

SCOTTISH LAW COMMISSION  
(SCOT. LAW COM. No. 33)

**EIGHTH  
ANNUAL REPORT  
1972-73**

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

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

The Honourable Lord Hunter, *Chairman*

Professor A. E. Anton, C.B.E.

Professor J. M. Halliday, C.B.E.

Professor T. B. Smith, Q.C.

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

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

**SCOTTISH LAW COMMISSION**  
**REPORT FOR THE YEAR ENDED 15th JUNE, 1973**

TO: THE RIGHT HONOURABLE NORMAN WYLIE, V.R.D., Q.C., M.P.,  
*Her Majesty's Advocate.*

In accordance with the provisions of section 3(3) as read with section 6(2) of the Law Commissions Act 1965, as amended<sup>1</sup> we have the honour to submit this the eighth Annual Report of the Scottish Law Commission.

J. O. M HUNTER,  
Chairman of The Scottish Law Commission

*23rd November, 1973*

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



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## I. THE COMMISSION

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

The Honourable Lord Hunter, Chairman	(Full-time)
Professor A. E. Anton, C.B.E.	(Part-time) <sup>1</sup>
Professor J. M. Halliday, C.B.E.	(Part-time)
Professor T. B. Smith, Q.C.	(Full-time)
Mr Ewan Stewart, M.C., Q.C.	(Full-time)
The Secretary of the Commission is Mr J. B. Allan.	

2. On 1st October 1972, Professor T. B. Smith, who has served the Commission since its inception as a part-time Commissioner, became a full-time Commissioner.

### STAFF

3. There was no change during this year in our legal staff which consists of two Parliamentary Draftsmen, one on a full-time basis and one employed part-time, our Secretary, and five other qualified lawyers. Our permanent non-legal staff was increased from seven to nine. During the 1972 summer vacation we employed five honours graduates in law in research work and we wish to thank them for their assistance.

### PREMISES

4. We still occupy premises in the Old College of Edinburgh University. As in previous years we must record our thanks for the co-operation we have received from the University. We continue to use the University Law Library, and that of the Centre of European Governmental Studies, and we are most grateful to the staffs of these institutions for the help which they give us.

### MEETINGS

5. We have met more frequently than in the previous year. With the co-operation of our part-time Commissioners we have during the past year held full meetings of the Commission twice a month. So far as practicable we have devoted one meeting per month entirely to the consideration of one particular subject.

## II. GENERAL

6. The success of work on law reform must, to some extent at least, be judged by both the quantity and the quality of legislation which has resulted from such work, although it is well to bear in mind that the Law Commissions are purely advisory bodies and therefore have no control over the

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<sup>1</sup> Professor A. E. Anton became a full-time member of the Commission on 1st October 1973.

promotion of legislation. Furthermore the degree of success of law reform legislation can only properly be judged after the quality of the legislation has been tested by practical experience over a considerable number of years. It is nevertheless satisfactory to record that during the year under review or within a few weeks of the end of that year three major measures of law reform to which the work of the Commission made a substantial contribution, reached the Statute Book.

7. The first of these measures was the Supply of Goods (Implied Terms) Act 1973, which was the product of the Joint Report of the two Law Commissions on *Exemption Clauses in Contracts: First Report: Amendments to the Sale of Goods Act 1893*. Although some important provisions of this Act are extended to Scotland by means of a Scottish application clause, a device which in principle we deplore, and although doubts have been expressed over the years about the soundness of the application to Scotland of certain principles underlying the Sale of Goods Act 1893, we feel justified in recording that we were able to play an important part in recent reforms in the realm of Sale of Goods and Consumer Protection.

8. The second major reforming measure was the Prescription and Limitation (Scotland) Bill<sup>2</sup>, which is designed to modernise and simplify important and difficult areas of law. Some further work may have to be done in areas affected by this legislation, particularly in the domain of limitation where the Bill did not attempt to do more than consolidate with certain amendments one aspect of limitation. The reforms, so far as relating to prescription, were wide-ranging and fundamental, as the numerous repeals of legislation enacted during the last five centuries testify.

9. The third major measure of law reform to reach the Statute Book was the Domicile and Matrimonial Proceedings Bill<sup>3</sup>. Although this Bill was presented to Parliament as a Private Member's Bill, the two Law Commissions had made a major contribution to the preparatory work. That part of the preparatory work which led to the provisions of the Bill relating to domicile was carried out by a Government Working Party, of which one of our Commissioners and a member of our legal staff were members. The Scottish part of the provisions relating to jurisdiction was substantially based on our Report on *Jurisdiction in Consistorial Causes affecting Matrimonial Status*<sup>4</sup>, which we completed early in the year under review. This part of the Bill and the parallel provisions for England and Wales mark an important advance towards a new basis for jurisdiction in consistorial actions and represent a step towards harmonisation with other European systems of law.

10. In addition we have been working towards a position where we can devote the necessary resources to our large Programme subjects. In order to achieve this we have concentrated on the completion of a number of

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<sup>1</sup> (1969) Scot. Law Com. No. 12. Law Com. No. 24.

<sup>2</sup> This Bill received the Royal Assent on 25th July 1973.

<sup>3</sup> This Bill received the Royal Assent on 25th July 1973.

<sup>4</sup> (1973) Scot. Law Com. No. 25.



partly finished exercises, including the preparation of a Joint Report on the Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses in Contracts for the Supply of Services and other Contracts. We are nearing the completion of our Report on the *Law Relating to Damages for Injuries causing Death* which will be accompanied by draft clauses<sup>1</sup>. We attach great importance to the recommendations for reform of the law of damages which will be contained in this Report, since they are designed to correct a number of anomalies and injustices which are for the most part peculiar to the law of Scotland and which have attracted serious criticism. It is our hope that time will be found for early legislation to effect these necessary reforms, and we regard the proposed changes which we have recommended for Scotland as immediate measures designed to bridge gaps and to repair serious defects in our existing law, which will in no way prejudice any proposals on legislation which may in due course emerge from the Royal Commission recently set up to consider Civil Liability and Compensation for Personal Injury<sup>2</sup>. We hope shortly to complete our Report and draft Clauses on Presumption of Death.

11. We have continued to keep under review proposals for reform of the law of divorce and, as we have pointed out in several Annual Reports, the absence of legislation for Scotland in this particular field will present serious difficulties in carrying out the systematic examination of other aspects of Family Law on which we hope shortly to embark. Our work on *Jurisdiction in Consistorial Causes affecting Matrimonial Status* and the legislation on this subject which followed our Report<sup>3</sup> and that of the Law Commission for England and Wales has emphasised the difficulties likely to be caused by delay in enacting legislation to reform the substantive law of divorce.

