

Scottish Law Commission

(SCOT. LAW COM. No. 98)

**TWENTIETH
ANNUAL REPORT
1984–85**

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

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

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SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15TH JUNE 1985

*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,¹ we have the honour to submit this the Twentieth 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*
2 September 1985

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

TWENTIETH ANNUAL REPORT

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PREFACE

The layout of our annual report has remained unchanged for a number of years. In this our Twentieth Annual Report, however, we have made a few changes. The most significant is the transfer from the beginning to near the end of the report of the passages on the Commission, our staff and the library which used to constitute Part I. The passages now appear, in a modified form, in Part IV (which also deals with other 'miscellaneous' matters)- Part I of the report is now our general survey of the past year (together with a few thoughts about the future) and the detailed summary of progress becomes Part II. Matters under the general heading of 'consultation' (including contacts with the Law Commission for England and Wales and other law reform bodies and with the legal profession) now appear as Part III. We hope these changes will be regarded as an improvement.

140 Causewayside
Edinburgh

2 September 1985.

PART I. GENERAL SURVEY OF THE PAST YEAR

Our report on diligence and debtor protection

1.1 We are reasonably satisfied with the progress of our law reform work in the period under review,¹ if for no other reason than that we have fulfilled our intention, as expressed in our last annual report,² to complete and submit to you our report on diligence and debtor protection.³ This has been the largest and most complex project undertaken by this Commission, and the many detailed and highly technical problems which have had to be resolved have imposed a prolonged and heavy burden, particularly on the draftsman and other members of our legal staff concerned with this work. In formulating our proposals for reform,⁴ we have not found it easy to strike a proper balance between the interests of creditor and debtor, but we have done our best to achieve that object. It will be for others to decide whether we have been successful. The completion of this report does not finally dispose of our diligence project as there are various rather specialised matters remaining on which we have not as yet consulted. These matters do not, however, have anything like the same wide-ranging social implications as the topics covered by our first report.

1.2 Judging by the numbers of reports and consultative documents published in the year under review,⁵ the need to give maximum priority to completion of the diligence report may not appear to have had an unduly harmful effect on our other work. But such statistics can be misleading. Because of the long term nature of most law reform work it may take several years for such work to come to fruition in the form of published proposals. The full impact on our other work of the heavy demands made on our resources by the diligence report may therefore become more noticeable in a year or two. Nevertheless, we are pleased that we have so far been able to keep up a reasonable momentum on a number of different fronts at once and we hope we will be able to continue to do so.

Reports and consultative documents published

Reports

1.3 Of the five law reform reports published within the period under review, two are joint reports on private international law matters, prepared in co-operation with the Law Commission for England and Wales. Much the more important of these is a report on the subject of child custody⁶ which seeks to resolve problems that have been a source of trouble for many years. The recommendations made in the report have two main purposes. First, they are designed to ensure that, so far as possible, where custody of a child is in dispute, the courts of only one part of the United Kingdom may exercise

¹Strictly speaking, the period covered is the year ended 15 June 1985, but in order to present a more complete picture we refer below to certain more recent developments.

²(1984) Scot. Law Com. No. 89, para. 2.5.

³Scot. Law Com. No. 95, submitted on 14 June 1985.

⁴A brief outline of the main features of our proposals is given in para. 2.14 below.

⁵In the period from 16 June 1984 to 15 June 1985, five law reform reports and two reports relating to consolidation Bills were published; in the same period six consultative documents were published.

⁶*Custody of Children—Jurisdiction and Enforcement within the United Kingdom*, (1985) Law Com. No. 138, Scot. Law Com. No. 91.

jurisdiction, thus minimising the risk of conflicting decisions being made. Second, they are designed to ensure that, where a court in one part of the United Kingdom has made a custody order, that order will be recognised throughout the United Kingdom, and will be enforceable in another part of the United Kingdom if registered in the supreme court of that part. It is hoped that the Government may find time to introduce legislation in this area in the fairly near future. This would appear highly desirable since the legislation which gives effect to two international conventions in this area¹ has now received the Royal Assent.² It would clearly be unsatisfactory if the position were to be less well regulated as between different parts of the United Kingdom than in the international sphere. Of rather less practical significance for Scotland is the joint report dealing with foreign decrees of nullity of marriage.³

1.4 Our report on matrimonial property⁴ was published on 21 June 1984. Already its recommendations have been implemented (with minor modifications) in legislation⁵ introduced in the 1984–85 Parliamentary Session. As mentioned below,⁶ the same legislation has implemented (again with slight modifications) our proposals on aliment and financial provision.⁷

1.5 This Commission's report on breach of confidence⁸ had its origins in a recommendation by the Younger Committee on Privacy⁹ which was followed by a reference to us from the Secretary of State for Scotland. The first question for us to consider was whether we should recommend legislation at all in this area or whether the problems would be better left to the future development of common law principles. There are arguments both ways, and to a large extent the answer to the question depends upon political judgment in balancing the mainly private interests in preserving confidentiality against the largely public interest in preserving relative freedom of information. In the end, we thought it best to make no recommendation either way, but if it should be decided by Government as a matter of policy that legislation is needed, the report provides proposals along with a draft Bill which might serve as the basis for a statutory framework to supplement the common law.

1.6 Our report on negligent misrepresentation,¹⁰ the fifth of the law reform reports published within the year under review, was prepared as part of our obligations programme. This small report is concerned with the removal of an anomaly arising from a 19th century decision of the Court of Session¹¹ which has kept the law in this area slightly out of step with modern developments. Although our report was published only in January this year, its recommen-

¹The Council of Europe Convention on the Recognition and Enforcement of Decisions concerning Custody of Children, etc., and the Hague Convention on the Civil Aspects of International Child Abduction (both concluded in 1980).

²See Child Abduction and Custody Act 1985 (c. 60).

³(1984) Law Com. No. 137, Scot. Law Com. No. 88.

⁴(1984) Scot. Law Com. No. 86.

⁵Family Law (Scotland) Act 1985 (c. 37).

⁶See para. 1.26.

⁷(1981) Scot. Law Com. No. 67.

⁸(1984) Scot. Law Com. No. 90.

⁹See (1972) Cmnd. 5012, Ch. 21.

¹⁰Scot. Law Com. No. 92.

¹¹*Manners v. Whitehead* (1898) 1 F. 171.

dation is being implemented in the Law Reform (Miscellaneous Provisions) (Scotland) Bill which is expected to complete its passage through Parliament soon.

1.7 More recently, the Commission's report on art and part guilt¹ was published on 18 July 1985 (that is, technically outside the year under review), but we think it right to mention it as it was submitted to the Secretary of State for Scotland on 25 April 1985. The report is concerned with the relationship between the concept of art and part guilt and certain specific statutory provisions which make it an offence for someone to 'aid, abet, counsel, procure or incite' another person to commit an offence under the legislation in question. For the reasons given in our report on this topic, we have recommended the enactment of a general aiding and abetting provision applicable to statutory offences. We envisage, however, that the existing general provisions on art and part guilt in statutory offences, now contained in the Criminal Procedure (Scotland) Act 1975, would be retained.

Consultative documents

1.8 During the year covered by this report,² we have published six consultative documents. Three of these are in the criminal law field and include a consultation paper on the topic of art and part guilt mentioned above which was issued with more limited circulation than usual in view of the rather technical nature of the issues raised. We are grateful to those who commented for reacting so quickly as this enabled us to report promptly to the Secretary of State in response to the reference we had received from him.³ The other two consultative documents in the criminal law field deal, respectively, with the law of mobbing and rioting⁴ and the definition in Scots law of the crime of attempted homicide.⁵ Again, we are grateful for the speed with which comments were received. As mentioned below,⁶ we have decided, having regard to the comments on our consultative memorandum, to make no recommendation for change in the law relating to attempted homicide. We have still to consider how to proceed on mobbing and rioting in light of the comments received.

