



Scottish Law Commission
promoting law reform

(SCOT LAW COM No 230)

annual report | 2012





Scottish Law Commission

promoting law reform

The Commission was established under the Law Commissions Act 1965

Our function

To recommend reforms to improve, simplify and update the law of Scotland

Our role

To play a leading role in developing the law for the people of Scotland so that it is just, principled, responsive and easy to understand

annual report | 2012



Commissioners and Chief Executive

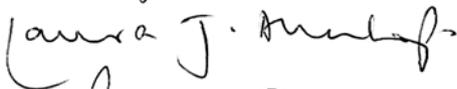
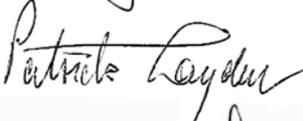
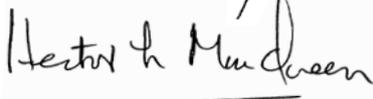
Dr Andrew J M Steven, Ms Laura J Dunlop QC, Professor Hector L MacQueen (back row, left to right)

Patrick Layden QC TD, Lady Clark of Calton (Chairman), Malcolm McMillan (Chief Executive) (front row, left to right)

Annual Report 2012

To: Kenny MacAskill MSP, Cabinet Secretary for Justice

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2012.

	LYNDA CLARK, Chairman
	LAURA J DUNLOP
	PATRICK LAYDEN
	HECTOR L MACQUEEN
	ANDREW J M STEVEN


Malcolm McMillan, Chief Executive
18 February 2013

Laid before the Scottish Parliament by the Scottish Ministers under section 3(3) of the Law Commissions Act 1965.

March 2013

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ISBN: 9780108882692

Printed in the UK for The Stationery Office Limited on behalf of the Queen's Printer for Scotland

03/13

Printed on paper containing 100% recycled fibre content.

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Chairman's foreword



In accordance with the provisions of the Law Commissions Act 1965, I am very pleased to present the Scottish Law Commission's Annual Report for 2012. This is the 47th Annual Report but it is the first report which I will have the privilege to submit to the Scottish Ministers as Chairman of the Commission.

In June 2012 I took office as Chairman, having been appointed by Kenny MacAskill, the Cabinet Secretary for Justice. I regard this as a great privilege and will continue to use the word 'Chairman' which has such an honourable history at the Commission. I am very conscious of the challenge of following so many distinguished lawyers commencing with the Rt Hon Lord Kilbrandon and including senior judicial colleagues with whom I have worked, the Rt Hon Lord Gill and the Rt Hon Lord Eassie. I am particularly grateful to Lord Gill who, in his office as Lord President, continues to support law reform work.

I would also like to pay tribute to the work of my predecessor, the Hon Lord Drummond Young who demitted office in December 2011. He continued to support the Commission as Acting Chairman until arrangements could be made for the appointment of a new Chairman. The Commission are also very

grateful that, after return to full-time judicial duties, he has continued with his work on the Commission's project on the law of trusts. This project, which is now almost completed, will make recommendations for a complete overhaul of the legislation governing trusts in Scotland with the object of reflecting current best practice and the best international standards. Lord Drummond Young who has extensive expertise in this area of law has made a very valuable contribution to this important project which is part of the Commission's work to modernise Scots private and commercial law. On behalf of the Commission, I would like to thank Lord Drummond Young for all his work over many years and the contribution which he has made to the reform of Scots law.

The Commission have always had a judge as Chairman and since 1996 the appointment has been part-time allowing the Chairman to carry out judicial duties also. This means that the Chairman continues to be very involved in the practical application of the law and exposed to some of the difficulties which end up in expensive litigation. The wide-ranging work which I continue to do as a judge both in civil and criminal law and at first instance and appeal is very important to my work as Chairman.

My vision of the Commission is not as an academic institute but I value the strong academic tradition of the Commission which is reflected in the many reports. I consider that the role and value of the work of the Commission is helped by the Commissioners having a detailed understanding of the practical application of the law and problems which arise in the various areas of the law which are considered by the Commission. I will encourage all Commissioners and staff to actively engage with the public, practitioners, pressure groups and people with relevant policy and legal expertise. I have been actively involved in the Scottish Justice Leaders Forum. This provides an opportunity to engage with many people working in diverse areas which assists me with a more general understanding of practical difficulties in the law which they require to operate within and apply in carrying out difficult work.

My first involvement on Commission work with the public was during a consultation process which took place as part of the prescription and title to moveable property project. That project is now successfully completed. The Report and draft Bill has attracted a great deal of support and the Commission hopes that legislation will follow soon.

The writing of our discussion papers and reports is done in our office but law reform is a process in which we must engage with the wider world. The Commission has for long sought to do that. I will certainly encourage that process and also look for new and improved ways to develop and carry forward law reform projects within a reasonable time.

With the assistance of the lead Commissioners, I am very pleased to report that in 2012 the Scottish Parliament passed 2 major Acts which were based on work and Bills produced by the Commission. These are the Land Registration etc (Scotland) Act 2012 and the Long Leases (Scotland) Act 2012. In the UK Parliament I can record a similar success resulting from a joint Report which was the basis of the Consumer Insurance (Disclosure and Representations) Act 2012.

When I was appointed as Chairman, the Commission were about halfway through their Eighth Programme of Law Reform. That meant there were a number of major projects which were at different stages of development. At Commission meetings, which are held regularly, all the work projects are reviewed and discussed at appropriate stages. The details of the current projects are set out later in this Report.

There were some reports published in 2012 prior to my appointment such as the Report on Similar Fact Evidence and the *Moorov* doctrine.

During 2012 the Commission published 2 joint Reports with the Law Commission for England and Wales. The first was the Nineteenth Report on Statute Law Repeals which is now an Act passed by the UK Parliament. The second was the Report on Consumer Redress for Misleading and Aggressive Practices.

The Commission also issued Discussion Papers on Adults with Incapacity and on Formation of Contract. With the Law Commission for England and Wales, the Commission issued joint Discussion Papers on Insurance Contract Law: the Business Insured's Duty of Disclosure and the Law of Warranties; and Regulation of Health Care Professionals. The Commission also published for the trust project, a Consultation Paper on Public and Charitable Trusts: Amalgamation of Functions and Creation of Common Investment Funds. With the Law Commission for England and Wales we also published an Issues Paper on Unfair Terms in Consumer Contracts: A New Approach?

I am very conscious that, although our work is not designed to be an academic exercise, the reports of the Commission are often referred to by academics as well as by counsel and judges. We welcome that and are pleased that our research and analysis of the law often has practical utility even if not formally implemented in legislation. But I see our major task as reforming the law by way of legislation.

Since establishment of the Scottish Parliament by the Scotland Act 1998, we have dealt with Scots law issues in relation to both reserved and devolved matters. Much of our work is directed at areas of Scots law which are devolved but there is an overlap on many occasions with reserved matters which require to be addressed. There are also significant projects which relate to reserved matters in which the Law Commission for England and Wales may take the lead but we require to provide considerable assistance and resources to ensure that Scots law and the practical effects in Scotland are assessed and taken into account in any recommendations for change and drafting proposed legislation.

