



ish Law Commission

*promoting law reform*

(SCOT LAW COM No 251)

annual report | 2017





# Scottish Law Commission

*promoting law reform*

The Commission was established under the Law Commissions Act 1965

## Our function

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

## Our role

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

annual report | 2017



*Commissioners and Chief Executive  
(left to right) Professor Hector MacQueen, Malcolm McMillan (Chief Executive), The Hon Lord Pentland (Chairman),  
Dr Andrew Steven, David Johnston QC, Mrs Caroline Drummond*

## Annual Report 2017

To: Michael Matheson MSP, Cabinet Secretary for Justice

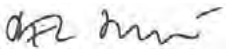
We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2017.



PAUL B CULLEN, *Chairman*



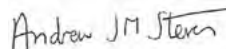
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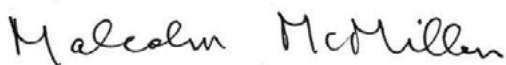
DAVID E L JOHNSTON QC



HECTOR L MACQUEEN



ANDREW J M STEVEN



Malcolm McMillan, *Chief Executive*

1 February 2018

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

February 2018

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*Commission staff*



## Chairman's foreword



It gives me great pleasure to present the Annual Report of the Scottish Law Commission for 2017. The report summarises and explains our law reform work over the past year.

Systematic law reform is especially important for Scots law, not least because the opportunities for the law to be developed by decisions of the courts may necessarily be limited and dependent on suitable cases arising. For a small system like ours it cannot be stressed sufficiently that the work of law reform is of vital importance in ensuring that the law is kept in tune with modern values and with the thinking and outlook of today's rapidly evolving society.

We are an independent and non-political statutory body of legal experts, with responsibility for promoting reform of the law of Scotland; we deal with areas of Scots law devolved to Holyrood, as well as areas reserved to Westminster under the devolution settlement. Our law reform projects are chosen on the basis of public consultation; we work closely with stakeholders as we develop our ideas for reform; and we submit recommendations and draft legislation to the Scottish and UK governments. We aim to produce carefully thought through proposals, which are designed to be promptly taken up by government and the legislatures.

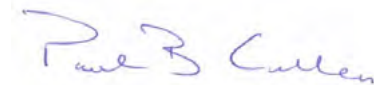
I am pleased to report that 2017 was a successful and productive year for the Commission. We published reports and draft Bills on three important branches of Scots private law: moveable transactions, defamation and prescription; further details about each of these projects are provided later in this report. All are key areas of the law affecting many people and organisations across Scotland at a practical level. We also published a discussion paper on remedies for breach of contract. In regard to implementation of our work, legislation was passed at Holyrood giving effect to our earlier recommendations on third party rights in contract, and at Westminster, legislation was passed on unjustified threats in intellectual property, a project on which we assisted the Law Commission for England and Wales. This all constitutes a substantial contribution to law reform.

This report also explains that during the year we continued to promote law reform on a broader front. In that connection, we were especially pleased to host a conference for the law reform agencies in the United Kingdom, Ireland and the Channel Islands; this was a valuable opportunity to exchange views and experiences on the subject of law reform. We were honoured to welcome Ms Annabelle Ewing MSP, Minister for Community Safety and Legal Affairs, on an official visit to the Commission; Ms Ewing has ministerial responsibility for the Commission. On an international level our Chief Executive, Malcolm McMillan, contributed to an important book containing guidance on law reform for the Commonwealth. We continued to develop and strengthen our relationship with the Scottish Law Schools through the Memorandum of Understanding we have entered into with them. All our Commissioners took part in a wide variety of outreach work to explain and promote more widely who we are and what we do.

Notwithstanding these achievements, it is important that I should take this opportunity to stress that effective law reform requires timely implementation of our recommendations by government; otherwise our work is liable to become out of date and our consultation exercises stale. I would encourage the Scottish Government to continue with its work on implementation of our 2012 Report on Prescription and Title to Moveable Property, our 2013 Report on Judicial Factors and our 2014 Reports on Adults with Incapacity and Trust Law. All are areas where reform is badly needed.

