



Scottish Law Commission

*promoting law reform*

(SCOT LAW COM No 246)

annual report | 2016





# 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 | 2016



*Commissioners and Chief Executive  
(left to right) Professor Hector MacQueen, Malcolm McMillan (Chief Executive), The Hon Lord Pentland (Chairman),  
Dr Andrew Steven, David Johnston QC, Mrs Caroline Drummond*



# Scottish Law Commission

*promoting law reform*

## Annual Report 2016

To: Michael Matheson MSP, Cabinet Secretary for Justice

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2016.

Paul B Cullen  
Caroline Drummond  
David Johnston  
Hector L MacQueen  
Andrew J M Steven

PAUL B CULLEN, *Chairman*

CAROLINE DRUMMOND

DAVID JOHNSTON

HECTOR L MACQUEEN

ANDREW J M STEVEN

Malcolm McMillan

Malcolm McMillan, Chief Executive  
21 February 2017

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

February 2017

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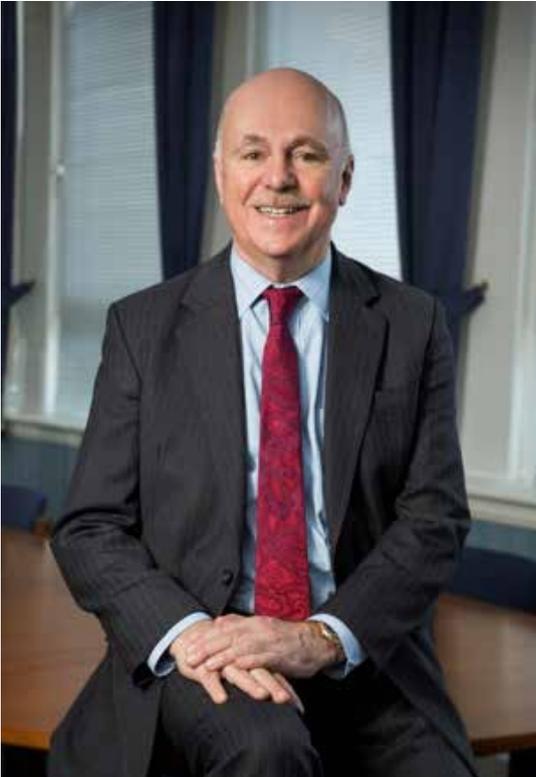
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*Commissioners and staff*

## Chairman's foreword



I am pleased to present the Annual Report of the Scottish Law Commission for 2016. The Report explains our law reform work over the past year.

The Scottish Law Commission is an independent statutory body responsible for promoting reform of the law of Scotland; we cover areas of the law devolved to Holyrood and areas reserved to Westminster. We select our law reform projects based on public consultation; we work closely with stakeholders as we develop proposals for reform; and we submit recommendations and draft legislation to the Scottish and UK governments as appropriate. The work of law reform is of vital importance in ensuring that the law is kept up to date. As society continues to develop, so must the law. The law must remain in tune with modern values and the outlook of today's society.

2016 was another busy and productive year for law reform in Scotland. We published Discussion Papers on the law of defamation, penalty clauses, and aspects of the law of prescription. We produced a Report and a draft Bill on third party rights in contract; it is pleasing to report that legislation on the subject has recently been introduced in the Scottish Parliament. We submitted a substantial report to the Scottish Government drawing together responses to our compulsory purchase consultation exercise; we hope that this can provide a platform for further consideration of reform in this challenging and important area. We have continued to make progress with our large project on reform of the law on moveable transactions. On our joint project on reform of electoral law, we published (with the Law Commission for England and Wales and the Northern Ireland Law Commission) an interim report in February 2016. This contained important recommendations for reform of electoral law and was provided to enable the UK and Scottish Governments to decide whether, and in what form, the joint project should continue.

In the Scottish Parliament, two law reform Bills were passed: a consolidating measure on bankruptcy law and a Bill reforming aspects of the law of succession. It is encouraging that the Delegated Powers and Law Reform Committee allocated time for consideration of a consolidation Bill. The Commission provided support as both these measures passed through the Parliament; this is an increasingly important aspect of our work.

