

Scottish Law Commission

(SCOT. LAW COM. No. 73)

**SEVENTEENTH
ANNUAL REPORT
1981-1982**

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

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

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

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

¹Appointed Chairman with effect from 1 October 1981.

²Mr Anton retired from membership of the Commission on 30 September 1982: his successor is Sheriff C. G. B. Nicholson.

SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15TH JUNE, 1982

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

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

PETER MAXWELL,
Chairman

A. E. ANTON

R. D. D. BERTRAM

E. M. CLIVE

JOHN MURRAY

R. EADIE, *Secretary*

24 September 1982.

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

SEVENTEENTH ANNUAL REPORT

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I. THE COMMISSION

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

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

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

1.2 Lord Hunter's second term of office as Chairman of the Commission expired last autumn,² when he resumed his Judicial duties in the Court of Session and the High Court of Justiciary. The drive and enthusiasm which Lord Hunter brought to bear on his duties during the ten years of his Chairmanship were of inestimable value in carrying the Commission through a most important and demanding period of its existence. We thank him most sincerely for his contribution to our work.

STAFF

1.3 Our legal staff consists of one full-time and two part-time Parliamentary Draftsmen, our Secretary and eight other qualified lawyers. During the year we received assistance from a senior member of the staff of the Crown Office and from Depute Procurators Fiscal who have undertaken research on our behalf into criminal law matters. During the summer vacation of 1981 we employed three graduates in law to assist with our research work. We wish to thank them for their assistance. Our non-legal staff remains at eleven.

PREMISES—LIBRARY

1.4 We have referred in recent annual reports³ to the increasingly cramped conditions of our library and to the negotiations that have been taking place over a number of years with a view to our obtaining access to the necessary additional accommodation to the rear of our existing premises. We are pleased to report that, following further discussions earlier this year with senior officers of the Government agencies concerned, access has now been obtained to a substantial part of the rear premises and that work has already begun on the adaptation of the area in question for use as the nucleus of our future library. If everything goes according to plan, work on this first phase of our library development programme will be completed by late autumn 1982. We are hopeful that access to the remainder of the rear premises will be obtained early in 1983 thus enabling the second phase of the library development programme to be completed by autumn 1983, when we will at last be able to house our entire collection of books and other materials in a properly equipped modern library containing adequate space for reading facilities and for the re-arrangement and re-cataloguing of books.

¹Lord Maxwell was appointed Chairman of the Commission with effect from 1 October 1981.

²Lord Hunter ceased to be Chairman on 30 September 1981.

³See in particular (1980) Scot. Law Com. No. 61, para. 1.3 and (1981) Scot. Law Com. No. 70, para. 1.4.

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

MEETINGS

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

II. GENERAL

2.1 Our most notable achievement in the period covered by this report was the submission and publication of our report on Bankruptcy,¹ which is by far the largest and most important report to emerge from this Commission during its existence. We think it appropriate in this connection to refer again to what was said in our last annual report² regarding the need to ensure that any legislative reform in this field should have regard to the fundamental differences between Scots law and English law in this and related fields. We also remain of the view that departmental responsibility for this field of law and for the preparation of legislation affecting it should be restored to the Scottish Office.

2.2 We explained in our last annual report³ that when a report and draft clauses are being prepared on a major subject such as Bankruptcy, a very large proportion of our limited resources is absorbed with some inevitable adverse effect on our other work. In this regard, our work on the related subject of Diligence⁴ has now replaced Bankruptcy as our first priority, and this will continue to be so for some little time to come. We are now actively engaged on the preparation of a report and draft Bill on Diligence. We are well aware of the importance of this subject and the wide public interest it attracts and we are giving it the highest priority, even where this involves delay in other projects. The subject is one of formidable difficulty and complexity which involves, to an exceptional extent, the examination of very detailed procedural rules of a practical nature. We are, however, making considerable progress.

2.3 In the field of Family Law we have, since the period covered by our last annual report, submitted our report on Aliment and Financial Provision,⁵ which was published last autumn. This report contains major recommendations for reform and clarification of the law. No legislation has as yet been introduced to give effect to these recommendations and we hope that the matter will soon

¹See para. 3.2 below.

²(1981) Scot. Law Com. No. 70, para. 2.3.

³*Ibid.*, para. 2.2.

⁴See para. 3.10 below.

⁵See para. 3.15 below.

receive Parliament's attention. We have also issued a consultative memorandum on Illegitimacy,¹ concerned with proposals to improve further the relative legal position of persons born illegitimate. In addition, we have issued a consultative memorandum on certain obsolete and discriminatory rules in the law of husband and wife,² mainly with the object of simplifying the law and bringing it more into line with modern social conditions. As the next stage in our Family Law programme, we are moving on to Family Property Law,³ on which a consultative memorandum is currently in the course of preparation. We are also preparing, and hope shortly to complete, a report on Financial Provision after Foreign Divorce⁴ and, in conjunction with the Law Commission for England and Wales, a consultative document on Polygamous and Potentially Polygamous Marriages.⁵

2.4 Under the general heading of Obligations, perhaps the most important aspect of our present work is the preparation, in conjunction with the Law Commission for England and Wales, of a joint consultative document on implied terms and remedies in the Sale and Supply of Goods.⁶ This exercise is benefiting from direct close and practical co-operation between the two Law Commissions. Another important aspect of our work under this general heading is Civil Liability in relation to Animals,⁷ a matter which, on examination, has surprisingly wide implications, but which, as recent proceedings in Parliament⁸ have shown, is of particular interest to the agricultural community. Several jurisdictions, including England and Wales, have reformed or are on the point of reforming the law on this subject, and we are inclined to think that our present law in this area is too complex and, to some extent, archaic. We have prepared and are about to publish a substantial consultative memorandum.⁹ While it is premature to predict the outcome of consultation, we hope that it may be possible not only to improve and clarify but also to simplify the existing plethora of legal rules in this area. In conjunction with the memorandum we are, for the first time, about to issue a shortened 'popular' version in the hope that we can get comments from a wider section of the public than is usual in relation to our law reform projects. Not all law reform projects are, of course, suitable for such treatment, but we shall watch this experiment with interest as giving some guidance as to how we might in the future involve the public more fully in aspects of our work. We are also engaged in the preparation of a report on the more technical question of legal correction of defectively expressed contracts and other writings,¹⁰ this being an area in which there at present seems to be a gap in our law as regards the available remedies. Although the problem is clear enough, certain aspects of the possible solution are presenting us with some difficulties. We are expecting to receive, in the fairly near future, a report from our Working Party on Security over Moveables.¹¹ It may be that this matter will in due course involve

¹See para. 3.18 below.