In 2018 we will begin work on our next programme of law reform; this will be our tenth programme. It will include a number of important projects on areas of the law that require modernisation and practical reform.

I conclude by recording my sincere appreciation of the dedicated hard work and invaluable public service rendered by all my colleagues at the Commission. I would like to acknowledge, in particular, the substantial contribution made by Professor MacQueen, who will demit office at the end of March 2018, after eight years of service as a law commissioner. I express my warm thanks to him for all that he has done for us and on behalf of everyone at Causewayside wish him well for the future.



**The Hon Lord Pentland**  
*Chairman*

## Publications 2017

PUBLICATION	DATE OF PUBLICATION
Annual Report 2016 (Scot Law Com No 246)	28 February 2017
Discussion Paper on Remedies for Breach of Contract (DP No 163 )	10 July 2017
Report on Prescription (Scot Law Com No 247)	14 July 2017
Report on Defamation (Scot Law Com No 248)	14 December 2017
Report on Moveable Transactions (Scot Law Com No 249)	19 December 2017

## Implementation of our reports 2017

The Commission's statutory function is to provide independent advice to Government on the reform of Scots law. Our recommendations for reform are contained in reports, which usually include a draft Bill which would give effect to our recommendations. Most of our reports are submitted to the Scottish Ministers, and reports are submitted to UK Ministers where the subject matter involves areas of law reserved to the UK Parliament.

Implementation of our recommendations is a matter for the Scottish Government and Scottish Parliament or, where appropriate, the UK Government and UK Parliament. In both cases the Commission usually provides assistance to Government officials during the Parliamentary stages of the Bill, and provides evidence to the Parliamentary Committee scrutinising the Bill.

### Act passed by the Scottish Parliament in 2017

#### Contract (Third Party Rights) (Scotland) Act 2017

The Contract (Third Party Rights) (Scotland) Bill was introduced in Parliament on 31 January 2017 and received Royal Assent on 30 October 2017. The Act, so far as not already in force, comes into force on 26 February 2018.

The principal policy aim of the Act is to replace the common law (known as *jus quaesitum tertio*) which enables parties to contract to create an enforceable right in favour of a third party with a clearer and more usable statutory version of the rule. The Act implements the legislative recommendations contained in our Report on Third Party Rights published in July 2016 as part of our review of contract law in the light of the Draft Common Frame of Reference. The Act will promote the

use of Scots law and enhance legal certainty. Importantly, the Act sets out in general terms the default position. Contracting parties will be free to make express provisions to the contrary. More information about the Act can be found here: <http://www.parliament.scot/parliamentarybusiness/Bills/103313.aspx>

### Prescription

In September 2017, the First Minister announced that a Bill implementing the recommendations in our Report on Prescription will be taken forward as part of the Scottish Government's legislative programme for 2017-18.

### Act passed by the United Kingdom Parliament in 2017

#### Intellectual Property (Unjustified Threats) Act 2017

We should also note that the Intellectual Property (Unjustified Threats) Act 2017 received Royal Assent on 27 April 2017 and came into force on 1 October 2017. It gives effect to the recommendations in the Report by the Law Commission for England and Wales on Patents, Trade Marks and Designs: Unjustified Threats. The legislation extends to Scotland, and we were pleased to assist our colleagues in London throughout the project.

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

## Law reform projects

The Commission's law reform work stems from our programmes of law reform and from references from Scottish Ministers and from UK Ministers.

### Programmes of law reform

Our Ninth Programme outlined our law reform projects for the period of three years from 2015 to the end of 2017. It was published in February 2015, following extensive consultation with the legal profession and other interested parties including members of the public. The Programme was approved by Scottish Ministers and laid before the Scottish Parliament.

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

#### Item 1 – Moveable transactions

##### *Project Team*

**Dr Andrew Steven**, Commissioner  
**Andrew Crawley**, Project Manager  
**Kay Cuthbertson**, Legal Assistant

This was a long-term project combining elements from the Seventh and Eighth Programmes of Law Reform, as carried over to the Ninth Programme of Law Reform.

Book debts (money owed but unpaid), loan books (sums due on mortgage, credit cards, car loans etc.), intellectual property rights (patents etc.), stock in trade, and equipment (vehicle fleets etc.) all fell within the scope of the project.

