

Scottish Law Commission

(SCOT. LAW COM. No. 70)

**SIXTEENTH
ANNUAL REPORT
1980–1981**

*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
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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

The Honourable Lord Hunter, V.R.D, *Chairman*,¹
Mr. A. E. Anton, C.B.E.,
Mr. R. D. D. Bertram,
Dr. E. M. Clive,²
Mr. J. Murray, Q.C.

The Secretary of the Commission is Mr. R. Eadie. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

¹Lord Hunter's term of office expired on 30 September 1981; his successor as Chairman of the Commission is the Hon. Lord Maxwell.

²Appointed as Commissioner with effect from 1 January 1981.

SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15TH JUNE, 1981

*To: The Right Honourable the Lord Mackay of Clashfern, Q.C.,
Her Majesty's Advocate*

In accordance with 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 Sixteenth Annual Report of the Scottish Law Commission.

J. O. M. HUNTER
Chairman

A. E. ANTON

R. D. D. BERTRAM

E. M. CLIVE

JOHN MURRAY

R. EADIE, Secretary

30 September 1981.

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

SIXTEENTH ANNUAL REPORT

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I. THE COMMISSION

1.1 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. The present Commissioners are:

The Honourable Lord Hunter, V.R.D., <i>Chairman</i> ¹	(Full-time)
Mr. A. E. Anton, C.B.E.	(Full-time)
Mr. R. D. D. Bertram	(Part-time)
Dr. E. M. Clive	(Full-time)
Mr. J. Murray, Q.C.	(Part-time)

The Secretary of the Commission is Mr. R. Eadie.

1.2 Professor Emeritus Sir Thomas Smith retired from membership of the Commission on 31 December 1980. Professor Smith, who had been a Commissioner for fifteen years, was the last serving original member of either of the two Law Commissions established by the Law Commissions Act 1965. He rendered outstanding service to this Commission both nationally and internationally, and during the final years of his appointment carried out many of the Chairman's duties in addition to his own. It is gratifying that the services of Professor Smith to the law of Scotland during a career of great variety and distinction have recently been recognised by the conferment on him of a knighthood. At the beginning of 1981 we welcomed as a Commissioner, Dr. E. M. Clive, lately Professor of Scots Law at the University of Edinburgh, who has specialised particularly in Family Law subjects.

STAFF

1.3 Our legal staff consists of one full-time and two part-time Parliamentary Draftsmen, our Secretary and eight other qualified lawyers. During the year we received assistance from a senior member of the staff of the Crown Office and from Depute Procurators Fiscal who have undertaken research on our behalf into criminal law matters. During the summer vacation of 1980 we employed three graduates in law and one final year honours law student to assist with our research work. We wish to thank them for their assistance. Our non-legal staff remains at eleven.

PREMISES—LIBRARY

1.4 In our last two annual reports² we referred to the increasingly cramped conditions of our library and to the negotiations that have been taking place with a view to our obtaining the necessary additional accommodation to the rear of our existing premises. We are disappointed to have to report that we have still not obtained access to the rear premises. Nevertheless, as a result of recent discussions with senior officers of the responsible Government agencies, we are hopeful that the negotiations will be satisfactorily concluded in the near future. We trust that the further specific undertakings given in this regard by the agency principally concerned will be fulfilled, as conditions in our existing library are continuing to deteriorate. There will soon be barely

¹Lord Hunter's term of office expired on 30 September 1981; his successor as Chairman of the Commission with effect from 1 October 1981 is the Hon. Lord Maxwell.

²(1979) Scot. Law Com. No. 56, para. 4; (1980) Scot. Law Com. No. 61, para. 1.3.

enough space for the storage of books, let alone for proper reading facilities or for the re-arrangement and re-cataloguing of books.

1.5 We and our legal staff continue to have access to the University of Edinburgh Law Library for a modest annual payment. This arrangement has been most beneficial to us and we again express our appreciation of the co-operation and assistance which we have received from the University and its officers, including in particular the Law Librarian, Miss M. E. Sturgeon. But we again emphasise that although access to the University Library has been invaluable to us, and will continue to be necessary for the foreseeable future on account of the very wide scope of its contents, the availability of these facilities in no way lessens the need to have within our own premises a library adequate to meet our normal requirements.

MEETINGS

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

II. GENERAL

2.1 During the period covered by this report, satisfactory progress has continued to be made on a number of projects and particularly on major projects covered by the Commission's published programmes of law reform. In the course of the period, publication as part of our programme work on Family Law of our report on Occupancy Rights in the Matrimonial Home and Domestic Violence was followed after a relatively short interval by publication of a Government Bill which incorporated a substantial proportion of the reforms which we had recommended. We have followed with interest the progress of the Matrimonial Homes (Family Protection) (Scotland) Bill and have given some informal assistance with this measure at various stages. We regret that the Bill did not incorporate the system of matrimonial home notices which was our preferred solution to meet the conveyancing problems and protect the position of the spouse without title to the matrimonial home. We have remained of the opinion that this would have been the best and most effective solution, but despite this criticism, we are pleased to see that there is a reasonably good prospect of the major parts of these important reforms recently recommended by the Commission being enacted before the end of the present Session of Parliament. Changes in the law following from our report on Powers of Judicial Factors, which was published during the period under review, have already found their way into the Statute Book in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980. We also published during this period a report on Section 5 of the Damages (Scotland) Act 1976, which we hope will assist in the removal of procedural difficulties which have arisen under that section. We note further that reforms based on an earlier report of the Commission² submitted during 1978 were given legislative effect in the Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980.

2.2 We will very soon be completing and submitting a report on personal Bankruptcy and certain related topics of Insolvency and Company Liquidation,

¹(1978) Scot. Law Com. No. 52,

together with a very substantial draft Bill. As a result, it will be possible to redeploy internally a proportion of the Commission's resources, and in so doing to review certain of our priorities. Experience with the Bankruptcy project has once more demonstrated that when a single large programme subject is nearing the stage of a report with draft clauses, it may absorb a very substantial proportion of the resources available to a Commission of this size. One inevitable consequence is serious interruption and delay of other work on which the Commission is engaged. An early priority will therefore be to resume work or to increase resources on several smaller and medium-sized projects, progress on which has been adversely affected in this way.