²See para. 3.19 below.

³See para. 3.17 below.

⁴See para. 3.16 below. This report was submitted on 9 September 1982.

⁵See para. 3.39 below. This joint consultative document was published on 13 September 1982.

⁶See para. 3.27 below.

⁷See para. 3.26 below.

⁸In relation to the Civic Government (Scotland) Bill.

⁹This consultative memorandum was published on 11 August 1982.

¹⁰See para. 3.24 below.

¹¹See para. 3.21 below.

us in a considerable amount of work, but we cannot determine precisely what will be involved until we see the Working Party's report. We are awaiting comments on our consultation paper on problems arising in contract formation from the exchange of standard term forms.¹

2.5 We have recently been considering certain major questions in the law of Evidence² arising from the response to our consultative memorandum on this subject. We hope to make further progress on this large subject in the coming year as resources allow, but we have not yet decided on the precise scope of a first report in this area.

2.6 Two subjects on which we expect to submit reports in the fairly near future are Time Limits in Actions for Personal Injuries³ and Irritancies in Leases.⁴ The main purpose of the former exercise is to try to improve and also simplify, the existing statutory provisions on such time limits. The problem relating to Irritancies in Leases arose from observations in the House of Lords in *Dorchester Studios (Glasgow) Ltd v. Stone and Another*.⁵ Our reports on both subjects (each with a draft Bill annexed) are now nearing completion.

2.7 In the field of Private International Law there are two matters particularly engaging our attention at this time. The first is Conflicts of Jurisdiction on Child Custody,⁶ particularly as between the different parts of the United Kingdom. This is a matter on which we are working closely with the Law Commission for England and Wales. Proposals are well advanced in this area and it is hoped that a joint report by the two Commissions will begin to take shape in the fairly near future. The second matter relates to the choice of law rules in relation to Delict.⁷ This is a somewhat more esoteric matter on which, however, there is little doubt that the existing law is less than satisfactory and can lead to injustice. It is being dealt with, in the first instance, by a joint working party of the two Law Commissions. This matter is one of considerable complexity and difficulty which has perplexed the legal systems of many countries.

2.8 So far as the Criminal Law is concerned, our report on the Law of Incest⁸ was submitted to you in September and published in December 1981. That report was prepared with the assistance of a former senior member of staff of the Crown Office whose services ceased to be available to us last autumn on his appointment as a sheriff. Our capacity to undertake substantial work in the Criminal Law field has thus been greatly curtailed. As a result, work on one or two projects has had to be deferred or suspended. We have resumed work to a limited extent, however, on the Mental Element in Crime,⁹ and we are hopeful of making some further progress in other areas. In considering how our limited resources in this field should be deployed, it is necessary for us to bear in mind that considerable demands will no doubt continue to be

¹See para. 3.22 below.

²See para. 3.13 below.

³See paras. 3.31 and 3.32 below.

⁴See para. 3.51 below.

⁵1975 S.C. (H.L.) 56.

⁶See para. 3.36 below.

⁷See para. 3.34 below.

⁸See para. 3.4 below.

⁹See para. 3.5 below.

made by our Evidence project (which has, of course, both civil and criminal elements) and by certain primarily civil projects which do, nevertheless, have implications as regards the Criminal Law.

2.9 It is probably an inevitable feature of our position that we find ourselves having to take on work which we might not otherwise do in relation to proposals made by law reform agencies in England and Wales, particularly the Law Commission. If legislation is proposed for England and Wales, there is often, naturally enough, pressure in Parliament and elsewhere for such legislation to be extended to Scotland. However, legislation which is suitable for England and Wales is often a good deal less than ideal for this jurisdiction. It has regrettably been a common experience for English legislative solutions to be applied to Scotland without very detailed examination or consultation as to whether such solutions are well adapted to our own legal system. We attempt to alleviate the position to some extent, when the subject-matter of proposals emanating from England impinges on our programme subjects or on work that we in any event have in hand, by endeavouring, so far as resources allow, to make an examination of the same topic here, even though we might not have considered the problem of sufficiently wide import in Scotland to justify giving any priority to it if it were not also being considered south of the Border. Two matters in this category are Financial Provision after Foreign Divorce, on which we intend shortly to issue a report and draft clauses, and Potentially Polygamous Marriages, on which we are presently co-operating with the Law Commission for England and Wales in the preparation of a joint consultative document. This consultative document will include a distinct Scottish part since the law of England and Wales is affected by statutory provisions which do not apply to Scotland.

2.10 One further aspect of our work which, at least to some extent, is being conditioned by proposals made by our sister Commission is Breach of Confidence.¹ We previously consulted on this topic in Scotland under a reference made to us following the report of the Younger Committee.² During the period under review, the Law Commission for England and Wales published a report on the same topic. Partly because of this report and our anxieties that its proposals should not be applied to Scotland without examination of their suitability for this jurisdiction, and partly also because of our own reconsideration of this subject in the light of the results of our earlier consultation, we are now disposed to put forward proposals somewhat different from those which we had earlier adumbrated in our consultative memorandum. We have accordingly issued a further consultation paper with a short time limit in the hope that we may be able to report with proposals for Scotland in time for them to be considered alongside the proposals submitted by the Law Commission for England and Wales.

2.11 As mentioned elsewhere in this report,³ we have submitted to you a new programme of consolidation and statute law revision. We continue to attach considerable importance to these areas of our work, and we are hopeful that, with the co-operation of the Government Departments concerned, we will be able to make improved progress in the coming year.

¹See para. 3.50 below.

²Report of the Committee on Privacy, Cmnd. 5012.

³See para. 3.45 below.

III. PROGRESS OF LAW REFORM PROJECTS

3.1 The position at 15 June 1982 in each of our current law reform projects is set out in the following paragraphs. The main subject headings are presented in alphabetical order, though we continue to attach greatest importance to our 'programme' work, that is, to projects undertaken in accordance with our published programmes¹ of law reform. In the main headings set out below, programme subjects are denoted by the use of an asterisk.

BANKRUPTCY*

(Second Programme, Item 6)

3.2 Our report on *Bankruptcy and Related Aspects of Insolvency and Liquidation*² was submitted to you on 11 August 1981 and published on 26 February 1982. We are grateful to the many members of the legal and accountancy professions who assisted us in the formulation of our recommendations for a comprehensive reform of Bankruptcy Law.