We published a Discussion Paper on Moveable Transactions in June 2011. We then consulted on a draft Bill in July 2017 based on our intended reforms, so far as within devolved competence.

We published a Report on Moveable Transactions on 19 December 2017. It sets out 203 recommendations for the reform of the laws of assignation, security over corporeal property, and security over incorporeal moveable property.

The recommendations include the creation of a new Register of Assignations, and a new Register of Statutory Pledges.



*Gregor Clark CB, Kay Cuthbertson, Legal Assistant, Dr Andrew Steven, Commissioner, and Andy Crawley, Project Manager*

We had particular regard when preparing our Report to law reform developments in other comparable jurisdictions. We have, for example, sought to adopt useful aspects of Article 9 of the Uniform Commercial Code of the United States, as adapted by other countries including New Zealand for their personal property security scheme.



The Report is now with the Scottish Ministers, and we await their response.



*Dr Andrew Steven, Commissioner, with legal assistants (past and present) Grant Barclay, Scott McGeachy, Joshua Hale, Kay Cuthbertson and Louise Mackinnon*

## Item 2 – Law of contract in the light of the Draft Common Frame of Reference

### Project Team

**Professor Hector MacQueen**, Commissioner  
**Lorraine Stirling**, Project Manager  
**Graham Crombie**, Project Manager  
**Lucy Reville**, Legal Assistant

The project is a general review of Scots law in the light of the Draft Common Frame of Reference (DCFR). It is a long-term project in our Ninth Programme of Law Reform, having been carried forward from our previous Programme.

To date we have published five Discussion Papers and two Reports. The Discussion Papers are Interpretation of Contract (2011), Formation of Contract (2012), Third Party Rights in Contract (2014), Penalty Clauses (2016) and Remedies for Breach of Contract

(2017). Our Report on Formation of Contract: Execution in Counterpart was published in 2013 and our Report on Third Party Rights was published in 2016.

Our recommended reform of execution in counterpart was legislated for in the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 and our recommended reform of third party rights led to the Contract (Third Party Rights) (Scotland) Act 2017 which is due to come into force in early 2018.

In 2017, we drew together the outstanding strands of the project. The consultation period for our Discussion Paper on Penalty Clauses closed in February and the consultation period for our Discussion Paper on Remedies for Breach of Contract closed in October. We also consulted on a draft Contract (Formation) (Scotland) Bill in the autumn.

We will be publishing what will be the final Report of our general review of Scots contract law in the light of the DCFR in spring 2018. This Report will cover Interpretation of Contract, Formation of Contract, Penalty Clauses and Remedies for Breach of Contract.



*Contract law team at the Scottish Parliament: Lucy Reville, Professor Hector MacQueen, Graham Crombie and Lorraine Stirling*

### Item 3 – Compulsory purchase

#### Project Team

**Caroline Drummond**, Commissioner  
**Dr Andrew Steven**, Commissioner  
**Kate Walker**, Project Manager  
**Ross Grimley**, Legal Assistant

This long-term project was first introduced in the Eighth Programme of Law Reform, and was also included in the Ninth Programme. The aim of this project was to analyse and improve the law of compulsory purchase in Scotland, which is generally viewed as outdated and inadequate. A six-month consultation followed the publication of our substantial Discussion Paper in December 2014. We received a large number of detailed responses from stakeholders. Both Commissioners attended and addressed a number of stakeholder events between 2015 and 2016.

A consolidated Report on the submissions from stakeholders was compiled over this time and was submitted to the Scottish Government in September 2016. The Report sets out key themes which emerged from the consultation and from the various stakeholder engagement events. The Report was sent to the Scottish Government in order to assist them in considering the future of compulsory purchase in Scotland and in deciding how best to take forward reform of such a large subject.

In 2017, we continued to support the Scottish Government in their consideration of this Report including, where appropriate, through further engagement with stakeholders. Commissioner, Caroline Drummond presented a paper at a workshop organised by the Scottish Government in May 2017, as well as at the Scottish Compulsory Purchase Association's Annual Conference in September 2017. The team also provided support at the Scottish Government's National Assembly on Compulsory Purchase in December 2017.

