

# Scottish Law Commission

(SCOT. LAW COM. No. 89)

**NINETEENTH  
ANNUAL REPORT  
1983–1984**

*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  
14th November, 1984*

---

**EDINBURGH  
HER MAJESTY'S STATIONERY OFFICE**

£4.15 net

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

The Honourable Lord Maxwell, *Chairman*,  
Mr. R. D. D. Bertram, W.S.,  
Dr. E. M. Clive,  
Mr. J. Murray, Q.C.,  
Sheriff C. G. B. Nicholson, Q.C.

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

SCOTTISH LAW COMMISSION  
REPORT FOR THE YEAR ENDED 15TH JUNE, 1984

*To: The Right Honourable the Lord Cameron of Lochbroom, 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,<sup>1</sup> we have the honour to submit this the Nineteenth Annual Report of the Scottish Law Commission.

*(Signed)* PETER MAXWELL, *Chairman*

R. D. D. BERTRAM

E. M. CLIVE

JOHN MURRAY

GORDON NICHOLSON

R. EADIE, *Secretary*

4 September 1984.

---

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



## NINETEENTH ANNUAL REPORT

### CONTENTS

<i>Part</i>	<i>Paragraph</i>	<i>Page</i>
<b>I THE COMMISSION</b>	1.1	1
STAFF	1.3	1
PREMISES: LIBRARY	1.4	1
MEETINGS	1.6	1
<b>II GENERAL</b>	2.1	2
<b>III PROGRESS OF LAW REFORM PROJECTS</b>	3.1	8
BANKRUPTCY	3.2	9
CRIMINAL LAW	3.3	9
General	3.3	9
Incest	3.4	9
Mental Element in Crime	3.5	10
Mobbing and Rioting	3.6	10
Coercion	3.7	10
Attempted Homicide	3.8	10
Computer Crime	3.9	10
Other topics	3.10	10
DAMAGES	3.11	11
DILIGENCE	3.12	11
EVIDENCE	3.14	11
FAMILY LAW	3.15	12
Aliment and Financial Provision	3.15	12
Financial Provision after Foreign Divorce	3.16	12
Matrimonial Property Law	3.17	12
Illegitimacy	3.18	12
Husband and Wife	3.19	12
Law of Children	3.20	12
<i>See also 'Private International Law'</i>		
OBLIGATIONS	3.21	13
Voluntary Obligations—General	3.21	13
Rights in Security over Moveable Property	3.22	13
Constitution and Proof of Voluntary Obligations	3.23	13
Defective Consent and Consequential Matters	3.23	13
Defective Expression—Rectification of Documents	3.24	13
Corporeal Moveables	3.25	14
Civil Liability in relation to Animals	3.26	14
Sale and Supply of Goods	3.27	14
Legal Capacity of Minors and Pupils	3.28	14
Other topics	3.29	14

PREScription AND LIMITATION OF ACTIONS . . . . .	3.30	14
PRIVATE INTERNATIONAL LAW . . . . .	3.31	14
Law applicable to Non-Contractual Obligations: Choice of Law Rules in Tort/Delict . . . . .	3.31	14
Conflicts of Jurisdiction affecting the Custody of Children . . . . .	3.32	15
Recognition of Foreign Nullity Decrees, etc. . . . .	3.33	15
Polygamous Marriages . . . . .	3.34	15
Domicile . . . . .	3.35	15
Choice of Law Rules relating to Marriage . . . . .	3.36	15
<i>See also</i> 'Family Law', 'Prescription and Limitation of Actions'		
SUCCESSION . . . . .	3.37	16
STATUTE LAW . . . . .	3.38	16
Consolidation . . . . .	3.38	16
Statute Law Revision . . . . .	3.48	18
Local Legislation . . . . .	3.49	18
OTHER MATTERS . . . . .	3.51	19
Breach of Confidence . . . . .	3.51	19
Irritancies in Leases . . . . .	3.52	19
Powers of Attorney . . . . .	3.53	19
Judicial Factors . . . . .	3.54	19
Companies (Floating Charges and Receivers) (Scotland) Act 1972 . . . . .	3.55	19
Recovery of Possession of Heritable Property . . . . .	3.56	20
MISCELLANEOUS: ADVICE TO GOVERNMENT DEPARTMENTS, ETC. . . . .	3.57	20
Reservation of Title to Corporeal Moveables . . . . .	3.58	20
<b>IV CONSULTATION . . . . .</b>	<b>4.1</b>	<b>20</b>
THE LAW COMMISSION FOR ENGLAND AND WALES . . . . .	4.1	20
OTHER LAW REFORM ORGANISATIONS . . . . .	4.4	21
THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND . . . . .	4.5	21
CONFERENCES, SEMINARS, ETC. . . . .	4.7	21
<b>V MISCELLANEOUS . . . . .</b>	<b>5.1</b>	<b>22</b>
DEPARTMENTAL COMMITTEES AND OTHER BODIES . . . . .	5.1	22
Statute Law Committee . . . . .	5.2	22
British Institute of International and Comparative Law . . . . .	5.3	22
International Society on Family Law . . . . .	5.4	22
SCRUTINY OF BILLS . . . . .	5.5	22

<b>APPENDICES</b> . . . . .	5.6	22
<b>Appendix I</b>		
Membership of Working Parties, etc. . . . .		23
<b>Appendix II</b>		
1. Scottish Law Commission—Reports, etc. Published by Her Majesty's Stationery Office (as at 31 August 1984) . . . . .		25
2. Scottish Law Commission—Consultative Memoranda Circulated for Comment and Criticism . . . . .		28
3. Scottish Law Commission—Other Published Documents . . . . .		30
4. Scottish Law Commission—Consultative Documents not Published and with Restricted Circulation . . . . .		30
5. Scottish Law Commission—Unpublished Confidential Documents . . . . .		30
<b>Appendix III</b>		
Statutory Provisions relating to the Scottish Law Com- mission's Proposals (as at 31 August 1984) . . . . .		31



## 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 Maxwell, <i>Chairman</i>	(Full-time)
Mr. R. D. D. Bertram, W.S.	(Part-time)
Dr. E. M. Clive	(Full-time)
Mr. J. Murray, Q.C.	(Part-time)
Sheriff C. G. B. Nicholson, Q.C.	(Full-time)

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

1.2 We take this opportunity of congratulating Professor A. E. Anton, C.B.E., a former Commissioner and presently our consultant on private international law matters, on his appointment as United Kingdom Member of the European Commission of Human Rights. Professor Anton is the first Scots lawyer to be appointed to membership of that Commission.

### 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 Depute Procurator Fiscal who has undertaken research on our behalf into criminal law matters. During the summer vacation of 1983 we employed four graduates in law to assist with our research work. We wish to thank them for their assistance. A professional librarian joined our staff in October 1983, following the creation of this new post as a consequence of a general staff inspection of the Commission. Owing to a compensating adjustment in the number of administrative support staff, however, our total complement of non-legal staff remains at eleven.

### PREMISES—LIBRARY

1.4 In our last annual report<sup>1</sup> we referred to the adaptation of part of our rear premises, previously occupied by the National Museum of Antiquities of Scotland, as a library. We are pleased to report that the main phase of the development has now been completed.

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 continues to be 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.

### MEETINGS

1.6 We continue to hold full Commission meetings on average twice a month. Additional meetings are held as required.

---

<sup>1</sup>(1983) Scot. Law Com. No. 81, para. 1.4.

## II. GENERAL

2.1 We believe that we have continued to make reasonably satisfactory progress with our law reform work in the period under review. Leaving aside work in the field of statute law (about which we have something to say below<sup>1</sup>), four reports have been published in the period covered by this annual report. The most important of these is a major report, published under our family law programme, on the subject of illegitimacy.<sup>2</sup> This is a subject on which we believe the law as it stands is seriously out of touch with present day social attitudes. In our report, as well as making recommendations designed to remove legal differences between people which depend on whether their parents are or have been married to each other, we take the opportunity to recommend simplification of complex statutory provisions relating to guardianship. Our report on evidence in cases of rape and other sexual offences<sup>3</sup> deals with a matter of considerable public concern, while our report on the rectification of contractual and other documents,<sup>4</sup> published under our obligations programme, is somewhat technical but makes proposals for closing an undesirable gap in the existing powers of the court to rectify erroneously expressed documents. In our report on the mental element in crime,<sup>5</sup> we have recommended that certain proposals made by the Law Commission for England and Wales on this topic should not be applied to the law of Scotland. We are pleased to be able to say that we have been informed that the Secretary of State for Scotland has accepted the advice contained in our report.

2.2 More recently, our report on matrimonial property<sup>6</sup> was published on 21 June 1984 (that is, just outside the year under review). That report, which was submitted to your predecessor on 29 March 1984, proposes certain minor, though quite important, changes in the existing law. But it is another illustration of the point mentioned in our last annual report,<sup>7</sup> namely that the scale of proposals which we put forward in our reports is not necessarily a proper reflection of the amount of work involved. In the case of matrimonial property, we thought it right to seek views at the consultation stage<sup>8</sup> on some fairly radical options for reform, including the possibility of introducing a general scheme of 'community property' as between husband and wife, of the kind found in some other legal systems. In order to present the options fairly, we thought it necessary to work out in some detail the practical implications of such schemes in the context of the law of Scotland, although in the end they were widely rejected by those we consulted. In addition to the above, we anticipate that there will be published in the fairly near future reports on three matters on which we are working jointly with the Law Commission for England and Wales. Of these, the project which is by far of the greatest practical importance is that concerned with the problems of jurisdiction, recognition and enforcement within the United Kingdom which arise with regard to orders relating to the custody of children.<sup>9</sup> The other two reports

---

<sup>1</sup>See in particular para. 2.12.