2.3 The submission of our report on Bankruptcy¹ will mark the completion of a major item in our Second Programme of Law Reform.² We will follow with interest the development of legal policy in this area of law, which, in recent years, has been under active consideration not only in Scotland but also in England and Wales and in the EEC. We consider it important that any legislative reforms affecting the Scots law of personal Bankruptcy should have regard to the existing and distinctive Scottish law and practice in that and related fields, which, in many of their aspects, differ greatly from those of England and Wales. It is considered essential that any reforms should cohere with the principles of the many areas of Scots law with which Bankruptcy interacts, including, for example, other parts of Mercantile Law, the law and practice of Diligence, the law of Property and of Obligations, including Rights in Security, Private International Law and certain aspects of Criminal Law. For these and other reasons, we think it appropriate to refer again, and with some emphasis, to the considerations developed in Part II of our Fourteenth Annual Report³ and to submit that Departmental responsibility for this field of law and for the preparation of legislation affecting it should be restored to the Scottish Office.

2.4 In addition to the forthcoming report on Bankruptcy Law, we expect very shortly also to submit reports on Aliment and Financial Provision⁴ and on Incest,⁵ both of which will be accompanied by draft Bills. We attach considerable importance to the reforms which will be proposed in the report and draft Bill on Aliment and Financial Provision. These reforms are designed not only to clarify and modernise these important areas of law and practice, but also to express principles and guidelines which should serve to give a somewhat different direction and content to financial provision on divorce. This branch of law continues to present social, legal and political problems which are both difficult and sensitive, but it is considered that in Scotland the time has come for further legislation. The report and draft Bill on Incest will propose reforms in that part of our Criminal Law which are widely regarded as long overdue. In the preparation of this report we have benefited greatly from the ready and most positive assistance given on consultation by a wide variety of commentators, and we express the hope that early legislation will be found practicable.

¹The report was submitted to you on 12 August 1981.

²(1968) Scot. Law Com. No. 8.

³(1979) Scot. Law Com. No. 56, para. 11.

⁴Our report on Aliment and Financial Provision was submitted to you on 17 July 1981. We were greatly assisted in the preparation of this report by research into the nature and scale of financial provision on divorce carried out for us by the Central Research Unit of the Scottish Office.

⁵Our report on the Law of Incest was submitted on 25 September 1981.

2.5 In pursuance of our Third Programme of Law Reform,¹ we have again devoted substantial resources to various matters in the realm of Private International Law. In this domain, we have continued to work closely with the Law Commission for England and Wales and are about to submit jointly with them a report on the Council of Europe Conventions on Foreign Money Liabilities and on the Place of Payment of Money Liabilities.² We have also, in response to invitations by the Department of Trade, submitted comments on a proposed EEC Directive on the Laws, Regulations and Administrative Provisions relating to Insurance Contracts, on the recommendations of the Law Commission for England and Wales in their report *Insurance Law: Non Disclosure and Breach of Warranty*, and on the 1980 UNCITRAL Convention on Contracts for the International Sale of Goods. A member of the Commission took part in the international discussion of the UNCITRAL Convention at the draft stage.

2.6 We have also been able, in the course of the period under review, to publish a number of consultative memoranda. In this connection we would emphasise that the documents which until now have been called by the Commission 'Memoranda' are not intended to express and do not express the concluded views of the Commission. These documents are purely consultative. Their object is to elicit from persons and bodies consulted, and from the general public, comment and information which will guide and assist the Commission in their eventual formulation of legal policy and in submitting considered advice and recommendations at a later stage by means of reports, often with draft Bills annexed, designed to bring about reforms of the law or sometimes to establish that no change in the law is considered necessary. We would also emphasise that any specific proposals for reform of the law contained in consultative memoranda of the Commission are provisional only and often merely tentative. They do not, in contradistinction to reports, bind the Commission to any particular view or to any particular course. The process of consultation activated by our consultative memoranda is thus, and has always been, a reality. The Commission will often, as a result of comments received from those consulted and also for other reasons, re-examine provisional or tentative proposals contained in a consultative memorandum, and, if satisfied that comments on or criticisms of these proposals are sound, reconsider them. As there are indications that the use of the name 'Memorandum' on its own in the title of these documents may have led to misapprehensions in some quarters as to their true purpose, particularly amongst persons or bodies who are not regularly consulted about proposals of the Commission, it has been decided that such memoranda should in future be issued under the full name of '*Consultative Memorandum*'.

2.7 During the period covered by this report, the Commission has published consultative memoranda in a number of fields. Five of these were published during October 1980, covering large parts of the law and practice of Diligence and raising difficult problems of legal and social policy as well as technical questions of considerable complexity. Comments in response to consultation are still awaited from several important bodies. Until these are received, it will not be possible for the Commission to reach considered and final decisions

¹(1973) Scot. Law Com. No. 29.

²The report was submitted on 24 June and published on 28 July 1981.

on the main questions put out for consultation or to prepare the necessary recommendations on a substantial number of strongly disputed issues. However, subject to this, the preparation of a report or reports, probably with a draft Bill annexed, will proceed with the least possible delay. In reaching the necessary decisions, the Commission will be much aided by information contained in a series of valuable research reports prepared or commissioned on our behalf by the Central Research Unit of the Scottish Office. Six of these research reports were published during the period under review and the publication of another two such reports is expected shortly. Two further consultative memoranda in this area of law are in course of preparation. The first of these likely to be completed is concerned with the collection and enforcement of aliment and periodical allowance.

2.8 Consultative memoranda have also been published during this period on the law of Evidence, which is a programme subject, and on Irritances in Leases, a subject which was referred to us by the Secretary of State for Scotland under section 3(1)(e) of the Law Commissions Act 1965 in consequence of certain observations in the speeches of their Lordships in *Dorchester Studios (Glasgow) Limited v Stone and Another*.¹ A consultative paper on Classification of Prescription and Limitation in Private International Law was published during the period under review, and a brief consultation paper is on the point of being issued on the subject of Financial Provision after Foreign Divorce.² It is hoped that the latter paper will enable us to consider possible reforms in this domain contemporaneously with the Law Commission for England and Wales. Consultative memoranda on Illegitimacy and on Civil Liability in relation to Animals are in course of preparation, and it is hoped that the drafting of a consultative memorandum on Family Property Law can be embarked on during the coming year. Our work on this last subject will be greatly assisted by a fact-finding and attitude survey carried out for us by the Office of Population Censuses and Surveys.

2.9 We continue to make progress on our programme work in the law of Obligations. Reports are being prepared in several areas covered by the series of consultative memoranda published in pursuance of that programme, including the Constitution and Proof of Voluntary Obligations. A report on Time Limits in Actions for Personal Injuries is also in course of preparation, and it is intended to incorporate in that report material arising out of the consultation paper on Classification of Prescription and Limitation in Private International Law which has already been referred to. We have noted the temporary character of recent Government legislation relating to the main subject which we propose to cover in the report.

