



Scottish Law Commission

*promoting law reform*

(SCOT LAW COM No 263)

annual report | 2022





# 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 | 2022

## Chair, Commissioners and Chief Executive



Lady Paton (Chair)



David Bartos



Professor Gillian Black



Kate Dowdalls KC



Professor Frankie McCarthy

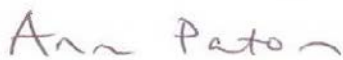


Charles Garland  
(Interim Chief Executive)

## Annual Report 2022

To: Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2022.



ANN PATON, *Chair*



DAVID BARTOS



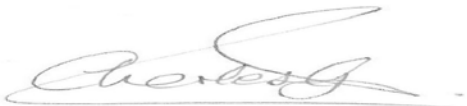
GILLIAN BLACK



KATE DOWDALLS



FRANKIE McCARTHY



Charles Garland, *Interim Chief Executive*  
16 March 2023

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

April 2023

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## Chair's foreword



2022 was a successful and eventful year. The Moveable Transactions (Scotland) Bill began its parliamentary journey at Holyrood, followed by the Trusts and Succession (Scotland) Bill. Other Commission projects, namely Automated Vehicles (jointly with the Law Commission of England and Wales), Commercial Leases (termination) and Cohabitation, achieved publication of Reports, the latter two with draft Bills. A launch in May 2022 initiated the consultation procedure for our Eleventh Programme, attracting many welcome responses.

Throughout the year, regular contact with the Minister for Community Safety (Ash Regan MSP and her successor Elena Whitham MSP) made significant contributions to the Commission's work and to the implementation of Commission reports. We are grateful to the Scottish Ministers for their continuing support.

We also enjoyed an in-person visit to 140 Causewayside from members of the Delegated Powers and Law Reform Committee (DPLRC) in May 2022, which enhanced communication and understanding of the Commission's work. Later in the year, in September 2022, an informal session before the DPLRC focused on tenement law, and a subsequent formal evidential hearing concerning moveable transactions involved evidence from the former lead Commissioners, Professor Gretton and Professor Steven, and from myself.

Meantime, a steady output of papers, webinars, seminars, talks, workshops, E-bulletins and website news, kept relevant stakeholders informed of the progress of Commission projects. "Outreach to others" was a key feature of the year, and took many forms. Virtual meetings with other Law Commissions in more distant jurisdictions enhanced international communication and understanding. In November 2022 the annual Five Jurisdictions Conference saw lively discussions involving Scotland, England and Wales, Eire, Northern Ireland, and the Channel Islands, while earlier in the year a Roundtables meeting, also in virtual format, involving Scotland, England and Wales, New Zealand, Ireland, and Australia, shared problems and solutions.

Individual Commission teams were also involved in outreach to many stakeholders, including practitioners, academics, support groups, members of parliament, and the public. Meetings and discussions (both virtual and in-person) took place with members of the Law Commission of England and Wales, including regular team meetings in relation to the joint projects of Automated Vehicles and Surrogacy, with related conference addresses being given by the lead Scottish Commissioners. In the Tenements project, a webinar series was created involving international experts from six different jurisdictions; the lead Commissioner also attended a useful conference in Groningen,



Netherlands, organised by the Expropriation Expert Group. In the Homicide project, a qualitative public opinion survey on significant issues was carried out by BritainThinks. In the Cohabitation project, the lead Commissioner gave evidence to the House of Commons Women and Equalities Committee, and was interviewed on Radio 4's Law in Action. In the Automated Vehicles joint project, the lead Scottish Commissioner gave a virtual address to a Law Society conference on delictual liability in the context of driverless vehicles. In the Damages for Personal Injury project, I spoke at a virtual Legal Services Agency seminar.

Published articles also contributed to outreach. The Journal of the Law Society of Scotland published articles by various members of the Commission on Damages for Personal Injury, Heritable Securities, and Leases. I contributed to the Law Society's virtual 90th Anniversary Conference *Donoghue v Stevenson* (The Immortal Snail) with an address and also with an article in the collected conference papers.

There were staff changes during the year. We were sorry to lose project manager Alison Fraser to the Solicitor's Office at Holyrood, and to say goodbye to our talented and hard-working Legal Assistants as they moved on to the next stage in their careers. On a positive note, however, we were pleased to welcome four new Legal Assistants, who immediately made major contributions to Commission projects.