At Westminster, the Enterprise Act 2016 was enacted; it implemented recommendations on the payment of late claims in our joint project on insurance law with the Law Commission for England and Wales. That project is approaching a conclusion; it has been very successful in delivering substantive improvements in this vitally important area. The final topic in the project concerns the issue of insurable interest; details are to be found in the body of this Report. There has also been progress with the project with which we assisted on groundless threats of infringement proceedings in relation to patents, trade marks, and designs; a Bill is making its way through the special procedure for Law Commission Bills at Westminster.

During the year, the Scottish Law Commission and the Scottish University Law Schools entered into a Memorandum of Understanding. I believe this to be a major step forward. It represents a strengthening of the good relationships we have always enjoyed with the academic community in Scotland. The aim of the new scheme is to promote greater collaboration and enhanced joint working. The first placement at the Commission has already taken place; this has proved to be very successful. I look forward keenly to seeing the scheme develop.

We have continued to review and improve our methods of working to ensure that they are fit for the modern age and that we communicate with civil society as effectively as possible. With these aims in mind, we decided that in future we would publish our work only in electronic form on our website. We posted several videos explaining aspects of our work on YouTube, including a discussion on law reform between me and James Wolffe QC, then Dean of the Faculty of Advocates and now the Lord Advocate; the videos are also accessible on our website. We have continued to take advantage of the opportunities presented by social media to reach out to a wide audience. We distribute regular electronic bulletins to our extensive network of contacts.

At the end of 2015 I suggested that it would be opportune to re-examine the way in which the Commission works with the Scottish Government, especially in relation to the selection of our projects and the provision of support for our work as projects develop. I look forward to making progress with the Scottish Government on these matters in 2017.

The Scottish Parliament has an important part to play in the work of law reform. I thank the Presiding Officer for his encouragement and support. I am grateful to all the Members of the Scottish Parliament who have contributed to consideration of law reform measures and who have taken an interest in the work of law reform.

In 2017 we will consult on the contents of our next programme of law reform, our 10th Programme. We are determined to ensure that we engage as widely as possible with a view to ensuring that we select the right projects. I would encourage everyone with an interest in the law to become involved in this exercise. We want to ensure that we fully understand the problems at the sharp end.

Finally, I wish to record my sincere appreciation of the dedication, support, and hard work of all my colleagues at the Commission.



**The Hon Lord Pentland**  
*Chairman*

## Publications 2016

PUBLICATION	DATE OF PUBLICATION
<b>Annual Report 2015</b> (Scot Law Com No 244)	19 February 2016
<b>Discussion Paper on Prescription</b> (DP No 160)	22 February 2016
<b>Discussion Paper on Defamation</b> (DP No 161)	17 March 2016
<b>Review of Contract Law – Report on Third Party Rights</b> (Scot Law Com No 245)	15 July 2016
<b>Review of Contract Law – Discussion Paper on Penalty Clauses</b> (DP No 162)	30 November 2016

### Other publications

Along with the Law Commission for England and Wales and the Northern Ireland Law Commission, we published a joint interim Report on Electoral Law on 4 February.

We published a Report on the Consolidated Responses to our Discussion Paper on Compulsory Purchase on 22 September.

These papers are not included in our numbered series of published reports but are available in electronic form on our website.

## Implementation of our reports 2016

The Commission's statutory function is to provide independent advice to Government on the reform of Scots law. Our recommendations for reform are contained in reports, which usually include a draft Bill which would give effect to our recommendations. Most of our reports are submitted to the Scottish Ministers but some are submitted to UK Ministers where the subject matter involves areas of law reserved to the UK Parliament.

Implementation of our recommendations is a matter for the Scottish Government and Scottish Parliament or, where appropriate, the UK Government and UK Parliament. In both cases the Commission usually provides assistance to Government officials during the Parliamentary stages of the Bill.