12. Later in this Report<sup>4</sup> we refer in detail to our work falling under section 3(1) (e) of the Law Commissions Act 1965, but in particular we wish to mention the preparation of our Report on *Liability for Antenatal Injury*<sup>5</sup>, to which we accorded high priority. Another important exercise on which we were occupied at various periods during the year under review was the preparation of very detailed comments on the Green Paper on Land Tenure Reform.

13. As a result of the work now completed or nearly completed it is possible for us to foresee with greater certainty the probable progress of our work over the next few years, at any rate in large Programme subjects. In the field of Obligations we propose to prepare a series of Memoranda dealing on a systematic basis with areas of law which for one reason or another are thought not to be satisfactory. Work on the first of these Memoranda is advancing but has been interrupted from time to time by other commitments.

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<sup>1</sup> This Report was published on 24th October 1973 (Scot. Law Com. No. 31).

<sup>2</sup> For the terms of reference of this Commission see Hansard, 19th December 1972 (O.R.) Col. 1119.

<sup>3</sup> (1973) Scot. Law Com. No. 25.

<sup>4</sup> See paras. 48-56.

<sup>5</sup> (1973) Scot. Law. Com. No. 30.

14. The preparation of our Report on Insolvency, Bankruptcy and Liquidation with draft clauses will for many months ahead employ a very substantial part of our resources. The necessary contemporaneous examination of the draft EEC Convention on Bankruptcy has added a new dimension of difficulty to this exercise, which is being carried out in close consultation with the Department of Trade and Industry whose expert guidance and assistance we greatly value. It would be desirable if we could make progress on the reform of the law of Diligence, since the recovery of alimentary debt and some other areas of the law of Diligence have an important bearing on certain aspects of Family Law. Our Working Party on Diligence has now made some very welcome progress, but we are concerned that our limited resources in legal staff and the necessity of giving priority to our exercise on Bankruptcy have so far prevented us from servicing this Working Party with adequate research material.

15. We believe that it may soon prove possible for us to proceed with systematic and contemporaneous work on the law of Succession and Family Law. The work on a Memorandum on Succession is planned to begin immediately the Report on Presumption of Death is completed but the projected work on Family Law cannot make substantial progress until the Memorandum on the Legal Capacity of Minors and Pupils has been published. Progress has been made with the drafting of this Memorandum but the scope of the work has tended to widen and it will employ a part of our resources for some little time longer. During the coming months we will be preparing a Memorandum on certain aspects of Privacy in pursuance of your reference to us on this subject under section 3(1)(e) of the Law Commissions Act 1965.

16. The resumé given in the foregoing paragraphs of the work completed in the past year and the work planned for the future makes it clear that the volume of work for which we bear responsibility has continued to increase with the result that our resources have been fully stretched throughout the past year. In some areas of law the problems with which we have to deal have become more complex, and one cause of this has been the entry of the United Kingdom into the Common Market, an event which appears likely to have considerable consequences in the field of law reform. In this latter connection the publication of our Third Programme of Law Reform marks an important stage in the development of the work of both Law Commissions in the field of private international law. The appointment of one of our part-time Commissioners to be a full member of the Commission with effect from 1st October 1973 has proved to be most fortunately timed, since he will be much concerned with work under our Third Programme. In the first place this Commissioner will be closely concerned with the examination of the draft EEC Convention relating to Bankruptcy, Compositions and Analogous Proceedings. An additional member of the legal staff is urgently required to assist him and we understand that this reinforcement will be made available some time during the autumn.

17. In relation to our work on statutory consolidation we have misgivings about the circumstances which led to the discontinuance of work on the consolidation of the Lands Clauses and Roads and Bridges legislation in

view of the time which had been devoted by Scottish Parliamentary draftsmen to preparations for these unsuccessful attempts at consolidation. It seems from our experience in connection with these two exercises that procedure different from that of a Programme Bill may have to be devised to cater for measures which are largely consolidation but which in order to modernise the law or to correct errors in drafting of existing statutes necessarily incorporate amendments of such a character and scope that they cannot be passed into law by means of the present Parliamentary procedures for consolidation even when coupled with Law Commission recommended amendments.

18. Finally we feel we ought to make some reference to the work done by Commissioners that does not fall directly within our statutory functions. Requests are made to us from time to time to permit Commissioners to become members of various Departmental and other Governmental Committees. Examples of such Committees are given in Part VIII<sup>1</sup>. After considering what the Committee has been set up to do we normally accede to such requests if we are satisfied that the Commission ought to be represented or if such action is necessary to ensure adequate Scottish representation. However we would observe that membership of these Committees does make very substantial inroads into the time Commissioners are able to devote to our own work.

### III. LAW REFORM PROGRAMMES

#### 1. FIRST PROGRAMME<sup>2</sup>

##### Item 1 : Evidence

19. In our last Annual Report we stated that we had secured the services of an experienced advocate who had been asked to identify the areas of the law of evidence which should be considered by us with a view to reform and to set out and tabulate the existing statutory provisions to facilitate future consolidation. We expect to receive his Report in the autumn.

##### Item 2 : Obligations

###### (a) *Comprehensive Review*

20. In our last Annual Report we mentioned<sup>3</sup> that we would give priority to our own Programme subject of Obligations. We also mentioned<sup>4</sup> that in relation to our Programme subjects we should plan carefully in advance the order in which particular areas of the law should be considered. We think it preferable in the initial stages to tackle areas which give dissatisfaction to the practitioner and have decided meanwhile to concentrate on clearing up defects and doubtful areas in the Law of Obligations and Moveable Property between which there is a close relation especially in questions of transfer. We have prepared a scheme of work to deal with voluntary obligations; delict; unjustified enrichment and *negotiorum gestio* and corporeal moveables.

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<sup>1</sup> See paras. 84 and 85.

<sup>2</sup> (1965) Scot. Law Com. No. 1.

<sup>3</sup> (1973) Scot. Law Com. No. 28 para 16.

<sup>4</sup> (1973) Scot. Law Com. No. 28 para 7.

(b) *Exemption clauses*

21. On 27th September 1971 we published, jointly with the Law Commission, a Paper<sup>1</sup> containing provisional proposals relating to (i) the exclusion of liability for negligence in the sale of goods and (ii) exemption clauses in contracts for the supply of services and other contracts. A large number of comments have been received and have been studied by the two Commissions. Work is proceeding on the preparation of a Report which, however, will not now be published by the end of 1973 as had originally been hoped.

Item 3: Prescription and Limitation of Actions

22. In our last Annual Report<sup>2</sup> we stated that work was proceeding on the draft clauses of a Bill to give effect to most of the recommendations contained in our Report on *Reform of the Law Relating to Prescription and Limitation of Actions*<sup>3</sup>. This work was duly completed and the Bill was introduced in Parliament in March 1973<sup>4</sup>. Our draft Memorandum on Property and Corporeal Moveables<sup>5</sup> will consider prescription in relation to such property.

