkeeper's Contract*

76. A member of the Commission's legal staff represented the United Kingdom at meetings of the Committee of Governmental Experts, held in Rome from 12 to 16 December 1977, 17 to 21 April 1978 under the auspices of the International Institute for the Unification of Private Law (UNIDROIT), to consider a draft Convention on the Hotelkeeper's Contract. Another meeting will be held from 23 to 31 October 1978.

¹See para. 24.

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

(4) *UNIDROIT—Quality and Quantity Control of Goods in International Sale*

77. On 23 February 1978 we were invited by the Foreign and Commonwealth Office to give our view on a UNIDROIT proposal to study problems relating to quality and quantity control of goods in international sale. We have asked Professor Smith, who is in charge of our programme work on Obligations, to consider this proposal.

(5) *UNCITRAL—Draft Convention on International Sale of Goods*

78. On 16 February 1978 we were invited by the Department of Prices and Consumer Protection to comment on the text of this Draft Convention which is to be considered at a future United Nations Diplomatic Conference. We referred this draft Convention to the Working Party on Contract Law¹ under the Chairmanship of Professor Smith, who took into account the comments of the Working Party when he attended the Eleventh Session of the United Nations Commission on International Trade Law (UNCITRAL) in New York.

(6) *UNCITRAL—Draft Convention on the Formation of Contracts for International Sale of Goods*

79. On 2 March 1978 we were invited by the Department of Prices and Consumer Protection to comment on the text of this draft Convention. We referred this draft Convention to the Working Party on Contract Law¹ under the Chairmanship of Professor Smith. The Working Party submitted their comments to us on 24 April 1978 and they were subsequently brought to the Department's attention. Professor Smith attended, as a member of the United Kingdom delegation, the Eleventh Session of the United Nations Commission on International Trade Law (UNCITRAL) held in New York from 30 May to 16 June 1978 at which this draft Convention was given detailed consideration. It was decided that this Convention and the one referred to in the previous paragraph should be amalgamated and brought before a future diplomatic conference to be arranged by the United Nations.

(7) *Tenth International Congress on Comparative Law*

80. Professor Smith will be attending the Tenth International Congress on Comparative Law to be held in Budapest, Hungary from 23 to 28 August 1978 and will be presenting a paper entitled 'Transfer of Property in Corporeal Moveables by *inter vivos* Acts in Scotland'.

(8) *Tagore Law Lectures*

81. Professor Smith had the honour of being appointed Tagore Law Professor to deliver eight Tagore Law Lectures in the University of Calcutta, India from 8 to 20 December 1977. The expanded text of these has been published in book form under the title 'Property Problems of Sale'.

VII. CONSULTATION

THE LAW COMMISSION

82. We continue our close co-operation with the Law Commission. During the year under review we have worked together on the EEC draft Convention on

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

Contractual and Non-Contractual Obligations¹ and also on the EEC draft Insurance Directive.² The annual Joint Meeting was held in Edinburgh on 18/19 April 1978. We wish to record our appreciation of the generous hospitality provided by the University of Edinburgh.

(1) *Codification of the Criminal Law*

83. The Working Party³ set up under the Chairmanship of the Honourable Lord Cameron to examine Working Papers, draft Reports and Reports produced by the Law Commission under their programme subject 'Codification of the Criminal Law' met on three occasions during the year and considered various draft documents. This Working Party has considered and submitted to us their comments on the Report on *Defences of General Application*⁴ and the draft Report on the *Mental Element in Crime*.⁵

84. This Working Party has also submitted to us their comments on the Scottish Home and Health Department paper on insanity in bar of trial and insanity at the time of the crime.

(2) *Working Papers on Contract*

85. On 16 August 1977 we submitted to the Law Commission the comments of the Working Party⁶ on Contract Law, under the Chairmanship of Professor Smith, on Law Commission Working Papers

No. 69—*The Incapacitated Principal*

No. 70—*The Parol Evidence Rule*

No. 71—*Implied Terms in Contracts for the Supply of Goods*.

OTHER LAW REFORM ORGANISATIONS

86. We continue to inform the Law Reform Consultant and Northern Ireland Office of the Legislative Draftsmen on matters of common interest.

87. 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

88. 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 meetings with representatives of the Faculty of Advocates and the Law Society of Scotland and have found these meetings most useful. As in previous years we wish to record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have served on our Working Parties.

¹See paras. 46 and 47.

²See para. 62.

³A list of members of this Working Party appears in Appendix I to this Report.

⁴Law Com. No. 83.