This project will not be included in our Tenth Programme of Law Reform.



*Caroline Drummond, Commissioner*



## Item 4 – Heritable securities

### Project Team

**Dr Andrew Steven**, Commissioner  
**Andrew Crawley**, Project Manager  
**Kay Cuthbertson**, Legal Assistant

The reform of the law of heritable securities, first mooted in our Eighth Programme of Law Reform, has been carried over to our Ninth Programme.

This major project is reviewing the law of security over heritable property (land, and associated rights).

Work on the project was largely postponed until publication of our Report on Moveable Transactions, but we expect to scope the project in 2018, with a view to publishing a discussion paper in 2019.

Dr John MacLeod, Lecturer in Law at the University of Glasgow, is preparing a research paper on enforcement of heritable securities, which will be of great assistance now. His paper will be delivered under the new arrangement between the Scottish Law Schools and the Commission which enables law academics to collaborate with us.

The law was last systematically reformed by the Conveyancing and Feudal Reform (Scotland) Act 1970, and that remains the main legislation.

The 1970 Act created the standard security over land, sometimes described as a 'mortgage'. The Act was a great improvement, but is still not without difficulty. The rules about enforcement are complex and hard to understand, and section-by-section review of the Act also reveals numerous technical problems. In addition, there has been considerable change since 1970 and the law should develop where that is needed to help ensure the efficient operation of the economy and the property markets.

## Item 5 – Defamation

### Project Team

**The Hon Lord Pentland**, Chairman  
**Graham McGlashan**, Project Manager  
**Susan Robb**, Solicitor (until October 2017)

This project to review the law of defamation formed part of our Ninth Programme of Law Reform. The topic of defamation law reform has continued to generate considerable public interest in Scotland. The Herald newspaper continues to pursue a public campaign for reform. The organisation known as Scottish PEN also continues to campaign for reform.

During 2017 we continued to develop our policy in light of responses to our Discussion Paper on Defamation which was published in March 2016.

We instructed a draft Bill to give effect to that policy and consulted widely on a working draft of that during August 2017. We received a large number of responses (over 100) to that consultation from individuals and organisations and we were grateful for this input from stakeholders.

We refined our policy and draft Bill after carefully considering those responses and prepared a report to explain our policy and the thinking behind our recommendations. The policy reflects a number of broad underlying aims, including making clear that defamation law in Scotland is concerned with protection of reputation rather than protection against hurt feelings and damage to self-esteem, and arriving at a law of defamation that is fit for purpose in the internet age.

Our Report on Defamation was published on 14 December 2017. It makes 49 recommendations and contains a draft Bill which aims to put those into effect and put the law of defamation in Scotland onto a modern, accessible footing.

The Report is now with the Scottish Ministers, and we await their response.



*Lord Pentland, Chairman*

## Item 6 – Proprietary aspects of leases

### Project Team

**Caroline Drummond**, Commissioner  
**Kate Walker**, Project Manager  
**Ross Grimley**, Legal Assistant

The reform of proprietary aspects of leases is included in our Ninth Programme of Law Reform. This project is taking a focussed approach, looking at areas where law reform is most needed. Leases can generally be categorised as falling into one of three areas: agricultural, residential, or commercial. We are concentrating mainly on commercial leases, as the law on residential leases and agricultural leases is already subject to significant statutory regulation. As this is a long-term project, we consider that reform would best be achieved through a series of targeted reports and draft Bills.

During consultation and engagement with stakeholders, it has been suggested that Scotland is losing investment as a result of an uncertain system, especially when compared to the legislative regulation in England and Wales. Aspects relating to termination of leases have been particularly identified as in need of reform – for example, tacit relocation, notices to quit and *confusio*. We are also reviewing old and outdated legislation such as the Tenancy of Shops (Scotland) Act 1949, in order to modernise the framework for commercial leases in Scotland. We also intend to review our previous Report on Irritancy in Leases of Land.