2.10 We continue to be somewhat concerned about the present position regarding the consolidation of legislation applying to Scotland only; this was drawn to the attention of the Statute Law Committee in December 1980 and is referred to in greater detail elsewhere in this report.³ While progress continues to be made for the time being, it seems possible that in the foreseeable future the systematic consolidation of Scotland-only measures may be interrupted. We would regard this as most unfortunate. While reliance

¹1975 S.C. (H.L.) 56.

²This consultation paper was issued on 1 July 1981.

³See para. 3.38 below.

on reprints in *Statutes in Force* may in some instances be acceptable as a short-term expedient, we do not consider that this can under present circumstances be regarded as in any sense a substitute for the process of consolidation. In this connection we consider that, as a result of recent legislation, there is now a growing need for re-consolidation of the Scottish legislation on Criminal Procedure.

2.11 It is satisfactory to report the enactment during the period under review of the Statute Law (Repeals) Act 1981. This is a very substantial statute law revision measure which has removed from the body of statute law large quantities of obsolete material. Statute law revision, although apparently unexciting, is a relatively important aspect of the work of law reform and, having regard to modern costs of printing and publishing, has substantial economic value.

III. PROGRESS OF LAW REFORM PROJECTS

3.1 The position at 15 June 1981 in each of our current law reform projects is set out in the following paragraphs. The main subject headings are presented in alphabetical order, though we continue to attach greatest importance to our 'programme' work, that is, to projects undertaken in accordance with our published programmes¹ of law reform. In the main headings set out below, programme subjects are denoted by the use of an asterisk.

BANKRUPTCY*

(Second Programme, Item 6)

3.2 We stated in our last annual report² that we intended to complete our comprehensive report on personal Bankruptcy Law during the period covered by this annual report. Preparation of the report has taken us rather longer than we expected, but the work has reached its final stages and the completed report, with a draft Bill annexed, will be submitted to you soon.³ We take this opportunity of thanking again the many members of the accountancy and legal professions who have greatly assisted us in the formulation of our recommendations for an improved system of Bankruptcy Law.

CRIMINAL LAW

General

3.3 As in previous years, the bulk of our work in the field of the Criminal Law has arisen from requests made to us by Government Departments and other bodies for advice under section 3(1)(e) of the Law Commissions Act 1965 or from proposals for reform of the law submitted to us under section 3(1)(d) of that Act. In addition, so far as our resources have allowed, we have

¹First Programme, (1965) Scot. Law Com. No. 1; Second Programme, (1968) Scot. Law Com. No. 8; Third Programme, (1973) Scot. Law Com. No. 29.

²(1980) Scot. Law Com. No. 61, para. 3.2.

³The report was submitted to you on 12 August 1981.

*Denotes programme subject.

continued to respond to consultation by the Law Commission for England and Wales on various aspects of that Commission's work, and to consider the possible implications for Scotland of the proposals made by them under their programme subject 'Codification of the Criminal Law'.

Incest

3.4 Our Consultative Memorandum No 44—*The Law of Incest in Scotland*, attracted a large number of useful comments. A report, with draft Bill annexed, containing our proposals for reform of this area of the Criminal Law, is nearing completion and we expect to submit it shortly.¹

Mental Element in Crime

3.5 Work is proceeding on the preparation of a draft consultative memorandum on the above subject.

Conspiracy—Mobbing and Rioting

3.6 Some additional research has been carried out on aspects of the law relating to conspiracy (including mobbing and rioting). As we indicated in our last annual report,² however, our proposed consultative memorandum on the Mental Element in Crime may have some bearing on this subject. Accordingly, having regard to the extent to which our limited resources are already committed to work on other projects, we propose to defer detailed consideration of the law on conspiracy and related issues until work on that consultative memorandum has been completed.

Coercion

3.7 We are currently considering a detailed research paper on the law relating to coercion which was prepared for us by a Depute Procurator Fiscal.

DAMAGES ARISING FROM PERSONAL INJURIES AND DEATH*

(Second Programme, Item 10)

3.8 Our report on *Damages for Personal Injuries: (1) Admissibility of Claims for Services: (2) Admissible Deductions*³ following upon Memorandum No. 21, was submitted to your predecessor on 20 April 1978 and published on 18 July 1978. No legislation has yet been introduced following on this report.

3.9 In 1979, in response to representations made to us, we issued a short consultation paper concerning the practical effect of section 5(6) of the Damages (Scotland) Act 1976, which was said to place an unreasonable duty on pursuers, in actions for damages arising out of a fatal accident, to trace and serve notices of the action on all persons with a potential claim. We submitted to you on 6 February 1981 our report on *Section 5 of the Damages (Scotland) Act 1976*. The report was published on 28 April 1981.⁴

¹Our Report No. 69 on *The Law of Incest in Scotland* was submitted on 25 September 1981.

²(1980) Scot. Law Com. No. 61, para. 3.7.

³(1978) Scot. Law Com. No. 51.

⁴(1981) Scot. Law Com. No. 64.

*Denotes programme subject.

DILIGENCE*

(Second Programme, Item 8)

3.10 As foreshadowed in our last annual report,¹ we published on 23 October 1980 five consultative memoranda on Diligence, namely—

Consultative Memorandum No. 47: General Issues and Introduction	
”	” No. 48: Poidings and Warrant Sales
”	” No. 49: Arrestment and Judicial Transfer of Earnings
”	” No. 50: Debt Arrangement Schemes
”	” No. 51: Administration of Diligence.

Comments were invited on Memorandum No. 48 by 31 March 1981 and on the remaining memoranda by 30 June 1981. Unfortunately, several bodies have been or are experiencing difficulty in submitting comments by these dates, and we are still awaiting comments from important bodies even on Memorandum No. 48. We hope, however, to be in a position shortly to proceed with the preparation of a report or reports on the law of Diligence.

3.11 In the year under review, we have also made progress with the preparation of the last two consultative memoranda on Diligence to which we referred in our last annual report.² Of these, we propose to issue the consultative memorandum on collection and enforcement of aliment and periodical allowance as the next memorandum in the series. Research is still being undertaken on the final memorandum relating to miscellaneous diligence topics, the scope of which was outlined in general terms in Part V of Memorandum No. 47.

3.12 As mentioned in previous annual reports,³ our consultative memoranda on Diligence are complemented by eight projects of research into the scale and social aspects of diligence initiated by the Central Research Unit of the Scottish Office. The results of the research were made available to us when preparing Memoranda Nos. 47 to 51 and are set out in the following series of ‘Reports for the Scottish Law Commission’, viz:

- No. 1 The Nature and Scale of Diligence
- No. 2 Characteristics of Warrant Sales
- No. 3 Debt Recovery through the Scottish Sheriff Courts
- No. 4 Arrestments of Wages and Salaries—a Review of Employers’ Involvement
- No. 5 The Origins and Consequences of Default—An Examination of the Impact of Diligence
- No. 6 Survey of Defenders in Debt Actions in Scotland
- No. 7 Debt Counselling—An Assessment of the Services and Facilities Available to Consumer Debtors in Scotland
- No. 8 Debt Recovery—A Review of Creditors’ Practices and Policies⁴

¹Fifteenth Annual Report ((1980) Scot. Law Com. No. 61), para. 3.11.