New accommodation for the Commission at Parliament House began to take shape during 2022, involving site visits and meetings with architects and planners. Removal to the new premises is expected to take place in the summer of 2023.

Finally, my thanks are due to the Commissioners and to all the staff at the Commission for their enthusiasm, commitment, and ability to work productively in what are still challenging times.

*Ann Paton*

**The Rt Hon Lady Paton**  
*Chair*

## Publications 2022

PUBLICATION	DATE OF PUBLICATION
<b>Joint Report on Automated Vehicles</b> (Scot Law Com No 258)	26 January 2022
<b>Discussion Paper on Damages for Personal Injury</b> (DP No 174)	23 February 2022
<b>Annual Report 2021</b> (Scot Law Com No 259)	7 March 2022
<b>Report on Aspects of Leases: Termination</b> (Scot Law Com No 260)	5 October 2022
<b>Report on Cohabitation</b> (Scot Law Com No 261)	2 November 2022

## Implementation of our reports 2022

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 that would give effect to our recommendations. Most of our reports deal with matters devolved to the Scottish Parliament and are submitted to the Scottish Ministers. Our reports are submitted to UK Ministers where the subject matter involves areas of law reserved to the UK Parliament.

Implementation of Commission recommendations is a matter for the Scottish Government and the Scottish Parliament or, where appropriate, the UK Government and the UK Parliament. The following developments towards implementation took place in 2022.

### Moveable Transactions

The Scottish Government introduced its Moveable Transactions (Scotland) Bill into the Scottish Parliament on 25 May 2022. This will largely implement the recommendations in our Report on Moveable Transactions published in December 2017 (SLC No 249). The Bill has been allocated to the Delegated Powers and Law Reform Committee, and is currently at Stage 2 of the parliamentary process. The Chair and two former lead Commissioners, Professor Gretton and Professor Steven, gave evidence to the Committee on 27 September 2022.

### Trusts and Succession

The Scottish Government introduced its Trusts and Succession (Scotland) Bill into the Scottish Parliament on 22 November 2022. This will in essence implement the recommendations in our Report on Trust Law (SLC No 239; 2014), together with a recommendation on intestate succession from our Report on Succession (SLC No 215; 2009). Like the Moveable Transactions (Scotland) Bill, it too has been allocated as an SLC Bill to the Delegated Powers and Law Reform Committee. The Commission expects to give evidence at Stage 1, and former lead Commissioner Lord Drummond Young, along with current Commission members, have been assisting the Scottish Government bill team in the lead up to introduction.

### Future Bills

The Programme for Government indicated that the Government is giving consideration to a longer-term programme of implementation of Scottish Law Commission Reports to be introduced during the current Parliament. These include Reports on Judicial Factors, Contract law, Title Conditions, Cohabitation and Damages for Personal Injury. We welcome this approach.

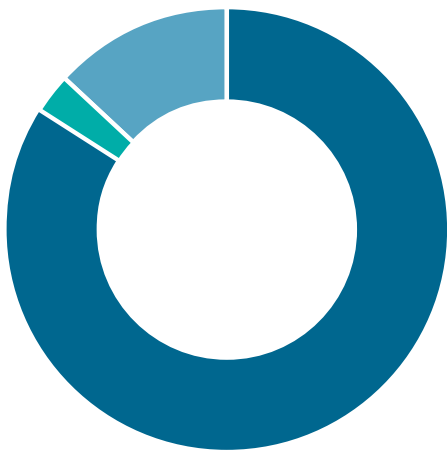
### Overall implementation figures

The overall position on implementation of Scottish Law Commission reports from 1965 to December 2022 is:

- Law reform reports published: 193 (15%)
- Implemented in whole or in part: 159 (82%)
- Superseded: 5 (3%)

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)

### Implementation rate of Commission reports



- Implemented in whole or in part 82%
- Superseded 3%
- Rest 15%





**Our 2022-23 legal assistants from left to right: Shy Zvouloun, Nic Vetta, Laura Beattie and Val Pyataev**





## 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.



From left to right: Lady Paton (Chair), Professor Black, Charles Garland (interim Chief Executive), Professor McCarthy, David Bartos and Kate Dowdalls KC

## Law reform projects

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

### Programmes of law reform

Our Tenth Programme outlined our law reform projects for the period of five years from the start of 2018 to the end of 2022. It was published in February 2018, 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. It can be found on our website: [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

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

#### Item 2 - Heritable securities

##### Project Team



**Professor Frankie McCarthy,**  
Commissioner

**Stephen Crilly,** Project Manager

**Val Pyataev,** Legal Assistant

The reform of the law of heritable securities, first mooted in our Eighth Programme of Law Reform, was begun in our Tenth Programme. We anticipate that it will be carried over to our Eleventh Programme.