⁵Published on 21 June 1978 as Law Com. No. 89.

⁶A list of members of this Working Party appears in Appendix I to this Report.

89. We are also most grateful for the help we continue to receive from the Librarian and staff of the Edinburgh University Library, Edinburgh University Law Library, the Centre of European Governmental Studies, the National Library of Scotland, the Advocate's Library and the Signet Library.

SEMINARS, COLLOQUIA ETC.

90. (1) All our Commissioners and the majority of our legal staff attended various sessions of the Fifth Commonwealth Law Conference held in Edinburgh on 24 to 29 July 1977. Our Chairman had the honour of being invited to give an address on Law Reform to the opening plenary session at which the Lord Chancellor presided. The address entitled 'The Meanings and Methods' was discussed at a subsequent session of the Conference. Professor Smith presented a paper on 'The Contribution of Legal Literature'. Professor Smith, our Secretary and one of our draftsmen acted as Rapporteurs to the Law Reform session.

(2) Our Chairman, Mr. Anton and Professor Smith attended the Commonwealth Law Reform Agencies Conference held in Marlborough House in London on 2 to 3 August 1977. Our Chairman chaired the proceedings of this Conference.

(3) Our Chairman and a member of our legal staff attended the annual Conference of the Scottish Legal Action Group held in Stirling on 21 to 22 January 1978.

(4) A member of our legal staff attended a Conference on Bankruptcy and Liquidation held at St Andrews University on 31 March to 2 April 1978.

(5) Our Secretary attended the annual Conference of the Law Society of Scotland held at Aviemore on 12 to 14 May 1978.

VIII. MISCELLANEOUS

DEPARTMENTAL AND OTHER COMMITTEES

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

(1) *Statute Law Committee*

92. Our Chairman continues to serve on the Statute Law Committee and continues as a member of the Editorial Board.

(2) *Civil Judicial Statistics*

93. A member of the legal staff continues to represent us at meetings of the Working Party of officials set up by the Scottish Courts Administration to review the Annual Civil Judicial Statistics for Scotland.

(3) *Insolvency Law Review Committee*

94. We continue to maintain a link with the Insolvency Law Review Committee through Professor Jack who attends their meetings as Scottish observer. We are kept informed about the progress of the review through the receipt of Committee papers.

(4) *European Judgments Convention*

95. Mr. Anton continues to attend meetings of the Committee set up by you, under the Chairmanship of Lord Maxwell, to consider, in the light of current developments, the Scottish rules of jurisdiction in civil and commercial matters and the procedure for the recognition and enforcement in Scotland of external judgments.

SCRUTINY OF BILLS

96. We now confine our scrutiny to Bills which particularly touch upon areas of law under current examination by us.

APPENDICES

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

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

Working Party on Security over Moveable Property

| | |
|--|-------------------------|
| Professor J. M. Halliday, C.B.E. (Chairman) | Solicitor, Glasgow |
| Mr. R. H. Barclay | Solicitor, Glasgow |
| Mr. T. Gardiner | Solicitor, Glasgow |
| Mr. A. M. Hamilton | Solicitor, Glasgow |
| Professor R. B. Jack | Solicitor, Glasgow |
| Mr. G. R. H. Reid | Solicitor, Glasgow |
| Professor W. A. Wilson | University of Edinburgh |

Secretary: Mr. A. J. Sim, Scottish Law Commission.

Consultative Committee on Insolvency Law Review

| | |
|---------------------------------|---|
| Professor R. B. Jack (Chairman) | Solicitor, Glasgow |
| Mr. A. E. Anton, C.B.E. | Scottish Law Commission |
| Mr. D. G. Antonio | Law Society of Scotland |
| Mr. S. M. Fraser | Institute of Chartered Accountants, Scotland |
| Mr. J. D. Goold, C.A. | Confederation of British Industry |
| Mr. A. McAndrew | Committee of Scottish Clearing Bankers |
| Mr. D. Macgregor | Scottish Trade Union Congress |
| Mr. G. W. Penrose, Q.C. | Faculty of Advocates |
| Mr. E. S. Robertson | Department of Trade, Scotland |

Secretary: Mr. R. M. Henderson, Scottish Law Commission

Steering Committee on Private International Law

| | | |
|---|---------------------|-------------------------|
| The Hon. Lord Hunter, V.R.D. | } Joint Chairmen | Scottish Law Commission |
| The Hon. Mr. Justice Cooke ¹ | | Law Commission |
| The Hon. Mr. Justice Kerr ² | | Law Commission |
| Mr. A. E. Anton, C.B.E. | | Scottish Law Commission |
| Dr. P. M. North | | Law Commission |