Because of our focus on legislative reform, I am wholly supportive of the Commission's practice which is to work closely with Ministers and Parliamentarians and with relevant Government

policy officials and lawyers. I appreciate the support for drafting Commission Bills provided by Scottish Parliamentary Counsel. I am grateful to Roseanna Cunningham, the Minister for Community Safety and Legal Affairs, in particular for agreeing to regular meetings and fostering good communications at Government level. I should also record the support and interest which has been provided by the Justice Committee of the Scottish Parliament in 2012 who have taken a keen and informed interest in the work of the Commission and in the implementation of our reports. The Commission has a good record of co-operation with governments of all political reflection. I will continue to encourage such co-operation and facilitate communication with members of both Parliaments of every political persuasion. I recognise, of course, that governments always have their own agenda with their own political and policy priorities. Nevertheless, it is essential not only for a vibrant economy but also for the creation of a fair and modern society that our laws are modernised and kept up-to-date.

No legislation proposed by the Commission was introduced in 2012 in the Scottish Parliament but I hope that both the UK and the Scottish Parliaments will act to take forward Commission reports and draft Bills in 2013.

One way in which to promote legislation which is not politically controversial but is necessary and useful is to provide a special Parliamentary procedure to consider such Commission Bills. I would very much welcome such a procedure at the Scottish Parliament at Holyrood. Such a procedure would increase the Parliament's legislative capacity for law reform. We support the establishment of some such system and have been working actively with the Scottish Government and Parliamentary officials to try to achieve this.

The Commission has also worked proactively with the UK Government. I would like to thank in particular the Advocate General for Scotland, Lord Wallace of Tankerness, the Scotland Office and officials. The

Advocate General has worked with the Commission to bring forward legislation to implement the Commission's Report and Bill on the Criminal Liability of Partnerships project. I was pleased to be able to attend with the Advocate General the All Peers Briefing Session when the Bill was discussed in some detail. This legislation was made possible by the use of a special procedure for Law Commission Bills in the House of Lords. This is a relatively new procedure. It is the first time the procedure has been used for a Bill for Scotland promoted by this Commission alone. I very much welcome this development and hope that other suitable Bills, such as the Commission's Bill relating to Unincorporated Associations, might be taken forward in this way in the future.

In December 2012, the Commission received a reference both from the Scottish Government and from the UK Government in relation to an electoral reform project. This project is to be a tripartite project with the Law Commissions for England and Wales and Northern Ireland. It is a major project designed to extend over a number of years. I am acting as the lead Commissioner on this project which I anticipate will be the focus of considerable interest.

The Commission has always had strong links with other law reform bodies around the world and particularly with the Law Commissions in England and Wales, Northern Ireland, Ireland and Jersey. Shortly after my appointment I attended meetings in Dublin with representatives of the other 4 Commissions. This was very useful to me at the start of my work.

The Commission has regular meetings with Commissioners and officials from the Law Commission for England and Wales in relation to joint projects. The former Chairman, the Rt Hon Lord Justice Munby was succeeded by the Rt Hon Lord Justice Lloyd Jones and I am very grateful to both Chairmen for their co-operation and assistance to me and to the Commission.



Lady Clark of Calton and the Advocate General for Scotland, the Rt Hon the Lord Wallace of Tankerness QC at Dover House, London

In conclusion, on behalf of the Commissioners, I want to praise the staff for their enthusiasm and diligence. The Commissioners work with a dedicated team and also work closely together as Commissioners. I thank them all for their help and support.

LADY CLARK OF CALTON
Chairman

Publications 2012

PUBLICATION	DATE OF PUBLICATION
Annual Report 2011 (Scot Law Com No 225)	29 February 2012
Discussion Paper on Regulation of Health Care Professionals; Regulation of Social Care Professionals in England (Joint Consultation Paper with the Law Commission for England and Wales, and the Northern Ireland Law Commission) (DP No 153)	1 March 2012
Review of Contract Law: Discussion Paper on Formation of Contract (DP No 154)	23 March 2012
Report on Consumer Redress for Misleading and Aggressive Practices (Joint Report with the Law Commission for England and Wales) (Scot Law Com No 226)	28 March 2012
Report on Statute Law Repeals: Nineteenth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission for England and Wales) (Scot Law Com No 227)	4 April 2012
Report on Prescription and Title to Moveable Property (Scot Law Com No 228)	9 May 2012
Report on Similar Fact Evidence and the <i>Moorov</i> Doctrine (Scot Law Com No 229)	23 May 2012
Discussion Paper on Insurance Contract Law: The Business Insured's Duty of Disclosure and the Law of Warranties (Joint Consultation Paper with the Law Commission for England and Wales) (DP No 155)	26 June 2012
Discussion Paper on Adults with Incapacity (DP No 156)	31 July 2012

These publications are available on our website www.scotlawcom.gov.uk

Other publications

We also published the following papers during 2012. These papers are not included in our numbered series of printed discussion papers and reports but are available in electronic form on our website.

Consultation Paper on Public and Charitable Trusts

On 2 July 2012 we issued a Consultation Paper on Public and Charitable Trusts: Amalgamation of Functions and Creation of Common Investment Funds.

Joint Issues Paper on Unfair Terms in Consumer Contracts

On 25 July 2012 we and the Law Commission for England and Wales issued a joint Issues Paper on Unfair Terms in Consumer Contracts: a new approach?

Please see our website for further information about our publications

www.scotlawcom.gov.uk



Implementation of our reports 2012

Under the Law Commissions Act 1965, our statutory function is to provide independent advice to Government on the reform of Scots law. Our recommendations are contained in reports, usually accompanied by a draft Bill containing provisions which would give effect to our recommendations. Our reports are submitted to the Scottish Ministers, or to UK Ministers where the subject matter involves areas of law reserved to the UK Parliament.

Implementation of the draft Bills annexed to our reports is a matter for the Scottish Government and Scottish Parliament or, where appropriate, the UK Government and UK Parliament.

During 2012 we continued our work with the Scottish Government and the UK Government in relation to Commission reports which have not so far been implemented.

We are grateful for the significant interest in implementation of our reports taken during 2012 by the Justice Committee of the Scottish Parliament. This resulted in correspondence during the summer between the Convener of the Justice Committee, and the Cabinet Secretary for Justice, regarding implementation of outstanding Commission reports.

We also worked with Government towards improving legislative planning for implementation of law reform measures; and with the Scottish Parliament to expand the capacity of the Parliament to enact law reform recommendations. We regard this work as an important part of our role in promoting law reform.

Acts passed by the Scottish Parliament in 2012

Land Registration etc. (Scotland) Act 2012

The Land Registration etc. (Scotland) Act was passed by the Scottish Parliament on 31 May 2012 and received Royal Assent on 10 July 2012. The Act implements recommendations contained in our Report on Land Registration, published in February 2010. The Act is heavily based on the draft Bill in our

Report and also contains additional provisions, for example relating to the use of electronic documents.

Long Leases (Scotland) Act 2012

The Long Leases (Scotland) Act 2012 was passed by the Scottish Parliament on 28 June 2012 and received Royal Assent on 7 August 2012. It implements recommendations in our Report on Conversion of Long Leases published in December 2006.

Bills introduced in the Scottish Parliament in 2012

There were no Bills introduced in the Scottish Parliament in 2012 implementing Commission Bills.

Act passed by the UK Parliament in 2012

Consumer Insurance (Disclosure and Representations) Act 2012

The Consumer Insurance (Disclosure and Representations) Act 2012 was passed by the UK Parliament on 6 March 2012 and received Royal Assent on 8 March 2012. The Act gives effect, with minor modifications, to the recommendations in the joint Report by the Scottish Law Commission and the Law Commission for England and Wales on Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation, published in December 2009.