1.9 The remaining three consultative documents published in the period under review are in the private international law field. All three were published jointly with the Law Commission for England and Wales. One of the consultative documents invites comments on difficult questions of choice of law in delict.⁷ A central issue raised in the document is the possibility of a replacement for the 'double-actionability' rule.⁸ The second consultative document in the private international law field deals with the law of domicile⁹

¹Scot. Law Com. No. 93.

²I.e. 16 June 1984 to 15 June 1985.

³See para. 2.11 below.

⁴Consultative Memorandum No. 60.

⁵Consultative Memorandum No. 61.

⁶See para. 2.8 below.

⁷Law Commission Working Paper No. 87, Scottish Law Commission Consultative Memorandum No. 62—*Choice of Law in Tort and Delict*.

⁸See as regards Scotland the case of *McElroy v. McAllister* 1949 S.C. 110.

⁹Law Commission Working Paper No. 88, Scottish Law Commission Consultative Memorandum No. 63—*The Law of Domicile*.

and offers suggestions for relaxing some of the rigidities of the existing law, such as the rules concerned with the revival of the domicile of origin. The third deals with choice of law rules relating to marriage.¹ It is fair to say that none of these consultative documents raises matters of great public interest. They are, nevertheless, examples of useful work carried out in co-operation with our colleagues in the Law Commission for England and Wales, with whom we continue to enjoy an excellent relationship.

1.10 A consultative document which raises a number of issues of considerable importance is our recently published memorandum on the legal capacity and responsibility of minors and pupils.² It invites views on possible options for reform of the law relating to the age at which young people can do acts having legal effect: for example, enter into contracts, make wills or consent to medical treatment. We mention this exercise not only because of the importance of the subject-matter, but also because it illustrates how we are trying to improve the 'technique' of law reform in order to make it more responsive to the needs of society. First, in the hope of attracting comments on a wider basis, we have published in addition to the full consultative memorandum a short 'pamphlet' version, outlining the main issues and options but without a detailed analysis of the existing law. Second, as forecast in our last annual report,³ we are trying to arrange public meetings at which our provisional proposals can be explained and discussed. We will be interested to see how this idea operates in practice. Finally, as also forecast in our last annual report, we have commissioned a research project in connection with this exercise. The first phase of the research project—a survey of adult opinion—has already been completed by System Three Scotland, and the second phase—a survey of the opinion of young people—is about to be undertaken by the Central Research Unit of the Scottish Office.

Outline of current work

Law reform work generally

1.11 Following the usual practice, the progress of our current work is summarised fairly fully in Part II⁴ of this annual report. Little purpose would be served in repeating all the details here, but we think it might be helpful to outline the salient aspects and to draw attention to a few matters of particular importance.

1.12 We report below⁵ that we have decided, with your support, to resume our work on administrative law which was discontinued some years ago. There has recently been renewed interest in this area. This has stemmed partly from the developments which led to the introduction of the new procedure for judicial review in the Court of Session, as recommended by a working party under the chairmanship of Lord Dunpark, and partly also from the work of the review committee established in 1978 by Justice, in association with All

¹Law Commission Working Paper No. 89, Scottish Law Commission Consultative Memorandum No. 64—*Choice of Law Rules in Marriage*.

²Consultative Memorandum No. 65, published on 26 June 1985 (i.e. just outside our 'reporting year').

³(1984) Scot. Law Com. No. 89, para. 2.4.

⁴In previous years Part III.

⁵See para. 2.2.

Souls College, Oxford. The Law Society of Scotland has been among the main bodies on this side of the Border to show a keen interest in the subject. We hope to get down to work soon on this potentially enormous area. For the sake of making some worthwhile progress with the modest resources which we will be able to allocate for this purpose, our work is expected to fall into a number of separate phases of more manageable size. The first of these will probably be concerned with title and interest to sue.

1.13 In the criminal law field, following publication of the three consultative documents mentioned earlier,¹ we hope to publish soon a consultative memorandum on the subject of child abduction.² This project, which deals with a matter of great public concern, had its origin in the Child Abduction Act 1984. That Act resulted from a Private Member's Bill to reform the law of England and Wales. Although provisions were added at a fairly late stage to extend this measure to Scotland, it is thought that this was in a sense a 'holding' operation, as shortly after the Bill received the Royal Assent we received a reference from the Secretary of State for Scotland asking us to examine the subject generally from the standpoint of Scots law.

1.14 Work is proceeding on other projects in the criminal law field, including in particular computer crime³ and forfeiture of the proceeds of crime.⁴ The former, which is concerned with a highly topical area, proceeds on a proposal from the Law Society of Scotland. The latter is the subject of a reference from the Secretary of State for Scotland which reflects considerable public concern about the apparent inadequacy of the existing law to prevent certain criminals, including those convicted of drug-trafficking offences, from profiting financially from their illegal activities. There is clearly a United Kingdom (and indeed international) aspect of this subject, and the effectiveness of our own contribution will depend to a significant extent on the continuing co-operation and assistance of government departments both north and south of the Border.

1.15 The second of our reports in the evidence field,⁵ dealing primarily with corroboration and hearsay in civil proceedings, is now nearing completion. We regret that the report has not already been submitted to you. It is concerned, however, with matters of great practical importance to the courts, the legal profession and individual litigants, and we have found it necessary to spend more time on certain issues which have been causing us particular difficulty.

1.16 In the field of family law, now that we have completed our work on aliment and financial provision, matrimonial property and illegitimacy, we have been able to concentrate more attention on our major project on the law of children.⁶ The first stage of this project is a review of the law governing the legal capacity and responsibility of minors and pupils, to which reference

¹See para. 1.8 above.

²Consultative Memorandum No. 67, published on 29 August 1985.

³See para. 2.9 below.

⁴See para. 2.12 below.

⁵The first report was concerned with evidence in cases of rape and other sexual offences: see (1983) Scot. Law Com. No. 78.

⁶See para. 2.20 below.

has already been made above.¹ Subsequent stages will cover custody and guardianship of children and parental rights and duties.

1.17 The obligations programme continues to be a very convenient 'umbrella' for projects which cannot readily be carried out under any other heading or authority. Under this heading our report on civil liability in relation to animals² has now been submitted to you. The report deals with some matters which have attracted considerable interest, particularly among the farming community. These matters include the problems of dogs worrying livestock and of livestock straying on to neighbouring land or busy roads. Also under the obligations programme, a consultative memorandum has recently been issued on the topic of the constitution and proof of voluntary obligations and the authentication of writings.³ This memorandum suggests a fairly radical overhaul of a large area of law and practice which is centuries old.

1.18 Having been informed of the views of the Joint Working Party of the legal and accountancy professions referred to in our last annual report,⁴ we are moving ahead with the preparation of a consultative memorandum on floating charges and receivers (along with some aspects of the law and procedure on registration of company charges) which we hope to complete in the fairly near future. Once that memorandum is a little nearer completion, we should be in a position to consider further what action may be expected to follow with regard to the matters raised in the report of our Working Party on security over moveables (a topic which also comes under the obligations heading).⁵

1.19 Work is continuing on the joint project on the sale and supply of goods which we mentioned in last year's annual report.⁶ This project was recently discussed at a joint meeting with our colleagues in the Law Commission for England and Wales when we re-examined the policy options fairly closely in light of the response to consultation. Preparation of a joint report is now in hand, but we would not like to predict just when it is likely to be submitted to you as there are still a few problems to settle.

1.20 An important new project which we are carrying forward under the obligations programme is rights of relief.⁷ This project originated in a proposal received from the Faculty of Advocates which was directed mainly to the problems arising from rights of relief between co-delinquents under section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940, as typified in *N.C.B. v. Thomson*.⁸ Further examination suggests, however, that we should extend our enquiry to cover areas (including rights of relief in relation to breach of contract) at least as wide as those dealt with by the English legislation in this area.⁹

¹See para. 1.10.