<sup>2</sup>(1984) Scot. Law Com. No. 82.

<sup>3</sup>(1983) Scot. Law Com. No. 78.

<sup>4</sup>(1983) Scot. Law Com. No. 79.

<sup>5</sup>(1983) Scot. Law Com. No. 80.

<sup>6</sup>(1984) Scot. Law Com. No. 86.

<sup>7</sup>(1983) Scot. Law Com. No. 81, para. 2.14.

<sup>8</sup>See Consultative Memorandum No. 57.

<sup>9</sup>See para. 3.32 below.

deal, respectively, with recognition of foreign nullity decrees<sup>1</sup> and problems relating to polygamous marriages.<sup>2</sup> While we fully appreciate that it is an important aspect of our functions to co-operate with our colleagues south of the Border on matters affecting the United Kingdom or Great Britain as a whole, such joint exercises inevitably tend to place heavy demands on our more limited resources, and in some instances (such as the last two exercises mentioned above) may result in our having to give greater priority to a subject than would otherwise have been the case.

2.3 Turning to projects which are still at the consultation stage, we have published, jointly with the Law Commission for England and Wales, a major consultative document on the sale and supply of goods.<sup>3</sup> This is a subject of substantial importance on which the comments received from those consulted are now being analysed. We hope that we and our colleagues in the Law Commission will be in a position to begin work on the preparation of a joint report in the reasonably near future. In addition, we have published a consultative memorandum on the technical, but nevertheless important, question of recovery of possession of heritable property.<sup>4</sup> At the time of preparing this annual report for submission to you, we have just published a consultative memorandum on the topic of mobbing and rioting<sup>5</sup> and we intend to publish shortly a consultative memorandum on the law and practice relating to attempted homicide.<sup>6</sup> These are both matters of considerable practical importance which have recently been the subject of criticism in certain quarters and we believe that they could usefully be re-examined. Also nearing completion is a substantial consultative document on the complex problems of choice of law in delict.<sup>7</sup> This document is being prepared and issued by a joint working party set up by the two Law Commissions. It is primarily concerned with a possible replacement for what is sometimes called the 'double actionability' rule, typified in Scotland by the case of *McElroy v. McAllister*,<sup>8</sup> and with the problem of devising some other more suitable rule for the great variety of circumstances which may arise in this area.

2.4 Before leaving the subject of consultation, we mention that we have recently been giving some further thought to methods of obtaining the views of a wider audience, particularly in relation to those law reform projects which would appear to be of interest to members of the public generally. In our last annual report,<sup>9</sup> we mentioned that in our project on civil liability for animals we had experimented with the publication, along with our full consultative memorandum, of a short 'popular' version, in the form of a pamphlet, designed for people who are not lawyers and who are unlikely to wish to take time to study all the more detailed and technical aspects involved. We repeated the experiment when consulting on our matrimonial property project, and the two Law Commissions followed the same course in relation

---

<sup>1</sup>See para. 3.33 below. The report on this topic was submitted on 20 July 1984.

<sup>2</sup>See para. 3.34 below.

<sup>3</sup>Law Commission Working Paper No. 85; Consultative Memorandum No. 58.

<sup>4</sup>Consultative Memorandum No. 59 (see para. 3.56 below).

<sup>5</sup>Consultative Memorandum No. 60 (see para. 3.6 below).

<sup>6</sup>See para. 3.8 below.

<sup>7</sup>See para. 3.31 below.

<sup>8</sup>1949 S.C. 110.

<sup>9</sup>(1983) Scot. Law Com. No. 81, para. 2.10

to the joint project on sale and supply of goods mentioned earlier.<sup>1</sup> This means of eliciting views has been moderately successful, in that the comments which we have received in response to the pamphlets have been most helpful and illuminating. The experiment has, however, been slightly disappointing, especially as regards the matrimonial property project, in that the total number of comments received from the general public was rather less than we had hoped. We think the practice of issuing pamphlet versions of consultative documents is probably worth repeating, where appropriate, and we will be considering how best to ensure that such pamphlets are distributed on a fairly wide basis. However, we are considering other ways of trying to involve the public more closely in our work, and in particular the possibility of holding, in appropriate cases, public seminars or meetings of some kind. Our exercise on the legal capacity of minors and pupils, as part of the project on the law of children,<sup>2</sup> may be suitable for such an approach. We have not, as yet, worked out details, and the financial constraints under which we operate would inhibit any very ambitious initiative, but we intend to try to make at least a start in this direction. But consultation, however wide, is sometimes not enough to provide us with the information we need in order to write a well-informed report. In some cases<sup>3</sup> we have found it extremely helpful for this purpose to have available to us the results of specially-commissioned research projects. We intend to commission a research project soon in connection with our work on the legal capacity of minors and pupils. The purpose of this project will be to obtain the views of both adults and young people on our proposals and to find out more about the extent to which young people enter into legal transactions. We are grateful for the help and advice which we have received on this matter from the Central Research Unit of the Scottish Office.

2.5 The position regarding our current work is set out in Part III of this report and there would be little point in repeating all the details here. We feel, however, that brief mention should be made of certain topics of particular importance, some of which have already been touched upon above. The largest single project on which we are currently engaged is the preparation of our first report (and relative draft Bill) on the subject of diligence.<sup>4</sup> Our top priority is to bring this project to completion. This project continues to give rise to very difficult problems, but it is our firm intention to submit the completed report and draft Bill before the end of the next reporting period.

2.6 We are also actively engaged in work on a topic which has certain implications in the diligence field (and in the field of bankruptcy,<sup>5</sup> another of our programme subjects), namely security over moveable property.<sup>6</sup> For the reasons explained in our last annual report,<sup>7</sup> although we have already had great assistance from a Working Party on this subject (which falls under the general heading of obligations), we consider that we must carry out further

---

<sup>1</sup>See para. 2.3 above.

<sup>2</sup>See paras. 2.7 and 3.20 below.

<sup>3</sup>In relation to diligence, financial provision on divorce and matrimonial property: see (1981) Scot. Law Com. No. 70, paras. 3.12 and 3.17.

<sup>4</sup>See paras. 3.12 and 3.13 below.

<sup>5</sup>See para. 3.2 below.

<sup>6</sup>See para. 3.22 below.

<sup>7</sup>(1983) Scot. Law Com. No. 81, para. 2.11.

consultation, especially as it now appears that the recommendations of the Crowther Committee,<sup>1</sup> against which our Working Party's report was prepared, are less likely to be adopted. The importance and difficulty of framing satisfactory proposals for Scotland are considerable. The entrenched rules of our common law have the advantage of relative clarity and simplicity, but unfortunately they are probably inadequate and too rigid to meet the needs of a society which depends so much on the availability of credit and, therefore, on the possibility of giving security for credit. We do not have the principles of 'equity' which have enabled the law of England and Wales to develop a less inflexible, albeit to our eyes more complex, system. There has been some advance in this area in recent times through the introduction into Scots law of floating charges for companies, but leaving that development aside, we have had to approach this exercise from first principles. We also have in progress a project dealing with the law relating to receivers and floating charges (on the former of which we have had the assistance of a joint working party of the legal and accountancy professions).<sup>2</sup> On re-examination, it appears to us that in devising possible options for improving the law of security over moveables we are bound to give close consideration to the role of the floating charge. With this in mind, we consider that the two projects cannot be kept separate, and we are therefore combining them into what will become quite a major operation. In this connection, we express our thanks to both Working Parties, and also to Mr. A. J. Sim, the Secretary of the Working Party on Security over Moveables, who has been the senior member of our staff dealing with these subjects.<sup>3</sup>

2.7 We also continue to make very good progress in the field of family law, having, as mentioned above,<sup>4</sup> recently submitted reports on illegitimacy and matrimonial property. As the next step, we are now working on the law relating to children,<sup>5</sup> and to begin with we are preparing a consultative memorandum on suggestions for possible changes in the position regarding their legal capacity.

2.8 Another of our main programme subjects is the law of evidence. We decided some time ago to break this large subject down into a number of separate projects, and, following completion and publication of the report on evidence in cases of rape and other sexual offences,<sup>6</sup> we are presently working on corroboration, hearsay and certain related questions (including computer evidence in civil proceedings).<sup>7</sup> We hope to report to you fairly soon on these matters, though it is only right to say that some aspects of the exercise are still causing us some difficulty.

2.9 As regards our programme subject of obligations, to which reference has already been made,<sup>8</sup> our work on certain aspects of the constitution and proof of obligations has made reasonably good progress during the period

---

<sup>1</sup>*Report of the Committee on Consumer Credit* (1971) Cmnd. 4596.

<sup>2</sup>See para. 3.55 below.