Bills introduced in the UK Parliament in 2012

Partnerships (Prosecution) (Scotland) Bill

The Partnerships (Prosecution) (Scotland) Bill was introduced in the House of Lords on 6 November 2012 and is proceeding through Parliament following the special procedure for the consideration of Law Commission Bills.

The Bill is based upon the draft contained in the Commission's Report on Criminal Liability of Partnerships in 2011.

Statute Law (Repeals) Bill

The Statute Law (Repeals) Bill was introduced in the UK Parliament in October 2012. The Bill was based

on the draft Bill contained in the joint Report by the Law Commission for England and Wales and the Scottish Law Commission published in April 2012. The Bill has now been enacted as the Statute Law (Repeals) Act 2013.

Government responses to our recommendations

Interest on debt and damages

The Scottish Government wrote to the Commission in June 2012, in relation to the recommendations of the Commission in our Report on Interest on Debt and Damages in 2003. The Government indicated that they do not intend to implement the recommendations relating to contractual debt; but would consider the provisions on interest and damages.

The law of damages

On 19 December 2012 the Scottish Government published a consultation paper on Civil Law of Damages: Issues in Personal Injury.

The consultation seeks views on aspects of the Commission's proposals for reform of the law on damages for psychiatric injury, the law on prescription and limitation (also known as "time bar") for actions for personal injury and a range of related issues such as the discount rate; interest on damages and periodical payments.

The proposals come from three Commission Reports: Damages for Wrongful Death in 2008, Damages for Psychiatric Injury in 2004, and Personal Injury Actions: Limitation and Prescribed Claims in 2007.

Prescription and Title to Moveable Property

We are waiting on a formal response from the Scottish Government to our Report published in May 2012.

Similar Fact Evidence and the Moorov Doctrine

We are waiting on a formal response from the Scottish Government to our Report published in May 2012.

Citations in 2012 of Commission work

There are further indications of the impact and value of the Commission's work, aside from implementation of our recommendations. The Commission's work is widely quoted in court judgments, in academic journals and in the media.

Our monitoring service picked up in 2012, 22 UK court judgments citing or discussing Commission publications; and 57 citations in articles in legal journals.

In the UK national and regional newspapers there were 48 references to the Commission and our work.

While any views expressed may or may not support the Commission and our recommendations, this information does reflect the level of attention given to the Commission in these contexts.

Further information about implementation of our Reports can be found on the Publications page of our website www.scotlawcom.gov.uk

Law reform projects

The Commission's law reform work stems from our programmes of law reform and references from Ministers. We also undertake projects jointly with the Law Commission for England and Wales, and with the Northern Ireland Law Commission where the subject matter relates to Scotland as well as other parts of the United Kingdom.

Projects included in our Eighth Programme of Law Reform

During 2012 work continued on projects under our Eighth Programme of Law Reform which covers the period from 2010 to the end of 2014.

Item 1 - Moveable transactions

Project Team

Dr Andrew Steven, Commissioner

Alastair Smith, Project Manager

Scott McGeachy, Legal Assistant

Scottish businesses at a competitive disadvantage and lead to the loss of legal, financial and commercial business to England and elsewhere.



Dr Andrew Steven

This is a medium-term project in our Eighth Programme of Law Reform.

The project involves a review of the law on (i) outright transfer (assignment) of incorporeal moveable property (ii) security over incorporeal moveable property and (iii) security over corporeal moveable property. Thus book debts (money owed but unpaid), loan books (sums due on mortgage, credit cards, car loans etc), intellectual property rights (patents etc), stock in trade, and equipment (vehicle fleets etc) all fall within the scope of the project. The project does not cover the transfer of corporeal moveable property, a subject that is mainly covered by the Sale of Goods Act 1979.

All three areas (assignment, security over incorporeal moveable property, and security over corporeal moveable property) are important to the smooth running of the Scottish economy but in all three areas Scots law appears to be out of date and insufficiently business-friendly. This may place

We published a Discussion Paper on Moveable Transactions in June 2011. The Paper considered the current law, identified its shortcomings, and suggested possible ways forward. Other legal systems were looked at, including the model that originated in the USA (Article 9 of the Uniform Commercial Code) and which has now been adopted (with some variations) in a number of other countries including Australia, Canada and New Zealand. Although the Discussion Paper concluded that a wholesale adoption of this model would not be appropriate, it was suggested that Scots law would benefit from adopting some of its ideas.

The Discussion Paper proposed that there should be a new type of security right that could cover both corporeal and incorporeal moveable property. There would be a new online Register of Moveable Transactions, in which the security right would be registered. The new register could also be used to register transfers of financial rights, for example in securitisations and factoring.

Nearly 40 responses were received to the Discussion Paper. Following the end of the consultation period, we have conducted a number of meetings with interested parties to discuss the issues raised by the consultation responses. These discussions, together with the consultation responses themselves, will inform the report and draft Bill which we plan to publish in 2014.

Item 2 - Trusts

Project Team

The Hon Lord Drummond Young, Consultant

Charles Garland, Project Manager

Lorna MacFarlane, Legal Assistant

This is a major long-term project which aims to replace much of the current legislation, including the Trusts (Scotland) Act 1921, with a new statute designed for the present and future uses to which trusts are or may be put. The range of situations in which trusts are commonly used in Scotland and elsewhere has changed very considerably since the current legislation was framed in the first quarter of the last century, and this is particularly true in the investment and financial services sectors and in commerce where trusts can be used as an important element in a transaction. We have had this at the forefront of our minds when preparing some of the more recent Discussion Papers. Also significant is the fact that many other jurisdictions, both "onshore" and "offshore", have modernised their trusts laws in recent years. Not only have we drawn heavily on their legislation where we consider it appropriate but we recognise that, in an internationally competitive market, it is clearly a great advantage to have a trusts statute which is modern in its outlook, language and coverage. By having this aim in mind in the course of our review, we trust that the fruits of our project will not only benefit domestic advisers and their clients but may also serve to attract inward business to Scotland.

Our project has been long-running: we have published eight Discussion Papers between 2003 and 2011 as well as two short Consultation Papers (in 2011 and 2012). In addition we published a Report in 2007 on the Variation and Termination of Trusts. We are now preparing a report and draft legislation which will cover almost all of the topics on which we have consulted. (The significant exception is the subject matter of our Discussion Paper on the Nature and Constitution of Trusts.) Work is well advanced and we plan to publish our report during 2013.

Item 3 - Judicial factors

Project Team

Patrick Layden QC TD, Commissioner

Gillian Swanson, Project Manager

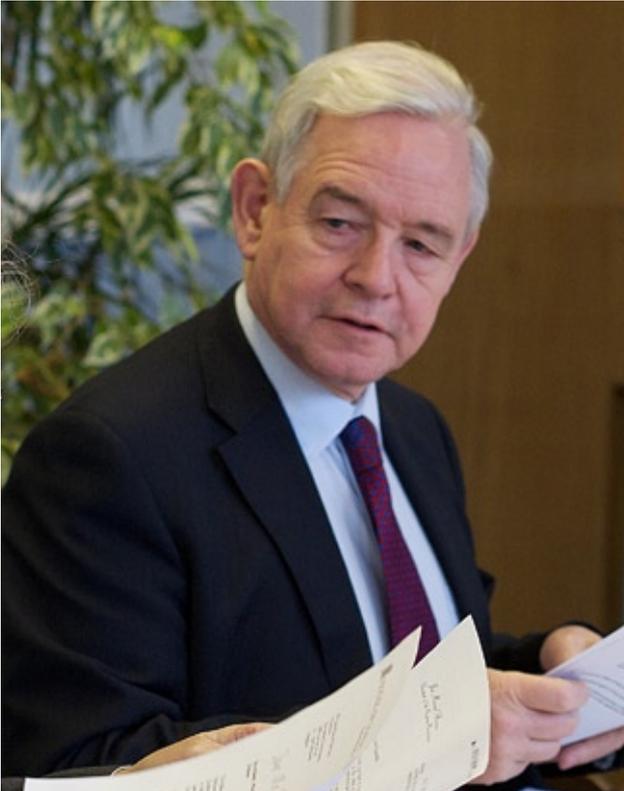
Joanna Bain, Legal Assistant

Our project on judicial factors has been carried forward into our Eighth Programme of Law Reform.