²Scot. Law Com. No. 97, submitted on 12 July 1985.

³Consultative Memorandum No. 66, published on 31 July 1985.

⁴(1984) Scot. Law Com. No. 89, para. 2.6 and 3.55.

⁵See para. 2.22 below.

⁶(1984) Scot. Law Com. No. 89, para. 2.3.

⁷See paras. 2.30 and 2.31 below.

⁸1959 S.C. 353. See also the recent case of *Comex Houlder Diving Ltd. v. Colne Fishing Co. Ltd. and Others*, 21 September 1984 (unreported).

⁹See the Civil Liability (Contribution) Act 1978.

1.21 Private international law, too, continues to be a very productive area, largely due to the impetus provided by our colleagues in the Law Commission for England and Wales. A report on polygamous marriages¹ was submitted to you recently.² Work on the preparation of joint reports on the three topics mentioned earlier³ will begin after the comments received in response to the consultative documents on those topics have been analysed.

1.22 We are pleased to report that we are at last able to turn our attention to the law of succession.⁴ Work has begun on the preparation of a consultative memorandum which we plan to issue during the coming year. We are conscious that a number of other areas have had to be neglected for longer than we would have wished, owing to the need to concentrate resources on matters of higher priority. These areas include judicial factors and powers of attorney.⁵ We hope that we will be able to turn our attention to these topics in the fairly near future. On the other hand, we are pleased to say that another 'miscellaneous' topic—recovery of possession of heritable property⁶—has not been entirely neglected in the past year. The preparation of a draft report on that topic is now in hand.

Statute law work

1.23 Our work in the statute law field⁷ is concerned with consolidation and statute law revision, along with certain matters relating to local legislation. This work, which is generally referred to as tidying-up the Statute Book, is important, and it has the particular virtue of being aimed specifically at reducing the volume of legislation in existence. It tends, however, to take rather a back seat when scarce resources have to be committed to priority projects in the law reform field. In the period under review, for example, our full-time Parliamentary draftsman was heavily engaged in the preparation of the very large and exceptionally difficult draft Bill appended to our diligence report.⁸ This helps to explain why our progress on Scotland-only consolidation Bills has again, we regret to say, been rather modest. Another factor, which has affected in particular the preparation of a major Bill to consolidate Scottish housing legislation, has been the inevitable tendency for consolidation work to take a lower priority than certain other matters (such as Government 'programme' legislation) in the departments responsible for furnishing our draftsmen with instructions.

1.24 As in the past, the Law Commission for England and Wales, with its very much larger resources, has carried out the great bulk of the work on United Kingdom and Great Britain consolidations. This Commission was

¹*Polygamous Marriages—Capacity to Contract a Polygamous Marriage and Related Matters*, Law Com. No. 146, Scot. Law Com. No. 96.

²The report was submitted on 28 June 1985 and published on 8 August 1985.

³See para. 1.9 above.

⁴See para. 2.39 below.

⁵See paras. 2.55 and 2.56 below.

⁶See para. 2.59 below.

⁷See paras. 2.40 to 2.52 below.

⁸See para. 1.1 above.

involved, however, in making joint recommendations for amendment of the law in connection with two such consolidations.¹

1.25 We continue to co-operate with the Law Commission for England and Wales on statute law revision and in the examination of problems affecting local legislation. A joint report on the former is nearing completion and the Joint Working Party set up by the two Commissions² submitted a first report on the latter to the Statute Law Committee at the end of last year.

Implementation

1.26 Finally, we note with considerable satisfaction that no fewer than seven of our law reform reports and three of our reports in the statute law field have been the subject of legislation introduced during the 1984–85 Parliamentary Session. The recommendations contained in our report on bankruptcy³ are being implemented (with some modifications) in the Bankruptcy (Scotland) Bill which is expected to complete its passage through Parliament soon, while those contained in our reports on aliment and financial provision⁴ and matrimonial property⁵ have been implemented (again with some modifications) in the Family Law (Scotland) Act 1985.⁶ Effect has been given to the recommendations made in our reports on irritancies in leases,⁷ evidence in cases of rape and other sexual offences,⁸ the rectification of contractual and other documents⁹ and negligent misrepresentation¹⁰ by provisions in the Law Reform (Miscellaneous Provisions) (Scotland) Bill which is also expected to complete its passage through Parliament soon. In addition, the recommendations made by the Law Commission for England and Wales and ourselves in our two joint reports dealing with the consolidation of the Companies Acts¹¹ were reflected in the Companies Bill—the main consolidation measure—which received the Royal Assent on 11 March 1985,¹² and the recommendations contained in the joint report on the consolidation of the Housing Acts¹³ are, so far as relating to Scotland, reflected in the Housing Associations Bill, which is also expected to complete its final Parliamentary stages shortly. The attention given to our work by Parliament and by the Government during the past year is gratifying and highly encouraging to all at this Commission.

¹See the reports dealing with the consolidation of the Companies Acts, (1984) Law Com. No. 136, Scot. Law Com. 87, and the consolidation of the Housing Acts, (1985) Law Com. No. 144, Scot. Law Com. No. 94.

²See para. 2.50 below.

³(1982) Scot. Law Com. No. 68.

⁴(1981) Scot. Law Com. No. 67.

⁵(1984) Scot. Law Com. No. 86.

⁶c. 37 (The Bill which resulted in this Act received the Royal Assent on 16 July 1985).

⁷(1983) Scot. Law Com. No. 75.

⁸(1983) Scot. Law Com. No. 78 (subject to modification).

⁹(1983) Scot. Law Com. No. 79.

¹⁰(1985) Scot. Law Com. No. 92.

¹¹Reports under s. 116 of the Companies Act 1981: (1983) Law Com. No. 126, Scot. Law Com. No. 83, and (1984) Law Com. No. 136, Scot. Law Com. No. 87.

¹²See Companies Act 1985 (c. 6).

¹³(1985) Law Com. No. 144, Scot. Law Com. No. 94.

PART II. PROGRESS OF LAW REFORM PROJECTS

2.1 The present position¹ in each of our current law reform projects is set out in the following paragraphs. The main subject headings are presented in alphabetical order. We continue to attach greatest importance to our programme work, that is, to projects undertaken in accordance with our published programmes.² In the main headings set out below, programme subjects are denoted by the use of an asterisk.

Administrative law

2.2 We have recently decided, with your support, to resume our work on administrative law, which was discontinued in 1976.³ As yet we have taken no firm decisions about the scope and timing of the project. It seems likely, however, that the work will fall into a number of relatively discrete phases, probably starting with an exercise on title and interest to sue, including some consideration of grounds of review so far as relevant. Subject to other demands on our resources, we hope to start on the work in the very near future.

2.3 In anticipation of our renewed involvement in this field, we commissioned Mr. C. M. G. Himsworth, Lecturer in the Department of Constitutional and Administrative Law at the University of Edinburgh, to carry out research on the subject of administrative law in the sheriff court. This research, which included a limited survey of the records of selected sheriff courts, has been completed, and we have now received Mr. Himsworth's paper, together with an extensive bibliography of relevant statutory references and preliminary analyses. This provides us with a very large amount of material not otherwise available in readily accessible form, and we hope to make good use of it when we take up work on the first phase of our project.

Bankruptcy*

(Second Programme Item 6)

2.4 Our report on *Bankruptcy and Related Aspects of Insolvency and Liquidation*⁴ was published on 26 February 1982. The recommendations contained in this report are being implemented, with some modifications, in the Bankruptcy (Scotland) Bill which is at present before Parliament.

Criminal law

General

2.5 As in previous years the larger part of our work in the criminal law field has arisen from requests made to us by Government departments and other bodies for advice under section 3(1)(e) of the Law Commissions Act 1965, and from proposals submitted to us under section 3(1)(a) of that Act. Our

¹For 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 1985).