Item 5: Interpretation of Statutes

23. There have been no meetings of the Working Party set up by both Commissions to consider, having regard to the recommendations made in the Joint Report on *Interpretation of Statutes*<sup>6</sup>, whether any change is desirable in the law governing the interpretation of treaties.

2. SECOND PROGRAMME<sup>7</sup>

Item 6: Insolvency, Bankruptcy and Liquidation

24. In response to the invitation contained in our published Memorandum No. 16 on Insolvency, Bankruptcy and Liquidation comments on our provisional proposals have now been received from 41 bodies or individuals. These comments are now being studied by the Commission's Bankruptcy team and it is intended to commence the preparation of a Report in the autumn of 1973. It is also intended that proposed clauses for a new draft Bankruptcy Bill should be appended to that Report and work will therefore proceed contemporaneously on the relative draft clauses. As was indicated in our last Annual Report<sup>8</sup>, our work on bankruptcy will require to take account of the provisions of the draft Convention prepared by the Commission of the European Communities relating to Bankruptcy, Compositions and Analogous Proceedings. We are now studying the implications of this Convention upon our domestic law of insolvency with a view to deter-

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<sup>1</sup> Circulated as Scottish Law Commission Memorandum No. 15 and Law Commission Working Paper No. 39.

<sup>2</sup> (1973) Scot. Law Com. No. 28, para. 17.

<sup>3</sup> (1970) Scot. Law Com. No. 15.

<sup>4</sup> This Bill received the Royal Assent on 25th July 1973.

<sup>5</sup> See para. 63.

<sup>6</sup> (1969) Scot. Law Com. No. 11; Law Com. No. 21.

<sup>7</sup> (1968) Scot. Law Com. No. 8.

<sup>8</sup> (1973) Scot. Law Com. No. 28, para. 19.

mining what changes are likely to be necessary in the substantive law of Scotland in order to give effect to provisions of the Convention, and in particular, of that part relating to the Uniform Law.

#### Item 7 : Succession

25. Due to priority being given to other subjects no further progress has been made. In our last Annual Report<sup>1</sup> we indicated that a choice lay between making minor changes or major changes in this branch of the law. We have decided to produce for limited circulation a Memorandum commenting on the Succession (Scotland) Act 1964 and canvassing the method and implications of a scheme of major reform.

#### Item 8 : Diligence

26. Since our last Annual Report<sup>2</sup> two further meetings of the Working Party<sup>3</sup> have been held and two more have been arranged to take place in the months of July and October respectively. Progress has now been made with the examination of a number of the numerous topics which have to be considered by the Working Party. The more detailed the Working Party's examination of the many complex issues involved in the study of the subject of diligence has been, the more convinced have the Working Party become that there are certain major questions relating to the reform of the law of diligence in Scotland which the Working Party cannot consider adequately unless they have available to them a great deal of social and statistical information relating to the background to diligence and, in particular, to the adverse social effects on the debtors and their families of the carrying out of the various existing forms of diligence such as pointing of goods and arrestment of wages. The Commission have therefore had several meetings recently with officials of the Government Departments concerned with a view to the necessary financial authority being obtained to a Social Survey on Diligence being carried out on the Commission's behalf. Approval for the commissioning of such a survey is still awaited but it is hoped that this will soon be forthcoming.

#### Item 9 : Reciprocal Enforcement of Judgments

27. Further consideration of this subject is deferred until the Committee<sup>4</sup>, under the Chairmanship of the Rt. Hon. Lord Kilbrandon, examining the EEC Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments has completed its deliberations.

#### Item 10 : Damages arising from Personal Injuries and Death

28. On 10th April 1972 we published Memorandum No. 17 on "*Damages for Injuries Causing Death*"<sup>5</sup>. During the year we considered the comments received on the Memorandum, and work proceeded on the preparation of a Report<sup>6</sup>.

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<sup>1</sup> (1973) Scot. Law Com. No. 28, para. 20.

<sup>2</sup> (1973) Scot. Law Com. No. 28, para. 21.

<sup>3</sup> A list of members of this Working Party appears in Appendix I to this Report.

<sup>4</sup> See para. 84.

<sup>5</sup> (1972) Memorandum No. 17.

<sup>6</sup> This Report was submitted to the Lord Advocate on 19th July 1973.

#### Item 11 : Presumption of Death

29. We stated in our last Annual Report<sup>1</sup> that the draft Report was reasonably well advanced and that work was proceeding on the preparation of the Bill to be appended to the Report. It is hoped that the Report and appended draft Bill will be completed by the end of 1973.

#### Item 12 : Legal Capacity of Minors and Pupils

30. We have recommenced work on this subject following the suspension of activity mentioned in our last Annual Report<sup>2</sup>. Our Working Party's report on this topic<sup>3</sup> emphasised in general terms the need for us to undertake in due course reform of the law of guardianship and its harmonisation with the common law. Our detailed research and informal consultation pursuant to this recommendation has brought to light many uncommented-on archaisms, anomalies and absurdities as well as practical difficulties in the field of guardianship. Further research is needed before a decision can be made whether to continue with our original intention of issuing a Memorandum in 1973 on legal capacity, or whether the scope of the Memorandum must be widened to include modernisation and reform of the categories, functions and appointment of guardians, and of judicial factors administering the assets of minors and pupils.

31. In the current Parliamentary session, the Guardianship Bill sponsored by the Government has made considerable progress<sup>4</sup>. Though we were not concerned with the preparation of this Bill, we note that it implements the principle of sex-equality in guardianship which is consistent with a proposal made to us by our Working Party.

#### Item 13 : Criminal Procedure

32. We continue to keep in touch with the proceedings of the Departmental Committee on Criminal Procedure under the Chairmanship of Lord Thomson which was set up following upon a recommendation in our Second Programme of Law Reform<sup>5</sup>. We submitted comments to the Scottish Home and Health Department on the Committee's First Report<sup>6</sup> on Criminal Appeals in Scotland which was published on 2nd August 1972. Mr Stewart is a member of the Committee.

#### Item 14 : Family Law

##### (a) *General*

33. In previous Annual Reports<sup>7</sup> we have emphasised the difficulty of systematic reform of Family Law pending divorce reform because so much of the existing law depends on the concept of the matrimonial offence. This is particularly true of the economic aspects of family law—property rights

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<sup>1</sup> (1973) Scot. Law Com. No. 28, para. 24.

<sup>2</sup> (1973) Scot. Law Com. No. 28, para. 25.

<sup>3</sup> See our Sixth Annual Report, Scot. Law Com. No. 23, para. 18.

<sup>4</sup> It received the Royal Assent on 5th July 1973 as the Guardianship Act 1973 (c.29) and comes into force on a day appointed by commencement order.