It is a major project aimed at reviewing the law of security over heritable property (land, and associated rights).

The law was last systematically reformed by the Conveyancing and Feudal Reform (Scotland) Act 1970, and that remains the main legislation. It created the standard security over land, sometimes termed a 'mortgage'. The Act was a great improvement, but is not without difficulty. The rules about enforcement are complex and hard to understand, and a section-by-section review of the Act also reveals numerous technical problems.

In addition, there has been considerable societal and economic change since 1970. The law should develop where that is needed to help ensure the efficient operation of the economy and of property markets.

We decided to approach the project in a number of phases. Our first discussion paper, published in June 2019, was on pre-default matters. We received around 20 responses from a range of stakeholders. A second discussion paper, on default and post-default issues, was published in December 2021 with a similar number of responses received. A third discussion paper will deal with two complex technical issues: (i) mechanisms for taking security over a standard security (sometimes known as sub-security arrangements); and (ii) standard securities in respect of non-monetary obligations where the remedy sought is performance. That paper is due for publication in mid-2023. Our intention is to draw together the results of consultation in respect of all three papers in a single report and draft Bill, which we aim to publish in 2025.

The focus of the team in the early part of 2022 was on promoting the public consultation in relation to the second discussion paper.

The team undertook a number of activities including: the publication of an article in the Journal of the Law Society of Scotland; two online webinars which were open to the public; a number of lunchtime seminars for law firms which involved speaking to around 250 lawyers who work in this area; and speaking appearances at the Edinburgh University Private Law Discussion Group, the Scottish Property Law Teachers' Discussion Group, and Central Law Training's Annual Conveyancing Conference. The team also made efforts to engage with a number of third sector debt advisor organisations as well as representative bodies of small and medium sized businesses. This included providing virtual online workshops for both Citizens' Advice Scotland and the Scottish Association of Law Centres.

The later part of the year saw some initial planning and drafting work for the third discussion paper, as well as an analysis of the responses to the first and second discussion papers with a view to preparing policy proposals.

### Item 3 – Aspects of leases

#### Project Team

**David Bartos**, Commissioner

**Alastair Smith**, Project Manager

**Daniel Buchan**, Legal Assistant (until August 2022)

A project on leases has formed part of our Ninth and now Tenth Programmes of Law Reform. In order to focus efforts on specific areas of difficulty within the current law we have chosen to concentrate on commercial leases, as residential and agricultural leases are considered to be more fully provided

for under the present law.

The first topic to be considered has been the termination of commercial leases. We published a discussion paper in May 2018 which raised questions about tacit relocation, including notices to quit; apportionment of rent; the Tenancy of Shops (Scotland) Act 1949; irritancy; and *confusio*.

In the light of consultees' views and with the benefit of renewed input from our advisory group, we formed the view that it would be appropriate to restate in clear terms the common law of tacit relocation, while reforming and modernising certain aspects including its name. We published a consultation on a draft Leases (Automatic Continuation etc.) (Scotland) Bill in December 2021 and published our Report on Aspects of Leases: Termination, incorporating a final draft of that Bill, in October 2022.

Our Report dealt with the reform of tacit relocation, including notices to quit; with apportionment of rent; and with irritancy. The Report concluded that further consideration and consultation was required before we could recommend any reform of *confusio* and the Tenancy of Shops (Scotland) Act 1949.

### Item 4 – Homicide

#### Project Team



**The Rt Hon Lady Paton**, Chair

**Graham McGlashan**, Project Manager

**Shy Zvouloun**, Legal Assistant



This medium-term project to review the law on the mental element in homicide was announced in our Tenth Programme of Law Reform and is expected to take five years to complete.