CRIMINAL LAW

General

3.3 The bulk of our work in the field of the Criminal Law has continued to arise from requests (both formal and informal) made to us by Government Departments and other bodies for advice under section 3(1)(e) of the Law Commissions Act 1965 or from proposals for reform of the law submitted to us under section 3(1)(a) of that Act. In addition, so far as our resources have allowed, we have continued to respond to consultation by the Law Commission for England and Wales on aspects of that Commission's work, and to consider the possible implications for Scotland of proposals made by them under their programme subject 'Codification of the Criminal Law'. Matters in the foregoing categories have sometimes led to formal law reform projects: examples of such projects are mentioned below. But in other cases the matters in question have been dealt with informally and are not, therefore, mentioned in the following summary.

Incest

3.4 Our report on *The Law of Incest in Scotland*³ was submitted to the Secretary of State for Scotland on 25 September 1981 and published on 23 December 1981. So far, we have had no indication as to when the proposals made in this report might be implemented.

Mental Element in Crime

3.5 Work on the above topic was interrupted at the beginning of 1982 owing to unexpected staff changes, but further work is now being carried out to the extent that other pressures on our resources permit, and it is hoped to complete a paper on the topic later in the year. At the moment we are considering whether we should consult on our proposed recommendations as

¹First Programme, (1965) Scot. Law Com. No. 1; Second Programme, (1960) Scot. Law Com. No. 8; Third Programme, (1973) Scot. Law Com. No. 29.

²(1982) Scot. Law Com. No. 68.

³(1981) Scot. Law Com. No. 69.

*Denotes programme subject

we had originally intended to do, or whether we should instead proceed straight to a report to the Secretary of State for Scotland pursuant to the reference we received from the Scottish Home and Health Department in 1979.

Conspiracy—Mobbing and Rioting

3.6 In view of other more pressing demands on our limited resources, we regret that we have been unable to carry out any further work on the above topics in the course of the year under review, but we are at present considering what particular aspects of these topics might warrant further study as and when resources become available. On the basis of our current thinking on the Mental Element in Crime,¹ however, we now consider it doubtful that our work on that project will have a close bearing on the above topics.

Coercion

3.7 Having regard to the other pressures on our present resources, we have reluctantly decided to discontinue work on the above topic, at any rate for the time being.

DAMAGES ARISING FROM PERSONAL INJURIES AND DEATH*

(Second Programme, Item 10)

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

3.9 In 1979, in response to representations made to us, we issued a short consultation paper concerning the practical effect of section 5(6) of the Damages (Scotland) Act 1976, which was said to place an unreasonable duty on pursuers, in actions for damages arising out of a fatal accident, to trace and serve notices of the accident on all persons with a potential claim. We submitted to you on 6 February 1981 our report on section 5 of the *Damages (Scotland) Act 1976*. The report was published on 28 April 1981.³ In February 1982 the Government introduced into Parliament the Administration of Justice Bill which gives effect to most of the recommendations contained in our two reports in this field.

DILIGENCE*

(Second Programme, Item 8)

3.10 In the year under review, we have been receiving comments from interested bodies and individuals on the five consultative memoranda on Diligence published in the previous year,⁴ namely—

¹See para. 3.5 above.

²(1978) Scot. Law Com. No. 51.

³(1981) Scot. Law Com. No. 64.

⁴October 1980; see our Sixteenth Annual Report ((1981) Scot. Law Com. No. 70), para. 3.10.

*Denotes programme subject.

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

Many comments from important bodies were not received until the year under review was well advanced and some comments are still awaited, but we have given, and are giving, top priority to the preparation of our first report on Diligence, making recommendations in the areas covered by the above consultative memoranda.

3.11 We have also made further progress with the preparation of our consultative memorandum on the collection and enforcement of aliment and periodical allowance to which we referred in our last annual report.¹ The completion of this memorandum, however, must await our forthcoming first report on Diligence in which we propose to deal with (amongst other things) enforcement of aliment and periodical allowance by diligence against earnings.

3.12 We mentioned in our last annual report² that, of the eight projects of research into the scale and social aspects of Diligence initiated by the Central Research Unit of the Scottish Office, and published as a series of Research Reports for the Scottish Law Commission, six had been completed and published in the year covered by that report. In the year under review, the two remaining reports in the series were published, namely: Research Reports for the Scottish Law Commission No 6, 'Survey of Defenders in Debt Actions in Scotland', and No 8 'Debt Recovery—a Review of Creditors' Practices and Policies'.³

EVIDENCE*

(First Programme, Item 1)

3.13 Work has continued on the analysis of comments received following the publication, on 16 September 1980, of our Consultative Memorandum No. 46—*The Law of Evidence*. We have recently been considering certain major policy issues with a view to preparation of a report on this subject.

FAMILY LAW*

(Second Programme, Item 14)

Occupancy Rights in the Matrimonial Home and Domestic Violence

3.14 The Matrimonial Homes (Family Protection) (Scotland) Act 1981, which gave effect to most of the recommendations made in our report⁴ to you, received the Royal Assent on 30 October 1981. It has not yet been brought into force.⁵

¹(1981) Scot. Law Com. No. 70, para. 3.11.

²*Ibid.*, para. 3.12.

³Research Report No. 6 was published by Her Majesty's Stationery Office (October 1981, price £12.80). All the other reports in the series, including Research Report No. 8, are available as Central Research Unit Papers and copies can be obtained from the Central Research Unit, Scottish Office, New St Andrew's House, Edinburgh EH1 3SZ.

⁴(1980) Scot. Law Com. No. 60.

⁵This Act came into force on 1 September 1982.

*Denotes programme subject.

Aliment and Financial Provision

3.15 Our report on *Aliment and Financial Provision*,¹ following upon Consultative Memorandum No. 22, was submitted to you on 17 July 1981 and published on 5 November 1981. No legislation has yet been introduced following on this report.

Financial Provision after Foreign Divorce

3.16 Following the decision of the House of Lords in *Quazi v. Quazi* [1979] 3 WLR 833, the Law Commission for England and Wales examined, in their Working Paper No. 77,² the powers of the court to award financial provision following a foreign decree of divorce. Although there is no Scottish case law on this subject, section 5(1) of the Divorce (Scotland) Act 1976 limits the powers of the court to make an award of financial provision to actions of divorce in the Court of Session. Nor has the Court any power to make such an award following a decree of nullity, whether granted in the Court of Session or elsewhere. We therefore published a brief consultation paper³ which examined these problems. We have now received comments from those consulted, and a report, together with a draft Bill annexed, is nearing completion.⁴

Family Property Law

3.17 The report of the Office of Population Censuses and Surveys, following the fact-finding and attitude survey of Family Property Law in Scotland referred to in our last annual report,⁵ was published in December 1981. With the assistance of Mr. K. G. C. Reid of the University of Edinburgh, work has recently commenced on the preparation of a consultative memorandum.