²*Ibid.*, para. 3.12.

³See especially our Thirteenth Annual Report ((1979) Scot. Law Com. No. 55), para.37.

⁴Research Reports Nos. 1–5 and 7 are available as Central Research Unit Papers and copies can be obtained from the Central Research Unit, Scottish Office, New St. Andrew’s House, Edinburgh EH1 3SZ. Research Report No. 8 is expected to become available soon, also as a Central Research Unit Paper. Research Report No. 6, however, has been published by Her Majesty’s Stationery Office. (October 1981, price £12.80.)

*Denotes programme subject.

Research Reports Nos. 1 to 5 and No. 7 were published in the year under review, and it is expected that the remaining two reports will be published shortly.

EVIDENCE*

(First Programme, Item 1)

3.13 On 16 September 1980 we circulated to a wide range of interested bodies and individuals our Consultative Memorandum No. 46—*The Law of Evidence*, with a request for comments to be submitted to us by 31 March 1981. Work has now commenced on analysing the comments so far received.

FAMILY LAW*

(Second Programme, Item 14)

Occupancy Rights in the Matrimonial Home and Domestic Violence

3.14 Following publication on 17 July 1980 of our report¹ on the above subject, the Government introduced into Parliament in January 1981 the Matrimonial Homes (Family Protection) (Scotland) Bill. This Bill gives effect to most of the recommendations contained in our report and it is anticipated that it will reach the Statute Book during the 1980–81 Parliamentary Session.

Aliment and Financial Provision

3.15 Work continued during the year on the preparation of a report on this important topic following upon our Memorandum No. 22².

Financial Provision after Foreign Divorce

3.16 Following the decision of the House of Lords in *Quazi v Quazi* [1979] 3 WLR 833, the Law Commission for England and Wales recently examined in their Working Paper No. 77,³ the powers of the court to award financial provision following a foreign decree of divorce. Although there is no Scottish case law on this subject, section 5(1) of the Divorce (Scotland) Act 1976 limits the powers of the court to make an award of financial provision to actions of divorce in the Court of Session. Nor has the Court any power to make such an award following a decree of nullity, whether granted in the Court of Session or elsewhere. We propose, therefore, to publish a brief consultation paper⁴ examining these problems and to invite comments.

Family Property Law

3.17 The Office of Population Censuses and Surveys have now furnished us with a draft of their report following the fact-finding and attitude survey of Family Property Law in Scotland referred to in our last annual report.⁵ We understand that this report will be published shortly. Some of the findings have already been of use to us in the preparation of our report on Aliment

¹(1980) Scot. Law Com. No. 60.

²This report was submitted to you on 17 July 1981.

³Published in the autumn of 1980.

⁴This consultation paper was issued on 1 July 1981.

⁵(1980) Scot. Law Com. No. 61, para. 3.17.

*Denotes programme subject.

and Financial Provision.¹ Work on the preparation of a consultative memorandum on Family Property Law will commence when resources become available.

Illegitimacy

3.18 A consultative memorandum on certain legal issues concerning the status of illegitimacy is being prepared; it is hoped that it will be ready for publication by the end of 1981 or early in 1982.

OBLIGATIONS: CORPOREAL MOVEABLES*

(First Programme, Item 2)

3.19 As we pointed out in our last annual report,² this heading covers a very wide area of the law of Scotland: the law of Obligations and the law of Property are, strictly speaking, distinct chapters of the law, but in questions of transfer of and security over moveables the law of Obligations frequently has effects on Property Law.

Corporeal Moveables

3.20 As we indicated in our last annual report,³ we have decided to postpone discussion of any further report based on the series of consultative memoranda on corporeal moveables⁴ until such time as it can be reviewed more appropriately in co-ordination with completed work on security over moveables.

Security over Moveables

3.21 Our Working Party on Security over Moveable Property,⁵ which was appointed to consider the question of the introduction into Scots law of a system of security over moveable property based upon the recommendations in Part 5 of the Report on Consumer Credit (The Crowther Report),⁶ was subsequently invited to consider the specific question of security in connection with the financing of North Sea oil operations. The Working Party has recently produced a report on that question which is currently under consideration by the Commission.⁷ The Working Party will revert later this year to the completion of the work which it was initially invited to undertake.

Constitution and Proof of Voluntary Obligations

3.22 On 10 March 1977 we issued six consultative memoranda⁸ on the constitution and proof of voluntary obligations. Consultation on this series of memoranda has been completed and a draft report is in the course of preparation.

¹See para. 3.15 above.

²(1980) Scot. Law Com. No. 61, para. 3.19.

³(1980) Scot. Law Com. No. 61, para. 3.20.

⁴Consultative Memoranda Nos. 24-31.

⁵A list of the members of the Working Party appears in Appendix I to this report.

⁶Cmnd. 4596.

⁷The Working Party's report has now been submitted to you with a note of our observations thereon.

⁸Consultative Memoranda Nos. 34-39.

*Denotes programme subject.

Defective Consent and Consequential Matters

3.23 Work has been proceeding on the preparation of a draft report following upon our Consultative Memorandum No. 42—*Defective Consent and Consequential Matters*. However, the commitment of resources to matters of greater priority has meant that we have been unable to make substantial progress with the preparation of this report in the year under review.

Defective Expression

3.24 On 30 November 1979, we published Consultative Memorandum No. 43—*Defective Expression and its Correction* which is concerned with defectively expressed contracts. Central to the issues discussed in the memorandum, we provisionally propose that a new legal remedy be introduced into Scots law to enable courts to correct latent defective expression in a contract and simultaneously to enforce the contract as correctly expressed. We asked for comments to be submitted to us by 30 May 1980, but it was only recently that the last set of comments was received. Analysis of the comments made to us on this consultative memorandum has been undertaken and we hope to proceed shortly to the preparation of a report.

Penalties and Irritancies

3.25 Because of the commitment of resources to matters of higher priority, we regret that no further work has been carried out meantime on the general law relating to irritancies, penalty clauses and liquidated damages clauses in contracts. A consultative memorandum will be drafted when resources become available.

Illegality

3.26 A research paper has been prepared on this topic and the preparation of a consultative memorandum will proceed when resources permit.