During 2022 we continued work on the project, mainly analysing responses to the consultation on our Discussion Paper on the Mental Element in Homicide (DP No 172), which closed on 15 October 2021.

Whilst the Discussion Paper drew a healthy number of consultation responses from legal professionals, academics and interested organisations, no consultation responses were received from members of the public. We consider that, in such a moral, contentious and complex area of law, opinions from the public are required to inform our development of policy proposals for law reform. As such, after a procurement exercise, the company BritainThinks were commissioned in August 2022 to conduct some limited qualitative public opinion research on behalf of the Commission.

At the end of 2022 we received the findings of that public opinion research from BritainThinks which we are now using, along with the consultation responses to our Discussion Paper, to inform our policy development.

During 2023 we will finalise our policy and prepare our recommendations for reform to the Scottish Ministers. We hope to be in a position to publish our final report and draft Bill by the end of 2023.

## Item 5 - Aspects of family law

### Project Team



**Kate Dowdalls KC**, Commissioner

**Lorraine Stirling**, Project Manager

**Laura Beattie**, Legal Assistant

The Aspects of family law project was included at the start of our Tenth Programme of Law Reform and we anticipate that it will continue into the Eleventh Programme. A decision was made to approach the project in phases, due to the number of aspects of family law suggested as in need of reform.

Phase 1 began in July 2018 and examined the rights of cohabitants on the breakdown of their relationship. It was completed in November 2022, with the publication of the Report on Cohabitation (Scot Law Com No 261).

We spent much of 2022 drafting our Report and instructing a Bill to implement our recommendations for reform. The Report includes recommendations in particular for: amendment of the definition of “cohabitant”, in section 25 of the Family Law (Scotland) Act 2006; updating the language in sections 26 and 27 (presumption of ownership of certain household goods and in certain money and property); providing guidance to the court on how to determine a claim for financial provision in section 28, by requiring the court to make orders that are justified on the application of

guiding principles and reasonable having regard to the resources of the cohabitants; widening the range of orders available to the court to include property transfer orders and orders for payment over a maximum period of six months for the relief of serious financial hardship; allowing the court to vary or set aside an agreement between cohabitants if it was not fair and reasonable when entered into; allowing the court to accept a late claim on special cause shown (subject to a two year deadline); and allowing cohabitants to agree to extend the one year time limit for making a claim, to allow them to negotiate with a view to settling their claims for financial provision. These reforms, if implemented, will result in a clearer, more principled and modern framework for determining claims, thereby encouraging fairer outcomes for separating cohabitants.

We began the scoping exercise for the second phase of our project towards the end of 2022: a review of the civil remedies available for domestic abuse. We are focusing, in particular, on whether the existing legislative framework is adequate and sufficient to provide victims of domestic abuse with prompt and effective protection and remedies. We anticipate that phase two will be completed during the Eleventh Programme.

## Item 6 - Surrogacy

### Project Team



**Professor Gillian Black**, Commissioner  
**Alison Fraser (until November 2022), then Alastair Smith**, Project Manager  
**Nic Vetta**, Legal Assistant

We are carrying out a joint project on surrogacy with the Law Commission of England and Wales. As the subject matter is reserved in terms of the Scotland Act 1998, the Department of Health and Social Care has asked us to undertake the project as a reference and to work alongside the Law Commission. For further details please see page 19 under "Joint projects".

## Item 7 - Damages for personal injury

### Project Team

**The Rt Hon Lady Paton**, Chair  
**Alison Fraser**, (until November 2022)  
 Project Manager  
**Shy Zvouloun**, Legal Assistant

Work on our project on damages for personal injury began in the summer of 2019.

We published a discussion paper in February 2022. The paper covered four topics, three of which related to provisions in Part II of the Administration of Justice Act 1982. They are: (i) awards of damages in respect of services provided to and by an injured person (sections 8 and 9) and specifically whether the restriction to relatives should continue to apply; (ii) what deductions should be made from awards of damages (section 10); and (iii) whether there is a problem with the way that awards of provisional damages operate in the context of asbestos-related disease claims and, if so, how this may be resolved.

The fourth topic covered by the discussion paper is the management of awards of damages made for the benefit of children.

The discussion paper received 32 responses from a range of individuals and stakeholders, including legal professionals, insurers, organisations, academics, politicians, and members of the public.