### Acts passed by the Scottish Parliament in 2016

#### Bankruptcy (Scotland) Act 2016

The Bankruptcy (Scotland) Act 2016 was passed by the Scottish Parliament, and received Royal Assent on 28 April 2016. The Act consolidates the Bankruptcy (Scotland) Act 1985 and subsequent legislation relating to bankruptcy in Scotland. It follows on from the Commission's Report, in 2013, on the Consolidation of Bankruptcy Legislation in Scotland.

This was the first consolidation Bill produced by the Commission to be considered by the Delegated Powers and Law Reform Committee of the Parliament. Gregor Clark, the Commission's Parliamentary Counsel, briefed the Committee on the drafting of the Bill and subsequently attended the Committee meetings to give detailed evidence on the provisions of the Bill.

#### Succession (Scotland) Act 2016

The Succession (Scotland) Act 2016 was passed by the Scottish Parliament, and received Royal Assent on 3 March 2016. The Act makes technical changes to the law of succession in Scotland, partially implementing our Report on Succession published in 2009.

This was the second Bill to be considered by the Delegated Powers and Law Reform Committee under the special process introduced by the Parliament for certain Commission Bills.

### Acts passed by the United Kingdom Parliament in 2016

#### Enterprise Act 2016

In our joint Report with the Law Commission for England and Wales on Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment, published in 2014, we recommended legislation to deal with late payment of insurance claims.

The Enterprise Act 2016 was enacted by the UK Parliament to implement the recommendations, and received Royal Assent on 4 May 2016. It amends the Insurance Act 2015 to require insurers to pay valid claims within a reasonable time otherwise policyholders are entitled to damages for foreseeable loss which they suffer.

A table providing information about implementation of our Reports can be found on the Publications page of our website: [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

## Law reform projects

The Commission's law reform work stems from our programmes of law reform and from references from Scottish Ministers and, on occasions, UK Ministers.

### Programmes of law reform

Our Ninth Programme outlines our law reform projects for the period of three years from 2015 to the end of 2017. It was published in February 2015, following extensive consultation with the legal profession and other interested parties including members of the public. The Programme was approved by Scottish Ministers and laid before the Scottish Parliament.

### Projects included in our Ninth Programme of Law Reform

#### Item 1 – Moveable transactions

##### *Project Team*

**Dr Andrew Steven**, Commissioner  
**Andrew Crawley**, Project Manager  
**Joshua Hale**, Legal Assistant

This sizeable project has been carried forward for completion under our Ninth Programme.

The project is concerned with three areas important to the Scottish economy:

- assignation (outright transfer) of incorporeal moveable property
- security over incorporeal moveable property and
- 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.



*Dr Andrew Steven, Commissioner*

Scots law on these three areas is out of date and not sufficiently business-friendly. Reform in this area of commercial law is much needed to enhance the position of Scotland as a place to do business.

Our Discussion Paper on Moveable Transactions proposed two significant reforms of the law in respect of moveable property.

It proposed that an assignation of incorporeal moveable property, as for example in a securitisation, could be completed either by intimation (as at present) or by registration in a new online register.

It also proposed the introduction of a new type of security right that could cover both corporeal and incorporeal moveable property. A new online register would be established in which the security right would be constituted by registration.

During 2016 we continued with detailed work on our draft Bill and report. We had the ongoing support of our advisory group as well as Registers of Scotland. We engaged also with stakeholders including the Asset Based Finance Association and the Federation of Small Businesses. They have provided us with valuable information for the project impact assessment.

Our report and draft Bill are now very well advanced and we anticipate completion of the project in 2017.