Civil Liability in Relation to Animals

3.27 We have continued to make progress on this topic, though we have not yet completed the consultative memorandum as we had planned. We are hopeful, however, that it will be published towards the end of 1981, or early in 1982.

Legal Capacity of Minors and Pupils

3.28 In our last annual report¹ we stated that further progress could not be made with work on this subject until difficult problems had been resolved in other areas of law, including Guardianship. This remains the position, but it is hoped that it will be practicable to resume work on this project in the course of the coming year.

PRESCRIPTION AND LIMITATION OF ACTIONS*

(First Programme, Item 3)

Limitation of Actions in Personal Injury Claims

3.29 On 17 April 1980 we issued our Memorandum No. 45 on *Time-Limits in Actions for Personal Injuries*. Work has begun on the preparation of a

¹(1980) Scot. Law Com. No. 61, para. 3.28.

*Denotes programme subject.

report on this topic, and instructions have been given to the draftsman for the preparation of a draft Bill to accompany the report. It is intended that this report will cover the subject matter of both Memorandum No. 45 and the consultation paper referred to in the next paragraph.

Prescription and Limitation in Private International Law

3.30 Following on the publication of the Law Commission's Working Paper No. 75—*Classification of Limitation in Private International Law*—we produced a consultation paper on the Scottish position for restricted circulation.¹ We have now received comments from all those consulted, and it is intended to publish our conclusions in the report following upon Memorandum No. 45.²

PRIVATE INTERNATIONAL LAW*

(Third Programme)

EEC Convention on the Law applicable to Contractual Obligations

3.31 This Convention has now been finalised. It was opened for signature in Rome on 19 June 1980 and signed on the same day by the plenipotentiaries of the following Member States: Belgium, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg and The Netherlands. The Convention and a report upon it by Professors M. Giuliano and P. Lagarde have been published in the Official Journal of the European Communities.³ The Convention has not as yet been signed by the United Kingdom.

Proposed EEC Convention on the Law applicable to Non-Contractual Obligations

3.32 In our last annual report⁴ we referred to a proposal that negotiations might be resumed at a later date within the European Communities on a Convention relating to Non-Contractual Obligations. These negotiations now appear unlikely to be resumed in the near future. It is proposed, however, that the Joint Working Party of the two Law Commissions⁵ referred to in our last annual report should remain in being with a view to considering the reform of the present choice of law rules within the United Kingdom for Tort/Delict.

Hague Conference: International Child Abduction

3.33 In our last annual report⁶ we mentioned that the Hague Conference on Private International Law was to consider at its XIVth Session in October 1980 a draft Convention on the Civil Aspects of International Child Abduction. At Commission I, which considered this draft Convention, the United Kingdom was again represented by Mr. R. L. Jones, formerly of the Home Office, and by Mr. Anton, who chaired the meeting. The draft Convention was finalised

¹This consultation paper was issued on 31 July 1980.

²See para. 3.29 above.

³Official Journal No. L 266 of 9 October 1980 (Convention) and Official Journal No. C 281 of 31 October 1980 (Report).

⁴(1980) Scot. Law Com. No. 61, para. 3.32.

⁵A list of the members of this Joint Working Party appears in Appendix I to this report.

⁶(1980) Scot. Law Com. No. 61, para. 3.33.

*Denotes programme subject.

and, immediately after the signature of the Final Act on 25 October 1980, the Convention was signed on behalf of Canada, France, Greece and Switzerland. The Convention will be taken into account by the two Law Commissions in the course of their examination of the law relating to assumption of jurisdiction in child custody cases and the recognition of custody decrees.¹

Conflicts of Jurisdiction affecting the Custody of Children

3.34 We referred to this subject in our last annual report.² As we then explained, we have reached agreement with the Law Commission for England and Wales on the main issues in this field. The two Commissions have had to divert resources to the completion of other reports, but it is intended to proceed to a report on the above subject whenever resources can be allocated to the project.

Recognition of Foreign Nullity Decrees

3.35 The Joint Working Party referred to in our last annual report³ has met and made progress towards the preparation of a consultative memorandum on this subject.

Foreign Money Liabilities

3.36 On the recommendation of the Joint Working Party referred to in our last annual report,⁴ the two Law Commissions agreed to proceed without further consultation to prepare a report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972). This report is virtually completed.⁵ It is understood that the Law Commission for England and Wales propose to produce a working paper, unrelated to the two Conventions, dealing with certain issues (primarily of a procedural character) concerned with Foreign Money Liabilities. The issues in question do not arise, or do not arise with the same force, in Scots law. We, therefore, do not at present propose to prepare a similar paper, though we will reconsider the matter following consultation on the Law Commission's working paper.

SUCCESSION*

(Second Programme, Item 7)

3.37 We explained in our last annual report⁶ that no work was being done on this subject at present, principally because of the commitment of resources to other subjects, but also because we thought it advisable to defer systematic consideration of the law of Succession until our study of Family Property Law was further advanced. This remains the position.

¹See para. 3.34 below.

²(1980) Scot. Law Com. No. 61, para. 3.34.

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

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

⁵The report (Scot. Law Com. No. 66; Law Com. No. 109) was submitted to you on 24 June and published on 28 July 1981.

⁶(1980) Scot. Law Com. No. 61, para. 3.38.

*Denotes programme subject.

STATUTE LAW

Consolidation

3.38 As in previous reports, we comment on current progress under the following heads:

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

*First Programme*¹

Court of Session—Preliminary consultation has begun on the basis of a first print of a Bill. The process of consultation will probably be lengthy, and there is no prospect of a Bill being introduced in the present Session of Parliament.

*Second Programme*²

As a result of the enactment of the Education (Scotland) and Solicitors (Scotland) Bills in the 1979–80 Parliamentary Session,³ the Second Programme has now been completed.

*Third Programme*⁴

Work on three of the items in this Programme (Adoption, Slaughterhouses and Water) has been completed.⁵ The position with regard to the remaining eight items is as follows:

(1) *Building legislation*—We have agreed that work on this consolidation should be deferred in view of the fact that the principal Act (the Building (Scotland) Act 1959) has been reprinted, as amended, in *Statutes in Force*.

(2) *Rents*—Amended instructions, taking into account the changes in the law resulting from the Tenants' Rights, Etc., (Scotland) Act 1980, have recently been received from the Scottish Office. Work on a consolidation Bill will commence when the services of a Draftsman become available.

(3) *Other items*: An indication has yet to be given by the Scottish Office as to when instructions may be received with regard to the other six items in the Programme. We have been advised that the delay has resulted mainly from the need to concentrate available Departmental resources on matters of greater priority, including Government legislation, and that manpower constraints associated with recent cuts in public expenditure have contributed to the Departments' difficulties. It is hoped that the position will improve to some extent in the future as a result of representations made by your Department to the Scottish Office.