A judicial factor, who can be appointed in a variety of circumstances, is someone appointed by the court to look after or gather in and distribute property belonging to someone else, often when there is no other course of action available. In practice, most judicial factors are solicitors or accountants, although anyone can be appointed. The law in this area is governed mainly by 19th century legislation which is so out of date that it is no longer fit for purpose.

Our Discussion Paper on Judicial Factors was published in December 2010. It put forward two options for reform. The first was to keep the existing structure but to modernise it and make it more efficient by means such as updating and clarifying the powers and duties of judicial factors. The second was more radical in that it proposed the establishment of a new public official who would carry out all judicial factory work unless the court wished to appoint someone else. As our consultation process showed support for the first option only,

we are working with interested parties towards modernising and simplifying the current law relating to judicial factors with a view to publishing a report and draft Bill in the first half of 2013.



Patrick Layden QC TD

Item 4 - Homicide

Project Team

Patrick Layden QC TD, Commissioner

Alastair Smith, Project Manager

Joanna Bain, Legal Assistant

Our Eighth Programme includes a review of the law on homicide. We have started researching the law of Scotland as well as the law of other countries with a view to working on a discussion paper during the course of 2013.

Item 5 - Criminal liability of partnerships

Project Team

Patrick Layden QC TD, Commissioner

Alastair Smith, Project Manager

Our Report on Criminal Liability of Partnerships was published in December 2011. A Bill to implement the Report, the Partnerships (Prosecution) (Scotland) Bill, was introduced in the UK Parliament in November 2012.

Item 6 - Law of contract in the light of the Draft Common Frame of Reference

Project Team

Professor Hector MacQueen, Commissioner

Charles Garland, Project Manager

Lorna MacFarlane, Legal Assistant

Our review of contract law is a long-term project under our Eighth Programme. We began by publishing a Discussion Paper on issues of interpretation (2011) and followed it with a Discussion Paper on formation of contract in March 2012.

We received a number of helpful responses to the consultation from a variety of interested parties. Taking them into account, and being aware of a strong desire amongst practitioners for clarity on the practice known as execution in counterpart, we have concentrated our efforts on preparing a report and short draft Bill to meet that demand. Execution in counterpart is typically of use where a multi-party document is to be signed, so as to give it legal effect, by parties who are in different parts of the country or of the world. The document is distributed to all parties who then sign their own copy and deliver it to the other parties. This contrasts with what is sometimes termed the traditional signing ceremony at which all parties (or their agents) gather together

into the same location and all sign a single copy of the document. By contrast with Scots law, English law is seen as much more accommodating towards execution in counterpart and there is a strong desire on the part of practitioners, especially those involved in commercial or cross-border work, for a clear and effective equivalent in Scots law.

We held a seminar at the University of Edinburgh at the end of November 2012 on our proposals and we were very pleased with the active participation of many practitioners and others. We have since followed this up with detailed discussions with representatives of a number of commercial law firms. This has allowed us to refine our ideas and we anticipate publishing our report on execution in counterpart, together with a draft Bill, around Easter 2013.

Our Discussion Paper on formation of contract discussed topics other than execution in counterpart: for example the "postal acceptance rule" and the "battle of the forms" and also some ideas for digital



Professor Hector L MacQueen

execution using electronic signatures. We will return to these topics in a future report.

We have also begun work on a Discussion Paper on remedies for breach of contract, which will also cover penalty clauses. We are minded to divide our consideration of this topic into two parts, the first (on which we have done most work to date) concerns the self-help remedies of rescission and retention and the second of which will deal with the judicial remedies of damages, specific implement and interdict. Looking to the future, our project will cover an examination of third party rights.

Item 7 - Adults with incapacity

Project Team

Ms Laura Dunlop QC, Commissioner

Dr Heike Gading, Project Manager

Susan Robb, Solicitor

As part of our Eighth Programme we are continuing to review the law on adults with incapacity, currently set out in the Adults with Incapacity (Scotland) Act 2000. In particular, we are addressing deprivation of liberty in residential care, when individuals lack the capacity to consent to restrictive measures to which they are subject, leading to possible breach of Article 5 of the European Convention on Human Rights.

Our Discussion Paper was published in July 2012, together with a summary version and an easy read leaflet. An important aspect of the Discussion Paper was the examination of how the law in this area has developed in England and Wales, where a new scheme has been introduced to govern deprivation of liberty of adults with incapacity. This scheme has already generated a considerable volume of litigation. We also found it useful to examine current law and law reform in other countries, especially the proposals for change in the law of guardianship made by the Victorian

Law Reform Commission in Australia. With the Hastie Stable of the Faculty of Advocates, we held a seminar on the issues in Edinburgh in September and were pleased to meet delegates from around Scotland. The Discussion Paper has triggered a wide and varied range of responses for which we are very grateful. We are analysing the responses in order to formulate policy on the issues raised in the project. After doing so, we will prepare a report with our recommendations.



Ms Laura Dunlop QC

We continue to debate the central and challenging issue of defining deprivation of liberty in relation to people who lack capacity to consent to residential arrangements, but require care in such settings. Our report will also consider the requirements for, and effect of, the consent of substitute decision-makers to any arrangements made, and the issue of deprivation of liberty for people without capacity who are admitted to hospital for treatment.

Item 8 - Compulsory purchase

Project Team

Patrick Layden QC TD, Commissioner

Dr Andrew Steven, Commissioner

Lesley Mure, Project Manager

Joanna Bain, Legal Assistant

The Eighth Programme includes a long-term project to examine the law and practice of compulsory purchase in Scotland. It seems inevitable that there will continue to be circumstances in which it is necessary for private property to be acquired compulsorily in the public interest. As long as compulsory purchase is considered to be a necessary process, it is in the interests of all those affected for the law to be clear, accessible and up-to-date.

But in Scotland the underlying legislation in relation to compulsory purchase is generally considered to be antiquated and obscure, with much of it dating from the 19th and early 20th centuries. There are a number of difficult issues relating to both the procedure for compulsory purchase and compensation.

In 2011 the Scottish Government published updated guidance on the existing procedures in two circulars on compulsory purchase orders and the disposal of surplus government land under what are known as the Crichton Down rules.

Various reforms have been made to the law of compulsory purchase in England and Wales, most recently by the Localism Act 2011.