## Item 2 – Law of contract in the light of the Draft Common Frame of Reference

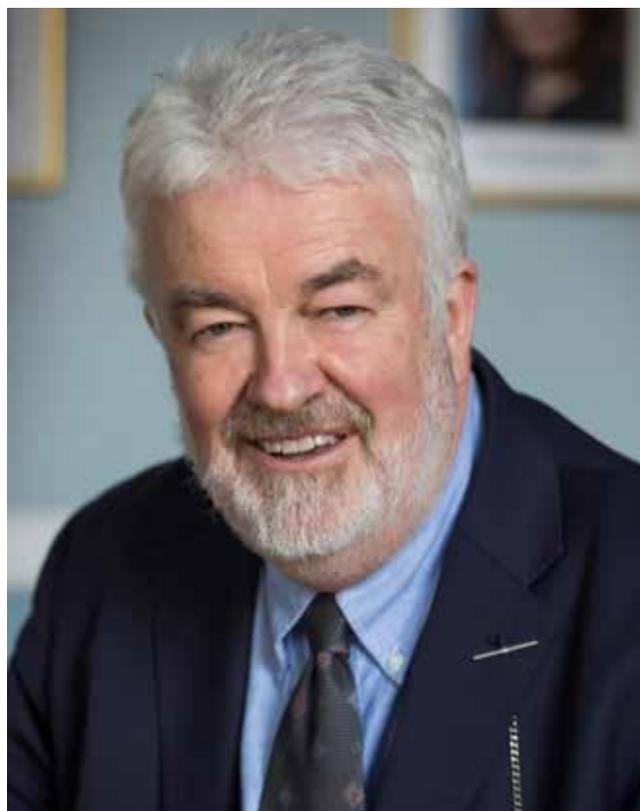
### Project Team

**Professor Hector MacQueen**, Commissioner  
**Graham Crombie**, Project Manager  
**Anna Mackinnon**, Legal Assistant

The project is a long-term one in our Ninth Programme of Law Reform, having been carried forward from our previous Programme.

To date we have published four Discussion Papers and two Reports. The Discussion Papers are Interpretation of Contract (2011), Formation of Contract (2012), Third Party Rights in Contract (2014) and Penalty Clauses (2016). Our Report on Formation of Contract: Execution in Counterpart was published in 2013 and our Report on Third Party Rights was published in 2016.

The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, which came into force on 1 July 2015, gives effect to the recommendations in our Report on Formation of Contract: Execution in Counterpart. On 31 January 2017, the Contract (Third Party Rights) (Scotland) Bill was introduced to Parliament to implement our Report on Third Party Rights.



*Professor Hector MacQueen, Commissioner*

During 2016, we have focused on two main areas of work. The finalisation and publication of our Report (and accompanying draft Bill) on Third Party Rights occupied much of the first half of the year. Latterly, we focused on drafting and publishing our Discussion Paper on Penalty Clauses.

In 2017, we aim to draw together the outstanding strands of the project. The consultation period for our Discussion Paper on Penalty Clauses closes in February 2017. We expect to publish one further Discussion Paper on Remedies for Breach of Contract during the first half of the year and we will also revisit areas of work undertaken earlier in the project. Further focused consultation may take place to ensure that recent developments in areas that we have already consulted on have been fully considered. Once this work is complete, it is our intention to report in early 2018.

### Item 3 – Compulsory purchase

#### *Project Team*

**Caroline Drummond**, Commissioner  
**Dr Andrew Steven**, Commissioner  
**Calum Stewart**, Legal Assistant

This long-term project was first introduced in the Eighth Programme of Law Reform, and is included in the Ninth Programme. The aim of this project was to analyse and improve the law of compulsory purchase in Scotland, which is generally viewed as outdated and inadequate.

In England and Wales, law reform in this area is moving quickly. Changes were made by the Localism Act 2011, and more recently a substantial number of proposals from a consultation on compulsory purchase have been included in the Housing and Planning Act 2016. The current Neighbourhood Planning Bill includes compulsory purchase reform.

A six-month consultation followed the publication of our substantial Discussion Paper in December 2014. We received a large number of detailed responses from stakeholders. Both Commissioners attended and addressed a number of stakeholder events in this period.

We have had excellent support on this project from stakeholders, particularly the Scottish Compulsory Purchase Association.



*Caroline Drummond, Commissioner*

A consolidated Report on the submissions from stakeholders was compiled over this time and was submitted to the Scottish Government in September 2016. This summarises both the written submissions received, together with the input given by stakeholders which the team had received at various engagement events between March 2015 and May 2016. The Report sets out key themes which emerged from the consultation. For example, the general concern remains that the legislation is outdated and ineffective in a modern context, issues of fairness are a common theme, and many suggestions surrounded the need for updated guidance and best practice.