Illegitimacy

3.18 On 9 March 1982, we published Consultative Memorandum No. 53—*Family Law: Illegitimacy*. The main aspects of the law on illegitimacy covered are presumptions of paternity, registration of birth, guardianship, custody and parental rights, adoption, succession, judicial proceedings to establish parentage and the definition of legitimacy. We asked for comments to be submitted to us by 30 September 1982. Since publication we have had consultations with the Law Commission for England and Wales (who are preparing a report on illegitimacy) regarding entitlement of an illegitimate child to acquire British citizenship by descent from its father.

Husband and Wife

3.19 We published on 8 April 1982 Consultative Memorandum No. 54: *Some Obsolete and Discriminatory Rules in the Law of Husband and Wife*. It discussed such questions as: the future of the actions for breach of promise of marriage and adherence; the husband's right to choose the place of the matrimonial home; and contracts for household necessities. Comments have been invited by 30 June 1982. Work on the preparation of a report, together with a draft Bill, will be commenced when the comments have been received and analysed.

¹(1981) Scot. Law Com. No. 67.

²Published in the autumn of 1980.

³This consultation paper was issued on 1 July 1981.

⁴This report was submitted to you on 9 September 1982.

⁵(1981) Scot. Law Com. No. 70, para. 3.17.

OBLIGATIONS: CORPOREAL MOVEABLES*

(First Programme, Item 2)

3.20 As we pointed out in our last annual report,¹ this heading covers a very wide area of the law of Scotland. The law of Obligations and the law of Property are, strictly speaking, distinct chapters of the law, but in questions of transfer of and security over moveables the law of Obligations frequently has effects on Property Law.

Security over Moveables

3.21 Our Working Party on Security over Moveable Property,² which was appointed to consider the question of the introduction into Scots law of a system of security over moveable property based upon the recommendations in Part 5 of the Report on Consumer Credit (The Crowther Report),³ was subsequently invited to consider the specific question of security in connection with the financing of North Sea oil operations. The Working Party completed its report on that question (Report in respect of Petroleum) in September 1981 and we submitted it to you with a note of our observations thereon on 29 September 1981. The Working Party has reverted to consideration of the more general aspects of security over moveable property, and progress on the preparation of its report is well advanced.

Constitution and Proof of Voluntary Obligations

3.22 Following the analysis of the comments received in response to the consultative memoranda in this series,⁴ we have been selecting preferred policy options for the purposes of a report and we have also discussed preliminary draft clauses of a Bill. In the course of preparation of a draft report, we decided that further consultation was necessary with business and professional bodies regarding the use of standard term forms in contract formation, with particular reference to the problem popularly referred to as 'the battle of the forms'. A consultation paper entitled *Contract Law: Exchange of Standard Term Forms in Contract Formation* was accordingly issued on 18 February 1982, with a request for comments by 31 May 1982.

Defective Consent and Consequential Matters

3.23 As indicated in our last annual report,⁵ we have had under consideration the preparation of a report following upon Consultative Memorandum No. 42—*Defective Consent and Consequential Matters*. With a view to the preparation of such a report, work has begun on a paper identifying the main policy options to be considered.

Defective Expression

3.24 We are currently preparing a report following upon our Consultative Memorandum No. 43—*Defective Expression and its Correction*⁶—which was concerned with defectively expressed contracts and other writings.

¹(1981) Scot. Law Com. No. 70, para. 3.21.

²A list of the members of the Working Party appears in Appendix I to this report.

³Cmnd. 4596.

⁴Consultative Memoranda Nos. 34–39.

⁵(1981) Scot. Law Com. No. 70, para. 3.23.

⁶Published on 30 November 1979.

*Denotes programme subject

Corporeal Moveables

3.25 Our report on *Lost and Abandoned Property*,¹ including the disposal of uncollected property (based on our Consultative Memorandum No. 29) was published on 16 January 1980. The recommendations made in that report are being implemented in part in the Civic Government (Scotland) Bill which is currently before Parliament. As stated previously,² however, we have decided to postpone discussion of any draft report based on the remainder of the series of consultative memoranda on corporeal moveables.³

Civil Liability in Relation to Animals

3.26 A consultative memorandum has now been completed on this topic and will be published during August 1982.⁴ Because of the nature of the topic, we shall also publish, concurrently with the memorandum, a short version of it in pamphlet form with a questionnaire appended. This is the first time we have prepared such a publication, and it is primarily intended for widespread distribution to those who may wish to comment on the issues discussed in the memorandum but do not have time to study its detailed treatment of the law. In this way, we hope that our consultation will be as wide as possible with those who are most directly affected by the issues involved.

Sale and Supply of Goods

3.27 In conjunction with the Law Commission for England and Wales, we are preparing a joint consultative document which will (*inter alia*) examine the implied terms of quality and fitness in contracts of sale and the remedies of the buyer where such implied terms are breached. The document will also examine terms implied at common law in certain other contracts in which goods are supplied, such as barter and hire. It is intended to publish this document during the course of the coming year.

Penalties and Irritancies

3.28 It has still not been possible for us to allocate resources to further work on the general law relating to irritancies, penalty clauses and liquidated damages clauses in contracts. We propose to respond, however, to a request made to us recently by the Department of Trade for our comments regarding UNCITRAL Draft Uniform Rules on Liquidated Damages and Penalty Clauses.⁵

Illegality

3.29 As mentioned in our last annual report,⁶ a research paper has been prepared on the above topic; but in view of other more pressing demands on our resources, we have been unable to carry out any further work on this topic.

Legal Capacity of Minors and Pupils

3.30 Because of the commitment of resources to matters of higher priority, we regret that no further work has been carried out on this subject. We hope that it will be practicable to resume work in the course of the coming year.

¹(1980) Scot. Law Com. No. 57.

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

³Consultative Memoranda Nos. 24-31.

⁴This consultative memorandum was published on 11 August 1982.

⁵Comments on this matter were forwarded to the Department of Trade on 16 July 1982.

⁶(1981) Scot. Law Com. No. 70, para. 3.26.

PRESCRIPTION AND LIMITATION OF ACTIONS*

(First Programme, Item 3)

Limitation of Actions in Personal Injury Claims

3.31 On 17 April 1980 we issued our Consultative Memorandum No. 45 on *Time-Limits in Actions for Personal Injuries*. A draft report is in an advanced stage of preparation, and it is intended to submit this report, with a draft Bill annexed, in the course of the coming year. The report will also include the subject matter of the consultation paper referred to in the next paragraph.