Following our preliminary work in 2011, we have started work in earnest on the project. We had two very helpful advisory group meetings with practitioners and academics in June. Mr Layden gave a presentation on the Commission's project at the inaugural conference of the Scottish Branch of the Compulsory Purchase Association in October. Mr Layden and Mrs Mure also led a workshop on issues

relating to compensation at the conference. In November Mr Layden gave a presentation on the Commission's project at a conference on compulsory purchase orders organised by Wright, Johnston & Mackenzie LLP and was a panel member for a workshop at that conference on how the law might be reformed.

We have received much support for the project from practitioners and academics during 2012. We hope to make substantial progress towards a discussion paper during 2013.

Item 9 - Heritable securities

Project Team

Dr Andrew Steven, Commissioner

Alastair Smith, Project Manager

Scott McGeachy, Legal Assistant

We intend to begin a review of the law of heritable securities during our Eighth Programme.

A heritable security is a security over heritable property (such as land and buildings) in respect of a debt. (The equivalent term in English law, "mortgage", is often encountered.)

The law of heritable security is governed mainly by legislation dating back to the Conveyancing and Feudal Reform (Scotland) Act 1970. The Act has been amended over the years, most notably by the Mortgage Rights (Scotland) Act 2001 and by the Home Owner and Debtor Protection (Scotland) Act 2010. But many shortcomings with the 1970 Act have come to light and remain unreformed. The Supreme Court's decision in *Royal Bank of Scotland plc v Wilson* [2010] UKSC 50, 2010 SLT 1227 highlights one such area of difficulty.

Item 10 - Prescription and title to moveable property

Project Team

Dr Andrew Steven, Commissioner

Alastair Smith, Project Manager

Our Report on Prescription and Title to Moveable Property was published in May 2012.

The project, part of our Eighth Programme of Law Reform, reviewed the law of prescription and title to moveable property.

The Commission recommended the introduction of two rules which would convert possession to ownership.

The first would apply where the person possessing the object reasonably believes that he or she is the owner, but turns out not to be – usually because the person from whom the object was bought was not the true owner. Provided that the possessor is in good faith (and does not, for instance, have reason to believe that the object was stolen), he or she would become owner after possessing the object for a continuous period of 20 years.

The second rule applies to lent or deposited property where the owner can no longer be traced. Although the rule is general in application, it is particularly aimed to help museums and galleries. Under the new rule, the holder of the object would be able to claim ownership if the owner had not been in contact for 50 years and could not be traced using reasonable diligence. This certainty of ownership will assist museums and galleries in cataloguing and managing their collections.

We also recommended that the introduction of the first of these rules should be accompanied by the abolition of the present rule that property which has not been possessed during a continuous period of 20 years becomes ownerless and falls to the

Crown. This rule – which, while framed as a rule of negative prescription, effectively operated as positive prescription in favour of the Crown – should be replaced by a new rule which would give ownership of lost or abandoned objects to the Crown after 60 years had passed.

In August 2012, a seminar was held with representatives of the museums and galleries sector, who welcomed the Commission's proposed new rule for lent and deposited property. We are awaiting a formal response from the Scottish Government regarding proposals for implementation of the Report.

References from Scottish Ministers

During 2012 we completed work on our remaining reference from Scottish Ministers on criminal law. We received no new references from Scottish Ministers during 2012.

Similar fact evidence and the *Moorov* doctrine

Project Team

Patrick Layden QC TD, Commissioner

Alastair Smith, Project Manager

Our Report on Similar Fact Evidence and the *Moorov* Doctrine was published in May 2012. The Report recommended that the current law on the admissibility of evidence as to bad character, similar fact evidence and evidence of previous convictions should be replaced with a coherent statutory



Our current legal assistants (left to right) Julie Davidson, Scott McGeachy, Joanna Bain and Lorna MacFarlane

replacement. This would start by restating the basic rule that all relevant evidence should, subject to a small number of public policy exceptions, be admissible.

The Report concluded that evidence that a person has acted in a similar way on other occasions, including evidence of previous convictions, is relevant because it may demonstrate a propensity on the part of that person to act in that particular way. Accordingly, the Report recommended that such evidence should be admissible, and capable of providing corroboration of other evidence of guilt. A draft Bill, annexed to the Report, would give effect to these recommendations.

We are awaiting a formal response from the Scottish Government regarding proposals for implementation of the Report.

Joint projects with the Law Commission for England and Wales

We continued work during 2012 on a number of joint projects with the Law Commission for England and Wales. The projects relate mainly to areas of the law which are reserved to the United Kingdom Parliament in terms of the Scotland Act 1998.

Insurance contract law

Project Team

Professor Hector MacQueen, Commissioner

Gillian Swanson, Project Manager

Julie Davidson, Legal Assistant

We are assisting the Law Commission with a major project on insurance contract law which they are carrying out under their Eleventh Programme of Law Reform.

A key date for the project in 2012 was 8 March which saw Royal Assent to the Consumer Insurance (Disclosure and Representations) Act. The legislation derives from the recommendations in our joint Report on Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation in December 2009; and we hope that the Act will come into force in spring 2013.

The Act will apply only to consumers and will deal with the issue of what a consumer must tell an insurer before entering into or varying an insurance contract. It will abolish the consumer's duty to volunteer material facts. Instead, consumers will have to take reasonable care to answer their insurer's questions fully and accurately. If consumers do volunteer information, they will have to take reasonable care to ensure that the information is not misleading.

The Act will also prescribe the insurer's remedies where it has been induced by a misrepresentation to enter into an insurance contract. The insurer's remedy will depend on whether the misrepresentation was honest

and reasonable; careless; or deliberate or reckless. For example, if the misrepresentation was careless, the insurer will have a compensatory remedy based upon what the insurer would have done had the consumer taken care to answer the question accurately; if the insurer would have excluded a certain illness, the insurer will not be required to pay claims which would fall within the exclusion but will be required to pay all other claims; or, if the insurer would have charged more for the policy, it will be required to pay a proportion of the claim.

In June 2012, we published our third, and final, joint consultation paper in this project, covering the issues of the business insured's duty of disclosure and the law of warranties.

Under the current law, a business policyholder has a duty to disclose every material circumstance it knows about the risk it wants to insure. Failure to do so entitles the insurer to avoid the contract, which means that the insurer may treat it as if it did not exist and refuse all claims.

The duty is unclear and sometimes poorly understood, while the consequence of breach is extremely harsh. There is evidence that the duty does not work well in practice. Our proposals aim to clarify how policyholders are expected to comply with the duty when presenting a risk to insurers and to encourage insurers to assist them in that task. We also propose fairer remedies for breach where the policyholder has not been dishonest.

An insurance warranty is an important term which, unless complied with by the policyholder exactly, results in the automatic discharge of the insurer's liability for loss. It makes no difference if the breach is trivial, not material to the risk or if the policyholder remedies the breach prior to loss being incurred.

We propose that breach of a warranty should suspend the insurer's liability for the duration of the breach, with remedy of the breach restoring liability. Where a term is designed to reduce a particular type

of risk, we propose that liability is suspended only in relation to that risk. This would be mandatory for consumer insurance but subject to freedom of contract for business insurance.

This consultation followed another, published in December 2011, on the topics of damages for late payment, insurers' remedies for fraudulent claims, insurable interest, and policies and premiums in marine insurance. Around the end of 2013, a final report will be published which will cover these topics in addition to the issues discussed above, namely the business insured's duty of disclosure and the law of warranties.

Consumer redress for misleading and aggressive practices

Project Team

Professor Hector MacQueen, Commissioner

Gillian Swanson, Project Manager

This was a joint project with the Law Commission which stemmed from a reference from the UK Department for Business, Innovation and Skills. The targeting of consumers by misleading or aggressive commercial practices is a problem affecting a large proportion of the population with many of those affected being among the most vulnerable members of society.