<sup>3</sup>Mr. Sim retired on 31 August 1984, but we hope that he may be able to assist us in the future in the capacity of consultant on this highly technical area of the law.

<sup>4</sup>See paras. 2.1 and 2.2.

<sup>5</sup>See para. 3.20 below, and also para. 2.4 above.

<sup>6</sup>(1983) Scot. Law Com. No. 78.

<sup>7</sup>See para. 3.14 below.

<sup>8</sup>See paras. 2.1 and 2.6 above.

under review.<sup>1</sup> Moreover, as mentioned above<sup>2</sup> we are actively engaged with our colleagues in the Law Commission for England and Wales on work relating to the sale and supply of goods. In addition, our work on security over moveables and civil liability in relation to animals<sup>3</sup> is being undertaken under the general umbrella of this major programme subject.

2.10 Considering our modest resources in the field of criminal law, we are reasonably satisfied with the progress we have been able to make with our work in this field during the past year, and so far as our resources allow, we intend to continue work on selected topics. Once we have received comments on the consultative memoranda on mobbing and rioting<sup>4</sup> and attempted homicide,<sup>5</sup> we will prepare reports on these subjects. In the meantime, we have begun work on two matters on which our advice has been sought by Government: the abduction of children,<sup>6</sup> and the concept of art and part guilt in relation to statutory offences.<sup>7</sup> We have also made a start to a potentially complex and rather longer-term exercise dealing with the topic of computer crime.<sup>8</sup>

2.11 Another important topic on which we hope to be able to submit a report in the reasonably near future is breach of confidence.<sup>9</sup> Looking further ahead, we have just resumed work on the major programme subject of succession.<sup>10</sup> Work on this subject has been in abeyance for some years, partly because we thought it advisable to defer systematic consideration of the law of succession until our examination of family property law was further advanced. The completion and publication of our report on matrimonial property<sup>11</sup> presents the opportunity for us to allocate resources to the succession project. It is not yet possible to forecast, however, what our strategy on this project is likely to be.

2.12 Our work in the field of statute law,<sup>12</sup> which is concerned with what might be called tidying up the Statute Book, consists of two main areas. First, there is consolidation, particularly consolidation of statutes applying to Scotland only. Our progress during the past year on work concerned with the consolidation of purely Scottish legislation has necessarily been rather modest, largely because our one whole-time and two part-time Parliamentary draftsmen have been heavily engaged in drafting Bills to be annexed to our law reform reports (including, in the case of our full-time draftsman, the very large and complex draft Bill which is being prepared in connection with our first report on diligence). It is hoped, however, that two important consolidation Bills prepared by our draftsmen (those relating to rents and foster care) will be

---

<sup>1</sup>We have recently concluded, however, that we should carry out further consultation before we proceed to a report on the constitution and proof of obligations: see para. 3.23, footnote 6, below.

<sup>2</sup>See para. 2.3.

<sup>3</sup>See para. 3.26 below.

<sup>4</sup>Consultative Memorandum No. 60 (see para. 3.6 below).

<sup>5</sup>See para. 3.8 below.

<sup>6</sup>See para. 3.10 below.

<sup>7</sup>*Ibid.*

<sup>8</sup>See para. 3.9 below.

<sup>9</sup>See para. 3.51 below.

<sup>10</sup>See para. 3.37 below.

<sup>11</sup>(1984) Scot. Law Com. No. 86.

<sup>12</sup>See paras. 3.38 to 3.50 below.

enacted by the end of the current Parliamentary Session. Apart from these, work is actively proceeding on a very large Bill to consolidate the legislation relating to housing in Scotland. The Law Commission for England and Wales, because of its larger resources, carries out the greater part of the work on United Kingdom and Great Britain consolidations (with valuable assistance, as regards Scotland, from draftsmen in the Lord Advocate's Department). We do find ourselves involved from time to time, however, in a considerable amount of work in relation to the preparation of reports making recommendations for amendments of the limited kind which are permissible in the course of consolidation procedure (an aspect of our work which, of course, can also arise as regards Scotland-only consolidations). In the period under review we have, in conjunction with the Law Commission for England and Wales, submitted four such reports—one concerned with the consolidation of the Dentists Acts,<sup>1</sup> another with the consolidation of legislation on the subject of road traffic regulation,<sup>2</sup> and two reports dealing with the proposed major consolidation of the Companies Acts.<sup>3</sup> Effect has already been given to the first two of these reports.<sup>4</sup>

2.13 We work closely with the Law Commission for England and Wales on matters pertaining to statute law revision. The results of this work are incorporated periodically in Statute Law (Repeals) Bills, or occasionally in more general Bills, including consolidation Bills and other Bills promoted by Government departments. Much of the work is concerned with United Kingdom and Great Britain legislation, but so far as resources permit, we also try to direct particular attention to Scottish measures. It is intended that a joint report (the Twelfth) will be published in the fairly near future to enable the relative Statute Law (Repeals) Bill to be introduced into Parliament in the 1984–85 Session.

2.14 There has been a new development in relation to statute law<sup>5</sup> to which we attach considerable importance. The local statute law of the United Kingdom presents many problems for its users, not least because it is inadequately indexed. The first steps towards remedying this situation were taken when the Statute Law Committee instituted a Chronological Table of Local and Personal Acts (from 1974), and the Law Commission for England and Wales agreed to carry out the research needed to extend that table backwards in time in order to provide a comprehensive guide. As a continuation of this initiative, a Joint Working Party of the two Law Commissions has been set up, at the request of the Statute Law Committee, to examine the options available for advancing the process of rationalising the local statute law. Within the limitations of our resources, we are participating in the work of this Working Party, whose objectives we strongly support.

2.15 It is gratifying and encouraging to note the progress made during the past year in the implementation of certain of our law reform proposals. Two of our reports—those on prescription and limitation<sup>6</sup> and on outdated rules

---

<sup>1</sup>(1984) Law Com. No. 129, Scot. Law Com. No. 84.

<sup>2</sup>(1984) Law Com. No. 133, Scot. Law Com. No. 85.

<sup>3</sup>(1983) Law Com. No. 126, Scot. Law Com. No. 83; (1984) Law Com. No. 136, Scot. Law Com. No. 87.

<sup>4</sup>See Dentists Act 1984 (c. 24) and Road Traffic Regulation Act 1984 (c. 27).

<sup>5</sup>See paras. 3.49 and 3.50 below.

<sup>6</sup>(1983) Scot. Law Com. No. 74.

in the law of husband and wife<sup>1</sup>—have been implemented by private Members' Bills.<sup>2</sup> We are very pleased that private Members have been sufficiently interested in our work to take up our proposals in Parliament and we hope that this may be repeated in the future. The proposals in our report on financial provision after foreign divorce<sup>3</sup> have been enacted in Part IV of the Matrimonial and Family Proceedings Act 1984, the measure which also served to implement the corresponding proposals of the Law Commission for England and Wales both as regards foreign divorce<sup>4</sup> and, more importantly, as regards financial relief on divorce generally.<sup>5</sup> Although we are pleased that our proposals on financial provision on foreign divorce have been implemented, we are slightly disappointed that legislation has not yet been introduced to implement the recommendations contained in our report on aliment and financial provision,<sup>6</sup> which deal with the position of those divorced in Scotland and are therefore of importance to a far greater number of people. It is somewhat reassuring for us to learn that consideration is in fact being given to the possibility of introducing such legislation in the fairly near future.

2.16 Looking to the future, we were very glad to read in the White Paper, 'A Revised Framework for Insolvency Law',<sup>7</sup> that 'the Scots law on personal bankruptcy will be dealt with as a separate legislative measure based on the Report and draft Bill of the Scottish Law Commission published in February 1982'. As mentioned below,<sup>8</sup> we understand that there is a reasonable possibility of the proposed legislation being introduced during the coming Parliamentary Session. It also appears that legislation may be introduced in the fairly near future to implement the proposals in our report on evidence in cases of rape and other sexual offences,<sup>9</sup> and that consideration is being given to the possibility of introducing legislation to implement our report on the rectification of contractual and other documents.<sup>10</sup> As mentioned above,<sup>11</sup> legislation based on the recommendations in our report on aliment and financial provision may also be in prospect. We appreciate, naturally, that the decisions as to when legislation might be introduced to implement the reports mentioned depend partly on certain imponderables, including the extent of the demands on the Government's legislative programme and on Parliamentary time.

### III. PROGRESS OF LAW REFORM PROJECTS

3.1 The present position<sup>12</sup> in each of our current law reform projects is set out in the following paragraphs. The main subject headings are presented in

---

<sup>1</sup>(1983) Scot. Law Com. No. 76.

<sup>2</sup>See Prescription and Limitation (Scotland) Act 1984 (c. 45) and Law Reform (Husband and Wife) (Scotland) Act 1984 (c. 15).

<sup>3</sup>(1982) Scot. Law Com. No. 72.

<sup>4</sup>(1982) Law Com. No. 117.

<sup>5</sup>(1981) Law Com. No. 112.

<sup>6</sup>(1981) Scot. Law Com. No. 67.

<sup>7</sup>Cmnd. 9175 (1984).

<sup>8</sup>See para. 3.2.

<sup>9</sup>(1983) Scot. Law Com. No. 78.