<sup>5</sup> (1968) Scot. Law Com. No. 8.

<sup>6</sup> (1972) Cmnd. 5038.

<sup>7</sup> See Sixth Annual Report (1970-71) (1971) Scot. Law Com. No. 23, para. 22; Seventh Annual Report (1971-72) (1973) Scot. Law Com. No. 28, para. 27.

and obligations of aliment of financial provision. We have, however, attempted to make progress in fields which can be dealt with separately from divorce. While different views can be entertained on the question whether the centre of gravity of family law is the relationship between husband and wife or the relationship between parent and child, we consider that initially reforms should focus on the relationship between husband and wife. The relationship of parent and child is, however, greatly affected by Item 12 of our Second Programme<sup>1</sup>, and we refer elsewhere in our Report to certain other family law matters<sup>2</sup>.

(b) *Divorce*

34. We have continued to keep the law of divorce under review. In February 1973, Mr William Hamilton M.P. introduced a Private Member's Bill<sup>3</sup> in the House of Commons to effect reforms which had our support,—in particular the replacement of the matrimonial offences by a single ground of irretrievable breakdown evidenced by certain fact situations. We gave assistance in the preparation of the Bill, which resembled closely the other two Private Member's Bills<sup>4</sup> introduced since our Report in 1967—*Divorce: The Grounds Considered*<sup>5</sup>. In addition to our close liaison with the Faculty of Advocates and the Law Society of Scotland on Reform of the Law of Divorce, we initiated consultations in June with representatives of the Church of Scotland. We have also begun consulting with medical and legal interests on the place of incurable mental illness in divorce.

(c) *Jurisdiction in matrimonial cases*

35. Our *Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status*<sup>6</sup>, with a draft Bill appended, was submitted on 28th July 1972 and published on 29th September 1972. It made recommendations for reform of the jurisdiction of the Scottish courts in divorce, nullity and separation actions and certain other consistorial proceedings. In November 1972, Mr Ian MacArthur MP introduced in the House of Commons a Private Member's Bill—the Domicile and Matrimonial Proceedings Bill—to implement the recommendations in our Report along with, among other things<sup>7</sup>, the parallel recommendations of the Law Commission for England and Wales<sup>8</sup>. The Bill has completed most of its stages<sup>9</sup>.

(d) *Domicile of married women*

36. We referred in our last Annual Report<sup>10</sup> to a Departmental Working Party on the domicile of married women of which a Commissioner and a

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<sup>1</sup> See para. 30 above.

<sup>2</sup> See paras. 35-36.

<sup>3</sup> The Divorce Law Reform (Scotland) Bill (1973), printed on 23rd January 1973.

<sup>4</sup> Divorce (Scotland) Bill (1970) presented by Mr Donald Dewar, M.P., printed on 27th January 1970; Divorce (Scotland) Bill (1970) presented by Mr Robert Hughes, M.P., printed on 25th November 1970.

<sup>5</sup> (1967) Scot. Law Com. No. 6; Cmnd. 3256.

<sup>6</sup> (1972) Scot. Law Com. No. 25.

<sup>7</sup> See next paragraph.

<sup>8</sup> Report on *Jurisdiction in Matrimonial Causes* (Law Com. No. 48); (1972) H.C. 464.

<sup>9</sup> The Domicile and Matrimonial Proceedings Act 1973 (c.45) received the Royal Assent on 25th July 1973 and comes into force on 1st January 1974.

<sup>10</sup> (1973) Scot. Law Com. No. 28, paras. 29 and 30.

member of our legal staff were members. The Working Party submitted their Report to you and the other Ministers concerned on 16th October 1972<sup>1</sup>. The Domicile and Matrimonial Proceedings Bill contains provisions to implement that Report by among other things enabling a married woman to have a different domicile from her husband<sup>2</sup>. We are now concerned with certain consequential problems of international law.

(e) *Actions of declarator relating to matrimonial status*

37. In our last Annual Report<sup>3</sup>, we mentioned that we had begun work on certain problems of jurisdiction in actions of declarator relating to matrimonial status. We had in mind declarators recognising foreign divorces<sup>4</sup>. We consider, however, that these problems are not pressing enough to be considered in anticipation of a wider review of the nominate actions of declarator, such as declarator of nullity of marriage. We have commenced work on a review of these actions which need not await divorce reform.

(f) *Miscellaneous actions of damages*

38. We have also commenced work on considering possible reform of a number of actions which may be thought archaic or anomalous and require abolition or reform. These actions include actions of damages for adultery, enticement of spouses or children and breach of promise of marriage. The comparable actions in English law have been abolished<sup>5</sup> and it is right that, in Scotland, consideration should be given to their reform or abolition. While these actions involve alleged breaches of duty in the law of obligations they are traditionally and conveniently considered as part of Family Law.

### 3. THIRD PROGRAMME<sup>6</sup>

#### Item 15 : Private International Law

39. In our last Annual Report we mentioned<sup>7</sup> our need to respond to proposals for the making or harmonisation of law put forward by international bodies and referred to the inevitable increase in this work when the United Kingdom entered the European Communities. One of the areas in which the European Communities envisage harmonisation is in the field of the Conflict of Laws and, in January 1970, the then six Member States established a Working Group to prepare various Conventions in this domain. In January 1973 you requested us to consider how these Conventions could best be examined. At the same time the Law Commission received a similar request from the Lord Chancellor. In view of this request we

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<sup>1</sup> The Report (which is not published) did not, of course, necessarily represent the views of this Commission.

<sup>2</sup> See now Domicile and Matrimonial Proceedings Act 1973, Part I.

<sup>3</sup> (1973) Scot. Law Com. No. 28, para. 31.

<sup>4</sup> See also (1973) Scot. Law Com. No. 25, paras. 169-170.

<sup>5</sup> See Law Reform (Miscellaneous Provisions) Act 1970 (c.33) sections 1-3 implementing in England and Wales recommendations in Report by the Law Commission on *Breach of Promise of Marriage* (Law Com. No. 26) (1969) H.C. 453; see also sections 4 and 5 implementing recommendations in Report on *Financial Provision in Matrimonial Proceedings* (Law Com. No. 25), (1969) H.C. 448 para. 102.

<sup>6</sup> (1973) Scot. Law Com. No. 29.

<sup>7</sup> (1973) Scot. Law Com. No. 28, para. 8.



submitted a Third Programme of Law Reform designed to enable us to take under review, when considered appropriate, rules of private international law relative to Obligations, Property, Family Relationships and to any other matter which may be the subject of negotiations or agreements between Member States of the European Economic Community and of The Hague Conference on Private International Law. In pursuance of this programme and in conjunction with the Law Commission there has been set up a Steering Committee and two Joint Working Parties<sup>1</sup> to examine the draft Convention on the law applicable to Contractual and Non-Contractual Obligations and a proposed Convention on the Law Applicable to Corporeal and Incorporeal Property.