The Report was sent to the Scottish Government in order to assist them in considering the future of compulsory purchase in Scotland and in deciding how best to take forward reform of such a large subject.

#### Item 4 – Heritable securities

In our Eighth Programme we proposed reviewing the law of heritable securities as a long-term project. Work on other property law projects prevented work starting on this project during the course of that Programme. For that reason the project has been carried forward into our Ninth Programme. We plan to start work on this once our project on moveable transactions has been completed.

In the meantime we were pleased to welcome Dr John MacLeod, Lecturer in Law at the University of Glasgow, who was based at our offices in the autumn of 2016. Dr MacLeod was carrying out research work in relation to a paper on enforcement of heritable securities

which will greatly assist us when the project commences. This work took place under the new arrangement between the Scottish Law Schools and the Commission which enables law academics to collaborate with us.

#### Item 5 – Defamation

##### *Project Team*

**The Hon Lord Pentland**, Chairman  
**Susan Robb**, Solicitor

As part of our Ninth Programme of Law Reform we are continuing to develop recommendations for reform of the law of defamation. The topic of defamation law reform has continued to generate considerable public interest in Scotland. The Herald newspaper is pursuing a public campaign for reform. The organisation known as Scottish PEN is also campaigning for reform.

Our Discussion Paper was published on 17 March 2016. We have considered carefully all of the responses which we received to that paper and have developed policy in light of them. We are in the course of instructing a draft Bill to give effect to that policy, along with preparing a report explaining the thinking behind our recommendations. The policy reflects a number of broad underlying aims, including making clear that defamation law in Scotland is concerned with protection of reputation rather than protection against hurt feelings and damage to self-esteem, and arriving at a law of defamation that is fit for purpose in the internet age.

We were grateful for the input of stakeholders during 2016, both in submitting responses to our Discussion Paper, and in attending events that have taken place.



*Lord Pentland, Chairman*

Following publication of the Discussion Paper, a seminar on reform of the law of defamation and verbal injury was held at the University of Edinburgh Law School on 22 April 2016, in association with the Commission. This was attended by a combination of practitioners, academics, journalists and campaigners. It generated lively and constructive discussion on a number of the topics covered by the Discussion Paper, in particular in relation to online defamation, threshold of seriousness of harm to reputation, and defences. We were grateful, also, for the opportunity to outline the issues raised in the Discussion Paper, and to canvass views, at a seminar hosted by Pinsent Masons LLP in June.

On 11 October 2016 we held a roundtable discussion focused on issues of defamation law from the “new” media perspective. “New” media includes individuals and groups editing or producing content for websites and other interactive platforms. Participants placed

significant emphasis on the importance of having a new and modern statute, setting out key elements of the Scots law of defamation in one place, in view of the increasing move away from traditional print media.

We have also established useful contacts with leading practitioners in England and Wales with a view to understanding the practical effects of the Defamation Act 2013 as and when issues under that legislation continue to arise in that jurisdiction.

We hope to enlist the further input of stakeholders during the course of 2017, in particular once we have a draft Bill for consideration.

## Item 6 – Proprietary aspects of leases

### *Project Team*

**Caroline Drummond**, Commissioner  
**Calum Stewart**, Legal Assistant

In the consultation for our Eighth Programme of Law Reform the law of leases of heritable property was proposed as a reform project. This was not a project which we were able to take forward at the time and so was identified as one which could be considered for our Ninth Programme.

In that Programme, we proposed proprietary aspects of leases as a long-term project. This would be a narrower area than that suggested for the Eighth Programme, and therefore one which would follow a more selective approach.

Leases can generally be categorised as falling into one of three areas: agricultural, residential, or commercial. Residential and agricultural leases are heavily regulated under Scots law, yet there is almost no regulation of commercial leases.

During consultation for both the Eighth and Ninth Programmes of Law Reform it was made clear by consultees that there are areas of concern within commercial leasing, such as those related to terminating a lease, the transmissibility of lease conditions, and the lack of creditor protection. It was suggested that Scotland is losing investment as a result of an uncertain system, especially when compared to the legislative regulation in England and Wales. We were also minded to review old and outdated legislation such as the Leases Act 1449 and the Tenancy of Shops (Scotland) Act 1949 in order to modernise the framework for commercial leases in Scotland. Whilst we recognise that the flexibility in our system of commercial leasing can be a positive asset, consultation has shown that reform in this area is necessary.