We started work on the project in autumn 2016. Throughout 2016 and 2017, the team met with various members of the professions involved with commercial leasing, including lawyers and surveyors, and the feedback from these sessions was very positive. We have been able to amplify and refine our original proposals as a result. Further areas of reform – which may be suitable for future discussion papers – have also been identified.

Drafting of a discussion paper covering aspects of termination began in 2017 and is now at an advanced stage. We intend to publish this paper by the summer of 2018.

## Item 7 – Aspects of the law of prescription

### Project Team

**David Johnston QC**, Commissioner  
**Gillian Swanson**, Project Manager  
**Susan Robb**, Solicitor (until October 2017)

In July 2017, we published a Report containing recommendations for the reform of aspects of the law of negative prescription.

Negative prescription establishes a time-limit within which a person who is aggrieved must raise his or her claim in court. If the time-limit is missed, the ability to pursue the claim is lost as, once the prescriptive period has expired, the right or obligation is extinguished. It is therefore vital that this area of the law strikes a fair balance between competing interests.



David Johnston QC, Commissioner

The Report is a review of certain issues within the law of negative prescription (as set out in the Prescription and Limitation (Scotland) Act 1973) which can cause difficulty in practice. The aim of our recommendations is to bring increased certainty, clarity and fairness. The Report therefore reviews the scope of the five-year and 20-year negative prescriptive periods; the discoverability test, that is to say the knowledge which a pursuer must have before the prescriptive period begins to run where damages are sought for loss or damage which was initially latent; the starting date of the 20-year prescriptive period in relation to obligations to pay damages, and how best to ensure that the 20-year prescriptive periods operate as true "long stops"; whether it should be possible to contract out from the statutory prescriptive periods; and the burden of proof. It also covers some miscellaneous issues including the reformulation of section 6(4) of the 1973 Act (which deals with fraud, concealment and error), the definition of "relevant claim", and clarification of the effect of a relevant claim.

We are delighted that, in September 2017, the First Minister announced that a Bill implementing our recommendations will be taken forward as part of the Scottish Government's legislative programme for 2017-18.

## References from Scottish Ministers

In addition to our work on topics included in our programmes of law reform, we also undertake work in response to references from Ministers. This work sometimes has to be undertaken in a short timescale to meet Government needs, and in those cases we adjust the timetables for our programme topics as necessary.

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

#### Project Team

**Dr Andrew Steven**, Commissioner  
**Andrew Crawley**, Project Manager  
**Kay Cuthbertson**, Legal Assistant

We were asked by the Minister for Community Safety and Legal Affairs to undertake a review of section 53 of the Title Conditions (Scotland) Act 2003 in the context of Part 4 of the Act. Section 53 of the 2003 Act allows the proprietors of "related properties" in a "common scheme" of real burdens to enforce the burdens against each other although the title deeds do not say expressly that they may do so.

It can be difficult to establish whether or not there is a common scheme, and if so, whether any two properties are related for that purpose. The law is said to lack clarity in that respect, so creating difficulties for (for example) proprietors who may need agreement from those with a right to object to a proposed development.

It was agreed that work on the project would begin following completion of our project on moveable transactions.

We intend to carry out preliminary research, with a view to setting up an advisory group early in 2018, and to seeking views from interested parties.

We expect to publish a discussion paper in 2018.

## Joint projects

In addition to law reform projects under our programmes of law reform, we undertake joint projects with the Law Commission for England and Wales and the Northern Ireland Law Commission.

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

#### Insurance contract law

#### Project Team

**Professor Hector MacQueen**, Commissioner  
**Gillian Swanson**, Project Manager

In recent years we have been assisting the Law Commission for England and Wales with a joint project on insurance contract law. Following the successful implementation of all of our recommendations to date (see the Consumer Insurance (Disclosure and Representations) Act 2012, and the Insurance Act 2015 as amended by the Enterprise Act 2016, Part 5), the remaining issue which will be addressed by the project is that of insurable interest. It is hoped that the project will conclude in 2018 with a report.