Prescription and Limitation in Private International Law

3.32 Following on the publication of the Law Commission's Working Paper No. 75—*Classification of Limitation in Private International Law*—we prepared a consultation paper on the Scottish position for restricted circulation.¹ Our proposals on this topic will be contained in the report referred to in the preceding paragraph.

PRIVATE INTERNATIONAL LAW*

(Third Programme)

EEC Convention on the Law applicable to Contractual Obligations

3.33 In our last annual report² we made reference to the fact that the above Convention had been opened for signature on 19 June 1980 but had not, as at the date of preparation of the annual report, been signed by the United Kingdom. The Convention was signed by the United Kingdom on 7 December 1981.

Proposed EEC Convention on the Law applicable to Non-Contractual Obligations: Choice of Law Rules in Tort/Delict

3.34 We explained in our last annual report³ that, although there appeared to be no prospect of negotiations being resumed within the European Communities in the near future on a Convention relating to Non-Contractual Obligations, we proposed that the Joint Working Party of the two Law Commissions should remain in being with a view to examining the present choice of law rules in tort and delict in the United Kingdom. A preliminary examination of the law is now under way.

Hague Conference: International Child Abduction

3.35 As we mentioned in our last annual report,⁴ this Convention (which was finalised at the XIVth Session of the Hague Conference on Private International Law in October 1980) will be taken into account by the two Law Commissions in their examination of the topic referred to in the next paragraph.

Conflicts of Jurisdiction affecting the Custody of Children

3.36 The Law Commission for England and Wales have commissioned Mr. R. L. Jones, lately of the Home Office, to assist in the preparation of a joint report on the above topic. Members of our Private International Law team have had several meetings with Mr. Jones and considerable progress is being made.

¹This consultation paper was issued on 31 July 1980.

²(1981) Scot. Law Com. No. 70, para. 3.31.

³(1981) Scot. Law Com. No. 70, para. 3.32.

⁴(1981) Scot. Law Com. No. 70, para. 3.33.

*Denotes programme subject.

Recognition of Foreign Nullity Decrees

3.37 Work is continuing within the Law Commission for England and Wales on the preparation of a draft working paper/consultative memorandum on this subject for consideration by the Joint Working Party¹ of the two Law Commissions.

Foreign Money Liabilities

3.38 The report of the two Law Commissions² on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) was published on 28 July 1981; its recommendations have been accepted by Government. In our last annual report,³ we mentioned that the Law Commission for England and Wales intended to publish a Working Paper on certain issues (primarily of a procedural character) concerned with foreign money liabilities. We indicated that, as these issues did not appear to arise with the same force in Scots law, we did not envisage preparing a similar paper, but that we would reconsider the matter at a later stage. We have since studied the Working Paper and been advised by the Law Commission for England and Wales of the import of the comments received upon it. As at present advised, we do not propose to embark on further work on this topic as such, but in our examination of particular branches of the law we will take into account, as appropriate, questions relating to foreign money liabilities.

Potentially Polygamous Marriages

3.39 We are co-operating with the Law Commission for England and Wales in the production of a joint working paper/consultative memorandum on the subject of polygamous marriages. This joint consultative document (which it is hoped to publish later in the year)⁴ will contain a separate Scottish part dealing with capacity for polygamy and the concept of the potentially polygamous marriage in Scots law.

SUCCESSION*

(Second Programme, Item 7)

3.40 We explained in our last annual report⁵ that no work was being done on this subject at present, principally because of the commitment of resources to other subjects, but also because we thought it advisable to defer systematic consideration of the law of Succession until our study of Family Property Law was further advanced. This remains the position.

STATUTE LAW

Consolidation

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

(a) *Scotland-only consolidations*

¹A list of members of this Joint Working Party appears in Appendix I to this report.

²(1981) Law Com. No. 109; Scot. Law Com. No. 66.

³(1981) Scot. Law Com. No. 70, para. 3.36.

⁴This joint consultative document was published on 13 September 1982.

⁵(1981) Scot. Law Com. No. 70, para. 3.37.

*Denotes programme subject.

*First Programme*¹

3.42 *Court of Session*—Preliminary consultation has now been carried out on the basis of a first print of a Bill. Comments and advice are awaited from a number of those consulted. A further print of the Bill will be prepared when replies have been received from all those consulted.

*Second Programme*²

3.43 Work on the Commission's Second Programme of Consolidation and Statute Law Revision has been completed.

*Third Programme*³

3.44 The position regarding the remaining eight of the original eleven items in the Third Programme is as follows:

(1) *Building legislation*—Work on this consolidation remains deferred for the reason stated in paragraph 3.38 of our last annual report.⁴

(2) *Rents*—Following receipt from the Scottish Office of amended instructions, a Draftsman has begun work on the preparation of a draft consolidation Bill.

(3) *Other items*—An indication has yet to be given by the Scottish Office as to when instructions may be received with regard to the other six items in the programme. It is hoped, however, that instructions on at least one of the items will be received in the fairly near future.

Future Programme

3.45 We recently submitted to you for your approval a new, and fairly short, programme of consolidation and statute law revision. As observed in our last annual report,⁵ work has already begun in advance of publication of the new programme on the preparation of a Bill to consolidate the legislation relating to Foster Care in Scotland.

(b) *United Kingdom and Great Britain Consolidations*

3.46 The following Acts have been passed since completion of our last annual reports, viz:

- Betting and Gaming Duties Act 1981
- Broadcasting Act 1981
- New Towns Act 1981
- Trustee Savings Banks Act 1981
- Agricultural Training Board Act 1982
- Civil Aviation Act 1982
- Industrial Training Act 1982.

3.47 Bills on the following subjects have been introduced into Parliament this Session:

- Aviation Security⁶
- Industrial Development

¹(1966) Scot. Law Com. No. 2.

²(1973) Scot. Law Com. No. 27.

³(1978) Scot. Law Com. No. 46.

⁴(1981) Scot. Law Com. No. 70, para. 3.38(a).

⁵(1981) Scot. Law Com. No. 70, para. 3.38(a).

⁶The Aviation Security Bill received the Royal Assent on 23 July 1982.

Insurance Companies
Iron and Steel.¹

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

Car Tax
Companies
Medical Profession
Pilotage
Representation of the people
Reserve Forces (Protection of Civil Interests)
Road Traffic Regulation
Weights and Measures
Value Added Tax.

Statute Law Revision

3.49 Preparatory work has continued, in co-operation with our colleagues in the Law Commission for England and Wales, on the Eleventh Joint Report on Statute Law Revision, though intermittently because of the demands made on our resources by other priorities. It is our intention, however, to give higher priority to this work during the coming year, and to direct a greater part of our effort to specifically Scottish proposals.