<sup>10</sup>(1983) Scot. Law Com. No. 79.

<sup>11</sup>See para. 2.15.

<sup>12</sup>For the sake of presenting a more complete picture, we mention certain developments which have taken place since the end of our reporting period (15 June 1984).

alphabetical order. We continue to attach greatest importance to our programme work, that is, to projects undertaken in accordance with our published programmes.<sup>1</sup> In the main headings set out below, programme subjects are denoted by the use of an asterisk.

#### **BANKRUPTCY\***

(Second Programme, Item 6)

3.2 As indicated in our Eighteenth Annual Report,<sup>2</sup> interdepartmental working groups were set up by the Department of Trade and Industry to consider the recommendations for alteration of insolvency law contained in our report on *Bankruptcy and Related Aspects of Insolvency and Liquidation*,<sup>3</sup> published on 26 February 1982, and in the report of the Insolvency Law Review Committee for England and Wales.<sup>4</sup> The Department recently issued a White Paper, entitled 'A Revised Framework for Insolvency Law',<sup>5</sup> which indicated that the Government's legislative proposals on personal bankruptcy would take the form of a separate measure for Scotland based on our report and relative draft Bill. We understand that there is a reasonable possibility of the proposed legislation being introduced during the 1984–85 Parliamentary Session.

#### **CRIMINAL LAW**

##### *General*

3.3 The bulk of our work in the field of the criminal law has continued to arise from requests (both formal and informal) 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)(a) of that Act. In addition, so far as our resources have allowed, we have continued to respond to consultation by the Law Commission for England and Wales on aspects of its work, and to consider the possible implications for Scotland of proposals made by that Commission under its programme subject 'Codification of the Criminal Law'. Matters in the foregoing categories have sometimes led to formal law reform projects: examples of such projects are mentioned below. But in other cases the matters in question have been dealt with informally and are not, therefore, mentioned in the following summary.

##### *Incest*

3.4 Our report on *The Law of Incest in Scotland*,<sup>6</sup> which was published on 23 December 1981, has not yet been implemented. The Scottish Office has recently indicated that Ministers remain of the view that legislation to implement the report should be introduced by a private Member rather than by the Government. Accordingly, this topic was included in the list of Bills available for Members successful in the ballot at the beginning of the

---

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

<sup>2</sup>(1983) Scot. Law Com. No. 81, para. 3.2.

<sup>3</sup>(1982) Scot. Law Com. No. 68.

<sup>4</sup>Cmnd. 8558 (1982).

<sup>5</sup>Cmnd. 9175 (1984).

<sup>6</sup>(1981) Scot. Law Com. No. 69.

\*Denotes programme subject.

Parliamentary Session (but was not selected by any of those who succeeded in the ballot).

#### *Mental Element in Crime*

3.5 Our report on *The Mental Element in Crime*<sup>1</sup> was submitted to the Secretary of State for Scotland on 23 August 1983 and published on 23 November 1983. We have been informed that the Secretary of State has accepted the advice contained in the report.

#### *Mobbing and Rioting*

3.6 On 5 July 1984, in response to a proposal<sup>2</sup> from the Crown Agent under section 3(1)(a) of the Law Commissions Act 1965, we published Consultative Memorandum No. 60—*Mobbing and Rioting*. Comments have been invited by 1 December 1984.

#### *Coercion*

3.7 As mentioned in our last annual report,<sup>3</sup> work on coercion has been discontinued, at any rate for the time being.

#### *Attempted Homicide*

3.8 We received from the Crown Agent on 2 May 1984 a proposal under section 3(1)(a) of the Law Commissions Act 1965 requesting us to consider the problems discussed in a paper by Mr. H. D. B. Morton Q.C. arising from the case of *Cawthorne v. H.M.A.*<sup>4</sup> In that case it was held that a person may be guilty of attempted murder where he has acted in a way which, had death resulted, would have amounted to murder, even if he had no intention to kill. We are proceeding with the preparation of a consultative memorandum on this topic.

#### *Computer Crime*

3.9 We received from the Law Society of Scotland on 13 July 1984 a proposal under section 3(1)(a) of the 1965 Act requesting us to examine problems arising from the use, misuse and abuse of computers and telecommunications systems. This is potentially a major project with considerable implications for various aspects of the criminal law of Scotland, but the project will not be concerned with the purely civil law aspects of topics such as copyright and patent law.

#### *Other topics*

3.10 Consideration has been given, or is expected to be given shortly, to other matters arising from requests for advice by Government departments and other bodies. These matters include the following:

- (1) *Art and part*—The problems involved in the application of the concept of art and part guilt to statutory crimes and offences are currently being examined at the request of the Scottish Office. We expect to receive shortly a formal 'reference' on this topic under section 3(1)(e) of the 1965 Act.

---

<sup>1</sup>(1983) Scot. Law Com. No. 80.

<sup>2</sup>The terms of the proposal (which extends to the law of conspiracy generally) are set out in Consultative Memorandum No. 60, para. 1.1.

<sup>3</sup>(1983) Scot. Law Com. No. 81, para. 3.7.

<sup>4</sup>1968 J.C. 32.

(2) *Child abduction*—We have just received from the Scottish Office,<sup>1</sup> on behalf of the Secretary of State for Scotland, a reference under section 3(1)(e) of the 1965 Act. The reference requests us to examine the law of Scotland on child abduction and related topics. This project, on which preliminary work has already begun, will include consideration of the implications of the Child Abduction Act 1984.<sup>2</sup>

#### **DAMAGES\***

(Second Programme, Item 10)

3.11 There have been no further developments in this area since submission of our Eighteenth Annual Report in which we mentioned<sup>3</sup> that most of the recommendations contained in our 1978 and 1981 reports<sup>4</sup> on the law relating to damages arising from personal injuries and death had been implemented by the Administration of Justice Act 1982. Our work on this programme subject has, therefore, been completed, at any rate for the time being.

#### **DILIGENCE\***

(Second Programme, Item 8)

3.12 We have accorded the highest priority to the preparation of the first report on diligence, which will contain recommendations on the topics covered by Consultative Memoranda Nos. 47–51, together with draft legislation for the implementation of those recommendations. While the process of translating policy recommendations in a complex area of private law into a lengthy draft Bill has proved to be time-consuming, it has permitted identification of practical problems and allowed us to make proposals for detailed legislative solutions which should yield benefits in the long run.

3.13 As mentioned in our last annual report,<sup>5</sup> Mr. G. L. Gretton, Lecturer in the Department of Scots Law at the University of Edinburgh, was commissioned to prepare research papers on diligence on the dependence, adjudications for debt and inhibitions. These papers have been submitted to the Commission and will provide us with the basis for consultative memoranda on these topics, to be prepared after completion of work on the first report on diligence.

#### **EVIDENCE\***

(First Programme, Item 1)

3.14 Our report on *Evidence in Cases of Rape and Other Sexual Offences*<sup>6</sup> was published on 21 July 1983. The Government is at present consulting on our recommendations with a view to introducing legislation in the fairly near future. Work is in progress on the preparation of a report, and relative draft Bill, dealing with corroboration, hearsay, computer evidence and related

---

<sup>1</sup>The reference on this topic was received from the Scottish Office on 30 July 1984.

<sup>2</sup>c.37.

<sup>3</sup>(1983) Scot. Law Com. No. 81, para. 3.8.

<sup>4</sup>*Damages for Personal Injuries: (1) Admissibility of Claims for Services; (2) Admissible Deductions* (1978) Scot. Law Com. No. 51; *Section 5 of the Damages (Scotland) Act 1976* (1981) Scot. Law Com. No. 64.

<sup>5</sup>(1983) Scot. Law Com. No. 81, para. 3.10.

<sup>6</sup>(1983) Scot. Law Com. No. 78.

\*Denotes programme subject.

matters, in civil proceedings. Once work on that report is completed, we propose, subject to other commitments, to begin work on the preparation of a further report or reports dealing with other aspects of the law of evidence.

#### **FAMILY LAW\***

(Second Programme, Item 14)

##### *Aliment and Financial Provision*

3.15 Legislation has yet to be introduced to implement the recommendations in our report on *Aliment and Financial Provision*,<sup>1</sup> published on 5 November 1981. We understand, however, that consideration is being given to the possibility of introducing legislation in the fairly near future.

##### *Financial Provision after Foreign Divorce*

3.16 Our report on *Financial Provision after Foreign Divorce*<sup>2</sup> was published on 28 October 1982. The recommendations contained in this report have been implemented in Part IV of the Matrimonial and Family Proceedings Bill which received the Royal Assent on 12 July 1984.<sup>3</sup>

##### *Matrimonial Property Law*

3.17 Our report on *Matrimonial Property*<sup>4</sup> was submitted to your predecessor on 29 March 1984 and was published on 21 June 1984.

##### *Illegitimacy*

3.18 Our report on *Illegitimacy*<sup>5</sup> was published on 26 January 1984. No legislation to implement this report has yet been introduced.