On 28 March 2012, we published our joint Report on Consumer Redress for Misleading and Aggressive Practices. We hope that our recommendations will be included in the UK Government's proposed Consumer Bill of Rights.

Under the existing laws that govern misleading and aggressive practices it is difficult, if not impossible, for consumers to get their money back. In May 2008, the Consumer Protection from Unfair Trading Regulations implemented the Unfair Commercial Practices Directive in the UK. The Regulations provide that traders must not use "unfair commercial

practices" against consumers. Whilst the Regulations cover many of the unfair practices consumers complain about, they do not, however, provide consumers with a direct cause of action where they have suffered loss as a result of an unfair commercial practice. Consumers must rely instead upon the remedies which they are afforded under the existing law; for example, under the law of misrepresentation. Our review of the current private law in this area found that it was fragmented, complex and unclear.

In our Report, we recommended limited reform, targeting the most serious cases of consumer detriment due to unfair trade practices. These are already criminal offences, but we recommended a new right of redress for consumers, which would give them the right to a refund or a discount on the price. Also, in terms of our recommendations, damages may be recoverable where consumers have suffered additional loss.

In particular, we recommended that there must be a contract between the parties or a payment made by the consumer. Thus consumers would not, for example, be entitled to compensation if they visited a shop in response to a misleading advertisement but did not buy anything. Nor would consumers have a separate right to compensation for being misled about their rights.

The consumer would have a right only against the other party to the contract, usually the retailer or service provider. The legislation would not provide additional rights against others in the supply chain, such as producers or against individual directors.

The list of banned practices under the Regulations would not give rise to automatic redress; they would be covered by the new right only if they would affect an "average consumer". The general prohibition against commercial practices which are "contrary to the requirements of professional diligence" would not give rise to redress as it is too uncertain. Land transactions and financial services would not be covered. Instead the existing law would remain.

In recommending a new statutory right of redress for a consumer against a trader, we recommended that the consumer would require to show that the trader carried out a misleading or aggressive practice; that this was likely to cause the average consumer to take a decision to enter a contract or make a payment he or she would not have taken otherwise; and that the misleading or aggressive practice was a significant factor in the consumer's own decision to enter the contract or make the payment.

Under the recommended legislation consumers would have two tiers of remedies. Tier 1 remedies would be the standard remedies and would apply on a strict liability basis. The type of remedy (the right to unwind the contract and obtain a refund, or the right to a discount) would depend on how soon after the event the consumer complains and whether the consumer has fully consumed the product. The amount would be based on the price paid and would not require evidence of loss. By contrast, Tier 2 remedies would apply only if the consumer proved additional loss; they would also be subject to the trader's due diligence defence. Tier 2 remedies would provide damages to compensate for indirect losses, including economic damage and distress and inconvenience.

Level crossings

Project Team

Dr Andrew Steven, Commissioner

Susan Sutherland, Project Manager

Susan Robb, Solicitor

We have been working with the Law Commission for England and Wales on a joint project on reform of the law relating to level crossings. The project is a joint one as much of the relevant legislation applies to Scotland as well as to England and Wales.

The law governing level crossings is complex and difficult to find. It involves Victorian legislation

relating to the railways as well as more recent legislation on health and safety, planning, roads, compulsory purchase and access to land. In addition the project involves consideration of property and land law. One of the key aims of the project is to simplify the legislative framework.



Frances Patterson QC, Commissioner, Law Commission for England and Wales

During 2012 we commenced work on preparation of a substantial Bill and draft Regulations which will be published with the joint report. We had useful meetings with the advisory group and with the Department for Transport and Office of Rail Regulation as well as with bodies representing others with an interest in level crossings to discuss our policy.

Work on the draft Bill and report is now well advanced. The Commissions are aiming to publish the joint report in 2013.

Unfair terms in consumer contracts

Project Team

Professor Hector MacQueen, Commissioner

Gillian Swanson, Project Manager

Julie Davidson, Legal Assistant

In our last Annual Report, we mentioned that the recommendations in our 2005 joint Report with the Law Commission for England and Wales on Unfair Terms in Contracts had been accepted in principle by the UK Government.

In May of 2012, however, the two Commissions were asked by the Department for Business, Innovation and Skills to carry out two further tasks in relation to this topic. The first was to review and update our 2005 joint Report in so far as it affects contracts made between businesses and consumers; the second was to consider, in particular, one problematic area, namely the exemption for main subject matter and price set out in Regulation 6(2) of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR). Accordingly, in July 2012, we published an Issues Paper in order to seek the views of interested parties on these matters.

Currently, two pieces of legislation deal with unfair contract terms. The Unfair Contract Terms Act 1977 (UCTA) sets out the traditional UK approach while the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR) implement an EU Directive, the Unfair Terms Directive (UTD). The co-existence of these two overlapping schemes has long been criticised for its complexity and obscurity and, in 2005, we recommended reform to simplify the law. In the Issues Paper we asked whether there was still support for the relevant recommendations we made at that time and asked if there were any areas where updating was required. For example, we looked at what the remaining role of UCTA would be if our proposals were taken forward; in so far as UCTA currently protects businesses from unfair terms, it would continue to do so as our proposals are confined to consumer protection.

Under Regulation 6(2) of the UTCCR, terms cannot be assessed for fairness if they relate to the "main subject matter of the contract" or to "the adequacy of the price or remuneration as against the goods or services supplied in exchange". These phrases have generated considerable litigation, most notably over bank charges. We think that there is a strong case for replacing Regulation 6(2) with a provision in clearer terms. Our proposals focussed on whether a term is transparent and prominent. Having carefully considered all responses to the Issues Paper, we are formulating a Policy Statement which we aim to submit to the Department for Business, Innovation and Skills in spring 2013.

We understand that, as is the case with our earlier joint Reports on consumer remedies for faulty goods and consumer redress for misleading and aggressive practices, our recommendations on unfair terms in consumer contracts may be included in the proposed UK Consumer Bill of Rights.

Joint projects with the Law Commission for England and Wales and the Northern Ireland Law Commission

Regulation of health care professionals

Project Team

Patrick Layden QC TD, Commissioner

Lesley Mure, Project Manager

Following a reference from the UK Department of Health we are working with the Law Commission for England and Wales and the Northern Ireland Law Commission on a project reviewing UK legislation relating to the regulation of health care professionals.

This is the first joint law reform project with the Northern Ireland Law Commission and the first such project involving the three Law Commissions.

The present regulatory framework has become complex and the intention is to review the framework with a view to modernising and simplifying the existing law and procedures.

The Commissions published a joint Consultation Paper on Regulation of Health Care Professionals in March 2012, inviting comments on proposals and questions on reform of the legislation governing regulation of health care professionals. We received over 90 responses from a wide range of interested bodies and individuals. We have reviewed the policy in light of the responses received.

We are now working on a report and draft Bill which we expect to publish in 2014.

Electoral Law

Project Team

The Hon Lady Clark of Calton, Chairman

Project Manager and Legal Assistant to be assigned

In November 2012 our Chairman, Lady Clark, announced that the Commission would be working with the Law Commission for England and Wales and the Northern Ireland Law Commission on a new joint law reform project to review UK legislation in relation to electoral law. The Commission has received a reference for this project from the Cabinet Office as regards reserved areas of Scots law, and from Scottish Ministers as regards devolved areas.