OTHER MATTERS

Breach of Confidence

3.50 Following on the publication of the Law Commission's report on Breach of Confidence² we have resumed work on this subject with a view to the preparation of a report. The comments which we received in response to Consultative Memorandum No. 40,³ and further analysis of the problems, have led us to question whether our earlier approach was entirely satisfactory. We have accordingly prepared a further consultation paper for restricted circulation,⁴ on which we have requested comments by 31 July 1982. We are proceeding with the preparation of a report, which we intend to submit in the course of the coming year.

Irritancies in Leases

3.51 Having analysed the comments submitted in response to our Consultative Memorandum No. 52—*Irritancies in Leases*—published on 30 April 1981, we are currently preparing a report on this topic. Preparation of our report is reaching a fairly advanced stage, and we intend to submit it, with a draft Bill annexed, before the end of 1982.

Powers of Attorney

3.52 As we indicated in our last annual report,⁵ we intend to consider whether an examination of the law relating to both powers of attorney and judicial factors should be included in a future law reform programme. This question will be considered after we have received a research paper on the subject of judicial factors presently being prepared for us.⁶

¹The Iron and Steel Bill received the Royal Assent on 13 July 1982.

²(1981) Law Com. No. 110.

³Published in April 1977.

⁴Issued in May 1982.

⁵(1981) Scot. Law Com. No. 70, para. 3.43.

⁶See para. 3.53 below.

Judicial Factors

3.53 We are awaiting a research paper on the subject of judicial factors which is being prepared for us by a consultant. After the research paper has been submitted to us we shall consider the question of future work relating to judicial factors and powers of attorney.¹

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

3.54 We explained in our last annual report² that we had still to consider certain questions arising from the comments received on our Consultative Memorandum No. 33—*Law of Rights in Security: Company Law: Registration of Charges (Scotland)*. We intend to take up consideration of these questions and we hope also to examine questions arising from the operation of Part II of the above Act (which relates to receivers). We have had the benefit of discussions with representatives of the Law Society of Scotland and the Faculty of Advocates on the difficulties being experienced in connection with the operation of the law relating to receivers. The Society and the Faculty have very kindly agreed to study the operation of the Act, especially as regards receivership (if possible in consultation with the Institute of Chartered Accountants of Scotland), and to let us have a note of their conclusions and suggestions. The Society have undertaken the task of setting up a joint working group of the legal and accountancy professions for the purpose of this exercise, and we understand that the arrangements for setting up such a group are well advanced.

Agricultural Holdings

3.55 We have decided to prepare a paper dealing specifically with termination of leases of agricultural holdings, to complement the research paper on Actions of Ejection and Removings referred to in the next paragraph. The preparation of our paper is in progress.

Actions of Ejection and Removings

3.56 Mr. A. G. M. Duncan, who was before his retirement a Senior Lecturer in the Department of Scots Law at the University of Edinburgh, has now submitted his research paper on the above topic. It is envisaged that Mr. Duncan's paper will be considered in conjunction with the paper on leases of agricultural holdings being prepared within the Commission³ and that consultation will follow on the proposals formulated in light of the two papers.

Miscellaneous: Advice to Government Departments etc.

3.57 It has become our practice to mention under this heading items which do not readily fit into any of the other classifications adopted in this report, including matters of an international character on which our advice has been sought by Government Departments. In some instances such matters have been the subject of formal references to us under section 3(1)(e) of the Law Commissions Act 1965 and have resulted in our undertaking law reform projects. Matters in this category are covered elsewhere in this report. In other cases, however, the requests have been dealt with informally. We do not think it would be appropriate for us to give an exhaustive list of matters in the second category in this report.

¹See para. 3.52 above.

²(1981) Scot. Law Com. No. 70, para. 3.46.

³See para. 3.55 above.

EEC draft Directive on Reservation of Title to Corporeal Moveable Property
3.58 We explained in our last annual report¹ that a revised version of a draft Directive on Reservation of Title to Corporeal Moveables had been examined by a Working Party of the Commission of the European Communities and that a further draft was to be produced for consideration by the Working Party. We understand that there are still certain questions of policy to be resolved before further progress can be made. The topic has been the subject of co-operation between the EC Commission and the Council of Europe, which has also been engaged actively in work in this field.²

IV. CONSULTATION

THE LAW COMMISSION FOR ENGLAND AND WALES

4.1 We continue our close co-operation with the Law Commission for England and Wales. During the year under review we have worked together on various matters, including Sale and Supply of Goods,³ Conflicts of Jurisdiction affecting the Custody of Children,⁴ Foreign Money Liabilities⁵ and Potentially Polygamous Marriages.⁶ The annual Joint Meeting was held in Edinburgh on 22 and 23 April 1982. We wish to record our appreciation of the generous hospitality provided by the Law Society of Scotland and the Faculty of Advocates.

Codification of the Criminal Law

4.2 Elsewhere in this report,⁷ we refer to our interest in the work of the Law Commission for England and Wales on their major programme subject 'Codification of the Criminal Law'. We are grateful to the Law Commission for continuing to keep us informed of the progress of their work in this field and for affording us the opportunity to comment from time to time on the possible implications for Scotland of certain of their projects.

Working Party on Contract Law

4.3 Our Working Party⁸ 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. It has not, however, had occasion to meet during the last year.

OTHER LAW REFORM ORGANISATIONS

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

THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

4.5 We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. We have also continued

¹(1981) Scot. Law Com. No. 70, para. 3.48(c).

²Our views have now been sought by the Scottish Office on a Draft European Convention on this topic prepared by a Council of Europe Working Party.

³See para. 3.27.

⁴See para. 3.36.

⁵See para. 3.38.

⁶See para. 3.39.

⁷See para. 3.3.

⁸A list of the present members of this Working Party appears in Appendix I to this report.

to hold informal meetings with representatives of the Faculty of Advocates and the Law Society of Scotland and have found these meetings most useful. As in previous years, we wish to record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have served on our Working Parties.

4.6 We are also most grateful for the help we continue to receive from the Librarian and staff of the Edinburgh University Library, Edinburgh University Law Library, the Centre of European Governmental Studies, the National Library of Scotland, the Advocates' Library and the Signet Library.

CONFERENCES, SEMINARS ETC.

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

4.8 Dr. Clive and a senior member of our legal staff attended the Annual Conference of the Scottish Legal Action Group held in Edinburgh on 13 March 1982. Dr. Clive gave a talk on the subject of Aliment and Financial Provision.

4.9 A senior member of our legal staff attended the Annual Conference of the Law Society of Scotland held at Gleneagles Hotel from 9 to 11 April 1982. As in previous years, the informal discussions with practising members of the profession about aspects of the Commission's work which took place against the background of the conference proved most beneficial.