##### *Husband and Wife*

3.19 Our report on *Outdated Rules in the Law of Husband and Wife*<sup>6</sup> was published on 12 May 1983. A private Member's Bill implementing the recommendations in this report received the Royal Assent on 24 May 1984.<sup>7</sup>

##### *Law of Children (incorporating Legal Capacity of Minors and Pupils)*

3.20 We have commenced work on the preparation of a consultative memorandum dealing with legal capacity of minors and pupils. The memorandum is being prepared as the first stage of the Commission's major exercise on the law of children, later stages of which will cover custody and guardianship of children, and parental rights and duties. We hope that this memorandum will be published in the course of the coming year. At the same time, we intend to commission a social research project in order to obtain the views of both adults and young people on our main proposals and to ascertain the extent to which young people at present enter into legal transactions.

---

<sup>1</sup>(1981) Scot. Law Com. No. 67.

<sup>2</sup>(1982) Scot. Law Com. No. 72.

<sup>3</sup>See the Matrimonial and Family Proceedings Act 1984 (c. 42).

<sup>4</sup>(1984) Scot. Law Com. No. 86.

<sup>5</sup>(1984) Scot. Law Com. No. 82.

<sup>6</sup>(1983) Scot. Law Com. No. 76.

<sup>7</sup>See the Law Reform (Husband and Wife) (Scotland) Act 1984 (c. 15).

\*Denotes programme subject.

## **OBLIGATIONS\***

(First Programme, Item 2)

### *Voluntary Obligations—General*

3.21 As mentioned in our last annual report,<sup>1</sup> we have reviewed the progress of work arising from our series of consultative memoranda on voluntary obligations<sup>2</sup> and are proceeding with further work in those areas where there seems to us to be a need and demand for law reform.

### *Rights in Security over Moveable Property*

3.22 In our last annual report,<sup>3</sup> we mentioned that we had received the report of our Working Party on Security over Moveable Property, which had been appointed to consider the introduction into Scots law of a new system of security over moveable property following on the recommendations in Part 5 of the Crowther Report.<sup>4</sup> In recent months we have been considering a paper prepared within the Commission with a view to consultation in the fairly near future on a wide range of issues concerned with rights in security. Because of the clear connection between these issues and certain of the issues raised by our exercise on the Companies (Floating Charges and Receivers) (Scotland) Act 1972,<sup>5</sup> we have decided that the two projects should be combined.

### *Constitution and Proof of Voluntary Obligations; Defective Consent and Consequential Matters*

3.23 The above headings cover our series of Consultative Memoranda Nos. 34–39 and 42. Work on the preparation of a report or reports, dealing with those matters in respect of which a need and demand for reform have been identified, has reached a fairly advanced stage.<sup>6</sup> The matters principally under consideration are the constitution and proof of voluntary obligations, including certain aspects of formation of contract, and negligent misrepresentation. We have recently asked a member of the academic staff of the University of Edinburgh<sup>7</sup> to prepare a research paper on the related issue of the execution and authentication of deeds, with a view to the preparation of a consultative memorandum on that topic.

### *Defective Expression—Rectification of Documents*

3.24 Our report on *Rectification of Contractual and Other Documents*<sup>8</sup> was submitted to your predecessor on 17 May 1983 and published on 27 July 1983. The Scottish Office has recently indicated that consideration is being given to the possibility of implementing the recommendations in the report in forthcoming legislation.

---

<sup>1</sup>(1983) Scot. Law Com. No. 81, para. 3.19.

<sup>2</sup>See para 3.23 below.

<sup>3</sup>(1983) Scot. Law Com. No. 81, para. 3.20.

<sup>4</sup>Cmnd. 4596.

<sup>5</sup>See para. 3.55 below.

<sup>6</sup>We have recently been reconsidering the implications of certain aspects of our work in this area and we have concluded that we should undertake further consultation before reporting to you on the constitution and proof of obligations and related matters. But we have in mind to submit a separate report on negligent misrepresentation.

<sup>7</sup>Mr. K. G. C. Reid, Lecturer in the Department of Scots Law.

<sup>8</sup>(1983) Scot. Law Com. No. 79.

\*Denotes programme subject.

*Corporeal Moveables*

3.25 The position regarding this topic remains as stated in our last annual report.<sup>1</sup>

*Civil Liability in Relation to Animals*

3.26 Following on consultation,<sup>2</sup> a discussion paper was prepared setting out the main options for reform, and work is now proceeding on a draft Bill to implement the policy adopted. We hope that the report incorporating this draft Bill will be submitted in the fairly near future.

*Sale and Supply of Goods*

3.27 In conjunction with the Law Commission for England and Wales, we published in October 1983 a consultative document on issues relating to sale and supply of goods.<sup>3</sup> Comments were requested by 31 March 1984, and most of these have now been received. An analysis of the comments is expected to be completed shortly; thereafter a policy paper will be prepared at joint team level.

*Legal Capacity of Minors and Pupils*

3.28 As explained in paragraph 3.20 above, work is progressing on this topic as part of our major project on reform of the law of children.

*Other topics*

3.29 The position regarding the other topics in the obligations field mentioned in our last annual report<sup>4</sup> remains unchanged.

**PRESCRIPTION AND LIMITATION OF ACTIONS\***

(First Programme, Item 3)

3.30 Our report on *Personal Injuries Actions and Private International Law Questions*<sup>5</sup> was published on 10 February 1983. A private Member's Bill which implements the recommendations in this report received the Royal Assent on 26 July 1984.<sup>6</sup>

**PRIVATE INTERNATIONAL LAW\***

(Third Programme)

*Law applicable to Non-Contractual Obligations: Choice of Law Rules in Tort/Delict*

3.31 The Joint Working Party<sup>7</sup> of the two Law Commissions has met again to complete its discussion of reform in the field of choice of law rules in tort/delict in the United Kingdom. Work is nearing completion on a joint consultative document on this topic.

---

<sup>1</sup>(1983) Scot. Law Com. No. 81, para. 3.23.

<sup>2</sup>See Consultative Memorandum No. 55—*Civil Liability in relation to Animals*.

<sup>3</sup>Law Commission Working Paper No. 85; Consultative Memorandum No. 58—*Sale and Supply of Goods*.

<sup>4</sup>(1983) Scot. Law Com. No. 81, para. 3.27.

<sup>5</sup>(1983) Scot. Law Com. No. 74.

<sup>6</sup>See Prescription and Limitation (Scotland) Act 1984 (c. 45).

<sup>7</sup>A list of the members of the Joint Working Party appears in Appendix I to this report.

\*Denotes programme subject.

*Conflicts of Jurisdiction affecting the Custody of Children*

3.32 As indicated in our last annual report,<sup>1</sup> work has been continuing as a matter of urgency on preparation of a joint report by the two Law Commissions on this topic. The report will make recommendations with a view to harmonising the law relating to the jurisdiction of courts within the United Kingdom to make custody orders and will propose rules to enable effect to be given to such orders throughout the United Kingdom. Certain aspects of our proposals have proved particularly difficult to finalise, but the report is now nearing completion and we hope that it will be ready for submission to you in the fairly near future.

*Recognition of Foreign Nullity Decrees, etc.*

3.33 The joint report by the two Law Commissions on the *Recognition of Foreign Nullity Decrees and Related Matters*<sup>2</sup> was submitted to you on 20 July 1984. The two Commissions have taken the opportunity in this report of recommending certain changes in the existing law regarding the recognition of divorces and legal separations, as contained in the Recognition of Divorces and Legal Separations Act 1971. Partly with these changes in mind, the draft Bill appended to the report is intended to replace rather than merely to amend the 1971 Act, with the object of setting out all the law relating to the recognition of foreign divorces, nullity decrees and judicial separations in a single statute.

*Polygamous Marriages*

3.34 A joint report on this subject is being prepared in co-operation with the Law Commission for England and Wales. It will deal with matters covered in Working Paper No 83/Consultative Memorandum No. 56—*Polygamous Marriages: Capacity to contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage*. We hope to submit the report to you in the fairly near future.

*Domicile*

3.35 A Joint Working Party<sup>3</sup> of the two Law Commissions was established earlier this year to discuss reform of the law of domicile and has met on two occasions. Consideration has been given by the Commissions to the major policy issues arising out of the Working Party's deliberations and work has commenced on preparation of a joint consultative document on this topic.

*Choice of Law Rules relating to Marriage*

3.36 A Joint Working Party<sup>4</sup> of the two Law Commissions was set up earlier this year to discuss reform of the choice of law rules relating to marriage. It has met on two occasions. The Commissions have considered the policy issues arising out of the Working Party's deliberations and work is progressing on a joint consultative document on this topic.

---

<sup>1</sup>(1983) Scot. Law Com. No. 81, para. 3.30.

<sup>2</sup>Law Com. No. 137; Scot. Law Com. No. 88.

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

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

## SUCCESSION\*

(Second Programme, Item 7)

3.37 We explained in our last annual report<sup>1</sup> that no work was being done on this subject at that time, 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. Now that our report on matters in the latter area has been submitted and published,<sup>2</sup> we will shortly be in a position to turn our attention to the law of succession. With this in mind, some further research is now being undertaken with a view to preparation of a paper identifying possible options for reform as the basis for a future consultative memorandum.

## STATUTE LAW

### *Consolidation*

3.38 As in the past, progress is recorded under two heads: consolidation of legislation applying to Scotland only; and consolidation of legislation extending to other parts of the United Kingdom as well as to Scotland.