²First Programme, (1965) Scot. Law Com. No. 1; Second Programme, (1968) Scot. Law Com. No. 8; Third Programme, (1973) Scot. Law Com. No. 29.

³See (1971) Memorandum No. 14, *Remedies in Administrative Law*; Eleventh Annual Report, 1975-1976 (1977) Scot. Law Com. No. 43, para. 50.

⁴(1982) Scot. Law Com. No. 68.

*Denotes programme subject.

work in these areas is summarised below. We also, of course, maintain links with the Law Commission for England and Wales and consider the implications for Scots law of that Commission's work.

Incest

2.6 The position on this topic remains as stated in our last annual report¹: our report on *The Law of Incest in Scotland*² was published on 23 December 1981, but no legislation has been introduced to implement our recommendations.

Mobbing and rioting

2.7 In response to a proposal³ from the Crown Agent under section 3(1)(a) of the Law Commissions Act 1965, we published on 5 July 1984 our Consultative Memorandum No. 60—*Mobbing and Rioting*. We are considering the implications of the comments received.

Attempted homicide

2.8 As with mobbing and rioting, this exercise is the result of a proposal by the Crown Agent under section 3(1)(a) of the 1965 Act. The proposal, received on 2 May 1984, asked us to consider the decision in *Cawthorne v. H.M.A.*⁴ This was to the effect that a person is guilty of attempted murder, even without deliberate intention to kill, if his actions were such that, had his victim died, he could have been convicted of murder. We published Consultative Memorandum No. 61—*Attempted Homicide*—on 27 September 1984. A minority of those who responded took the view that the law should be amended to allow conviction for attempted murder on proof only of intention to kill. The majority, however, including some of our most influential commentators, were opposed to such change. In the circumstances, we concluded that we should not recommend any reform of the existing law and so advised the Lord Advocate and the Crown Agent.⁵

Computer crime

2.9 This wide-ranging project is the subject of a proposal by the Law Society of Scotland under section 3(1)(a) of the 1965 Act. The proposal, received on 13 July 1984, invited us to examine problems arising from the use, misuse and abuse of computers and telecommunications systems. It does not include consideration of the possible reform of such civil law areas as copyright and patent law. Work on the preparation of a consultative memorandum is proceeding, and in the course of this work we have received much co-operation and useful information from those in business and industry closely involved with computers.

¹(1984) Scot. Law Com. No. 89.

²(1981) Scot. Law Com. No. 69.

³The terms of the proposal, which extend to the law of conspiracy generally, are set out in Consultative Memorandum No. 60, para. 1.1.

⁴1968 J.C. 32.

⁵As we decided to make no recommendations for reform of the law, our advice was given by letter and not in a formal report.

Child abduction

2.10 On 30 July 1984 we received a reference from the Secretary of State for Scotland in terms of section 3(1)(e) of the 1965 Act, requesting us to examine the law on child abduction and related matters (including the provisions of the Child Abduction Act 1984). A consultative memorandum is about to be published¹ with an invitation to comment by early in 1986.

Art and part guilt of statutory offences

2.11 Following consideration of certain issues relating to art and part guilt and aiding and abetting in the context of the joint report of the two Law Commissions on the consolidation of the Road Traffic Regulation Act 1967 and related enactments,² we received a reference from the Secretary of State for Scotland under section 3(1)(e) of the 1965 Act on 20 August 1984. The reference requested us to examine the concept of art and part guilt in relation to statutory crimes and offences under the law of Scotland. We submitted our report on *Art and Part Guilt of Statutory Offences*³ to the Secretary of State on 25 April 1985. In the report, which was published on 18 July 1985, we recommend the creation of the new, general offence of aiding, abetting, counselling, procuring or inciting the commission of any statutory offence (which, we envisage, would be in addition to, and not in place of, the traditional concept of art and part guilt as embodied in sections 216 and 428 of the Criminal Procedure (Scotland) Act 1975).

Forfeiture of the proceeds of crime

2.12 On 8 February 1985 we received a reference on the above topic from the Secretary of State for Scotland under section 3(1)(e) of the 1965 Act. The reference requests us to consider—

- (a) the adequacy of the present law and procedure relating to the forfeiture, in criminal proceedings in Scotland, of property and the proceeds of criminal activity;
- (b) whether further provision should be made to enable courts in Scotland to order forfeiture of the proceeds (whether direct or indirect) of criminal activity and property derived from such proceeds;
- (c) what powers and procedures may be necessary, having due regard to the interests of persons affected, to enable such property and proceeds, and other property liable to forfeiture to be traced, seized, forfeited or otherwise applied, both in Scotland and elsewhere.’

Work in this area is still at a very early stage.

¹This memorandum was published on 29 August 1985 as Consultative Memorandum No. 67. An abbreviated version, in pamphlet form (with questionnaire appended), was published on the same date.

²(1984) Law Com. No. 133; Scot. Law Com. No. 85.

³Scot. Law Com. No. 93.

Damages*

(Second Programme, Item 10)

2.13 As mentioned in our last annual report¹ our work on this programme subject has been completed, at any rate for the time being.

Diligence*

(Second Programme, Item 8)

2.14 On 14 June 1985, fulfilling a pledge given in our last Annual Report,² we submitted to you our Report on *Diligence and Debtor Protection*,³ with draft legislation appended. The Report reviews the Scottish system of debt recovery as a whole and recommends: (1) the introduction of time to pay decrees and time to pay orders (giving debtors an extension of time to pay their debts); (2) the introduction of debt arrangement schemes, providing for the orderly and regular payment by a multiple debtor of the debts owed to his several creditors, either in full or, in appropriate cases, by way of a composition;⁴ (3) reforms of the diligence of poinding and warrant sale; (4) the replacement of the existing diligence of arrestment and furthcoming of earnings by three new forms of diligence against earnings, i.e. earnings arrestments, enforcing debts already due; current maintenance arrestments, enforcing future aliment and periodical allowance on divorce; and conjoined arrestment orders, enforcing debts due to two or more creditors; (5) reforms relating to the forms of diligence (including summary warrant diligence) enforcing rates, taxes and Crown debts and to the priorities accorded to such diligences; (6) reform of the organisation of messengers-at-arms and sheriff officers; and (7) certain miscellaneous reforms having the object of rationalising and modernising aspects of the law of diligence. These reforms are designed to meet the main criticisms which have been made in recent years of the impact on debtors of diligence, especially poindings and warrant sales.

2.15 We shall consider in due course what priorities should be adopted in relation to other topics in the domain of diligence not covered by the report which we have submitted, including for example, adjudication for debt, diligence on the dependence,⁵ sequestration for rent under the landlord's hypothec and poinding of the ground.⁶

¹(1984) Scot. Law Com. No. 89, para. 3.11.

²(1984) Scot. Law Com. No. 89, para. 2.5.

³(1985) Scot. Law Com. No. 95.

⁴Debt arrangements schemes will be a type of insolvency process, and for this reason the Report is also submitted under Item 6 of our Second Programme, which covers *inter alia* personal insolvency.

⁵See our last Annual Report, (1984) Scot. Law Com. No. 89, para. 3.13.

⁶See also our Report on *Diligence and Debtor Protection* (1985) Scot. Law Com. No. 95, paras. 1.8 and 3.40.

*Denotes programme subject.