4.10 Dr. Clive attended the Fourth World Conference of the International Society on Family Law held at Harvard Law School, USA, from 11 to 16 June 1982. Dr. Clive presented a paper on issues relating to the financial consequences of divorce.

V. MISCELLANEOUS

DEPARTMENTAL AND OTHER COMMITTEES

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

Statute Law Committee

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

Insolvency Law Review Committee

5.3 The Report of the Review Committee on Insolvency Law and Practice relating to England and Wales (whose meetings were attended by Professor R. B. Jack as Scottish observer) was completed in February 1982 and published on 8 June 1982.¹

¹ Cmnd. 8558.

Consultative Committee on Insolvency Law Review

5.4 We are at present considering the future of the Consultative Committee referred to in our last annual report,¹ and we intend to take this matter up with you shortly.²

SCRUTINY OF BILLS

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

APPENDICES

5.6 Membership of the various Working Parties etc appears in Appendix I. A list of papers which have been prepared by the Commission appears in Appendix II. Included in this Appendix are certain consultative documents, some published and some unpublished, which were given restricted circulation. The extent to which our proposals have been incorporated in legislation is indicated in Appendix III.

¹(1981) Scot. Law Com. No. 70, para. 5.4.

²We have now approached you on this matter.

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

*Working Party on Security over Moveable Property*¹

Professor J. M. Halliday, C.B.E. (Chairman)	Solicitor, Glasgow
Mr. R. H. Barclay	Solicitor, Glasgow
Mr. T. Gardiner	Solicitor, Glasgow
Mr. A. M. Hamilton, C.B.E.	Solicitor, Glasgow
Professor R. B. Jack	Solicitor, Glasgow
Professor W. A. Wilson	University of Edinburgh

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

Steering Committee on Private International Law

The Hon. Lord Maxwell	} Joint Chairmen	Scottish Law Commission
The Hon. Mr. Justice Ralph Gibson		Law Commission
Mr. A. E. Anton, C.B.E.		Scottish Law Commission
Dr. P. M. North		Law Commission
Joint Secretaries	} Mr. R. Eadie Mr. R. H. Streeten	Scottish Law Commission Law Commission

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

Professor A. L. Diamond (Chairman)	Institute of Advanced Legal Studies
Mr. A. E. Anton, C.B.E.	Scottish Law Commission
Mr. R. D. D. Bertram	Scottish Law Commission
Mr. L. A. Collins	Solicitor, London
Mr. C. G. J. Morse	King's College, London
Dr. P. M. North	Law Commission

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

Joint Working Party on Recognition of Foreign Nullity Decrees

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

Secretary: Mr. M. Hatcher, Law Commission³

Working Party on Contract Law

Mr. J. Murray, Q.C. (Chairman)	Scottish Law Commission
Mr. R. D. D. Bertram	Scottish Law Commission

¹The membership of the Working Party was supplemented, for the purpose of its examination of the question of security in connection with North Sea oil operations, by the addition of Mr. J. T. Cameron, Q.C., Mr. T. M. Lawrie, Solicitor, Glasgow and Mrs. L. Lilleker of the Office of the Solicitor to the Secretary of State for Scotland.

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

³The Secretary of this Working Party is now Mr. I. H. Maxwell.

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

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

APPENDIX II

1 SCOTTISH LAW COMMISSION—REPORTS, ETC. PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE (AS AT 15 SEPTEMBER 1982)

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

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

Commission

	<i>No.</i>	
1972	24	Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland—Town and Country Planning (Scotland) Bill (Cmnd. 4949)
	25	Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
	26	*Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5108)
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1973	27	Second Programme of Consolidation and Statute Law Revision
	28	Seventh Annual Report 1971–72
	29	Third Programme of Law Reform
	30	Report on Liability for Antenatal Injury (Cmnd. 5371)
	31	Report on the Law relating to Damages for Injuries Causing Death
32	*Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5493)	
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1974	33	Eighth Annual Report 1972–73
	34	Report on Presumption of Death
	35	*Friendly Societies Bill—Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd. 5634)
	36	*Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5792)
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1975	37	Ninth Annual Report 1973–74
	38	*Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd. 5850)
	39	*Exemption Clauses—Second Report
	40	*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd. 6303)
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1976	41	Tenth Annual Report 1974–75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
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1977	43	Eleventh Annual Report 1975–76
	44	*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd. 6719)
	45	*Report on Liabilities for Defective Products (Cmnd. 6831)
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1978	46	Third Programme of Consolidation and Statute Law Revision
	47	Twelfth Annual Report 1976–77
	48	*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd. 7189)
	49	Electricity (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd. 7178)

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

Commission

	<i>No.</i>	
	50	Adoption (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd. 7187)
	51	Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions
	52	Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Cmnd. 7245)
	53	*Interpretation Bill—Report on Interpretation Act 1889 and Certain other Enactments, relating to the Construction and Operation of Acts of Parliament and other Instruments (Cmnd. 7235)
	54	*Customs and Excise Management Bill—Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd. 7418)
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1979	55	Thirteenth Annual Report 1977–78
	56	Fourteenth Annual Report 1978–79
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1980	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd. 7688)
	59	Report on Powers of Judicial Factors (Cmnd. 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979–80
	62	*Judicial Pensions Bill—Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd. 8097)
	63	*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd. 8089)
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1981	64	Report on Section 5 of the Damages (Scotland) Act 1976
	65	*Trustee Savings Banks Bill—Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd. 8257)
	66	*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd. 8318)
	67	Family Law—Report on Aliment and Financial Provision
1981	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation
/82		
1981	69	The Law of Incest in Scotland
	70	Sixteenth Annual Report 1980–81

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

1966	Memorandum No. 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964
	Memorandum No. 2—Expenses in Criminal Cases
1967	Memorandum No. 3—Restrictions on the Creation of Liferents

*Produced jointly with the Law Commission for England and Wales

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

- Memorandum No. 4—Applications for Planning Permission
 Memorandum No. 5—Damages for Injuries Causing Death
 *Memorandum No. 6—Interpretation of Statutes
- 1968** *Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
 Memorandum No. 8—Draft Evidence Code—First Part
- 1969** Memorandum No. 9—Prescription and Limitation of Actions
 Memorandum No. 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961
 Memorandum No. 11—Presumptions of Survivorship and Death
 Memorandum No. 12—Judgments Extension Acts
- 1970** Memorandum No. 13—Jurisdiction in Divorce
- 1971** Memorandum No. 14—Remedies in Administrative Law
 *Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses in Contracts for the Supply of Services and other Contracts
 Memorandum No. 16—Insolvency, Bankruptcy and Liquidation
- 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
- 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