Joint Secretaries } Mr. J. B. Allan, Scottish Law Commission
 } Mr. J. M. Cartwright Sharp, Law Commission

Joint Working Group on Private International Law (Obligations)

| | | |
|---|---------------------|--|
| The Hon. Lord Hunter, V.R.D. | } Joint Chairmen | Scottish Law Commission |
| The Hon. Mr. Justice Cooke ¹ | | Law Commission |
| Mr. A. Akbar | | Law Commission |
| Mr. J. B. Allan | | Scottish Law Commission |
| Mr. A. E. Anton, C.B.E. | | Scottish Law Commission |
| Professor A. L. Diamond | | Institute of Advanced Legal Studies, University of London |

The Hon. Lord Maxwell
Mr. K. M. H. Newman
Dr. P. M. North
Lord Chancellor's Department
Law Commission

Secretary: Miss J. A. Killick, Law Commission

¹The Hon. Mr. Justice Cooke died on 12 April 1978.

²The Hon. Mr. Justice Kerr was appointed on 8 May 1978.

Joint Working Party on Foreign Money Liabilities

| | |
|---|--|
| Dr. P. M. North (Chairman) | Law Commission |
| Mr. A. Akbar | Law Commission |
| Mr. A. E. Anton, C.B.E. | Scottish Law Commission |
| Mr. R. Armitage | Treasury Solicitor's Department |
| Mr. R. J. Ayling | Department of Trade, Industry, Prices and Consumer Protection |
| Mr. R. K. Batstone | Foreign and Commonwealth Office |
| Mr. R. Brodie | Scottish Courts Administration |
| Mr. R. Cassels | Royal Bank of Scotland |
| Sir Stanley Krusin, C.B. | Law Commission |
| Mr. J. P. H. Mackay, Q.C. | Scottish Law Commission |
| Mr. H. V. Richardson, O.B.E. | Lord Chancellor's Department |
| Secretary: Miss J. A. Killick, Law Commission | |

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

| | | |
|---|-----------------------|-----------------------------------|
| The Hon. Lord Hunter, V.R.D. | } Joint } Chairmen | Scottish Law Commission |
| The Hon. Mr. Justice Cooke ¹ | | Law Commission |
| The Hon. Mr. Justice Kerr ² | | Law Commission |
| Mr. A. E. Anton, C.B.E. | | Scottish Law Commission |
| Mr. R. K. Batstone | | Foreign Commonwealth Office |
| Mr. M. C. Blair | | Lord Chancellor's Department |
| Mr. B. O'Brien | | Law Commission |
| Sir Denis W. Dobson, K.C.B., O.B.E., Q.C. | | |
| Mr. G. C. Duke | | Scottish Courts Administration |
| Lady Johnston | | Law Commission |
| Mr. R. L. Jones | | Home Office |
| Dr. P. M. North | | Law Commission |
| Mr. N. R. Whitty | | Scottish Law Commission |
| Mr. J. W. Wilson | | Supreme Court of Northern Ireland |
| Secretary: Mr. T. L. Rees, Law Commission | | |

Working Party to examine Law Commission Working Papers on Criminal Law

| | |
|---|---------------------------------------|
| The Hon. Lord Cameron, D.S.C., D.L. (Chairman) | |
| Mr. J. D. Allan | Procurator Fiscal's Office, Glasgow |
| Mr. D. W. Batchelor ³ | Procurator Fiscal's Office, Edinburgh |
| Sheriff G. H. Gordon, Q.C. | Sheriff's Library, Glasgow |
| Mr. J. Martin ⁴ | Crown Office, Edinburgh |
| Mr. A. C. Normand | Procurator Fiscal's Office, Perth |
| Dr. A. F. Rodger | Advocate, Edinburgh |
| Mr. N. J. Shanks | Scottish Home and Health Department |
| Secretary: Mr. R. M. Henderson, Scottish Law Commission | |

Working Party to examine Law Commission Working Papers relating to the Law of Contract

| | |
|--|-------------------------|
| Professor T. B. Smith, Q.C. (Chairman) | Scottish Law Commission |
| Mr. R. D. D. Bertram, W.S. | Scottish Law Commission |
| Mr. R. Black | Faculty of Advocates |
| Mr. J. T. Cameron, Q.C. | Faculty of Advocates |
| Mr. M. G. Clarke | Faculty of Advocates |
| Dr. W. W. McBryde | University of Aberdeen |
| Secretary: Mr. H. R. M. Macdonald, Scottish Law Commission | |

¹The Hon. Mr. Justice Cooke died on 12 April 1978.