Evidence*

(First Programme, Item 1)

2.16 Our report on *Evidence in Cases of Rape and Other Sexual Offences*¹ was published on 21 July 1983. The recommendations made in this report are now being implemented, in a slightly modified form, by the Law Reform (Miscellaneous Provisions) (Scotland) Bill, which is currently before Parliament. Work is near completion on the preparation of a report, and relative draft Bill, dealing primarily with corroboration and hearsay in civil proceedings. On submission of that report, we propose, subject to other commitments, to commence 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

2.17 Our report on *Aliment and Financial Provision*² was published on 5 November 1981. The recommendations contained in this report have been implemented, with some modifications, in the Family Law (Scotland) Act 1985.³

Matrimonial property law

2.18 Our report on *Matrimonial Property*⁴ was published on 21 June 1984. Its recommendations have been implemented (with slight modification) in the Family Law (Scotland) Act 1985.³

Illegitimacy

2.19 Our report on *Illegitimacy*⁵ was published on 26 January 1984. A Private Member's Bill introduced by Lord James Douglas-Hamilton to implement the recommendations in this report received its First Reading on 22 May 1985, but the order for second reading was objected to on 7 June 1985 and the Bill did not proceed further. The Government has indicated that it is sympathetic to the principle of the Bill.⁶

Law of children (incorporating legal capacity of minors and pupils)

2.20 On 26 June 1985, we published Consultative Memorandum No. 65—*Legal Capacity and Responsibility of Minors and Pupils*. As explained in our last annual report,⁷ this memorandum has been prepared as the first stage of a major exercise on the law of children, later stages of which will cover custody and guardianship of children, and parental rights and duties. A short version of the memorandum, in pamphlet form (with a questionnaire appended), was published on the same date. Comments on both documents are invited by 31 December 1985. In an attempt to encourage

¹(1983) Scot. Law Com. No. 78.

²(1981) Scot. Law Com. No. 67.

³c. 37 (The Bill which resulted in this Act received the Royal Assent on 16 July 1985.)

⁴(1984 Scot. Law Com. No. 86.

⁵(1984) Scot. Law Com. No. 82.

⁶Weekly Hansard No. 1348 (14 May 1985) col 107.

⁷(1984) Scot. Law Com. No. 89, para. 3.20.

*Denotes programme subject.

a fairly wide response to our provisional proposals, we hope to hold one or two public meetings during the consultation period, at which the issues raised in the memorandum and pamphlet would be discussed. A social research survey of adult opinion on our proposals has been carried out and a separate survey of young people will shortly be undertaken on our behalf by the Central Research Unit of the Scottish Office.

Obligations*

(First Programme, Item 2)

Voluntary obligations—general

2.21 Following the approach which we have previously adopted,¹ we will undertake work in those areas of the law on voluntary obligations where there seems to us to be a need and demand for law reform.

Rights in security over moveable property

2.22 In our last annual report,² we mentioned that after receiving the report of our Working Party on Security over Moveable Property we had been considering a paper on the subject prepared within the Commission. Once our proposed consultative memorandum on the related topics of floating charges and receivers³ is nearer completion, we should be in a position to consider further what action may be expected to follow with regard to the matters raised in the report of our working party.

Constitution and proof of voluntary obligations and the authentication of writings

2.23 During the preparation of a draft report on the constitution and proof of voluntary obligations we decided that it was necessary also to investigate in greater detail problems relating to the authentication of writings. As mentioned in our last annual report⁴ we asked a member of the academic staff of the University of Edinburgh⁵ to write a research paper on the execution and authentication of writings with a view to the preparation of a consultative memorandum on that topic. This paper has been received, and on 31 July 1985 we published Consultative Memorandum No. 66—*Constitution and Proof of Voluntary Obligations and the Authentication of Writings*. Comments have been invited by 31 March 1986.

Defective consent and consequential matters: negligent misrepresentation

2.24 Our report on *Negligent Misrepresentation*⁶ was submitted to you on 22 November 1984 and published on 24 January 1985. Shortly after publication a Private Member⁷ tabled an amendment to the Law Reform (Miscellaneous Provisions) (Scotland) Bill, which, if enacted, would implement the recom-

¹See (1984) Scot. Law Com. No. 89, para. 3.21.

²(1984) Scot. Law Com. No. 89, para. 3.22.

³See paras. 2.57 and 2.58 below.

⁴(1984) Scot. Law Com. No. 89, para. 3.23.

⁵Mr. K. G. C. Reid, Lecturer in the Department of Scots Law.

⁶(1985) Scot. Law Com. No. 92.

⁷Mr. Donald Dewar, MP. (with the support of Mr. Harry Ewing, M.P. and Mr. John Maxton, M.P.).

*Denotes programme subject.

mendation in our report. The Government subsequently accepted the amendment. The Bill is expected to complete its passage through Parliament shortly.

Defective expression—rectification of documents

2.25 Our report on *Rectification of Contractual and Other Documents*¹ was submitted to your predecessor on 17 May 1983 and published on 28 July 1983. Clauses implementing the substance of our recommendations have been included in the Law Reform (Miscellaneous Provisions) (Scotland) Bill.

Corporeal moveables

2.26 As previously stated,² we have decided to postpone any further work on corporeal moveables.

Civil liability in relation to animals

2.27 We submitted our report on *Civil Liability in relation to Animals*³ on 12 July 1985. The report makes recommendations for reforming certain rules of liability which apply at present where animals cause injury or damage. Our aim has been to produce a set of rules which will be as widely acceptable as possible. This has not been an easy task, however, given the diverse interests which exist in relation to animals, and the strongly held views which many people expressed to us following publication of our consultative documents.⁴

Sale and supply of goods

2.28 In conjunction with the Law Commission for England and Wales, we published a consultative document on issues relating to the sale and supply of goods⁵ in October 1983 with a request for comments by 31 March 1984. A large number of comments was submitted, and the last of these was not in fact received until late in 1984. Following preparation of a detailed analysis of the comments, the options for reform were re-assessed at a recent joint meeting of the two Law Commissions. Work has now commenced on the preparation of a joint report.

Legal capacity of minors and pupils

2.29 As indicated in paragraph 2.20 above, a consultative memorandum covering the above topic has recently been published.⁶ This topic is the first stage of our major project on the reform of the law of children.

Rights of relief

2.30 We received from the Faculty of Advocates on 7 December 1984 a proposal under section 3(1)(a) of the Law Commissions Act 1965 requesting us to consider the question of rights of relief in relation to claims and

¹(1983) Scot. Law Com. No. 79.

²See our Sixteenth Annual Report, (1981) Scot. Law Com. No. 70, para. 3.20.

³Scot. Law Com. No. 97.

⁴(1982) Consultative Memorandum No. 55; Pamphlet, *Liability for Animals*.

⁵Law Commission Working Paper No. 85; Scottish Law Commission Consultative Memorandum No. 58—*Sale and Supply of Goods*.

⁶Consultative Memorandum No. 65—*Legal Capacity and Responsibility of Minors and Pupils*, published on 26 June 1985.

proceedings based on delict, with particular reference to the power of the court under section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 to decide that a person found liable in damages is entitled to recover a contribution from another person who, if sued, might also have been held liable.

2.31 Some preliminary research on this subject has been undertaken and we recently gave further thought to the range of issues which might be considered in a consultative memorandum. Although the proposal from the Faculty of Advocates was confined (with our agreement) to rights of relief arising from delict, we are now inclined to think that the exercise should include rights of relief arising in other circumstances, such as breach of contract, and indeed that it should correspond generally (although with certain possible variations) to the scope of the Civil Liability (Contribution) Act 1978, the legislation which governs this subject in England and Wales. Work is now in hand on the preparation of a consultative memorandum on this wider basis.

Other topics

2.32 As previously stated,¹ we have prepared research papers on the general law relating to irritancies, illegality, penalty clauses and liquidated damages clauses in contracts. We also keep under review other aspects of the law of obligations. Subject to the availability of resources, and to our being satisfied that there is a need and demand for reform, we may undertake work in greater depth on such matters at some future date.

Private international law*

(Third Programme)

Law applicable to non-contractual obligations: choice of law rules in tort/delict

2.33 In conjunction with the Law Commission for England and Wales, we published in December 1984 a consultative document on the choice of law rules in tort and delict.² Comments have been invited by 16 July 1985.