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- 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
- *Memorandum No. 56—Polygamous Marriages
(Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage)

3 SCOTTISH LAW COMMISSION—PUBLISHED CONSULTATIVE DOCUMENTS CIRCULATED FOR COMMENT AND CRITICISM

- 1974 *Private International Law—EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations

4 SCOTTISH LAW COMMISSION—OTHER PUBLISHED DOCUMENTS

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

5 SCOTTISH LAW COMMISSION—CONSULTATIVE PAPERS NOT PUBLISHED AND WITH VERY RESTRICTED CIRCULATION

- 1969 Married Women's Policies of Assurance (Scotland) Act 1880—Working Paper
- 1973 Consultation Paper on Divorce for Incurable Insanity
- 1974 Insolvency, Bankruptcy and Liquidation in Scotland—Consultative Paper
- 1978 Consultation Document—Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive

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

- 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

6 SCOTTISH LAW COMMISSION—UNPUBLISHED CONFIDENTIAL DOCUMENTS

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

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

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 15 September 1982)

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restrictions on the Creation of Liferents (Memorandum No. 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 18.
Applications for Planning Permission (Memorandum No. 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c. 30), section 79.
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot. Law Com. No. 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 9.
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot. Law Com. No. 5) (Cmnd. 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c. 22), Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 5.
Divorce—The Grounds Considered (Scot. Law Com. No. 6) (Cmnd. 3256)	12.5.67	Divorce (Scotland) Act 1976 (c. 39).
Sea Fisheries (Shellfish) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c. 83)
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 10) (Cmnd. 4004)	17.4.69	Trustee Savings Banks Act 1969 (c. 50).
Interpretation of Statutes (Joint Report with the Law Commission) (Scot. Law Com. No. 11)	11.6.69	None.
Exemption Clauses in Contracts—First Report: Amendment to the Sale of Goods Act 1893 (Joint Report with the Law Commission) (Scot. Law Com. No. 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c. 13).
The Companies (Floating Charges) (Scotland) Act 1961 (Scot. Law Com. No. 14) (Cmnd. 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c. 67).
Reform of the Law Relating to Prescription and Limitation of Actions (Scot. Law Com. No. 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c. 52)
Hague Convention on Recognition of Divorces and Legal Separations (Joint Report with the Law Commission) (Scot. Law Com. No. 16) (Cmnd. 4542)	1.12.70	Recognition of Divorces and Legal Separations Act 1971 (c. 53).
Coinage Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 18) (Cmnd. 4544)	26.11.70	Coinage Act 1971 (c. 24).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Vehicles (Excise) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 19) (Cmnd. 4547)	2.12.70	Vehicles (Excise) Act 1971 (c. 10).
National Savings Bank Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 20) (Cmnd. 4574)	13.1.71	National Savings Bank Act 1971 (c. 29).
Taxation of Income and Gains derived from Land (Joint Report with the Law Commission) (Scot. Law Com. No. 21) (Cmnd. 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c. 41).
The Road Traffic Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 22) (Cmnd. 4731)	26.7.71	Road Traffic Act 1972 (c. 20).
Town and Country Planning (Scotland) Bill (Scot. Law Com. No. 24) (Cmnd. 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c. 52).
Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot. Law Com. No. 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c. 45).
Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 26) (Cmnd. 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c. 39).
Report on Liability for Antenatal Injury (Scot. Law Com. No. 30) (Cmnd. 5371)	30.8.73	None required.
Report on the Law relating to Damages for Injuries causing Death (Scot. Law Com. No. 31)	24.10.73	Damages (Scotland) Act 1976 (c. 13).
Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 32) (Cmnd. 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c. 22).
Report on Presumption of Death (Scot. Law Com. No. 34)	3.9.74	Presumption of Death (Scotland) Act 1977 (c. 27).
Friendly Societies Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 35) (Cmnd. 5634)	27.6.74	Friendly Societies Act 1974 (c. 46).
Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 36) (Cmnd. 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c. 10).
Supply Powers Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 38) (Cmnd. 5850)	6.1.75	Supply Powers Act 1975 (c. 9).
Exemption Clauses—Second Report (Joint Report with the Law Commission) (Scot. Law Com. No. 39)	2.10.75	Unfair Contract Terms Act 1977 (c. 50).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 40) (Cmnd. 6303)	8.12.75	Statute Law (Repeals) Act 1976 (c. 16).
Family Law—Report on Liability for Adultery and Enticement of a Spouse (Scot. Law Com. No. 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c. 39).
Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 44) (Cmnd. 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c. 18).
Liability for Defective Products (Joint Report with the Law Commission) (Scot. Law Com. No. 45) (Cmnd. 6831)	15.6.77	None.
Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 48) (Cmnd. 7189)	11.5.78	Statute Law (Repeals) Act 1978 (c. 45).
Electricity (Scotland) Bill (Scot. Law Com. No. 49) (Cmnd. 7178)	23.5.78	Electricity (Scotland) Act 1979 (c. 11).
Adoption (Scotland) Bill (Scot. Law Com. No. 50) (Cmnd. 7187)	3.5.78	Adoption (Scotland) Act 1978 (c. 28).
Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot. Law Com. No. 51)	18.7.78	None.
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot. Law Com. No. 52) (Cmnd. 7245)	27.7.78	Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980 (c. 56).
Interpretation Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 53) (Cmnd. 7235)	8.6.78	Interpretation Act 1978 (c. 30).
Customs and Excise Management Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 54) (Cmnd. 7418)	7.12.78	Customs and Excise Management Act 1979 (c. 2).
Report on Lost and Abandoned Property (Scot. Law Com. No. 57)	16.1.80	None.
Education (Scotland) Bill (Scot. Law Com. No. 58) (Cmnd. 7688)	2.4.80	Education (Scotland) Act 1980 (c. 44).
Report on Powers of Judicial Factors (Scot. Law Com. No. 59) (Cmnd. 7904)	3.7.80	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), section 8.
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).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Judicial Pensions Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 62) (Cmnd. 8097)	27.11.80	Judicial Pensions Act 1981 (c. 20).
Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 63) (Cmnd. 8089)	10.12.80	Statute Law (Repeals) Act 1981 (c. 19).
Report on Section 5 of the Damages (Scotland) Act 1976 (Scot. Law Com. No. 64)	29.4.81	None.
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 65) (Cmnd. 8257)	11.6.81	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) (Joint Report with the Law Commission) (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)	4.11.81	None.
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot. Law Com. No. 68)	25.2.82	None.
The Law of Incest in Scotland (Scot. Law Com. No. 69) (Cmnd. 8422)	23.12.81	None.