#### (a) *Scotland-only consolidations*

##### *First Programme*<sup>3</sup>

3.39 *Court of Session*—Following consultation with the Court of Session Rules Council, certain enactments have been incorporated into an Act of Sederunt; this will enable a further print of the consolidation Bill to be prepared when drafting resources and other priorities permit.

3.40 *Roads and Bridges*—One of the items appearing in our First Programme is Roads and Bridges (Scotland). It became clear to us some years ago, however, that it would be beyond our power to produce a satisfactory consolidation in modern language from the complex and, in many respects, archaic, legislation in this field, at any rate without extensive pre-consolidation amendments first having been made to the legislation by means of an appropriate Government Bill. We are pleased to note that the desired objectives with regard to consolidation and modernisation of this legislation are now on the point of being realised by a single Government measure, the *Roads (Scotland) Bill*, which has reached its final Parliamentary stages. This Bill, which was prepared by draftsmen in the Lord Advocate's Department, in effect codifies in modern terms, and with certain amendments of substance; the statute law relating to roads and bridges in Scotland.

##### *Second Programme*<sup>4</sup>

3.41 As indicated in our Eighteenth Annual Report,<sup>1</sup> work on the Commission's Second Programme of Consolidation and Statute Law Revision has been completed.

---

<sup>1</sup>(1983) Scot. Law Com. No. 81, para. 3.34.

<sup>2</sup>See para. 3.17 above.

<sup>3</sup>(1966) Scot. Law Com. No. 2.

<sup>4</sup>(1973) Scot. Law Com. No. 27.

<sup>5</sup>Scot. Law Com. No. 81, para. 3.37.

\*Denotes programme subject.

### *Third Programme*<sup>1</sup>

3.42 Work on three of the items in the Third Programme (Adoption, Slaughterhouses and Water) has been completed. The position regarding the remaining eight of the original eleven items in the Programme is as follows:

- (1) *Building legislation*—Work on this consolidation remains deferred for the reasons stated in our Sixteenth Annual Report.<sup>2</sup>
- (2) *Rents*—Following its introduction into Parliament earlier in the Session, the Rent (Scotland) Bill has completed all stages in the House of Lords and is now before the House of Commons. It is hoped that this Bill will pass through its remaining stages smoothly and reach the Statute Book by the end of the Session.
- (3) *Prisons*—Preliminary instructions for the consolidation of the legislation relating to Prisons in Scotland were received recently. Work on this consolidation will commence when the services of a draftsman become available.
- (4) *Other items*—The Scottish Office has indicated that work on the preparation of instructions with regard to one of the other items in the Programme, *Valuation and Rating*, is currently in hand.

### *Fourth Programme*<sup>3</sup>

3.43 Work has proceeded on two of the four items contained in our Fourth Programme of Consolidation and Statute Law Revision, viz:

- (1) *Foster Care*—The Bill was introduced this Session; it has completed all stages in the House of Lords and is at present before the House of Commons. It is not anticipated that there will be any further amendments to the Bill, and it is hoped that it will pass through its remaining stages and receive the Royal Assent soon.
- (2) *Housing*—Work is continuing on the preparation of a first print of a Bill and is now reasonably well advanced. This is a large-scale consolidation: it is likely to run to over 300 clauses and 20 schedules. The clauses are at present in first draft form, but it is unlikely that a complete first print of the Bill will be available much before the end of 1984.

### *Additional items*

3.44 With our agreement, a draftsman in the Lord Advocate's Department has undertaken the preparation of a Bill to consolidate the legislation relating to *Mental Health* in Scotland. This Bill received the Royal Assent on 12 July 1984.<sup>4</sup> It has also been agreed that a draftsman in the Lord Advocate's Department should prepare a Bill to consolidate the legislation relating to *Agricultural Holdings* in Scotland. We understand that work has recently begun on this proposed consolidation.

### (b) *United Kingdom and Great Britain consolidations*

3.45 The following Acts have been passed since completion of the Commission's Eighteenth Annual Report:

---

<sup>1</sup>(1978) Scot. Law Com. No. 46.

<sup>2</sup>(1981) Scot. Law Com. No. 70, para. 3.38.

<sup>3</sup>(1982) Scot. Law Com. No. 71.

<sup>4</sup>See *Mental Health (Scotland) Act 1984* (c. 36).

Car Tax Act 1983  
Medical Act 1983  
Value Added Tax Act 1983  
Dentists Act 1984  
Road Traffic Regulation Act 1984

3.46 A Bill to consolidate the legislation relating to *Capital Transfer Tax* was introduced into Parliament this Session and is expected to receive the Royal Assent soon.<sup>1</sup>

3.47 Bills on the following subjects are in course of preparation:

Clean Air  
Companies  
Exhibition of Films  
Fisheries  
Income and Corporation Taxes  
Reserve Forces (Protection of Civil Interests)  
Road Traffic  
Weights and Measures.

#### *Statute Law Revision*

3.48 In May 1984, the Law Commission for England and Wales published its proposals to repeal obsolete provisions in the Companies Act 1984 as the Eleventh Report on Statute Law Revision.<sup>2</sup> Work is proceeding on the next Joint Report on Statute Law Revision (now the Twelfth),<sup>3</sup> with a view to introducing a Bill into Parliament during the 1984–85 Session.

#### *Local Legislation*

3.49 A Joint Working Party has been established by the two Law Commissions,<sup>4</sup> pursuant to a decision of the Statute Law Committee on 2 December 1983, with the following remit:

‘To examine the problems of the local statute law in England and Wales and in Scotland, to report on the options for advancing the process of rationalising and reforming it and to make recommendations for consideration by the Statute Law Committee.’

The Working Party held its first meeting in London on 14 May 1984. Work is now proceeding on a draft interim report to the Statute Law Committee. This report will examine, *inter alia*, the work in progress to rationalise local authority private legislation, in England and Wales under section 262(9) of the Local Government Act 1972, and in Scotland under section 225(6) of the Local Government (Scotland) Act 1973. We intend to keep under review the progress in Scotland, and, as a first step, we have established informal contacts with the Scottish Office departments concerned and with the Secretary of State’s Counsel for Private Legislation Procedure.

---

<sup>1</sup>This Bill received the Royal Assent on 31 July 1984: see Capital Transfer Tax Act 1984 (c. 51).

<sup>2</sup>(1984) Law Com. No. 135.

<sup>3</sup>Referred to in our last annual report as the Eleventh Joint Report—see (1983) Scot. Law Com. No. 81, para. 3.44

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

3.50 A major concern of the Working Party is that the process of rationalising local legislation should result in express repeals and modifications of existing enactments which can be recorded specifically in the Chronological Table of Local and Personal Acts being prepared by the Law Commission for England and Wales.<sup>1</sup> That project, in which we are co-operating with the Law Commission, is an important part of the work of simplifying the statute law and of making it accessible. The information which will be recorded in the Chronological Table is essential for this purpose, and the work in progress to rationalise local authority law has reinforced the need for such a Table.

#### OTHER MATTERS

##### *Breach of Confidence*

3.51 Work has proceeded recently on the preparation of a report on breach of confidence, dealing with matters covered in Consultative Memorandum No. 40 and in a further consultation paper prepared for restricted circulation which was issued in May 1982. We hope that the report (with a draft Bill annexed) will be ready for submission to you in the fairly near future.

##### *Irritancies in Leases*

3.52 As indicated in our last annual report,<sup>2</sup> our report on *Irritancies in Leases*<sup>3</sup> was submitted to the Secretary of State for Scotland on 19 November 1982 and published on 17 February 1983. No legislation has yet been introduced to implement the recommendations in this report.

##### *Powers of Attorney*

3.53 As indicated in the next paragraph, we have still to consider how work on our proposed study of the law relating to powers of attorney and judicial factors could best be advanced.

##### *Judicial Factors*

3.54 As mentioned in our last annual report,<sup>4</sup> a research paper on the subject of judicial factors has been prepared for us by a consultant. The commitment of resources to matters of higher priority has so far prevented us from considering how work on our proposed study of the law relating to both judicial factors and powers of attorney could best be advanced, but we hope to be in a position to do so in the course of the coming year.

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

3.55 The Joint Working Party set up to provide us with information about difficulties experienced in the operation of the law relating to receivers (and consisting of representatives from the Law Society of Scotland, the Faculty of Advocates and the Institute of Chartered Accountants of Scotland, together with an observer from the Commission) has substantially completed its work. The Working Party's report is likely to provide very useful material for sections on Part I (Floating Charges) and Part II (Receivers) of the Companies (Floating Charges and Receivers) (Scotland) Act 1972, in a consultative

---

<sup>1</sup>See the Eighteenth Annual Report of the Law Commission for England and Wales, (1984) Law Com. No. 131, paras. 2.82–2.87.

<sup>2</sup>(1983) Scot. Law Com. No. 81, para. 3.46.

<sup>3</sup>(1983) Scot. Law Com. No. 75.

<sup>4</sup>(1983) Scot. Law Com. No. 81, para. 3.48.

document which the Commission hopes to prepare in the fairly near future. As indicated above,<sup>1</sup> because of the clear connection between certain aspects of this project and our more general project on rights in security, we have decided that the two projects should be combined.