Conflicts of jurisdiction affecting the custody of children

2.34 The joint report by the two Law Commissions on *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*³ was published on 15 January 1985. The report makes recommendations for uniform rules of jurisdiction in civil proceedings relating to the custody of children and for recognition and enforcement throughout the United Kingdom of custody orders made in England and Wales, Scotland and Northern Ireland. We understand that consideration is being given to the possibility of introducing legislation to implement its recommendations in the fairly near future.

¹See our Eighteenth Annual Report, (1983) Scot. Law Com. No. 81. para. 3.27.

²Law Commission Working Paper No. 87; Scottish Law Commission Consultative Memorandum No. 62—*Choice of Law in Tort and Delict*.

³Law Com. No. 138; Scot. Law Com. No. 91.

*Denotes programme subject.

Recognition of foreign nullity decrees, etc.

2.35 The joint report by the two Law Commissions on the *Recognition of Foreign Nullity Decrees and Related Matters*¹ was published on 19 September 1984. No indication has yet been given as to when legislation to implement this report may be introduced.

Polygamous marriages

2.36 The joint report by the two Law Commissions on *Polygamous Marriages—Capacity to Contract a Polygamous Marriage and Related Matters*² was submitted to you on 28 June 1985.³ The report recommends that persons domiciled in England and Wales or in Scotland should not lack capacity to contract abroad a marriage which is in fact monogamous merely because it is celebrated in polygamous form. It also contains a separate Scottish recommendation to ensure that full legal effect is given in Scotland to all marriages which are actually monogamous.

Domicile

2.37 The two Law Commissions published a joint consultative document on the law of domicile⁴ on 16 April 1985. Comments have been invited by 31 July 1985.

Choice of law rules relating to marriage

2.38 A joint consultative document on this topic⁵ was published by the two Law Commissions on 16 April 1985. Comments have been invited by 31 July 1985.

Succession*

(Second Programme, Item 7)

2.39 Since submission of our last annual report, we have carried out further research on the law of succession with a view to identifying options for reform. Work has now commenced on the preparation of a consultative memorandum on the subject.

Statute law

Consolidation

2.40 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.

¹Law Com. No. 137; Scot. Law Com. No. 88.

²Law Com. No. 146; Scot. Law Com. No. 96.

³The report was published on 8 August 1985.

⁴Law Commission Working Paper No. 88; Scottish Law Commission Consultative Memorandum No. 63—*The Law of Domicile*.

⁵Law Commission Working Paper No. 89; Scottish Law Commission Consultative Memorandum No. 64—*Choice of Law Rules in Marriage*.

*Denotes programme subject.

(a) *Scotland-only consolidations*

First Programme

2.41 *Court of Session*—Following the decision to incorporate certain enactments into an Act of Sederunt, a further print of the consolidation Bill has been prepared and circulated for comment. The draftsman has had discussions with some of those consulted and is now awaiting further comments on the print.

Second Programme

2.42 As indicated in our last annual report,¹ work on the Commission's Second Programme of Consolidation and Statute Law Revision has been completed.

Third Programme

2.43 As a result of the enactment of the Rent (Scotland) Bill² at the end of the last Parliamentary Session, work on four of the items in the Third Programme (Adoption, Slaughterhouses and Water, together with Rents) has now been completed. The position regarding the remaining seven 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 the Sixteenth Annual Report.³
- (2) *Prisons*—Instructions have been received for the consolidation of the legislation relating to prisons in Scotland. Work on this consolidation will commence when the services of a draftsman become available.
- (3) *Valuation and Rating*—Instructions were received recently for the preparation of a Bill to consolidate the legislation relating to valuation and rating in Scotland. Work on this consolidation will commence when the services of a draftsman become available, provided we are then assured by the Scottish Office that the time is ripe for consolidation.
- (4) *Other items*—Instructions have not yet been received from the Scottish Office with regard to any of the other items in the Programme.

Fourth Programme

2.44 Work has proceeded on two of the four items contained in the Commission's Fourth Programme of Consolidation and Statute Law Revision, viz:

- (1) *Foster Care*—The Foster Children (Scotland) Bill received the Royal Assent on 31 October 1984.⁴
- (2) *Housing*—A first print of the Housing (Scotland) Bill (extending to over 300 Clauses and more than 20 Schedules) was completed in December 1984 and circulated for comment. Comments have not as yet been received, and although we had hoped that this Bill would be ready for introduction in the 1985–86 Parliamentary Session, it appears this may no longer be possible owing to the decision of the Scottish Office to divert its resources in this area to the preparation

¹(1984) Scot. Law Com. No. 89, para. 3.41.

²See Rent (Scotland) Act 1984 (c. 58).

³(1981) Scot. Law Com. No. 70, para. 3.38.

⁴See Foster Children (Scotland) Act 1984 (c. 56).

of a proposed Government 'programme' Bill. Understandably, the Scottish Office considers that work on the programme Bill must be accorded higher priority. We regret, however, that the progress of this much needed consolidation seems likely to be further delayed. Nevertheless, the draftsman is proceeding with preparation of a second draft of the Bill. It is hoped that the Scottish Office will be able to find the resources to comment on this draft when it is completed.

Additional items

2.45 With our agreement, a draftsman in the Lord Advocate's Department is undertaking the preparation of a Bill to consolidate the legislation relating to *Agricultural Holdings* in Scotland.

(b) *United Kingdom and Great Britain consolidations*

2.46 The following Acts have been passed since completion of our last annual report:

- Business Names Act 1985
- Capital Transfer Tax Act 1984
- Cinemas Act 1985
- Companies Act 1985
- Companies Consolidation (Consequential Provisions) Act 1985
- Company Securities (Insider Dealing) Act 1985
- Reserve Forces (Safeguard of Employment) Act 1985.

2.47 Bills on the following subjects have been introduced into Parliament this session:

- Housing Associations
- Weights and Measures.

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

- Clean Air
- Fisheries
- Income and Corporate Taxes
- Opticians.

*Statute law revision*¹

2.49 As indicated in our last annual report,² work is proceeding, in association with the Law Commission for England and Wales, on the Twelfth Joint Report on Statute Law Revision. A draft Statute Law (Repeals) Bill and a draft of the relative report have now been prepared. It is hoped that these will soon be completed so that the Bill can be introduced into Parliament as early as possible in the 1985–86 Session.

Local legislation

2.50 In our last annual report,³ we described the setting up of a Joint Working Party by the two Law Commissions, with the following remit:

¹See also para. 2.52.

²(1984) Scot. Law Com. No. 89, para. 3.48.

³(1984) Scot. Law Com. No. 89, para. 3.49.

‘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 First Report of the Working Party was submitted to the Statute Law Committee on 7 December 1984. The Committee endorsed the Working Party’s recommendations, which were directed mainly to local authority private legislation and the effects of section 262(9) of the Local Government Act 1972 and section 225(6) of the Local Government (Scotland) Act 1973. The Working Party has been asked by the Committee to report further on statutory undertakers’ legislation in due course. Separately, we are endeavouring to provide the Working Party with information concerning the practical working of the Private Legislation Procedure (Scotland) Act 1936. In this task we have the assistance of Mr. Gavin Douglas, Q.C. (who is Counsel to the Secretary of State for Scotland on Private Legislation Procedure as well as being one of our part-time Parliamentary draftsmen).

2.51 We also explained in our last annual report how our work on local legislation was linked to a wider and longer-term project of preparing an effective Chronological Table of Local and Personal Acts.¹ This work, largely being carried out by the Law Commission for England and Wales, has continued and the first instalment of the Table, covering the effects of legislation between 1925 and 1973 on all local and personal Acts, has now been completed. As a preliminary step, the Table has been sent to selected interests, including interests in Scotland, whose work most frequently involves use of local Acts. After comments have been received and considered, the Table will be published.

2.52 It is hoped that the work of the Joint Working Party and the work on the Chronological Table will result in due course in a Statute Law (Repeals) Bill which will clarify the status, whether operative or not, of local authority private Acts disclosed in the course of research on the Chronological Table.