## IV. CONSOLIDATION AND STATUTE LAW REVISION

### 1. CONSOLIDATION

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

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

#### *First Programme<sup>2</sup>*

- (1) *Lands Clauses (Scotland)*—We have completed the examination referred to in our last Annual Report<sup>3</sup> and submitted the results of our researches to the appropriate authority.
- (2) *Town and Country Planning (Scotland)*—This Consolidation Bill received the Royal Assent on 27th July 1972.

41. We are now no longer working on any legislation mentioned in our First Programme of Consolidation and Statute Law Revision. A survey of the progress we made under that Programme is contained in our Second Programme of Consolidation and Statute Law Revision which was published on 28th March 1973<sup>4</sup>.

#### *Second Programme<sup>5</sup>*

42. In our Second Programme we recommend the consolidation of—

- (a) Education (Scotland) Acts;
- (b) Enactments relating to the functions of the Scottish Electricity Boards;
- (c) National Health Service (Scotland) Acts;
- (d) Enactments relating to Solicitors in Scotland;
- (e) Enactments relating to criminal procedure in Scotland;
- (f) The Criminal Law Amendment Acts.

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

<sup>2</sup> (1966) Scot. Law Com. No. 2.

<sup>3</sup> (1973) Scot. Law Com. No. 28, para. 33(a) (2).

<sup>4</sup> (1973) Scot. Law Com. No. 27, paras. 4-8.

<sup>5</sup> (1973) Scot. Law Com. No. 27.

Work has commenced on the consolidation of (1) enactments relating to criminal procedure in Scotland and (2) National Health Service (Scotland) Acts.

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

43. During the year under review the following Acts were passed :

Contracts of Employment Act 1972

National Debt Act 1972

Poisons Act 1972

Matrimonial Causes Act 1973 (The provisions of paragraph 3(2) of Schedule 2—Consequential Amendments—extend to Scotland)

Independent Broadcasting Authority Act 1973.

## 2. STATUTE LAW REVISION

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

45. The Statute Law (Repeals) Bill referred to in our last Annual Report<sup>1</sup> received the Royal Assent on 18th July 1973 as the Statute Law (Repeals) Act 1973 (c.39).

46. In conjunction with our English colleagues work is now proceeding on the preparation of another Bill, which it is hoped to present early in the next session of Parliament.

47. Our Chairman continues to serve on the Statute Law Committee and continues as a member of the Editorial Board<sup>2</sup> which body is responsible for the production of the new perpetually renewable edition of "The Statutes in Force".

## V. OTHER STATUTORY FUNCTIONS

### 1. ADVICE TO GOVERNMENT DEPARTMENTS AND OTHER BODIES

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

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<sup>1</sup> (1973) Scot. Law Com. No. 28, para. 34.

<sup>2</sup> A list of members of the Board appears in Appendix I to this Report.

(1) *Administrative Law*

49. On 23rd August 1971 we issued Memorandum No. 14 on Remedies in Administrative Law<sup>1</sup>. This Memorandum consists of a Paper prepared by Professor Bradley, Professor of Constitutional Law in the University of Edinburgh, who has acted as special consultant, along with a series of questions prepared by the Consultative Committee<sup>2</sup> which was set up to assist us in the examination of this subject. Comment on and criticism of our provisional proposals was invited. Comments were received from Government Departments on 23rd May 1973, and these comments, together with others which had already been received, are now being examined.

(2) *Foreign Money Liabilities*

50. The Working Party<sup>3</sup> set up jointly by the two Commissions is continuing its examination of the problems which may arise if a sum of money is due in a currency other than that of the place of payment or the place where payment is sought. The Working Party is awaiting the results of a preliminary study. Professor Anton acts as a Scottish Consultant to the Joint Working Party.

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

51. The Working Party set up by ourselves and the Law Commission<sup>4</sup> has continued to work on their remit<sup>5</sup> under the Chairmanship of Lord Justice Scarman. It is intended to prepare and circulate in due course a consultative paper. In the meantime, to facilitate its preparation preliminary consultations on special points have been initiated and steps have been taken to ascertain the approach of foreign systems to the problem. Professor Anton and Mr Whitty are our representatives on this Working Party.

(4) *Mental Element in Crime*

52. We hope in due course to submit our advice on the appropriateness of the application to Scotland of the proposals contained in the Law Commission's Working Paper No. 31 on *The Mental Element in Crime* but so far as we are aware there is no reason at present to treat this work as being of high priority.

(5) *Products Liability*

53. In October 1971 we were asked by you "to consider whether the existing law governing compensation for personal injury, damage to property or any other loss caused by defective products is adequate, and to recommend what improvements, if any, in the law are needed to ensure that additional remedies are provided and against whom such remedies should be made available".

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<sup>1</sup> (1971) Memorandum No. 14.

<sup>2</sup> A list of members of this Committee appears in Appendix 1 to this Report.

<sup>3</sup> A list of members of this Working Party appears in Appendix I to this Report.

<sup>4</sup> A list of members of this Working Party appears in Appendix I to this Report.

<sup>5</sup> For the full remit, see our Sixth Annual Report, (1973) Scot. Law Com. No. 28, para. 39.

54. Since the Law Commission also received a similar request from the Lord Chancellor, we agreed with them that our examination should be a joint one, and accordingly a Joint Working Party<sup>1</sup> was set up for this purpose. During the year a Royal Commission on Civil Liability and Compensation for Personal Injuries was set up under the Chairmanship of Lord Pearson to consider, *inter alia*, products liability. In the field of personal injuries there is therefore an overlap between the remits of the Royal Commission and the two Law Commissions, but it has been agreed with Lord Pearson that both Law Commissions should continue with their work. To date the Joint Working Party has been seeking evidence from interested parties by means of a questionnaire. The replies to the questionnaire<sup>2</sup> are being examined. Our Chairman and Mr Macdonald, a member of our legal staff, are our representatives on this Working Party, which also contains one other Scottish member.

(6) *Liability for Antenatal Injury*

55. In December 1972 we were asked by you to examine the following questions:

- (a) What is the present law of Scotland regarding liability to make reparation (including payment of solatium if the child fails to survive) in respect of injury caused to a child before birth?
- (b) If the present law gives rights of reparation in respect of such injury, is redress competent when the defender's acts causing the injury occurred prior to the time of the child's conception?
- (c) Should there be liability if there is none under the present law?

We submitted our Report<sup>3</sup> to you on 31st May 1973.

(7) *Breach of Confidence*

56. In June 1973 we were asked by you, "with a view to the protection of privacy—

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

The Commission asked Mr R. Black, a lecturer in Scots Law in the University of Edinburgh, to prepare a preliminary paper on this subject. We expect to issue a Memorandum during the coming year.