Electoral law in the UK is spread across 25 major statutes. It has become increasingly complex and fragmented. In addition, recent years have seen a steady increase in the numbers and types of election. Today the electorate may be asked to vote – at the same time – for a range of representatives. Each type of election comes with its own set of rules and systems, and combining different types into one electoral event introduces yet more layers of electoral law.

The overall aim of the project is to ensure that the law governing elections is modern, fit for purpose, and meets the expectations of citizens.

Owing to the nature of the subject-matter, which is UK-wide, a scoping exercise has been carried out by

the Law Commission for England and Wales in co-operation with this Commission and the Northern Ireland Law Commission. Consultees gave unanimous support to the UK-wide review and agreed that the aim should be to:

- (a) Review the legislative framework for electoral law to provide a clear, principled and consistent structure for setting out electoral laws,
- (b) Review electoral administration law to rationalise, simplify and modernise the rules governing conduct of all elections, so as to reduce the risk of mistakes,
- (c) Identify where the electoral process – and the electorate – would benefit from rules that are more specific and clear, and
- (d) Recommend areas where existing rules could be less prescriptive and more flexible to reduce the complexity and volume of laws, and reflect the best interests of voters.

Following consideration of the results of the consultation, a Report was published by the Law Commission for England and Wales on 11 December 2012: "Electoral Law in the United Kingdom: A Scoping Report".

The aim is to produce a consultation paper with proposals for reform, which will be issued after the Scottish referendum in autumn 2014.

Further information about our law reform projects is available on the law reform projects page on our website
www.scotlawcom.gov.uk

Progress in 2012 on our law reform projects: summary

Project	Publications in 2012	Position at the end of 2012
Moveable transactions (Eighth Programme, item 1)		Working on report and draft Bill, to be published in 2014
Trusts (Eighth Programme, item 2)	Consultation Paper on Public and Charitable Trusts: Amalgamation of Functions and Creation of Common Investment Fund published on our website July 2012	Working on report and draft Bill, to be published in 2013
Judicial factors (Eighth Programme, item 3)		Working on report and draft Bill, to be published in 2013
Homicide (Eighth Programme, item 4)		Some preliminary work undertaken
Law of contract in the light of the DCFR (Eighth Programme, item 6)	Review of Contract Law: Discussion Paper on Formation of Contract (DP No 154) published March 2012	Working on report and draft Bill on Execution in Counterpart, to be published in 2013
Adults with incapacity (Eighth Programme, item 7)	Discussion Paper on Adults with Incapacity (DP No 156) published July 2012	Working on report and draft Bill, to be published around the end of 2013
Compulsory purchase (Eighth Programme, item 8)		Working on discussion paper, to be published in 2013/14
Heritable securities (Eighth Programme, item 9)		Some preliminary work undertaken
Prescription and title to moveable property (Eighth Programme, item 10)	Report on Prescription and Title to Moveable Property (Scot Law Com No 228) published May 2012	Project completed May 2012
Similar fact evidence and the <i>Moorov</i> doctrine (Reference from Scottish Ministers)	Report on Similar Fact Evidence and the <i>Moorov</i> Doctrine (Scot Law Com No 229) published May 2012	Project completed May 2012

Project	Publications 2012	Position at the end of 2012
Insurance contract law (Joint project with the Law Commission for England and Wales)	Discussion Paper on Insurance Contract Law: The Business Insured's Duty of Disclosure and the Law of Warranties: a Joint Consultation Paper (DP No 155) published June 2012	Working on report and draft Bill, to be published around the end of 2013
Consumer redress for misleading and aggressive practices (Joint project with the Law Commission for England and Wales)	Report on Consumer Redress for Misleading and Aggressive Practices (Scot Law Com No 226) published March 2012	Project completed March 2012
Level crossings (Joint project with the Law Commission for England and Wales)		Working on joint report and draft Bill, to be published in 2013
Unfair terms in consumer contracts (Joint project with the Law Commission for England and Wales)	Issues Paper on Unfair Terms in Consumer Contracts: a new approach? published on our website July 2012	Working on joint advice, to be published spring 2013
Regulation of health care professionals (Joint project with the Law Commission for England and Wales and the Northern Ireland Law Commission)	Regulation of Health Care Professionals; Regulation of Social Care Professionals in England: a Joint Consultation Paper (DP No 153) published March 2012	Working on joint report and draft Bill, to be published in 2014

Consolidation and statute law repeals

Consolidation

Project Team

The Hon Lady Clark of Calton, Chairman

Susan Sutherland, Project Manager

Susan Robb, Solicitor



Gregor Clark CB, Parliamentary Counsel (Consultant)

In terms of the Law Commissions Act 1965, one of our functions is to undertake work on consolidation of legislation. This work involves preparing a draft Bill to bring together earlier enactments on an area of law. This has the benefit of making the legislation easier to use. Instead of having to look up several Acts covering a number of years on a particular matter, the user has to look up only one Act. Consolidation is also an important way of tidying up the statute book.

From time to time we assist the Law Commission for England and Wales with preparation of consolidation Bills. Joint consolidation projects relate to legislation applying to Great Britain or the United Kingdom. The consolidation Bills are introduced in the UK Parliament but in so far as they include matters within the legislative competence of the Scottish Parliament require the approval of that Parliament before introduction. At present we have no joint consolidation projects with the Law Commission.

Bankruptcy legislation

We continued work in 2012 on preparation of a Bill to consolidate the legislation relating to bankruptcy in Scotland.

The Bankruptcy (Scotland) Act 1985 is the main piece of legislation governing bankruptcy. In recent years the Act has been heavily amended and much relevant material is also to be found in subordinate legislation. The aim of our work is to produce a Bill bringing the existing provisions together into a new and more accessible legislative framework.

Work on our report is nearing completion. The report will contain a number of recommendations for amendments to the 1985 Act. The amendments are

intended to remove anomalies and to omit provisions that are no longer of any practical utility.

The draft Bill which will be included in the report would be for the Scottish Parliament to enact. But some of the provisions consolidated would require to have effect outwith Scotland. An order under section 104 of the Scotland Act 1998 Act would be required to supplement any Consolidation Act resulting from the draft Bill and complete its restatement of bankruptcy law. The making of such an order would be a matter for UK Ministers and for the UK Parliament.

In its Programme for Government 2012-2013, published in September 2012, the Scottish Government announced its intention to introduce a Bill to modernise bankruptcy law. It would be possible for the recommendations in our forthcoming report to be implemented as part of that Bill. This approach might enable the Commission's consolidation Bill to be taken forward subsequently as a "straight" consolidation (without amendments to give effect to Commission recommendations).

We expect to publish our report in the first half of 2013.

Statute law repeals

Project Team

The Hon Lady Clark of Calton, Chairman

Susan Sutherland, Project Manager

Susan Robb, Solicitor

Another of our functions under the Law Commissions Act 1965 is to recommend the repeal of obsolete legislation. We undertake this work jointly with the Law Commission for England and Wales.

The purpose of our work is to remove obsolete and otherwise unnecessary legislation from the statute book. This process helps to simplify and modernise our law, making it more intelligible. It also saves time and costs for lawyers and others working with legislation.

In April 2012 we published our latest joint Report on Statute Law Repeals. The Report included a draft Bill. The Report was the nineteenth such Report to be published by the Commissions since 1965.