Future Programme

Despite the delay which has arisen in relation to the Third Programme, we consider that there is a good case for publishing a Fourth Programme of Consolidation and Statute Law Revision. We remain willing to prepare

¹(1966) Scot. Law Com. No. 2.

²(1973) Scot. Law Com. No. 27.

³See our Fifteenth Annual Report, (1980) Scot. Law Com. No. 61, para. 3.39.

⁴(1978) Scot. Law Com. No. 46.

⁵See (1980) Scot. Law Com. No. 61, para. 3.39.

and submit a brief programme to you for your approval. Pressure for the preparation of a further programme of consolidation under section 3(1)(d) of the Act of 1965 will inevitably increase if instructions for some at any rate of the six outstanding items under our Third Programme of Consolidation are not received at a reasonably early date, or if it is proposed that further consolidation Bills should be prepared in areas where work by the Commission has not been approved under existing programmes of consolidation and statute law revision. In advance of publication of a new programme, work has already begun, at the request of the Scottish Office and with your approval, on the preparation of a Bill to consolidate the legislation relating to Foster Care in Scotland, and a first print of that Bill has recently been produced. It is hoped to make further progress with this consolidation Bill once there is a reasonable expectation of the topic appearing in a published programme in the near future.

(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:

Overseas Development and Co-operation Act 1980
Animal Health Act 1981
Film Levy Finance Act 1981
Judicial Pensions Act 1981
National Film Finance Corporation Act 1981
Public Passenger Vehicles Act 1981

(2) Bills have been introduced into Parliament to consolidate the enactments relating to:

Betting and Gaming Duties
Broadcasting
New Towns
Trustee Savings Banks

(3) Bills on the following subjects are currently in course of preparation:

Civil Aviation
Companies
Housing Associations
Industrial Development
Industrial Training
Insurance Companies
Litter
Medical
Pilotage
Representation of the People
Reserve Forces (Protection of Civil Interests)
Road Traffic Regulation
Weights and Measures

Statute Law Revision

3.39 The Tenth Joint Report¹ of the two Law Commissions on Statute Law Revision was published on 10 December 1980. This report was implemented in the Statute Law (Repeals) Bill which received the Royal Assent on 21 May

¹(1980) Scot. Law Com. No. 63; Law Com. No. 106.

1981. We have commenced work in co-operation with our colleagues in the Law Commission for England and Wales on the Eleventh Joint Report on Statute Law Revision. As we indicated in our last annual report,¹ we are hoping to direct a greater part of our effort on the Eleventh Report to matters of more direct concern to Scotland.

OTHER MATTERS

Breach of Confidence

3.40 As we explained in our last annual report,² we do not consider that the time is yet ripe for us to make further progress on this project following upon our Memorandum No. 40—*Confidential Information*—which we issued in April 1977. There are a number of other topics, relating to various aspects of privacy, which have recently been under consideration in various quarters, and on which have recently been under consideration in various quarters, and on which Government policy decisions are awaited—notably freedom of information, official secrets, defamation and data protection. We will be reviewing the position, however, when the Law Commission for England and Wales publish their proposed report on this subject.

Irritancies in Leases

3.41 A consultative memorandum³ on the above topic was published on 30 April 1981 with a request for comments to be submitted to us by 31 July 1981. There has been a good response to this request to date.

Married Women's Policies of Assurance

3.42 The Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980,⁴ which substantially implements the recommendations made in our report⁵ to you, received the Royal Assent on 29 October 1980.

Powers of Attorney

3.43 We hope to resume work later in the year on powers of attorney (a subject on which Scotland has no equivalent to the Powers of Attorney Act 1971). As we indicated in our Fifteenth Annual Report,⁶ we intend to consider whether an examination of the law relating to both powers of attorney and judicial factors should be included in a future law reform programme.

Judicial Factors

3.44 Our report on *Powers of Judicial Factors*⁷ was published on 3 July 1980. The proposals contained in this report have already been implemented by section 8 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1980.⁸ With a view to carrying out a wider examination of the subject of judicial

¹1980) Scot. Law Com. No. 61, para. 3.41.

²(1980) Scot. Law Com. No. 61, para. 3.43.

³Consultative Memorandum No. 52.

⁴1980 c. 56.

⁵(1978) Scot. Law Com. No. 52.

⁶(1980) Scot. Law Com. No. 61, para. 2.1.

⁷(1980) Scot. Law Com. No. 59.

⁸1980 c. 55.

factors, we have invited an academic to prepare a research paper for us on this subject.

Agricultural Holdings

3.45 We understand that the research paper being prepared by Mr. A. G. M. Duncan of the University of Edinburgh on the subject of actions of ejection and removings¹ will also deal with relevant aspects of the law relating to the termination of leases of agricultural holdings.

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

3.46 We explained in our last annual report² that we had still to consider further certain questions arising from the comments received on our Consultative Memorandum No. 33—*Law of Rights in Security: Company Law: Registration of Charges (Scotland)*. That remains the position.

Actions of Ejection and Removings

3.47 Mr. A. G. M. Duncan, Senior Lecturer, Department of Scots Law, University of Edinburgh, has virtually completed his research paper on the law of ejection and removings and we expect to receive this paper shortly.³ One of the preliminary matters to be considered after the paper is received will be whether this project should subsume the project on agricultural holdings.⁴

Miscellaneous: Advice to Government Departments etc.

3.48 Under this heading we report progress on certain items which do not readily fit into any of the other classifications adopted in this report. We include in particular various matters of an international character on which our advice has been sought by Government Departments, but we stress that this list is not exhaustive. The provision of advice to Government Departments, particularly on matters of European and Private International Law, continues to place considerable demands on our resources. In some instances such matters have been the subject of formal references to us under section 3(1)(e) of the Law Commissions Act 1965 and have resulted in our undertaking law reform projects. Matters in this category are dealt with elsewhere in this report. In other cases, however, the requests have been dealt with informally.

(a) *Proposed EEC Insurance Directive: Contract Law*

On 9 March 1978 we were invited by the Department of Trade to comment on a draft Directive on the Laws, Regulations and Administrative Provisions relating to Insurance Contracts. This Directive was initially examined by our Working Party⁵ on Contract Law. The Working Party was also invited to examine a working paper⁶ by the Law Commission for England and Wales on non-disclosure and breach of warranty in contracts of insurance. We submitted our comments on the Directive in its latest

¹See para. 3.47 below.

²(1980) Scot. Law Com. No. 61, para. 3.49.