## Intellectual property (unjustified threats)

### Project Team

**Professor Hector MacQueen**, Commissioner  
**Gillian Swanson**, Project Manager

The Intellectual Property (Unjustified Threats) Act 2017 received Royal Assent on 27 April 2017 and came into force on 1 October 2017. It gives effect to the recommendations in the Report by the Law Commission for England and Wales on Patents, Trade Marks and Designs: Unjustified Threats. The legislation extends to Scotland, and while this was not formally a joint report, we were pleased to assist our colleagues in London throughout the project.

An unjustified threat is made when someone unfairly threatens someone else with legal action for infringing their intellectual property, when no infringement has actually taken place. The new provisions bring consistency across all relevant intellectual property rights providing a clear framework within which businesses can work towards resolving disputes without the need to turn to litigation.

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

### Electoral law

#### Project Team

**The Hon Lord Pentland**, Chairman  
**Gillian Swanson**, Project Manager

As part of a joint project with the Law Commission for England and Wales and the Northern Ireland Law Commission to review legislation in relation to electoral law throughout the UK, a joint Interim Report was published in 2016. Its main recommendation was the formulation of a draft UK Bill promoting a new general framework which could be adopted for all elections and referendums. The intention was that the Bill would serve as a possible template for the devolved legislatures to adapt and adopt if they so wished. However, following consideration of the Interim Report, the UK Cabinet Office, towards the end of 2017, asked the Law Commission for England and Wales to take forward the next stage of the project by drafting secondary legislation to reform the conduct rules of local elections and local referendums in England and Police and Crime Commissioner elections in England and Wales.

Thereafter, in December 2017, the Scottish Government decided to take forward reform of devolved aspects of electoral law by launching a consultation on electoral reforms for Scottish Local Government and Scottish Parliament elections. The paper refers to the Commissions' Interim Report commenting that it highlighted a number of areas in which reform was desirable.

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



## Progress on our law reform projects: summary

### Projects under our Ninth Programme

PROJECT	POSITION AT THE END OF 2017
<b>Moveable transactions</b> (Ninth Programme, item 1)	Report and draft Bill published in December 2017
<b>Law of contract in the light of the Draft Common Frame of Reference</b> (Ninth Programme, item 2)	Our consultation on Penalty Clauses closed in February 2017; consultation on a Discussion Paper on Remedies for Breach of Contract closed in October 2017; a consultation on a draft Contract (Formation) (Scotland) Bill closed in November 2017. We are working on the final report in the Contract project covering Interpretation of Contract, Formation of Contract, Penalty Clauses and Remedies for Breach of Contract, to be published in spring 2018
<b>Compulsory purchase</b> (Ninth Programme, item 3)	A Report on the Consolidated Responses to our consultation was published in 2016. We have continued to support the Scottish Government in its consideration of this Report during 2017
<b>Heritable securities</b> (Ninth Programme, item 4)	Some preliminary work undertaken but project not yet formally started
<b>Defamation</b> (Ninth Programme, item 5)	Report and draft Bill published in December 2017
<b>Proprietary aspects of leases</b> (Ninth Programme, item 6)	Drafting of a discussion paper on aspects of termination is underway, the discussion paper being due for publication in 2018
<b>Aspects of the law of prescription</b> (Ninth Programme, item 7)	Report and draft Bill published in July 2017

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

PROJECT	POSITION AT THE END OF 2017
<b>Insurance contract law</b>	Work on a joint report and draft Bill on insurable interest to continue with a view to publication in 2018

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

PROJECT	POSITION AT THE END OF 2017
<b>Electoral law</b>	After consideration of the Commissions' Interim Report of 2016, the Scottish Government is to take forward possible reform of devolved electoral law. The Law Commission for England and Wales has been tasked with drafting secondary legislation to reform the conduct rules of certain elections and referendums in England and Wales



## Consolidation and statute law repeals

### Consolidation

#### Project Team

**The Hon Lord Pentland**, Chairman

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

The Commission has not carried out any work this year on consolidation of legislation.

Any consolidation work requires an agreement with the Scottish Government that they will provide the necessary support and resources for a particular project. A Government policy resource is required to provide policy direction and guidance on the area being consolidated; and a significant legislative drafting resource has to be provided to prepare any Bill.