The Bill annexed to the Report was the largest such Bill recommended by the Commissions since 1965, proposing the total repeal of more than 800 Acts, and the partial repeal of 50 other Acts, covering a range of legislation. The Scottish repeals included 16 expired Acts passed between 1798 and 1828 relating to the imposition of a duty of two pennies Scots on the sale of ale, beer or porter in certain parts of Scotland. They also covered five Acts authorising railway projects in Scotland that were subsequently abandoned.

The Bill was introduced in the UK Parliament in October 2012. Members of the joint team gave evidence to the Joint Committee during the passage of the Bill. The Bill was subsequently approved without amendment and received Royal Assent on 31 January 2013.

Work is now underway on researching possible repeals for the next joint report which is likely to be completed in 2016. As is our usual practice we will undertake full consultation on the proposals as work is completed on each area of legislation.

Promoting law reform

The Commission liaises with Ministers, Government and other bodies to plan for law reform work including implementation of Commission reports. We work closely with Scottish Ministers and the Scottish Government on devolved matters, and with the UK Government, including the Scotland Office, and the Advocate General for Scotland and his Office, on reserved areas of Scots law.

As part of the wider work of promoting law reform in Scotland, Lady Clark is meeting with the Justice spokespersons of the main political parties represented in the Scottish Parliament.

The Commission continues to have close links with the legal profession in Scotland. We are indebted to members of the profession who serve as members of our advisory groups on law reform projects, and who contribute to our consultations; in particular for the practical experience of the law that these members contribute to the law reform process.

In November 2012, Commissioners and our Chief Executive met with the Convener and members of the Law Reform Committee of the Law Society of Scotland, and the Director of Law Reform and members of the Law Reform Department. We discussed current and future law reform work.

Lady Clark was invited to deliver a speech on law reform and the work of the Commission at the annual conference of the Scottish Legal Action Group (SCOLAG) in September 2012.

The Commission also appreciates our links with the Law Schools in Scotland, and the contribution that legal academics make to our work. We value the seminars on our projects hosted by the universities.

The Commission enjoys close contact with other law reform bodies; in particular the Law Commission for England and Wales and the Northern Ireland Law Commission, with whom we carry out joint law



Mrs Higgins, Mr Michael D Higgins, President of Ireland, and Lady Clark of Calton (left to right) at the President's Official Residence in Phoenix Park, Dublin

reform projects. We have regular contact also with the law reform bodies in Ireland and in Jersey. Lady Clark and our Chief Executive, Malcolm McMillan, attended the annual conference of the law reform bodies of Scotland, England and Wales, Ireland, Northern Ireland and Jersey, hosted by the Law Commission of Ireland in Dublin in July 2012. The President of Ireland, Mr Michael D Higgins held a reception for the delegates at the conference.

The Commission is pleased to welcome visitors from other jurisdictions and law reform bodies across the world.

In 2012, for example, the Commission hosted study visits to discuss law reform by a lawyer from Moldova; and a lawyer from the Uganda Law Reform Commission.

In September 2012 Lady Clark and Professor MacQueen met a delegation of judges from the Shanghai No 1 Intermediate People's Court, China on a study visit to Scotland, and addressed them on the work of the Commission.



Lady Clark with members of the delegation from Shanghai

Dr Steven attended the Australasian Law Reform Agencies Conference in Canberra, Australia in September 2012. The theme of the conference was Conversations about Law Reform: Sharing Knowledge and Experience. Dr Steven undertook a number of valuable meetings in Brisbane and Canberra, Australia and in Auckland and Wellington, New Zealand, to discuss aspects of Personal Property Securities law in these jurisdictions. The reforms in these countries are

of significance to the Commission's current project on moveable transactions. Meetings were held with the Australian Law Reform Commission and the New Zealand Law Commission, and with practitioners, judges and Government officials.

The Commission has a link with the Malawi Law Commission as part of the Scottish Government's Programme on Capacity Building for Justice in Malawi. The Commission liaises with Challenges Worldwide, the development agency appointed by Scottish Ministers to prepare and deliver the Programme for the justice sector in Malawi. We have also worked with Challenges Worldwide to facilitate participation in the Programme by other legal bodies in Scotland.

One of the Commission's former legal assistants, Garry MacLean, continues to work in Malawi as the local co-ordinator of the Programme; and he works also on a part-time basis at the Malawi Law Commission, assisting their intellectual property team which is undertaking a review of the law of patents.

The Commission's Chief Executive, Malcolm McMillan was invited by the Africa Research Institute to give a presentation on law reform in London in November 2012 at the launch of their publication on Duty of Care: Constitutional and Law Reform in Malawi by Dr Janet Chikaya-Banda, then the Chief Law Reform Officer of the Malawi Law Commission.



Malcolm McMillan, Chief Executive, at the Africa Research Institute

Future law reform publications

The Commission aims to make progress on all of our current law reform projects in the course of 2013, in particular by issuing publications on certain of these projects. The rate of progress we make depends on the priorities accorded to the respective areas of work; on the resources available to us; and on the extent to which the Commission is asked to take on other work.

We expect to publish further discussion papers within the next year or so on breach of contract, as part of our continuing review of contract law; and on compulsory purchase law.

A number of projects will be completed during this period by the submission of a report and draft Bill to Scottish Ministers for consideration. We are aiming to issue reports on judicial factors; execution in counterpart; trust law; the consolidation of bankruptcy legislation; and adults with incapacity.

As regards our joint work with the Law Commission for England and Wales, we expect to complete a number of projects in the course of the next year or so, by submitting joint reports on level crossings and on insurance contract law; and joint advice on unfair terms in consumer contracts.

Commissioners and staff

Commissioners

Lady Clark of Calton, Chairman

Ms Laura Dunlop QC

Patrick Layden QC TD

Professor Hector MacQueen

Dr Andrew Steven

Chief Executive

Malcolm McMillan

Parliamentary Counsel (Consultant)

Gregor Clark CB

Project Managers (Solicitors)

Heike Gading

Charles Garland

Lesley Mure

Alastair Smith

Susan Sutherland

Gillian Swanson

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The Commission's running costs 2012

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2012 were offset by payments received from Skills for Justice and the Royal Commission on the Ancient and Historic Monuments of Scotland for use of part of our office accommodation.

Expenditure	Year to 31 December 2012
Salaries – Commissioners (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£474,194
Salaries – Chief Executive and legal staff (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£647,582
Salaries – Administrative staff (including national insurance contributions and superannuation payments)	£126,077
Accommodation (including maintenance, rates and utilities)	£79,610
Printing and publishing (including costs of books and library purchases, binding, maintenance of equipment, printing costs of publications, photocopying and stationery)	£77,745
Telephone and postage	£7,139
Travel and subsistence	£5,303
Miscellaneous (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£57,123
Total	£1,474,773



How we undertake our law reform projects

- Research into the existing Scots law and review of comparative law
- Analysis of problems with the current law
- Development of policies for reform
- Consultation on proposed reforms
- Consideration of consultation responses
- Review of policy in the light of consultation
- Publication of a report to Ministers with recommendations for reform, including in most cases a draft Bill to implement the recommendations. Implementation of the recommendations in our reports requiring legislation is taken forward in the Scottish Parliament or, in reserved areas of law, in the UK Parliament at Westminster.
- Role of advisory groups – to assist us with our projects we often set up advisory groups of people with expertise in the relevant areas of law. These small groups provide valuable assistance and guidance to our project teams.

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