³The research paper has now been submitted to us.

⁴See para. 3.45 above.

⁵A list of members of this Working Party appears in Appendix I to this report.

⁶Working Paper No. 73 (published February 1979).

version (16 December 1980), and on the Law Commissions's recommendations in their report—*Insurance Law: Non-disclosure and Breach of Warranty*,¹ on 9 April 1981.

(b) *UNCITRAL—Convention on Contracts for the International Sale of Goods*

On 25 November 1980, we were invited by the Department of Trade to comment on the 1980 UNCITRAL Convention on Contracts for the International Sale of Goods, having already been consulted on the Convention during its draft stages. Our comments (which generally supported signature and ratification of the Convention) were submitted to the Department of Trade on 7 May 1981.

(c) *EEC draft Directive on Reservation of Title to Corporeal Moveables*

We explained in our last annual report² that our understanding was that an EEC draft Directive on Reservation of Title to Corporeal Moveables was at present being examined by a Working Party of the EEC Commission. We are informed that a revised version of the draft Directive has been examined by the Working Party and that the EEC Commission hopes to produce a further re-draft for the Working Party's consideration.

IV. CONSULTATION

THE LAW COMMISSION FOR ENGLAND AND WALES

4.1 We continue our close co-operation with the Law Commission for England and Wales. During the year under review we have worked together on various matters, including the EEC Conventions on Contractual and Non-Contractual Obligations,³ Conflicts of Jurisdiction affecting the Custody of Children⁴ and Foreign Money Liabilities.⁵ The annual Joint Meeting was held in Cardiff on 7 and 8 May 1981. We wish to record our appreciation of the generous hospitality provided by University College Cardiff.

Codification of the Criminal Law

4.2 Elsewhere in this report,⁶ we refer to our interest in the work of the Law Commission for England and Wales on their major programme subject 'Codification of the Criminal Law'. We are grateful to the Law Commission for continuing to keep us informed of the progress of their work in this field and for affording us the opportunity to comment from time to time on the possible implications for Scotland of certain of their projects.

Working Party on Contract Law

4.3 Our Working Party⁷ on Contract Law has remained in being for the purpose of considering working papers published by the Law Commission for England and Wales and such other matters as may be referred to it from time

¹Law Com. No. 104 (published October 1980).

²(1980) Scot. Law Com. No. 61, para. 3.51(b).

³See paras. 3.31 and 3.32.

⁴See para. 3.34.

⁵See para. 3.36.

⁶See para. 3.3.

⁷A list of the present members of this Working Party appears in Appendix I to this report.

to time. It has not, however, had occasion to meet during the past year. On the retirement of Professor (now Sir Thomas) Smith the chairmanship of the Working Party has been assumed by Mr. J. Murray Q.C. Sir Thomas remains a member in his capacity as our consultant on Obligations.

OTHER LAW REFORM ORGANISATIONS

4.4 We have maintained our contact with law reform organisations in various 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

4.5 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.

4.6 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 Advocates' Library and the Signet Library.

SEMINARS, COLLOQUIA ETC.

4.7 Professor Smith attended the Sixth Commonwealth Law Conference held in Lagos, Nigeria, on 18 to 22 August 1980 and delivered a 'keynote' address on the subject of the reception of the Common law in the Commonwealth.

4.8 Our Chairman, two other Commissioners and our Secretary attended a seminar on law reform held at the Civil Service College, Sunningdale, on 8 to 10 October 1980. Lord Scarman presided at this seminar, which was attended by senior administrators and lawyers from various Government Departments (including your own Departments and the Scottish Office) as well as by representatives of the two Law Commissions. We welcomed the opportunity which the seminar presented to exchange views about the role of the Commissions and other law reform agencies and the problems which sometimes arise concerning implementation of our proposals.

4.9 Our Chairman and two other Commissioners, together with two members of our legal staff, attended the Annual Conference of the Scottish Legal Action Group held in Edinburgh on 28 February 1981. The proceedings included a lively discussion of the subject of recovery of debt and its legal and social consequences—a subject which is of particular interest to us in view of our work on the law of Diligence.¹

4.10 Mr. Bertram and a member of our legal staff attended the Annual Conference of the Law Society of Scotland held at Aviemore on 9 and 10 May 1981. We were also represented at the Society's Annual General Meeting held in Perth on 3 April 1981.

¹See paras. 3.10 to 3.12 above.

V. MISCELLANEOUS

DEPARTMENTAL AND OTHER COMMITTEES

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

Statute Law Committee

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

Insolvency Law Review Committee

5.3 Professor R. B. Jack continues to attend, as Scottish observer, the meetings of the Insolvency Law Review Committee set up by the Department of Trade to review all aspects of the insolvency laws of England and Wales.

Consultative Committee on Insolvency Law Review

5.4 The Consultative Committee on Insolvency Law Review,¹ which we set up in 1978 under Professor Jack's chairmanship, remains in being for the purpose of expressing a Scottish view when the recommendations of the Insolvency Law Review Committee are being considered by the Government.

SCRUTINY OF BILLS

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

APPENDICES

5.6 Membership of the various Working Parties etc. appears in Appendix I. A list of papers which have been prepared by the Commission 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.

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

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

*Working Party on Security over Moveable Property*¹

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
Professor W. A. Wilson	University of Edinburgh

Secretary: Mr. A. J. Sim, Scottish Law Commission²

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 of 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 ³	Department of Trade, Scotland

Secretary: Mr. J. Clarkson, 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 Kerr		Law Commission
Mr. A. E. Anton, C.B.E.		Scottish Law Commission
Dr. P. M. North		Law Commission
Joint Secretaries	} Mr. R. Eadie Mr. R. H. Streeten	Scottish Law Commission
		Law Commission

Joint Working Party on Private International Law (Tort/Delict)

Professor A. L. Diamond (Chairman)	Institute of Advanced Legal Studies
Mr. A. E. Anton, C.B.E.	Scottish Law Commission
Mr. T. Norman Biggart	Solicitor, Glasgow
Mr. L. Collins	Solicitor, London
Mr. H. F. Macdiarmid	Scottish Courts Administration
Mr. C. G. J. Morse	King's College, London
Dr. P. M. North	Law Commission

Secretary: Mr. R. J. Dormer, Law Commission

¹The membership of the Working Party has been supplemented, for the purpose of its examination of the question of security in connection with North Sea oil operations, by the addition of Mr. J. T. Cameron, Q.C., Mr. T. M. Lawrie, Solicitor, Glasgow, and Mrs. L. Lilleker of the Office of the Solicitor to the Secretary of State for Scotland. We regret to report that Mr. G. R. H. Reid, formerly a member of the Working Party, died on 9 October 1980.