The team is currently working on the drafting of a policy paper on the basis of the responses to the discussion paper. We hope to be in a position to finalise and publish a report and draft Bill by the end of 2023.

## References from Scottish Ministers

In addition to our work on topics included in our programmes of law reform, we also sometimes undertake work in response to references from Ministers.

### Tenement law: compulsory owners' associations

#### Project Team



**Professor Frankie McCarthy**, Commissioner  
**Stephen Crilly**, Project Manager  
**Val Pyataev**, Legal Assistant

On 10 January 2022 the Commission received a reference from Scottish Ministers in relation to the establishment of compulsory owners' associations in Scottish tenement properties.

This reference followed from the Final Recommendations Report of the Scottish Parliamentary Working Group on the Maintenance of Tenement Scheme Property published in June 2019.

Our project forms part of a large programme of Scottish Government work detailed in its Housing to 2040 strategy. Since receipt of the reference the project team has set up a regular series of meetings with relevant contacts in Scottish Government in order that both parties are aware of ongoing, interrelated work.

We have also carried out an initial literature review, including material on the policy background to the Working Group recommendations, and have examined primary and secondary legal sources. This has resulted in the production of a list of key issues which the project will seek to address. The list is available to view on the project webpage.

A series of scoping meetings with key stakeholders were held throughout the spring and summer. We met with 19 organisations which included a mix of relevant industry representative bodies, tenement owner representative and advisory bodies, representatives from a number of local authorities, property managers, and individual tenement owners.

We have put in place an advisory group of legal experts to support our work on the project, and held the first meeting of the group in August 2022.

We have completed an initial phase of comparative research culminating in a series of three comparative law webinars which took place in the autumn. These were delivered by legal academics across six different jurisdictions and were open to the public to attend. Recordings of the webinars are available on the SLC YouTube channel.

Research has also been taken forward on two foundational issues: legislative competence and human rights, and these will be explored further in a discussion paper which we aim to publish in autumn 2023. We estimate that a report on this project will be published in spring 2026.

## Joint projects

The Commission also undertakes joint law reform projects with the Law Commission of England and Wales.

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

### Automated Vehicles

#### *Project Team*

**David Bartos**, Commissioner

**Alastair Smith**, Project Manager

This joint project has involved a wide-ranging review of the legal framework surrounding the safe and effective deployment of automated vehicles on British roads. The review was requested by the UK Government's Centre for Connected and Autonomous Vehicles (CCAV) and ran from 2018 to 2022. It aims to make the UK a premier development location for self-driving vehicles.

We published three joint Consultation Papers. The first examined the law in a range of different fields, including criminal offences and civil liability, how safety can be assured both before and after automated driving systems are deployed, and how current road rules might need to be adapted to take account of artificial intelligence. The second focused on passenger services and public transport; it invited comments on a suggestion that there be a single national scheme of operator licensing for highly automated road passenger services (or HARPS), and asked how they would be integrated with public transport. Questions of accessibility, notably for those with a disability, and of road pricing were also raised.



The third consultation paper contained proposals for a comprehensive new legal framework aimed at ensuring the safety of automated vehicles. This includes a safety assurance scheme for monitoring performance and software updates throughout a vehicle's life; a clear definition of the responsibilities of drivers, 'users in charge', and fleet owners; and obligations on manufacturers and technology developers in relation to the safety of their vehicles. There are also proposals for some new criminal offences, for example relating to interference with automated vehicles, and wrongdoing by corporate bodies and their senior management.

Our joint report was published in January 2022 (Law Com No 404; Scot Law Com No 258).

## Surrogacy

### Project Team



**Professor Gillian Black**, Commissioner  
**Alison Fraser (until November 2022), then Alastair Smith**, Project Manager  
**Nic Vetta**, Legal Assistant

A joint project on surrogacy is item 6 of our Tenth Programme of Law Reform and is also the subject of a reference from the Department of Health and Social Care.

Surrogacy describes the situation where a surrogate bears a child on behalf of another person or persons who intend to become the child's parent or parents for all purposes. The intended parents can become the legal parents of the child born to the surrogate by obtaining a parental order from a court after the child has been born.