#### *Recovery of Possession of Heritable Property*

3.56 We published our Consultative Memorandum No. 59—*Recovery of Possession of Heritable Property*—on 9 February 1984, together with a research paper prepared for us by Mr. A. G. M. Duncan, formerly Senior Lecturer in law at the University of Edinburgh. We invited comments on the proposals set out in the consultative memorandum by 30 June 1984. (This topic subsumes the two former projects, *Actions of Ejection and Removings* and *Agricultural Holdings*, referred to in our last annual report<sup>2</sup>).

#### **MISCELLANEOUS: ADVICE TO GOVERNMENT DEPARTMENTS, ETC.**

3.57 It has become our practice to mention under this heading items which do not readily fit into any of the other classifications adopted in this report, including matters of an international character on which our advice has been sought by Government departments. 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 covered elsewhere in this report. In other cases, however, the requests have been dealt with informally. We do not think it would be appropriate for us to give an exhaustive list of matters in the second category in this report.

#### *Reservation of Title to Corporeal Moveables*

3.58 We explained in our last annual report<sup>3</sup> that, in response to a request by the Scottish Office, we had submitted observations on a draft European Convention on reservation of title to corporeal moveables prepared by a Council of Europe Working Party. We are advised that the topic is still being examined by the Working Party.

## **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 sale and supply of goods,<sup>4</sup> conflicts of jurisdiction affecting the custody of children,<sup>5</sup> recognition of foreign nullity decrees,<sup>6</sup> polygamous marriages,<sup>7</sup> the law of domicile<sup>8</sup> and choice of law rules relating to marriage.<sup>9</sup> The annual Joint Meeting was held in Edinburgh on 11 and 12

---

<sup>1</sup>See para. 3.22.

<sup>2</sup>(1983) Scot. Law Com. No. 81, paras. 3.50 and 3.51.

<sup>3</sup>(1983) Scot. Law Com. No. 81, para. 3.53.

<sup>4</sup>See para. 3.27.

<sup>5</sup>See para. 3.32.

<sup>6</sup>See para. 3.33.

<sup>7</sup>See para. 3.34.

<sup>8</sup>See para. 3.35.

<sup>9</sup>See para. 3.36.

June 1984. We wish to record our appreciation of the generous hospitality provided by the Law Society of Scotland.

*Codification of the Criminal Law*

4.2 Elsewhere in this report,<sup>1</sup> we refer to our interest in the work of the Law Commission for England and Wales on its 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 its 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 its projects.

*Working Party on Contract Law*

4.3 Our Working Party<sup>2</sup> 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 to time.

**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. In this regard, we have 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.

**CONFERENCES, SEMINARS, ETC.**

4.7 Commissioners and members of our legal staff attended a number of conferences, seminars and colloquia in the course of the year under review: some of the more important of these are mentioned below in chronological order.

4.8 Our Chairman attended the 7th Commonwealth Law Conference, held in Hong Kong from 18 to 23 September 1983. The proceedings included a special 'forum' on law reform within the Commonwealth, at which most of the major law reform agencies throughout the Commonwealth were represented. We regard it as very important for our future work that we should continue to maintain close contact with these agencies.

---

<sup>1</sup>See para. 3.3.

<sup>2</sup>A list of the present members of the Working Party appears in Appendix I to this report.

4.9 Sheriff Nicholson attended the 9th International Congress on Criminology, held in Vienna from 25 to 30 September 1983, and the Annual Conference of the Scottish Association for the Study of Delinquency, held at Peebles from 18 to 20 November 1983.

4.10 A member of our legal staff attended the Annual Conference of the Law Society of Scotland, held at Gleneagles Hotel from 6 to 8 April 1984. As in previous years, the informal discussions with practising members of the profession about aspects of the Commission's work which took place against the background of the conference proved most beneficial.

4.11 A member of our legal staff attended the Annual Conference of the Scottish Association of Citizens Advice Bureaux, held at Aviemore on 12 and 13 June 1984, at which your Lordship delivered an address. The proceedings included an interesting discussion of issues pertaining to our work on the law of diligence.

## V. MISCELLANEOUS

### DEPARTMENTAL COMMITTEES AND OTHER BODIES

5.1 Our Commissioners and legal staff are from time to time appointed to serve on Government and departmental committees and as members of other bodies concerned with the development and reform of the law.

#### *Statute Law Committee*

5.2 Our Chairman serves on the Statute Law Committee and is a member of the Editorial Board for Statutes in Force.

#### *British Institute of International and Comparative Law*

5.3 Our Chairman continues to serve as a member of the Council of Management of the British Institute of International and Comparative Law.

#### *International Society on Family Law*

5.4 Dr Clive is a member of the Executive Council of the International Society on Family Law.

### 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. In Appendix II we list reports, consultative memoranda and other documents prepared by the Commission. These lists include certain consultative documents which were given restricted circulation. The extent to which our proposals have been incorporated in legislation is indicated in Appendix III.

## APPENDIX I

### MEMBERSHIP OF WORKING PARTIES ETC.

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

The Hon. Lord Maxwell	} Joint Chairmen	Scottish Law Commission
The Hon. Mr. Justice Ralph Gibson		Law Commission for England and Wales
Dr. E. M. Clive		Scottish Law Commission
Dr. P. M. North		Law Commission for England and Wales
Joint Secretaries	} Mr. J. G. H. Gasson, Law Commission for England and Wales Mr. R. Eadie, Scottish Law Commission	

#### *Joint Working Party on Tort/Delict*

Professor A. L. Diamond (Chairman)	Institute of Advanced Legal Studies
Professor A. E. Anton, C.B.E.	Consultant, Scottish Law Commission
Mr. R. D. D. Bertram	Scottish Law Commission
Mr. L. A. Collins	Solicitor, London
Mr. B. J. Davenport, Q.C.	Law Commission for England and Wales
The Hon Lord Maxwell	Scottish Law Commission
Mr. C. G. J. Morse	King's College, London
Dr. P. M. North	Law Commission for England and Wales

Secretary: Mr. R. J. Dormer, Law Commission for England and Wales

#### *Joint Working Party on the Law of Domicile*

Dr. E. M. Clive	} Joint Chairmen	Scottish Law Commission
Dr. P. M. North		Law Commission for England and Wales
Professor A. E. Anton, C.B.E.		Consultant, Scottish Law Commission
Mr. R. Bland		Scottish Courts Administration
Mr. J. Easton		Inland Revenue
Mr. P. G. Harris		Law Commission for England and Wales
Mr P. M. Harris		Lord Chancellor's Department
Mr. J. Hill		Foreign and Commonwealth Office
Professor D. McClean		University of Sheffield
Mr. J. Ribbins		General Register Office

Secretary: Miss J. C. Hern, Law Commission for England and Wales

#### *Joint Working Party on Choice of Law Rules in Marriage*

Dr. E. M. Clive	} Joint Chairmen	Scottish Law Commission
Dr. P. M. North		Law Commission for England and Wales
Mr. A. Akbar		Law Commission for England and Wales
Miss S. M. J. Brooks		Foreign and Commonwealth Office
Mr. M. Carpenter		Lord Chancellor's Department
Mr. I. G. Dewar		General Register Office for Scotland
Mr. G. C. Duke		Office of the Solicitor to the Secretary of State for Scotland

Mr. J. Ribbins

General Register Office

Secretary: Miss J. C. Hern, Law Commission for England and Wales

*Joint Working Party on Local Legislation*

The Hon. Mr. Justice Ralph Gibson (Chairman) Law Commission for England and Wales

The Hon. Lord Maxwell Scottish Law Commission  
Mr. B. J. Davenport, Q.C. Law Commission for England and Wales

Mr. H. W. Gamon, C.B.E., M.C. Society of Parliamentary Agents  
Mr. J. G. S. Maclean (as alternate for Lord Maxwell) Scottish Law Commission

Mr. D. Rippengal, C.B., Q.C. Counsel to Chairman of Committees  
Mr. R. H. Streeten Law Commission for England and Wales

Mr. M. J. Ware Department of the Environment

Secretary: Mr. A. M. Rowland, Law Commission for England and Wales

*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. H. R. M. Macdonald Scottish Law Commission

Professor Emeritus Sir Thomas Smith, Q.C. Consultant on Obligations

Secretary: Mr. J. C. Mullin, Scottish Law Commission

## APPENDIX II

### I SCOTTISH LAW COMMISSION—REPORTS, ETC. PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE (AS AT 31 AUGUST 1984)

		<i>Commission No.</i>	
<b>1965</b>	1		First Programme of Law Reform
-----			
<b>1966</b>	2		First Programme of Consolidation and Statute Law Revision
	3		First Annual Report 1965-66
-----			
<b>1967</b>	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
-----			
<b>1968</b>	8		Second Programme of Law Reform
	9		Third Annual Report 1967-68
-----			
<b>1969</b>	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
-----			
<b>1970</b>	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)
-----			
<b>1971</b>	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)
<hr/>		
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)
<hr/>		
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)
<hr/>		
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)
<hr/>		
1976	41	Tenth Annual Report 1974–75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
<hr/>		
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)
<hr/>		
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)
	50	Adoption (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd. 7187)