²The Hon. Mr. Justice Kerr was appointed on 8 May 1978.

³Mr. Batchelor was assigned to the Commission on 1 May 1978.

⁴Mr. Martin left the Commission on 30 April 1978.

APPENDIX II

1 SCOTTISH LAW COMMISSION—PAPERS PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE (as at 31 October 1978)

Commission

| | <i>No.</i> | |
|-------|------------|--|
| 1965 | 1 | First Programme of Law Reform |
| ————— | | |
| 1966 | 2 | First Programme of Consolidation and Statute Law Revision |
| | 3 | First Annual Report 1965-66 |
| ————— | | |
| 1967 | 4 | Proposals for Reform of the Law of Evidence relating to Corroboration |
| | 5 | Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd. 3223) |
| | 6 | Divorce—The Grounds Considered (Cmnd. 3256) |
| | 6A | *Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd. 3267) |
| | 7 | Second Annual Report 1966-67 |
| ————— | | |
| 1968 | 8 | Second Programme of Law Reform |
| | 9 | Third Annual Report 1967-68 |
| ————— | | |
| 1969 | 10 | *Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968— Trustee Savings Banks Bill (Cmnd. 4004) |
| | 11 | *Report on the Interpretation of Statutes |
| | 12 | *Report on Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893 |
| | 13 | Fourth Annual Report 1968-69 |
| ————— | | |
| 1970 | 14 | Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd. 4336) |
| | 15 | Reform of the Law Relating to Prescription and Limitation of Actions |
| | 16 | *Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd. 4542) |
| | 17 | Fifth Annual Report 1969-70 |
| | 18 | *Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd. 4544) |
| | 19 | *Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd. 4547) |
| ————— | | |
| 1971 | 20 | *Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd. 4574) |
| | 21 | *Report on the Taxation of Income and Gains derived from Land (Cmnd. 4654) |
| | 22 | *Report on the Consolidation of Certain Enactments relating to Road Traffic— Road Traffic Bill (Cmnd. 4731) |
| | 23 | Sixth Annual Report 1970-71 |

*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 (Cmnd. 5371)
- 31 Report on the Law relating to Damages for Injuries Causing Death
- 32 *Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5493)
-
- 1974 33 Eighth Annual Report 1972–73
- 34 Report on Presumption of Death
- 35 *Friendly Societies Bill—Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd. 5634)
- 36 *Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5792)
-
- 1975 37 Ninth Annual Report 1973–74
- 38 *Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd. 5850)
- 39 *Exemption Clauses—Second Report
- 40 *Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd. 6303)
-
- 1976 41 Tenth Annual Report 1974–75
- 42 Family Law: Report on Liability for Adultery and Enticement of a Spouse
-
- 1977 43 Eleventh Annual Report 1975–76
- 44 *Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd. 6719)
- 45 *Report on Liability for Defective Products (Cmnd. 6831)

*Produced jointly with the Law Commission.

Commission

No.

- 1978 46 Third Programme of Consolidation and Statute Law Revision
47 Twelfth Annual Report 1976-77
48 *Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill
(Cmnd. 7189)
49 Electricity (Scotland) Bill—Report of the Consolidation of Certain Enactments
relating to Electricity in Scotland (Cmnd. 7178)
50 Adoption (Scotland) Bill—Report on the Consolidation of Certain Enactments
relating to Adoption in Scotland (Cmnd. 7187)
51 Damages for Personal Injuries: Report on
(1) Admissibility of Claims for Services
(2) Admissible Deductions
52 Report on the Married Women's Policies of Assurance (Scotland) Act 1880
(Cmnd. 7245)
53 *Interpretation Bill—Report on Interpretation Act 1889 and Certain other
Enactments relating to the Construction and Operation of Acts of Parlia-
ment and other Instruments (Cmnd. 7235)

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
- 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
- 1975 *Memorandum No. 20—Liability for Defective Products
Memorandum No. 21—Damages for Personal Injuries—Deductions and Heads of
Claim

*Produced jointly with the Law Commission.