Other matters

Breach of confidence

2.53 Our report on *Breach of Confidence*² was submitted to the Secretary of State for Scotland on 26 October 1984 and published on 20 December 1984.

Irritancies in leases

2.54 Our report on *Irritancies in Leases*³ was published on 17 February 1983. The recommendations contained in this report are being implemented in the Law Reform (Miscellaneous Provisions) (Scotland) Bill which is at present before Parliament.

Powers of attorney

2.55 As mentioned 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.

¹(1984) Scot. Law Com. No. 89, para. 3.50.

²(1984) Scot. Law Com. No. 90.

³(1983) Scot. Law Com. No. 75.

Judicial factors

2.56 We regret that the demands made on our resources by matters of higher priority has continued to prevent 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 are hopeful that we will be able to turn our attention to these topics during the coming year.

Floating charges and receivers

2.57 We have now been advised of the conclusions and recommendations of the Joint Working Party (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) set up to provide us with information about difficulties experienced in the operation of the law relating to receivers. We are most grateful to the members of the Joint Working Party for their valuable contribution to an understanding of the problems encountered in relation to the present law of receivership.

2.58 Work is in hand on the preparation of a consultative memorandum on floating charges and receivers (together with some aspects of the law and procedure relating to the registration of company charges).¹ We hope that this memorandum will be completed in the fairly near future.

Recovery of possession of heritable property

2.59 We have considered comments submitted in response to our Consultative Memorandum No. 59—*Recovery of Possession of Heritable Property*—published on 9 February 1984, and have formulated policy for a report on this topic. Work has now commenced on the preparation of the report and relative draft Bill.

Miscellaneous: advice to Government Departments, etc.

2.60 It has been 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

2.61 It is understood that the draft European Convention on reservation of title to corporeal moveables referred to in our last annual report² was the

¹The provisions of the Companies (Floating Charges and Receivers) (Scotland) Act 1972 have been incorporated in the Companies Act 1985 (see in particular Part XII, Chapter II, and Part XVIII), but may be subject to amendment by the Insolvency Bill which is currently before Parliament.

²(1984) Scot. Law Com. No. 89, para. 3.58.

subject of further discussions in a Council of Europe Committee towards the end of 1984 but that no conclusions were reached. Work on a draft EEC Directive on the same subject is meantime in abeyance pending the outcome of the discussions on the draft Convention.

PART III. CONSULTATION

The Law Commission for England and Wales

3.1 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,¹ conflicts of jurisdiction affecting the custody of children,² recognition of foreign nullity decrees,³ polygamous marriages,⁴ the law of domicile⁵ and choice of law rules relating to marriage.⁶ The annual Joint Meeting was held in London on 2 and 3 April 1985. We wish to record our appreciation of the generous hospitality provided by the Senate of the Inns of Court and Bar and the Law Society.

Codification of the criminal law

3.2 We are grateful to the Law Commission for continuing to keep us informed of the progress of its work on its major programme subject, 'Codification of the Criminal Law', 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

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

Other law reform organisations

3.4 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

3.5 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

¹See para. 2.28.

²See para. 2.34.

³See para. 2.35.

⁴See para. 2.36.

⁵See para. 2.37.

⁶See para. 2.38.

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

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.

3.6 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, the Signet Library and the Institute of Advanced Legal Studies, London.

Conferences, seminars, etc.

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

3.8 Dr. Clive attended relevant parts of the proceedings of the Annual Conference of the Society of Public Teachers of Law, held in Edinburgh from 17 to 21 September 1984. Some of the talks given at this conference (including in particular one on the law of succession) proved of considerable interest and had quite a close bearing on our work.

3.9 Mr. Murray and Sheriff Nicholson attended a seminar on civil procedure held in London, under the auspices of the Law Commission for England and Wales, on 26 and 27 September 1984. This seminar was chaired by The Right Honourable Lord Templeman (Lord of Appeal in Ordinary) and took place with the support and encouragement of the Lord Chancellor. Although the seminar was concerned primarily with the system of civil justice in England and Wales, a number of the issues raised have potential implications of some importance for other countries, including Scotland. The main conclusions reached at the seminar are outlined in the Nineteenth Annual Report of the Law Commission for England and Wales,¹ which also contains a full list of those who attended.

3.10 Mr. Bertram and a member of our legal staff attended the Annual Conference of the Law Society of Scotland, held at Gleneagles Hotel from 19 to 21 April 1985. 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.

PART IV. MISCELLANEOUS

Commissioners

4.1 The Commission consists of a full-time Chairman, two full-time Commissioners, and two part-time Commissioners. The present Commissioners are:

The Honourable Lord Maxwell, Chairman	(Full-time)
Mr. R. D. D. Bertram, W.S.	(Part-time)
Dr. E. M. Clive	(Full-time)

¹(1985) Law Com. No. 140, paras. 1.6-1.8.

Mr. J. Murray, Q.C. (Part-time)
Sheriff C. G. B. Nicholson, Q.C. (Full-time)

Staff

4.2 Our legal staff consists of one full-time and two part-time Parliamentary Draftsmen, our Secretary and eight other qualified lawyers. Throughout the year we received assistance from a Depute Procurator Fiscal who has undertaken valuable research on our behalf into criminal law matters. During the summer vacation of 1984 we employed four honours graduates in law to assist with our research work. We wish to thank them all for their assistance. Our complement of non-legal staff remains at eleven.

4.3 At the date of preparation of this report the principal members of staff were:

Parliamentary draftsmen

Mr. J. F. Wallace, Q.C. (Full-time)
Mr. G. S. Douglas, Q.C. (Part-time)
Mr W. C. Galbraith, Q.C. (Part-time)

Secretary

Mr. R. Eadie

Assistant Solicitors

Mr. N. R. Whitty
Mrs. L. A. Lilleker

Other members of legal staff¹

Mr. J. G. S. Maclean
Dr. D. I. Nichols
Mr. J. C. Mullin
Miss J. L. McLeod
Mrs. D. F. Barbirou
Mr. M. McMillan

Chief Clerk

Mrs. M. J. W. Turnbull

Librarian

Mrs. T. P. Macdonald

Library

4.4 In our last annual report² we referred to the adaptation of part of our rear premises, to form a library. These new facilities are an immense improvement on the cramped accommodation they replaced and we have already felt the positive benefit to our work. We take this opportunity of recording our appreciation of the important part played by the Property Services Agency in making this development possible.

4.5 We and our legal staff still have access, however, to the University of

¹In addition, as indicated above, valuable assistance has been received from a Depute Procurator Fiscal. Throughout the period under review the Depute Procurator Fiscal concerned was Mrs. A. M. Cowan, who was an active member of both the criminal law and evidence teams.

²(1984) Scot. Law Com. No. 89, para. 1.4.

Edinburgh Law Library. Access to the University Library has been very beneficial to us, and will continue to be necessary for the foreseeable future in view of the wide scope of its contents. 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.

Departmental committees and other bodies

4.6 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

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

Departmental Advisory Committee on Arbitration Law

4.8 Mr. Murray is a member of the Department of Trade and Industry Advisory Committee on Arbitration Law, which is chaired by Lord Justice Mustill. A member of our legal staff acts as an alternate member. The first task of the Committee has been to advise the Government regarding the United Nations draft Model Law on International Commercial Arbitration.

International Society on Family Law

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

Scrutiny of Bills

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

Appendices

4.11 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.