(8) *Crowther Report on Consumer Credit*

57. During the previous year we had submitted comments to the Department of Trade and Industry on the Crowther Committee's Report<sup>4</sup>. In these

<sup>1</sup> A list of members of this Working Party appears in Appendix I to this Report.

<sup>2</sup> (1973) Scot. Law Com. No. 28, para. 41.

<sup>3</sup> This Report was published on 30th August 1973 (Scot. Law Com. No. 30).

<sup>4</sup> (1971) Cmnd. 4596, (2 vols.).

comments we had stressed that any legislation implementing the proposals of the Report would have serious consequences on the law of Scotland and that account would have to be taken of the fundamental differences between Scots law and English law in relation to moveables including security over moveables. We have subsequently received from the Department of Trade and Industry a series of consultation papers and we have submitted comments to the Department on these papers. They related to the scope of consumer legislation, proposals for the computation and disclosure of the true rate of charge in consumer credit transactions, pledges and credit cards.

#### *(9) Dean of Guild Courts*

58. As was indicated in our last Annual Report<sup>1</sup>, the Report<sup>2</sup> of the Royal Commission on Local Government in Scotland recommended that Dean of Guild Courts in their present form should be discontinued. We observe that clause 225 of the current Local Government (Scotland) Bill provides that on 16th May 1975 all Dean of Guild Courts shall cease to exist, and unless otherwise provided, all powers, duties and responsibilities conferred on a Dean of Guild or a Dean of Guild Court by or under any enactment shall thereafter be exercised by the authority responsible for building control in the area concerned. We also observe that under clause 226 of the Bill it is proposed that the Burgh Police (Scotland) Act 1892 to 1911 shall cease to have effect at the end of 1979 and in the meantime be amended as provided in the Bill. In view of the fact that these two clauses, if enacted, will remove certain of the anomalies and difficulties which we had noticed in the course of our examination of the Dean of Guild Courts we have meantime deferred our study of the questions relating to such Courts and Building Authorities which were raised by the Law Society of Scotland and the Society of Town Clerks of Scotland.

#### *(10) Estate Duty*

59. Professor Halliday is our representative on the Consultative Group<sup>3</sup> set up by both Law Commissions to examine certain proposed changes in the Estate Duty Law and to report what changes are necessary to facilitate consolidation of Estate Duty legislation. This Group are nearing the end of their task and aim to present their Report in the autumn.

#### *(11) Green Paper on Land Tenure Reform in Scotland*

60. We were invited by the Secretary of State for Scotland to consider and comment upon the proposals for alteration of the law of land tenure in Scotland contained in the Green Paper on Land Tenure Reform in Scotland published in 1972. In February 1973 we submitted detailed comments upon the various proposals in the Green Paper and thereafter had discussion and correspondence with the Scottish Home and Health Department about matters of detail and principle arising from our comments.

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<sup>1</sup> (1973) Scot. Law Com. No. 28, para. 46.

<sup>2</sup> (1969) Cmnd. 4150, para. 1104.

<sup>3</sup> A list of members of the Consultative Group appears in Appendix I to this Report.

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

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

### (1) *Proposals*

62. We continue to receive at various times throughout the year proposals for changes in the law. Each proposal is considered by us and in subsequent paragraphs we mention what action is being taken in relation to some of them.

### (2) *Acquisition of Title to Corporeal Moveables*

63. Preparation of a study of the law relating to the acquisition of title to moveable property is proceeding, and is to be included in a Memorandum we propose issuing later this year on Property in Corporeal Moveables.

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

64. As we indicated in our last Annual Report<sup>1</sup>, we are awaiting the decision of the courts on certain cases relating to the question of estate duty claims arising under section 2(1)(b)(iv) of the Finance Act 1894, as substituted by the Finance Act 1969 prior to issuing a Memorandum containing our provisional proposals for the amendment of the Married Women's Policies of Assurance (Scotland) Act 1880. It is understood that there are several cases now pending in the courts relating to this question but that judgment in these cases has not yet been given. This matter is so fundamental to one of the principal questions to be dealt with in our Memorandum that we consider that it would be futile to complete it until a court ruling on the question has been obtained. We are accordingly awaiting the disposal of the appeals in these cases.

### (4) *Powers of Attorney*

65. In our last Annual Report<sup>2</sup> we mentioned that we had received a proposal that the subject of Powers of Attorney should be examined and had decided to study the subject with a view to circulating in due course a Memorandum containing tentative proposals for amendment of the law. No further progress has been made on the preparation of this Memorandum.

### (5) *Agricultural Holdings*

66. Our attention was drawn to the unsatisfactory working of the provisions of the legislation relating to the termination of tenancies of agricultural holdings. We have decided to examine those provisions that are subject to criticism and in due course incorporate the results of our examination in a Memorandum.

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<sup>1</sup> (1973) Scot. Law Com. No. 28, para. 55.

<sup>2</sup> (1973) Scot. Law Com. No. 28, para. 56.

(6) *Landlord and Tenant—Full Repairing and Insuring Leases in Scotland*

67. It was suggested to us that we should institute a study of the law of Scotland relating to leases, and in particular commercial leases. We considered the proposals contained in a Memorandum submitted to us in conjunction with the proposals for leasehold reform contained in the Green Paper on Land Tenure Reform in Scotland<sup>1</sup>.

(7) *Powers of judicial factors*

68. We have received a proposal that we should examine the desirability of legislation to facilitate the exercise by judicial factors of powers conferred on them by the Trusts (Scotland) Act 1921. We have decided that this subject merits examination and are proceeding accordingly.

(8) *Interim Interdict*

69. As the result of a proposal recently received we have decided to make a preliminary examination of the existing procedure whereby a court may grant interim interdict to one party without the party against whom interdict is sought being heard (unless he has lodged a caveat).

## VI. FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

70. Professor Anton led the United Kingdom Delegation to the Twelfth Session of The Hague Conference on Private International Law which took place from 2nd to 21st October 1972. The following draft Conventions were prepared:

- (1) The International Administration of the Estates of Deceased Persons.
- (2) The Law Applicable to Products Liability.
- (3) The Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

71. Professor Smith attended and was elected Chairman of a meeting of the Committee of Governmental Experts convened to examine the UNIDROIT draft Uniform law on the Protection of the *bona fide* Purchaser of Corporeal Moveables which was held in Rome from 4th to 8th June 1973.

72. A member of our legal staff attended a meeting of the Council of Europe Committee of Experts on the Legal Status of Children born out of Wedlock which was held in Strasbourg from 25th to 29th September 1972.