### Statute law repeals

#### Project Team

**The Hon Lord Pentland**, Chairman

One of our functions is to recommend the repeal of obsolete legislation. We undertake this work jointly with the Law Commission for England and Wales.

The purpose of repealing obsolete legislation is to modernise and simplify the statute book, reduce its size and make it easier for people to use. This in turn helps to avoid unnecessary costs. It also helps to avoid people being misled by outdated legislation that appears to be current law.

The Commissions present their proposals to Government as statute law repeals reports, published with a draft Bill. Since 1965, 19 such Bills have been enacted, repealing more than 3,000 Acts. The Commissions last published a report, their Twentieth Report and Draft Statute Law (Repeals) Bill on 3 June 2015. The Report proposes the repeal of more than 200 old laws that are cluttering up the statute book.

The Bill awaits implementation by the UK Governments. The Commission has not carried out any further statute law repeal work in the meantime.



*Our Parliamentary Counsel, Gregor Clark CB*

## Promoting law reform

As an outward-facing body, the Commission aims to promote law reform, within Scotland, the UK, and beyond.

As the independent law reform agency for Scotland, we liaise closely with Scottish Ministers: in particular the Cabinet Secretary for Justice, the Minister for Community Safety and Legal Affairs, the Minister for Parliamentary Business, and with Scottish Government officials. We assist in the implementation of Commission recommendations in devolved areas. In relation to reserved areas of Scots law, we liaise with UK Ministers and the Scotland Office, and with the Advocate General for Scotland and his officials.



*Our current legal assistants, Kay Cuthbertson, Ross Grimley and Lucy Reville*

The Commission has strong links with the Scottish Parliament. Briefings on our recommendations are regularly provided by the Commission to Committees of the Parliament and their officials.

The Commission continues to engage closely with the legal profession in Scotland, in particular the Law Society of Scotland and the Faculty of Advocates. We are very grateful to

members of the profession who serve as members of our advisory groups on law reform projects, and to those who respond to our consultations. Contributions from the profession contribute significantly to the law reform process, by virtue of their practical experience of the law.

The Commission has contacts with law reform bodies throughout the world, and a close relationship in particular with the Law Commission for England and Wales with whom we carry out joint law reform projects.

In June 2017 the Commission hosted the annual conference of the law reform bodies of Scotland, England and Wales, Ireland, and Jersey. This was a valuable opportunity for leading law reformers to share their experiences and expertise with each other. The programme for the conference included a reception and tour of the Advocates' Library. The agenda for the conference focussed on external relationships: the ways in which a law reform body can work best with the legal academic community; and with Government.



*Delegates at the Advocates' Library*

## Law reform in the Commonwealth

The Commission has made a significant contribution this year to the promotion of law reform in the Commonwealth.

The Commonwealth Association of Law Reform Agencies (CALRAs), of which the Commission is an active member, and the Commonwealth Secretariat, produced the first general guide to conducting law reform in Commonwealth countries: "Changing the Law: A Practical Guide to Law Reform". The Guide uses examples and experiences from across



the Commonwealth and beyond, offering practical guidance on law reform and on each phase of the law reform process. It was formally launched at the Commonwealth Law Ministers' Meeting in October 2017. Our Chief Executive, Malcolm McMillan, contributed to the Guide as an author and peer reviewer. The Guide puts forward some key achievements in Scotland on law reform, including under special parliamentary processes for implementation of law reform measures, the Delegated Powers and Law Reform Committee at the Scottish Parliament.

## Collaboration with the Universities

The Commission values our relationship and links with the Scottish Law Schools. A Memorandum of Understanding with the Law Schools was signed in 2016. The first placement under the Memorandum continues, with Dr John MacLeod of the School of Law at the University of Glasgow working on reform of the law on enforcement of securities over land and buildings (mortgages), to assist the Commission's pending project on heritable securities.

## Minister for Community Safety and Legal Affairs' visit

Annabelle Ewing MSP, Minister for Community Safety and Legal Affairs, visited the Commission on 29 November 2017.

The Minister viewed a display of the Commission's reports since 1965, and discussed the impact of that work on the legal landscape of Scotland. The Minister met Commissioners, the Chief Executive and staff.