²For the purpose of the Working Party's deliberations on the question of security in connection with North Sea oil operations, Mr. J. Clarkson acted as Secretary.

³Mr. E. S. Robertson retired in March 1981.

Joint Working Party on Recognition of Foreign Nullity Decrees

Mr. A. E. Anton, C.B.E.	} Joint	Scottish Law Commission
Dr. P. M. North		} Chairmen
Mr. M. Hatcher		Law Commission
Mr. J. Clarkson		Scottish Law Commission
Mr. S. M. Cretney		Law Commission
The Hon Lord Dunpark		Court of Session
Mr. J. Siddle		Foreign and Commonwealth Office

Secretary: Miss A. E. Tutton, Law Commission

Joint Working Party on Foreign Money Liabilities

Dr. P. M. North (Chairman)	Law Commission
Mr. A. E. Anton, C.B.E.	Scottish Law Commission
Mr. R. D. D. Bertram	Scottish Law Commission
Mr. R. Brodie	Scottish Courts Administration
Mr. R. Cassels	Royal Bank of Scotland
Mr. A. Cope	Law Commission
Miss N. O'Flynn	Department of Trade
Mr. A. Parry	Foreign and Commonwealth Office
Mr. P. K. J. Thomson	Lord Chancellor's Department

Secretary: Mr. R. J. Dormer, Law Commission

Working Party on Contract Law

Mr. J. Murray, Q.C. (Chairman)	Scottish Law Commission
Mr. R. D. D. Bertram	Scottish Law Commission
Professor R. Black	University of Edinburgh
Mr. M. G. Clarke	Faculty of Advocates
Dr. W. W. McBryde	University of Aberdeen
Mr. J. C. Mullin	Scottish Law Commission
Professor Emeritus Sir Thomas Smith, Q.C.	Consultant on Obligations

Secretary: Mr. H. R. M. Macdonald, Scottish Law Commission

APPENDIX II

I SCOTTISH LAW COMMISSION—REPORTS, ETC. PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE (AS AT 15 SEPTEMBER 1981)

	<i>Commission No.</i>	
1965	1	First Programme of Law Reform
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1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965–66
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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
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1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967–68
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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
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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)
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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 for England and Wales.

Commission

	<i>No.</i>	
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)
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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)	
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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)
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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)
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1976	41	Tenth Annual Report 1974–75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
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1977	43	Eleventh Annual Report 1975–76
	44	*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd. 6719)
	45	*Report on Liabilities for Defective Products (Cmnd. 6831)
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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 on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd. 7178)

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Commission

	<i>No.</i>	
	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 Parliament and other Instruments (Cmnd. 7235)
	54	*Customs and Excise Management Bill—Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd. 7418)
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1979	55	Thirteenth Annual Report 1977–78
	56	Fourteenth Annual Report 1978–79
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1980	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd. 7688)
	59	Report on Powers of Judicial Factors (Cmnd. 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979–80
	62	*Judicial Pensions Bill—Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd. 8097)
	63	*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd. 8089)
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1981	64	Report on Section 5 of the Damages (Scotland) Act 1976
	65	*Trustee Savings Banks Bill—Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd. 8257)
	66	*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd. 8318)

2 SCOTTISH LAW COMMISSION—CONSULTATIVE MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM¹

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

¹The publications in this series are now referred to by their full title of '*consultative memorandum*' but in order to avoid undue repetition they will continue to be listed in this Appendix in the form set out.

*Produced jointly with the Law Commission for England and Wales.

- 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 Souse
- 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
- 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.)

*Produced jointly with the Law Commission for England and Wales.

- 1979 Memorandum No. 43—Defective Expression and its Correction
- 1980 Memorandum No. 44—The Law of Incest in Scotland
 Memorandum No. 45—Time-Limits in Actions for Personal Injuries
 Memorandum No. 46—The Law of Evidence
 Memorandum No. 47—First Memorandum on Diligence: General Issues and Introduction
 Memorandum No. 48—Second Memorandum on Diligence: Poidings and Warrant Sales
 Memorandum No. 49—Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings
 Memorandum No. 50—Fourth Memorandum on Diligence: Debt Arrangement Schemes
 Memorandum No. 51—Fifth Memorandum on Diligence: Administration of Diligence
- 1981 Memorandum No. 52—Irritancies in Leases

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—OTHER PUBLISHED DOCUMENTS

- 1979 Research Paper on the Law of Evidence of Scotland by Sheriff I. D. Macphail

5 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
- 1978 Consultation Document—Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive
- 1979 Consultation Paper—Bankruptcy: Gibson v. Hunter Home Designs Ltd
 Consultative Note on section 5(6) of the Damages (Scotland) Act 1976
- 1980 Consultation Paper—Prescription and Limitation in Private International Law
- 1981 Consultation Paper—Financial Provision after Foreign Divorce

6 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 for England and Wales.

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 15 September 1981)

<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 Liferents (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 Commission) (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c. 83)
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 10) (Cmnd. 4004)	17.4.69	Trustee Savings Banks Act 1969 (c. 50).
Interpretation of Statutes (Joint Report with the Law Commission) (Scot. Law Com. No. 11)	11.6.69	None.
Exemption Clauses in Contracts—First Report: Amendment 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	Electricity (Scotland) Act 1979 (c. 11).
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	Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980 (c. 56).
Interpretation Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 53) (Cmnd. 7235)	8.6.78	Interpretation Act 1978 (c. 30).
Customs and Excise Management Bill (Joint Report with the Law Commission) Scot. Law Com. No. 54) (Cmnd. 7418)	7.12.78	Customs and Excise Management Act 1979 (c. 2).
Report on Lost and Abandoned Property (Scot. Law Com. No. 57)	16.1.80	None.
Education (Scotland) Bill (Scot. Law Com. No. 58) (Cmnd. 7688)	2.4.80	Education (Scotland) Act 1980 (c. 44).
Report on Powers of Judicial Factors (Scot. Law Com. No. 59) (Cmnd. 7904)	3.7.80	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), section 8.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot. Law Com. No. 60)	17.7.80	None.
Judicial Pensions Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 62) (Cmnd. 8097)	27.11.80	Judicial Pensions Act 1981 (c. 20).
Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 63) (Cmnd. 8089)	10.12.80	Statute Law (Repeals) Act 1981 (c. 19).
Report on Section 5 of the Damages (Scotland) Act 1976 (Scot. Law Com. No. 64)	29.4.81	None.
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 65) (Cmnd. 8257)	11.6.81	None.
Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Joint Report with the Law Commission) (Scot. Law Com. No. 66) (Cmnd. 8318)	28.7.81	None required.