73. A Council of Europe Committee of Experts on the Liability of Producers has been set up by the Committee of Ministers, on the proposal of the European Committee on Legal Co-operation (CCJ). A member of our legal staff attended the first two meetings of the Committee which

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<sup>1</sup> See para. 60.

were held in Strasbourg from 20th to 24th November 1972 and from 19th to 23rd March 1973, as a member of the United Kingdom Delegation. We submitted a paper setting out the law of products liability in Scotland.

74. We submitted comments to the Department of Trade and Industry on the International Draft Convention for the Unification of Certain Rules relating to the Carriage by Sea of Passengers and their Luggage.

75. We associated ourselves with the comments submitted by the Law Commission to the Department of Trade and Industry on the questionnaire issued by the Inter-Governmental Maritime Consultative Organisation on a possible revision of the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships.

## VII. CONSULTATION

### THE LAW COMMISSION

76. We have maintained our close co-operation with the Law Commission. Apart from meetings to discuss individual subjects, our joint exercise with them on exemption clauses has occupied the attention of both Commissions for most of the year with meetings held in Edinburgh and London.

77. Our annual joint meeting was held in London on 17th-18th April 1973. We wish to thank both our English colleagues and the Masters and Benchers of the Middle Temple for the hospitality accorded to us.

78. We have provided the Law Commission with comments on the following Working Papers issued by them :

(a) Working Paper No. 41—*Personal Injury Litigation: Assessment of Damages*; and

(b) Working Paper No. 48—*Family Law—Declarations in Family Matters*.

The Law Commission's Working Paper No. 47 on *Injuries to Unborn Children* was examined by us in course of the preparation of our Report<sup>1</sup> on *Liability for Antenatal Injury*.

### OTHER LAW REFORM ORGANISATIONS

79. Until his retirement through illness on 1st March 1973 we continued to inform the Director of Law Reform of Northern Ireland on matters of common interest. On 1st March 1973 the Office of Director of Law Reform ceased to exist and his functions are now carried out by the Office of the Legislative Draftsmen. We thank Dr Donaldson for his assistance in the past and look forward to continued co-operation with his successor Mr W. A. Leitch, C.B.

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

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<sup>1</sup> (1973) Scot. Law Com. No. 30.



## THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

81. We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. During the year we have instituted informal quarterly meetings with representatives of the Law Society of Scotland and the Faculty of Advocates. The object of these meetings is to keep the legal profession informed about our current and proposed future work and to give the profession an opportunity of making proposals for future measures of law reform and also of commenting on our work. We receive from them suggestions and criticisms which assist us in ascertaining what the profession consider to be the priorities in law reform. 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.

### SEMINARS, COLLOQUIA, ETC.

82. Our Chairman, Mr Stewart and our Secretary attended a Seminar on the "Future of Law Reform" at All Souls College, Oxford, on 29th and 30th September, 1972.

83. Professor Smith attended a Colloquium on Injuries to Unborn Children which was held in London on 19th March, 1973. The Colloquium was arranged by the Royal Society of Medicine on behalf of the Law Commission.

## VIII. MISCELLANEOUS

### DEPARTMENTAL AND OTHER COMMITTEES

#### (1) *European Judgments Convention*

84. Professor Anton is a member of the Committee under the Chairmanship of the Rt. Hon. Lord Kilbrandon set up by the Lord Chancellor and the Secretary of State for Scotland on 23rd March 1972 to advise on the negotiations incidental to the United Kingdom's accession to the European Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments. The Secretary of State's functions in relation to this Committee have now been transferred to the Lord Advocate. It is expected that an interim report will be submitted to the Lord Chancellor and the Lord Advocate in the autumn.

#### (2) *Committee on the Preparation of Legislation*

85. Mr Stewart and Sir John Gibson are members of the Committee under the Chairmanship of the Rt. Hon. Sir David Renton, set up by the Lord President of the Privy Council to examine the preparation of legislation with a view to achieving greater simplicity and clarity in the statute law; to review the form in which public Bills are drafted and to consider any consequential implications for Parliamentary procedure. Both Mr Stewart and Sir John Gibson are members of the Scottish sub-committee and Mr Stewart is also a member of the sub-committee on European legislation.

#### COMPUTERS

86. Professor Halliday continues as a Trustee of the Scottish Legal Computer Research Trust and we are again represented on the Executive Committee of the Trust by one of our legal staff.

#### SCRUTINY OF BILLS

87. Our work on the scrutiny of Bills continues so far as our resources permit.

#### APPENDICES

88. Membership of the various Working Parties etc. appears in Appendix I. A list of papers which have been prepared by the Commission and made public appears in Appendix II. The extent to which our proposals have been incorporated in legislation is given in Appendix III.

## APPENDIX I

### MEMBERSHIP OF WORKING PARTIES ETC.

#### *Working Party on Diligence*

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

#### *Steering Committee on Private International Law*

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

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

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

#### *Joint Working Party on Private International Law (Obligations)*

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

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

The Rt. Hon. Lord Justice Scarman, O.B.E.  
(Chairman)  
The Hon. Lord Hunter  
The Hon. Mr Justice Cooke  
Sir Henry Ware, K.C.B.  
Sir Derek Hilton, M.B.E.  
Sir John Gibson, C.B., Q.C.  
Mr A. B. Lyons  
Mr A. N. Stainton, C.B.  
Editorial Director and Secretary: Mr M. L. Dunlap, Law Commission.

Scottish Law Commission  
Law Commission  
Treasury Solicitor  
Past President, The Law Society  
- Statutory Publications Office  
First Parliamentary Counsel

*Consultative Committee on Administrative Law*

The Hon. Lord Hunter (Chairman)  
The Hon. Lord Fraser  
Mr A. L. Bushnell, C.B.E.  
Mr J. S. Dalgetty  
Mr C. E. Jauncey, Q.C.  
Mr J. Mellick, O.B.E.  
Professor J. Bennet Miller  
Mr Ewan Stewart, M.C., Q.C.  
Secretary: Mr H. R. M. Macdonald, Scottish Law Commission

Scottish Law Commission  
County Clerk, Perth  
formerly Solicitor to the Secretary of  
State for Scotland  
Faculty of Advocates  
Solicitor, Glasgow  
University of Glasgow  
Scottish Law Commission

*Working Party On Foreign Money Liabilities*

Mr A. L. Diamond (Chairman)  
Mr M. Abrahams<sup>1</sup>  
Mr R. K. Batstone  
Mr R. Cassels  
Mr J. A. E. Davies  
Mr L. Gretton  
Mr R. J. Holmes  
Mr M. W. Parkington  
Secretary: Mr R. C. Allcock<sup>2</sup>, Law Commission

Law Commission  
Law Commission  
Foreign and Commonwealth Office  
The Royal Bank of Scotland  
Law Commission  
Department of Trade and Industry  
Lord Chancellor's Office  
Law Commission

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

The Rt. Hon. Lord Justice Scarman, O.B.E.  
(Chairman)  
The Hon. Mr Justice Cooke  
Professor A. E. Anton, C.B.E.  
Mr G. P. H. Aitken  
Mr R. K. Batstone  
Mr D. A. Bennett  
Mr M. C. Blair  
Mr R. L. Jones  
Miss V. Plowman  
Mr N. R. Whitty  
Mr J. W. Wilson  
Secretary: Mr A. Akbar, Law Commission

Law Commission  
Scottish Law Commission  
Scottish Courts Administration  
Foreign and Commonwealth Office  
Scottish Office  
Lord Chancellor's Office  
Home Office  
Lord Chancellor's Office  
Scottish Law Commission  
Assistant Secretary to the Supreme Court  
of Northern Ireland

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<sup>1</sup>Mr Abrahams retired from the Law Commission in December 1972.