*The Minister for Community Safety and Legal Affairs, Annabelle Ewing MSP, with the Chairman, Lord Pentland*



## Law Awards: Professor Hector MacQueen

We are delighted at the Outstanding Contribution Award made to our Commissioner, Professor Hector MacQueen at the Law Awards ceremony held on 30 November 2017 in Glasgow. This is a significant recognition of Professor MacQueen's contribution to Scots law, including law reform.



*Professor Hector MacQueen*

## Visit by Chinese delegation

The Legislative Affairs Commission of the National People's Congress of China visited the Commission on 11 September 2017. A meeting was held with Commissioners, Dr Steven and Mrs Drummond, and the Chief Executive, Malcolm McMillan, to discuss the role of the Commission and the processes for law reform.



*Chinese delegation and Commission representatives*

## Publications planned for 2018

In 2018 the Commission will continue to work on current projects in our Ninth Programme of Law Reform that will roll over into the Tenth Programme. We will also commence work on new projects in the Tenth Programme, and on a project referred to us by Scottish Ministers. We also expect to commence work on joint projects referred to us by UK Ministers. The Commission aims to produce a number of publications during 2018.

Our ongoing work on contract law will produce a final report and draft Bill in spring 2018. The report will cover interpretation of contract, formation, penalty clauses and remedies for breach.

In our review of section 53 of the Title Conditions (Scotland) Act 2003, referred to us by Scottish Ministers, we expect to publish a discussion paper in the summer of 2018.

On the leases project, we are working towards publication of a discussion paper on aspects of termination of leases, by the summer of 2018.

Finally, as regards joint law reform work with the Law Commission for England and Wales, we expect to complete the review of insurance law with a joint report on insurable interest.

# Commissioners and staff

(as at 31 December 2017)

## Commissioners

The Hon Lord Pentland, *Chairman*  
Caroline Drummond  
David Johnston QC  
Professor Hector MacQueen  
Dr Andrew Steven

## Chief Executive

Malcolm McMillan

## Parliamentary Counsel (Consultant)

Gregor Clark CB\*

## Project Managers (Solicitors)

Andrew Crawley  
Graham Crombie  
Graham McGlashan  
Lorraine Stirling\*  
Gillian Swanson  
Kate Walker\*

## Legal Assistants

Kay Cuthbertson  
Ross Grimley  
Lucy Reville

## Librarian

Emma McLarty\*

## Office Manager

Helen Stevenson\*

## Personal Secretaries

Wilma MacAskill\*  
Joan Melville MBE

## Administrative Staff

Iain Ritchie  
Gordon Speirs

\* Part-time staff

## The Commission's running costs 2017

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2017 were offset by payments received from Historic Environment Scotland for use of part of our office accommodation.

EXPENDITURE	YEAR TO 31 DECEMBER 2017
<b>Salaries – Commissioners</b> (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£593,157
<b>Salaries – Chief Executive and legal staff</b> (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£613,270
<b>Salaries – Administrative staff</b> (including national insurance contributions and superannuation payments)	£139,953
<b>Accommodation</b> (including maintenance, rates and utilities)	£98,131
<b>Printing and publishing</b> (including costs of books and library purchases, binding, maintenance of equipment, publishing costs of publications, photocopying and stationery)	£28,734
<b>Telephone and postage</b>	£4,346
<b>Travel and subsistence</b>	£7,364
<b>Miscellaneous</b> (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£75,945
<b>Total</b>	£1,560,900



# Scottish Law Commission [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

## How we undertake our law reform projects

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

For more information about the Commission please contact:

Malcolm McMillan, Chief Executive

Scottish Law Commission

140 Causewayside, Edinburgh EH9 1PR

Tel: 0131 668 2131 E-mail: [info@scotlawcom.gsi.gov.uk](mailto:info@scotlawcom.gsi.gov.uk)

Freedom of Information enquiries: [FOI@scotlawcom.gsi.gov.uk](mailto:FOI@scotlawcom.gsi.gov.uk)

Website: [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

Twitter: [@scotlawcom](https://twitter.com/scotlawcom)

This Report is available on our website.





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