---

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

*Commission*

	<i>No.</i>	
	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)
<hr/>		
1979	55	Thirteenth Annual Report 1977–78
	56	Fourteenth Annual Report 1978–79
<hr/>		
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)
<hr/>		
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)
	67	Family Law—Report on Aliment and Financial Provision
1981 /82	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation
1981	69	Report on the Law of Incest in Scotland (Cmnd. 8422)
	70	Sixteenth Annual Report 1980–81
<hr/>		
1982	71	Fourth Programme of Consolidation and Statute Law Revision
	72	Family Law—Report on Financial Provision after Foreign Divorce
	73	Seventeenth Annual Report 1981–82
<hr/>		
1983	74	Prescription and the Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions
	75	Report on Irritancies in Leases (Cmnd. 8760)
	76	Family Law—Report on Outdated Rules in the Law of Husband and Wife
	77	*Medical Bill—Report on the consolidation of the Medical Acts 1956 to 1978 and certain related provisions (Cmnd. 8839)

---

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

*Commission*

	<i>No.</i>	
	78	Evidence—Report on Evidence in Cases of Rape and Other Sexual Offences
	79	Obligations—Report on Rectification of Contractual and Other Documents
	80	Report on the Mental Element in Crime
	81	Eighteenth Annual Report 1982–83
<hr/>		
<b>1984</b>	82	Family Law—Report on Illegitimacy
	83	*Amendment of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd. 9114)
	84	*Dentists Bill—Report on the Consolidation of the Dentists Acts 1957 to 1983 (Cmnd. 9119)
	85	*Road Traffic Regulation Bill—Report on the Consolidation of the Road Traffic Regulation Act 1967 and certain related enactments (Cmnd. 9162)
	86	Family Law—Report on Matrimonial Property
	87	*Further Amendment of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd. 9272)

**2 SCOTTISH LAW COMMISSION—CONSULTATIVE MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM<sup>1</sup>**

<b>1966</b>	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
<b>1967</b>	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
<b>1968</b>	*Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
	Memorandum No. 8—Draft Evidence Code—First Part
<b>1969</b>	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
<b>1970</b>	Memorandum No. 13—Jurisdiction in Divorce
<b>1971</b>	Memorandum No. 14—Remedies in Administrative Law
	*Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses for the Supply of Services and other Contracts
	Memorandum No. 16—Insolvency, Bankruptcy and Liquidation
<b>1972</b>	Memorandum No. 17—Damages for Injuries Causing Death
<b>1974</b>	Memorandum No. 18—Liability of a Paramour in Damages for Adultery and Enticement of a Spouse
	Memorandum No. 19—Powers of Judicial Factors
<b>1975</b>	*Memorandum No. 20—Liability for Defective Products

---

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

<sup>1</sup>The 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.

- 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.)
- 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: Poindings 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
- 1982** Memorandum No. 53—Family Law: Illegitimacy  
 Memorandum No. 54—Some Obsolete and Discriminatory Rules in the Law of Husband and Wife

---

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

Memorandum No. 55—Civil Liability in relation to Animals  
\*Memorandum No. 56—Polygamous Marriages  
(Capacity to Contract a Polygamous Marriage and the Concept  
of the Potentially Polygamous Marriage)

- 1983 Memorandum No. 57—Matrimonial Property  
\*Memorandum No. 58—Sale and Supply of Goods
- 1984 Memorandum No. 59—Recovery of Possession of Heritable Property  
Memorandum No. 60—Mobbing and Rioting

### 3 SCOTTISH LAW COMMISSION—OTHER PUBLISHED DOCUMENTS

- 1974 \*Private International Law—Consultative Document on EEC Preliminary Draft  
Convention on the Law applicable to Contractual and Non-Contractual Obligations
- 1979 Research Paper on the Law of Evidence of Scotland by Sheriff I. D. Macphail
- 1984 Research Paper on Actions of Ejection and Removing by Mr. A. G. M. Duncan

### 4 SCOTTISH LAW COMMISSION—CONSULTATIVE DOCUMENTS NOT PUBLISHED AND WITH 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
- 1982 Consultation Paper—Exchange of Standard Term Forms in Contract Formation  
Consultation Paper—Breach of Confidence
- 1983 Consultation Paper—Custody of Children: Jurisdiction and Enforcement within the  
United Kingdom: Jurisdiction of the Sheriff Court  
Supplementary Consultation Paper—Conflicts of Jurisdiction affecting the Custody  
of Children  
Consultation Paper—Illegitimacy and the Guardianship Acts  
\*Consultation Paper—Recognition of Foreign Nullity Decrees and Related Matters

### 5 SCOTTISH LAW COMMISSION—UNPUBLISHED CONFIDENTIAL DOCUMENTS

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

---

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

### APPENDIX III

#### STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 31 August 1984)

<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 (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c. 83)
*Trustee Savings Banks Bill (Scot. Law Com. No. 10)	17.4.69	Trustee Savings Banks Act 1969 (c. 50).
*Interpretation of Statutes (Scot. Law Com. No. 11)	11.6.69	None.
*Exemption Clauses in Contracts—First Report: Amendment to the Sale of Goods Act 1893 (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 (Scot. Law Com. No. 16) (Cmnd. 4542)	1.12.70	Recognition of Divorce and Legal Separations Act 1971 (c. 53).
*Coinage Bill (Scot. Law Com. No. 18) (Cmnd. 4544)	26.11.70	Coinage Act 1971 (c. 24).
*Vehicles (Excise) Bill (Scot. Law Com. No. 19) (Cmnd. 4547)	2.12.70	Vehicles (Excise) Act 1971 (c. 10).

---

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*National Savings Bank Bill (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 (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 (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 (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 (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 (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 (Scot. Law Com. No. 36) (Cmnd. 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c. 10).
*Supply Powers Bill (Scot. Law Com. No. 38) (Cmnd. 5850)	6.1.75	Supply Powers Act 1975 (c. 9).
*Exemption Clauses—Second Report (Scot. Law Com. No. 39)	2.10.75	Unfair Contract Terms Act 1977 (c. 50).
*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (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).

---

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Scot. Law Com. No. 44) (Cmnd. 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c. 18).
*Liability for Defective Products (Scot. Law Com. No. 45) (Cmnd. 6831)	15.6.77	None.
*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (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	Administration of Justice Act 1982 (c. 53), Part II.
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 (Scot. Law Com. No. 53) (Cmnd. 7235)	8.6.78	Interpretation Act 1978 (c. 30).
*Customs and Excise Management Bill (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	In part by the Civic Government (Scotland) Act 1982 (c. 45), Part VI.
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.
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot. Law Com. No. 60)	17.7.80	Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59).
*Judicial Pensions Bill (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 (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	Administration of Justice Act 1982 (c. 53) Part II.
*Trustee Savings Banks Bill (Scot. Law Com. No. 65) (Cmnd. 8257)	11.6.81	Trustee Savings Banks Act 1981 (c. 65).

---

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Scot. Law Com. No. 66) (Cmnd. 8318)	28.7.81	None required.
Family Law—Report on Aliment and Financial Provision (Scot. Law Com. No. 67)	5.11.81	None.
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot. Law Com. No. 68)	26.2.82	None.
Report on the Law of Incest in Scotland (Scot. Law Com. No. 69) (Cmnd. 8422)	23.12.81	None.
Report on Financial Provision after Foreign Divorce (Scot. Law Com. No. 72)	28.10.82	Matrimonial and Family Proceedings Act 1984 (c. 42), Part IV.
Prescription and Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions (Scot. Law Com. No. 74)	10.2.83	Prescription and Limitation (Scotland) Act 1984 (c. 45).
Report on Irritancies in Leases (Scot. Law Com. No. 75) (Cmnd. 8760)	17.2.83	None.
Family Law—Report on Outdated Rules in the Law of Husband and Wife (Scot. Law Com. No. 76)	12.5.83	Law Reform (Husband and Wife) (Scotland) Act 1984 (c. 15).
*Medical Bill (Scot. Law Com. No. 77) (Cmnd. 8839)	24.3.83	Medical Act 1983 (c. 54).
Report on Evidence in Cases of Rape and Other Sexual Offences (Scot. Law Com. No. 78)	21.7.83	None.
Report on Rectification of Contractual and Other Documents (Scot. Law Com. No. 79)	28.7.83	None.
The Mental Element in Crime (Scot. Law Com. No. 80)	23.11.83	None required.
Family Law—Report on Illegitimacy (Scot. Law Com. No. 82)	26.1.84	None.
*Amendment of the Companies Acts 1948–1983 (Scot. Law Com. No. 83) (Cmnd. 9114)	21.12.83	Companies Acts (Pre-Consolidation Amendments) Order 1983 (S.I. 1983, No. 134).
*Dentists Bill (Scot. Law Com. No. 84) (Cmnd. 9119)	18.1.84	Dentists Act 1984 (c. 24).

---

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Road Traffic Regulation Bill (Scot. Law Com. No. 85) (Cmnd. 9162)	21.2.84	Road Traffic Regulation Act 1984 (c. 27).
Family Law—Report on Matrimonial Property (Scot. Law Com. No. 86)	21.6.84	None.
*Further Amendments of the Companies Acts 1948–1983 (Scot. Law Com. No. 87) (Cmnd. 9272)	25.6.84	None.

---

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