In June 2019, we published a joint Consultation Paper - Building families through surrogacy: a new law. The consultation period closed in October 2019 and we received 680 responses, including 30 from respondents in Scotland. Much of 2021 was spent examining the detailed aspects of the proposal in light of these responses and further developing our proposals for law reform. During 2022 we continued to work towards preparing a joint report and a draft Bill for publication in spring 2023.

The main proposal in the consultation paper is a new pathway to parenthood which would take a different approach to the current route of obtaining a parental order and better reflect the intention of the surrogates and the intended parents and the purpose of the surrogacy arrangement. Under the new pathway, intended parents would be recognised as the legal parents without going through the current judicial process of seeking a parental order. It would also provide for important conditions and safeguards to protect the interests of any child born of the surrogacy arrangement, the surrogate, and the intended parents. The parental order route would still remain, and we have also considered reform of elements of this process in line with the issues raised in the consultation paper.

Further details about the proposed new pathway and other key provisional proposals can be found in the joint consultation paper and accompanying summary.

### **Insurance contract law**

The Consumer Insurance (Disclosure and Representations) Act 2012, and the Insurance Act 2015 as amended by the Enterprise Act 2016, Part 5, have given effect to all of our recommendations to date in our joint project on insurance with the Law Commission of England and Wales.

There is one remaining issue which the Commissions wished to address, namely insurable interest in the context of life-related insurance. In 2018 we consulted on a working draft of a Bill the aim of which was to address issues in the current law of insurable interest which appear to be hindering the development of socially useful life-related insurance products. Since then, competing priorities at the lead Commission, the Law Commission of England and Wales, have meant that it has not yet been possible to bring this project to a conclusion. We will consider the continued case for this work as and when conditions and resources allow.

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)



**Executive Assistants: Wilma Campbell and Scott Macdonald**

## Progress on our law reform projects: summary

### Projects under our Tenth Programme

PROJECT	POSITION AT THE END OF 2022
<b>Heritable securities</b> (Tenth Programme, item 2)	A discussion paper on pre-default issues was published in June 2019, and a second discussion paper on default and post-default issues was published in December 2021. Consultation on this second paper closed on 1 April 2022. We are working towards publication of a third discussion paper on sub-securities and non-monetary obligations in mid-2023.
<b>Aspects of leases</b> (Tenth Programme, item 3)	Our Report on Aspects of Leases: Termination was published in October 2022.
<b>Homicide</b> (Tenth Programme, item 4)	We are analysing responses to the discussion paper on the Mental Element in Homicide published in May 2021, with a view to developing policy and working towards publication of a report and draft Bill by the end of 2023.
<b>Aspects of family law</b> (Tenth Programme, item 5)	A report and draft Bill on Cohabitation was published in November 2022. The scoping exercise for Phase 2, considering the law of civil remedies for domestic abuse, began thereafter.
<b>Surrogacy</b> (Tenth Programme, item 6)	See table below under “Joint projects with the Law Commission of England and Wales”.
<b>Damages for personal injury</b> (Tenth Programme, item 7)	Our discussion paper was published in February 2022; we are working towards publication of a report and draft Bill by the end of 2023.

### References from Scottish Ministers

PROJECT	POSITION AT THE END OF 2022
<b>Tenement law: compulsory owners’ associations</b> (reference received in January 2022)	The work is ongoing and we are working towards publication of a discussion paper in autumn 2023.

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

PROJECT	POSITION AT THE END OF 2022
<b>Automated vehicles</b>	A joint report was published in January 2022.
<b>Surrogacy</b>	Policy considerations within the Commissions have been ongoing with a view to producing a joint report and draft Bill in spring 2023.
<b>Insurance contract law</b>	Work is suspended due to other priorities at the Law Commission of England and Wales.



First full in-person Commission meeting after the easing of the Covid-19 restrictions, showing physical distancing: January 2022



## Consolidation and statute law repeals

### Consolidation

#### Project Team

The Rt Hon Lady Paton, Chair

Consolidation is an important way of tidying up the statute book. Work on consolidation 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.

Any consolidation project undertaken by the Commission requires agreement with the Scottish Government, including in particular the provision of support and resources for any project. A Government policy lead 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.

The Commission did not carry out any work this year on consolidation of legislation.