- 1976 Memorandum No. 22—Aliment and Financial Provision (2 Vols.)
 *Memorandum No. 23—Custody of Children—Jurisdiction and Enforcement within the United Kingdom
 Memorandum No. 24—Corporeal Moveables—General Introduction and Summary of Provisional Proposals
 Memorandum No. 25—Corporeal Moveables—Passing of Risk and of Ownership
 Memorandum No. 26—Corporeal Moveables—Some Problems of Classification
 Memorandum No. 27—Corporeal Moveables—Protection of the Onerous *bona fide* Acquirer of Another's Property
 Memorandum No. 28—Corporeal Moveables—Mixing Union and Creation
 Memorandum No. 29—Corporeal Moveables—Lost and Abandoned Property
 Memorandum No. 30—Corporeal Moveables—Usucapion or Acquisitive Prescription
 Memorandum No. 31—Corporeal Moveables—Remedies
 Memorandum No. 32—Comments on White Paper "*Our Changing Democracy: Devolution to Scotland and Wales*" Appendix—Devolution Scots Law and the Role of the Commission
 Memorandum No. 33—Law of Rights in Security—Company Law—Registration of Charges: Scotland
- 1977 Memorandum No. 34—Constitution and Proof of Voluntary Obligations—General Introduction and Summary of Provisional Proposals
 Memorandum No. 35—Constitution and Proof of Voluntary Obligations—Unilateral Promises
 Memorandum No. 36—Constitution and Proof of Voluntary Obligations—Formation of Contract
 Memorandum No. 37—Constitution and Proof of Voluntary Obligations—Abortive Constitution
 Memorandum No. 38—Constitution and Proof of Voluntary Obligations—Stipulations in Favour of Third Parties
 Memorandum No. 39—Constitution and Proof of Voluntary Obligations—Formalities of Constitution and Restrictions on Proof
 Memorandum No. 40—Confidential Information
- 1978 Memorandum No. 41—Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence (2 Vols.)
 Memorandum No. 42—Defective Consent and Consequential Matters (2 Vols.)

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.

1978 Consultative Document—Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive

5 SCOTTISH LAW COMMISSION—UNPUBLISHED CONFIDENTIAL DOCUMENTS

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

*Produced jointly with the Law Commission.

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 31 October 1978)

| <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 | Divorce (Scotland) Act 1976 (c. 39). |
| Sea Fisheries (Shellfish) Bill (Joint Report with the Law Commissions) (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). |

| <i>Titles of relevant Memoranda and Reports</i> | <i>Date of Publication</i> | <i>Statutory Provision</i> |
|--|----------------------------|--|
| 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). |
| 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) (Cmnd. 5371) | 30.8.73 | None required. |
| Report on the Law relating to Damages for Injuries causing Death (Scot. Law Com. No. 31) | 24.10.73 | Damages (Scotland) Act 1976 (c. 13). |
| Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (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 | Presumption of Death (Scotland) Act 1977 (c. 27). |
| 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). |
| Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 36) (Cmnd. 5792) | 5.12.74 | Statute Law (Repeals) Act 1975 (c. 10). |
| Supply Powers Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 38) (Cmnd. 5850) | 6.1.75 | Supply Powers Act 1975 (c. 9). |
| Exemption Clauses—Second Report (Joint Report with the Law Commission) (Scot. Law Com. No. 39) | 2.10.75 | Unfair Contract Terms Act 1977 (c. 50). |

| <i>Titles of relevant Memoranda and Reports</i> | <i>Date of Publication</i> | <i>Statutory Provision</i> |
|---|----------------------------|---|
| Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 40) (Cmnd. 6303) | 8.12.75 | Statute Law (Repeals) Act 1976 (c. 16). |
| Family Law—Report on Liability for Adultery and Enticement of a Spouse (Scot. Law Com. No. 42) | 23.6.76 | In part by section 10 of the Divorce (Scotland) Act 1976 (c. 39). |
| Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 44) (Cmnd. 6719) | 6.1.77 | Statute Law (Repeals) Act 1977 (c. 18). |
| Liability for Defective Products (Joint Report with the Law Commission) (Scot. Law Com. No. 45) (Cmnd. 6831) | 15.6.77 | None. |
| Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 48) (Cmnd. 7189) | 11.5.78 | Statute Law (Repeals) Act 1978 (c. 45). |
| Electricity (Scotland) Bill (Scot. Law Com. No. 49) (Cmnd. 7178) | 23.5.78 | None. |
| Adoption (Scotland) Bill (Scot. Law Com. No. 50) (Cmnd. 7187) | 3.5.78 | Adoption (Scotland) Act 1978 (c. 28). |
| Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot. Law Com. No. 51) | 18.7.78 | None. |
| Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot. Law Com. No. 52) (Cmnd. 7245) | 27.7.78 | None. |
| Interpretation Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 53) (Cmnd. 7235) | 8.6.78 | Interpretation Act 1978 (c. 30). |

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