<sup>2</sup>Mr Allcock left the Law Commission in July 1973 and was succeeded as Secretary by Miss J. Richardson.

*Joint Working Party on Products Liability*

Mr A. L. Diamond (Chairman)	Law Commission
The Hon. Lord Hunter	Scottish Law Commission
Mr M. Abrahams <sup>1</sup>	Law Commission
Mr J. A. E. Davies	Law Commission
Mr R. G. Greene <sup>2</sup>	Law Commission
Mr P. N. Legh-Jones	Barrister
Mr H. R. M. Macdonald	Scottish Law Commission
Mr M. W. Parkington	Law Commission
Mr T. N. Risk	Solicitor, Glasgow
Mr M. J. Rogers	Chief Executive, Common Market Secretariat, Lloyds

Secretary: Mr R. C. Allcock<sup>3</sup>, Law Commission

*Consultative Group on Tax Law (Estate Duty)*

Mr M. C. Nourse, Q.C. (Chairman)	
Mr John C. Craig	Institute of Chartered Accountants of Scotland
Professor J. M. Halliday, C.B.E.	Scottish Law Commission
Mr W. H. B. Johnson	Board of Inland Revenue
Mr J. P. Lawton	Barrister
Mr A. K. Tavaré	Solicitor's Office, Inland Revenue

Secretary: Mr B. M. F. O'Brien, Law Commission  
Assistant Secretary: Mr H. D. Brown, Law Commission

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<sup>1</sup>Mr Abrahams retired from the Law Commission in December 1972.

<sup>2</sup>Mr Greene left the Law Commission in May 1973.

<sup>3</sup>Mr Allcock left the Law Commission in July 1973 and was succeeded as Secretary by Miss J. Richardson.

## APPENDIX II

1 SCOTTISH LAW COMMISSION—PAPERS PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE  
(as at 31st October 1973)

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

\*Produced jointly with the Law Commission.

*Commission*

- No.*
- 1972 24 Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland—Town and Country Planning (Scotland) Bill (Cmnd. 4949)
- 25 Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
- 26 \*Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5108)
- 
- 1973 27 Second Programme of Consolidation and Statute Law Revision
- 28 Seventh Annual Report 1971-72
- 29 Third Programme of Law Reform
- 30 Report on Liability for Antenatal Injury
- 31 Report on the Law relating to Damages for Injuries causing Death

2 SCOTTISH LAW COMMISSION—MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM

- 1966 Memorandum No. 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964
- Memorandum No. 2—Expenses in Criminal Cases
- 1967 Memorandum No. 3—Restrictions on the Creation of Liferents
- Memorandum No. 4—Applications for Planning Permission
- Memorandum No. 5—Damages for Injuries Causing Death
- \*Memorandum No. 6—Interpretation of Statutes
- 1968 \*Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
- Memorandum No. 8—Draft Evidence Code—First Part
- 1969 Memorandum No. 9—Prescription and Limitation of Actions
- Memorandum No. 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961
- Memorandum No. 11—Presumptions of Survivorship and Death
- Memorandum No. 12—Judgments Extension Acts
- 1970 Memorandum No. 13—Jurisdiction in Divorce
- 1971 Memorandum No. 14—Remedies in Administrative Law
- \*Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses in Contracts for the Supply of Services and other Contracts
- Memorandum No. 16—Insolvency, Bankruptcy and Liquidation in Scotland
- 1972 Memorandum No. 17—Damages for Injuries Causing Death

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\*Produced jointly with the Law Commission.

### APPENDIX III

#### STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 31st October 1973)

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restrictions on the Creation of life-rents (Memorandum No. 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c.70), section 18.
Applications for Planning Permission (Memorandum No. 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c.30), section 79.
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot. Law Com. No. 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c.70), section 9.
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot. Law Com. No. 5) (Cmnd. 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c.22); Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c.70), section 5.
Divorce—The Grounds Considered (Scot. Law Com. No. 6) (Cmnd. 3256)	12.5.67	None.
Sea Fisheries (Shellfish) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c.83).
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 10) (Cmnd. 4004)	17.4.69	Trustees Savings Banks Act 1969 (c.50).
Interpretation of Statutes (Joint Report with the Law Commission) (Scot. Law Com. No. 11)	11.6.69	None.
Exemption Clauses in Contracts. First Report: Amendments to the Sale of Goods Act 1893 (Joint Report with the Law Commission) (Scot. Law Com. No. 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c.13).
The Companies (Floating Charges) (Scotland) Act 1961 (Scot. Law Com. No. 14) (Cmnd. 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c.67).
Reform of the Law Relating to Prescription and Limitation of Actions (Scot. Law Com. No. 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c.52).
Hague Convention on Recognition of Divorces and Legal Separations (Joint Report with the Law Commission) (Scot. Law Com. No. 16) (Cmnd. 4542)	1.12.70	Recognition of Divorces and Legal Separations Act 1971 (c.53).
Coinage Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 18) (Cmnd. 4544)	26.11.70	Coinage Act 1971 (c.24).
Vehicles (Excise) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 19) (Cmnd. 4547)	2.12.70	Vehicles (Excise) Act 1971 (c.10).
National Savings Bank Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 20) (Cmnd. 4574)	13.1.71	National Savings Bank Act 1971 (c.29).



<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Taxation of Income and Gains derived from Land (Joint Report with the Law Commission) (Scot. Law Com. No. 21) (Cmnd. 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c.41).
Road Traffic Bill (Joint Report with the Law Commission) (Scot. Law No. 22) (Cmnd. 4731)	26.7.71	Road Traffic Act 1972 (c.20).
Town and Country Planning (Scotland) Bill (Scot. Law Com. No. 24) (Cmnd. 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c.52).
Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot. Law Com. No. 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c.45).
Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 26) (Cmnd. 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c.39).
Report on Liability for Antenatal Injury (Scot. Law Com. No. 30)	30.8.73	None.
Report on the Law relating to Damages for Injuries causing Death (Scot. Law Com. No. 31)	24.10.73	None.

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