### Statute law repeals

#### Project Team

The Rt Hon Lady Paton, Chair

One of the Commission's functions is to recommend the repeal of obsolete legislation. We undertake this work jointly with the Law Commission of 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, the 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 Government. The Commission is not in the meantime carrying out any further statute law repeal work.



**3 of our Legal Assistants: Laura Beattie, Nic Vetta and Shy Zvouloun**

## Promoting law reform

The Commission works to promote law reform, not only in Scotland and the UK but internationally.

As the independent law reform body for Scotland we liaise closely with Scottish Ministers: in particular the Cabinet Secretary for Justice and Veterans, the Minister for Community Safety, and the Minister for Parliamentary Business; and with Scottish Government officials. We assist them in the implementation of Commission recommendations in devolved areas.

In relation to reserved areas of Scots law we liaise with UK Ministers, the Office of the Secretary of State for Scotland, and with the Advocate General for Scotland and his officials.

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. For example, members of the Delegated

Powers and Law Reform Committee visited us at 140 Causewayside in May 2022; and in September 2022 our Chair and two former lead Commissioners, Professor Gretton and Professor Steven, gave evidence to the Committee on the Moveable Transactions (Scotland) Bill.

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 also derive much assistance from academics and others with an interest in our project work. We are very grateful to all who serve as members of our advisory groups on law reform projects, and to those who respond to our consultations. Their contributions contribute significantly to the law reform process.

The Commission has contacts with law reform bodies throughout the world, and a close relationship in particular with the Law Commission of England and Wales with whom we carry out joint law reform projects. We also liaise regularly with law reform bodies in Northern Ireland, Ireland and Jersey, and in the Commonwealth.

## Publications planned for 2023

In 2023 the Eleventh Programme of Law Reform is due to begin, and it is expected that a number of ongoing projects from the Tenth Programme will be continued. We will also continue work with the Law Commission of England and Wales on joint law reform projects referred to us by UK Ministers.

The Commission aims to publish:

- a third discussion paper on heritable securities (in mid-2023);
- a discussion paper on tenement law (in autumn 2023);

- a report and draft Bill on damages for personal injury (by the end of 2023); and
- a report and draft Bill on the mental element in homicide (by the end of 2023).

As regards joint law reform work with the Law Commission of England and Wales, we intend to publish a joint report and a draft Bill on surrogacy in spring 2023.

## Commissioners and staff

(as at 31 December 2022)

### Commissioners

The Rt Hon Lady Paton, *Chair*\*

David Bartos

Professor Gillian Black\*

Kate Dowdalls KC

Professor Frankie McCarthy

### Interim Chief Executive

Charles Garland

### Project Managers (Solicitors)

Stephen Crilly

Alison Fraser (until 9 November 2022)

Graham McGlashan

Alastair Smith\*

Lorraine Stirling

### Legal Assistants

Laura Beattie

Val Pyataev

Nic Vetta

Shy Zvouloun

### Librarian

Sarah Ragg

### Office Manager

Helen Stevenson\*

### Executive Assistants

Wilma Campbell

Scott Macdonald

### Administrative Staff

Gordon Speirs

\* Part-time staff

## The Commission's running costs 2022

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2022 were offset by payments received from Historic Environment Scotland for use of part of our office accommodation. In addition to the expenditure figures below we report our spending on matters such as public relations, overseas travel, hospitality and entertainment, and external consultancy on our website as required by section 31 of the Public Services Reform (Scotland) Act 2010.

EXPENDITURE	YEAR TO 31 DECEMBER 2022
<b>Salaries – Commissioners</b> (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£657,621.00
<b>Salaries – Chief Executive and legal staff</b> (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£768,207.00
<b>Salaries – Administrative staff</b> (including national insurance contributions and superannuation payments)	£149,975.00
<b>Accommodation</b> (including maintenance, rates and utilities)	£84,335.00
<b>Printing and publishing</b> (including costs of books and library purchases, binding, maintenance of equipment, publishing costs of publications, photocopying and stationery)	£21,731.00
<b>Telephone and postage</b>	£4,087.00
<b>Travel and subsistence</b>	£248.00
<b>Miscellaneous</b> (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£50,731.00
<b>Total</b>	£1,736,935.00

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

For more information about the Commission please contact:

Charles Garland, Interim Chief Executive

**Scottish Law Commission**

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This Report is available on our website.





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