Mr. I. G. Dewar
Mr. G. C. Duke

General Register Office for Scotland
Office of the Solicitor to the Secretary
of State for Scotland
General Register Office

Mr. J. Ribbins

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

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

APPENDIX II

1 SCOTTISH LAW COMMISSION—REPORTS, ETC. PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE (AS AT 31 AUGUST 1985)

<i>Commission</i>		
	<i>No.</i>	
1965	1	First Programme of Law Reform

1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66

1967	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to 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

1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967-68

1969	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968—Trustee Savings Banks Bill (Cmnd. 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968-69

1970	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd. 4336)
	15	Reform of the Law Relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd. 4542)
	17	Fifth Annual Report 1969-70
	18	*Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd. 4544)
	19	*Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd. 4547)
1971	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd. 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd. 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic—Road Traffic Bill (Cmnd. 4731)
	23	Sixth Annual Report 1970-71

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

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

<i>Commission</i>		
	<i>No.</i>	
	26	*Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5108)
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1973	27	Second Programme of Consolidation and Statute Law Revision
	28	Seventh Annual Report 1971–72
	29	Third Programme of Law Reform
	30	Report on Liability for Antenatal Injury (Cmnd. 5371)
	31	Report on the Law relating to Damages for Injuries Causing Death
	32	*Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5493)
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1974	33	Eighth Annual Report 1972–73
	34	Report on Presumption of Death
	35	*Friendly Societies Bill—Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd. 5634)
	36	*Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5792)
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1975	37	Ninth Annual Report 1973–74
	38	*Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd. 5850)
	39	*Exemption Clauses—Second Report
	40	*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd. 6303)
1976	41	Tenth Annual Report 1974–75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
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1977	43	Eleventh Annual Report 1975–76
	44	*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd. 6719)
	45	*Report on Liabilities for Defective Products (Cmnd. 6831)
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1978	46	Third Programme of Consolidation and Statute Law Revision
	47	Twelfth Annual Report 1976–77
	48	*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd. 7189)
	49	Electricity (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd. 7178)
	50	Adoption (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd. 7187)
	51	Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions
	52	Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Cmnd. 7245)
	53	Interpretation Bill—Report on Interpretation Act 1889 and Certain other Enactments relating to the Construction and Operation of Acts of Parliament and other Instruments (Cmnd. 7235)
	54	*Customs and Excise Management Bill—Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd. 7418)

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

<i>Commission</i>		
	<i>No.</i>	
1979	55	Thirteenth Annual Report 1977–78
	56	Fourteenth Annual Report 1978–79
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1980	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd. 7688)
	59	Report on Powers of Judicial Factors (Cmnd. 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979–80
	62	*Judicial Pensions Bill—Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd. 8097)
	63	*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd. 8089)
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1981	64	Report on Section 5 of the Damages (Scotland) Act 1976
	65	*Trustee Savings Banks Bill—Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd. 8257)
	66	*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd. 8318)
	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
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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
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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)
	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
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1984	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 Amendments of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd. 9272)
	88	*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Cmnd. 9341)

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

Commission

No.

- 89 Nineteenth Annual Report 1983–84
90 Report on Breach of Confidence
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- 1985 91 *Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Cmnd. 9419)
92 Obligations—Report on Negligent Misrepresentation
93 Report on Art and Part Guilt of Statutory Offences (Cmnd. 9551)
94 *Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill
95 Report on Diligence and Debtor Protection¹
96 *Private International Law—Polygamous Marriages: Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage

2 SCOTTISH LAW COMMISSION—CONSULTATIVE MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM²

- 1966 Memorandum No. 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964
Memorandum No. 2—Expenses in Criminal Cases
- 1967 Memorandum No. 3—Restrictions on the Creation of Liferents
Memorandum No. 4—Applications for Planning Permission
Memorandum No. 5—Damages for Injuries Causing Death
*Memorandum No. 6—Interpretation of Statutes
- 1968 *Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
Memorandum No. 8—Draft Evidence Code—First Part
- 1969 Memorandum No. 9—Prescription and Limitation of Actions
Memorandum No. 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961
Memorandum No. 11—Presumptions of Survivorship and Death
Memorandum No. 12—Judgments Extension Acts
- 1970 Memorandum No. 13—Jurisdiction in Divorce
- 1971 Memorandum No. 14—Remedies in Administrative Law
*Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses for the Supply of Services and other Contracts
Memorandum No. 16—Insolvency, Bankruptcy and Liquidation
- 1972 Memorandum No. 17 Damages for Injuries Causing Death
- 1974 Memorandum No. 18—Liability of a Paramour in Damages for Adultery and Enticement of a Spouse
Memorandum No. 19—Powers of Judicial Factors
- 1975 *Memorandum No. 20—Liability for Defective Products
Memorandum No. 21—Damages for Personal Injuries—Deductions and Heads of Claim

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

¹ Awaiting publication.

² 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.

- 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
 Memorandum No. 55—Civil Liability in relation to Animals

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

- *Memorandum No. 56—Polygamous Marriages
(Capacity to Contract a Polygamous Marriage and 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
Memorandum No. 61—Attempted Homicide
*Memorandum No. 62—Private International Law: Choice of Law in Tort/ delict
- 1985 *Memorandum No. 63—Private International Law: The Law of Domicile
*Memorandum No. 64—Private International Law: Choice of Law Rules in Marriage
Memorandum No. 65—Legal Capacity and Responsibility of Minors and P ills
Memorandum No. 66—Constitution and Proof of Voluntary Obligations and the
Authentication of Writings
Memorandum No. 67—Child Abduction.

3 SCOTTISH LAW COMMISSION—OTHER PUBLISHED DOCUMENTS

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

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 1 EC
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

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

Consultation Paper—Illegitimacy and the Guardianship Acts
*Consultation Paper—Recognition of Foreign Nullity Decrees and Related Matters

1984 Consultation Paper—Art and Part Guilt of Statutory Offences

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 1985)

<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 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 (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 Comm. 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.

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<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Trustee Savings Banks Bill (Scot. Law Com. No. 65) (Cmnd. 8257)	11.6.81	Trustee Savings Banks Act 1981 (c. 65).
*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	Family Law (Scotland) Act 1985 (c. 37).
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot. Law Com. No. 68)	26.2.82	None. ¹
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. ²
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. ²
Report on Rectification of Contractual and Other Documents (Scot. Law Com. No. 79)	28.7.83	None. ²
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.

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

¹The proposals in this report are being implemented (with modifications) in a Bill introduced in the 1984–85 Parliamentary Session.

²The proposals in these reports are also being implemented in a Bill introduced in the 1984–85 Parliamentary Session.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*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. 1983/134) Companies Act 1985 (c. 6).
*Dentists Bill (Scot. Law Com. No. 84) (Cmnd. 9119)	18.1.84	Dentists Act 1984 (c. 24).
*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	Family Law (Scotland) Act 1985 (c. 37).
*Further Amendments of the Companies Acts 1948–1983 (Scot. Law Com. No. 87) (Cmnd. 9272)	25.6.84	Companies Acts (Pre-Consolidation Amendments) (No. 2) Order 1984 (S.I. 1984/1169) Companies Act 1985 (c. 6).
*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Scot. Law Com. No. 88) (Cmnd. 9341)	19.9.84	None.
Report on Breach of Confidence (Scot. Law Com. No. 90)	20.12.84	None.
*Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Scot. Law Com. No. 91) (Cmnd. 9419)	15.1.85	None.
Obligations—Report on Negligent Misrepresentation (Scot. Law Com. No. 92)	24.1.85	None. ¹
Report on Art and Part Guilt of Statutory Offences (Scot. Law Com. No. 93) (Cmnd. 9551)	18.7.85	None.
*Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Scot. Law Com. No. 94) (Cmnd. 9515)	10.5.85	None. ²
Report on Diligence and Debtor Protection (Scot. Law Com. No. 95) ³		None.
*Private International Law—Polygamous Marriages: Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage (Scot. Law Com. No. 96)	8.8.85	None.

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

¹The recommendation in this report is being implemented in a Bill introduced in the 1984–85 Parliamentary Session.

²The recommendations in this report (so far as relating to Scotland) are reflected in the Housing Associations Bill introduced in the 1984–85 Parliamentary Session.

³Awaiting publication.