We started work on the project in autumn 2016. This has largely involved a scoping exercise in order to define the specific issues which the project should address. The team has met with various members of the professions involved with commercial leasing, including lawyers and surveyors, and the feedback from these sessions has been very positive. We have been able to amplify our original proposals as a result.

As this is a long-term project, we consider that reform would best be achieved through a series of targeted reports and draft Bills which would tackle areas of the law of commercial leases.

We appreciated the input from those involved in the area during the latter half of 2016. We will continue our scoping exercise in 2017 with the aim of preparing a first discussion paper for the project.

## Item 7 – Aspects of the law of prescription

### Project Team

**David Johnston QC**, Commissioner  
**Gillian Swanson**, Project Manager  
**Susan Robb**, Solicitor

In February 2016, we published a Discussion Paper which examined a number of topics in the law of prescription. These included the scope of the five-year prescription; the structure of the 20-year prescription; whether it should be possible to contract out from the statutory prescriptive periods; and the burden of proof. They also included the law relating to prescription in relation to claims for latent damage. The impetus for examining the last of these topics was the decision of the Supreme Court in the case of *David T Morrison & Co Ltd v ICL Plastics Ltd* in 2014, in which the Court changed the understanding of this area of the law by ruling that, for prescription to start running, a party suffering loss merely has to be aware of the occurrence of the loss. Our paper asked for views on whether the law as it stands after the *Morrison* case is fair; and it explored options for reform.



*David Johnston QC, Commissioner*

The Discussion Paper attracted a substantial response. Respondents included a member of the public, an architectural institute, insurance-related interests, a utility company and HM Revenue and Customs as well as representatives of the legal profession. Having taken into account the views of those respondents, we have refined our policy and intend to consult on a draft Bill in order to obtain any further views from those interested in this area prior to publishing a report, with a final draft Bill, around the end of July 2017.

## References from Scottish Ministers

In addition to our work on topics included in our programmes of law reform, we also undertake work in response to references from Ministers. This work sometimes has to be undertaken in a short timescale to meet Government needs, and in those cases we adjust the timetables for our programme topics as necessary.

### Reference on section 53 of the Title Conditions (Scotland) Act 2003

We were asked by the Cabinet Secretary for Justice to undertake a review of section 53 of the Title Conditions (Scotland) Act 2003 in the context of Part 4 of the Act. Section 53 of the 2003 Act allows the proprietors of "related properties" in a "common scheme" of real burdens to enforce the burdens against each other although the title deeds do not say expressly that they may do so.

As agreed with the Scottish Government, we will start work on this once we have completed our current project on moveable transactions.

## Joint projects

In addition to law reform projects under our programmes of law reform, we undertake joint projects with the Law Commission for England and Wales and the Northern Ireland Law Commission.

## Joint projects with the Law Commission for England and Wales

### Insurance contract law

#### Project Team

**Professor Hector MacQueen**, Commissioner  
**Gillian Swanson**, Project Manager

We are reaching the conclusion of a major project on insurance contract law with which we have been assisting the Law Commission. To date, all of our recommendations have been implemented. First, our recommendations on consumer insurance reform were implemented by the Consumer Insurance (Disclosure and Representations) Act 2012; secondly, our recommendations on business disclosure, warranties and insurers' remedies for fraudulent claims were implemented by the Insurance Act 2015; thirdly, the Insurance Act 2015 was amended by the Enterprise Act 2016, Part 5, to include our recommendations on damages for late payment. The latter provisions will come into force on 4 May 2017.

The Insurance Act 2015 also included provisions relating to the Third Parties (Rights against Insurers) Act 2010 enabling it to be updated and brought into force. The 2010 Act, which also derived from recommendations made by both Law Commissions, simplifies the procedure by which third parties can claim against an insurer when the insured is, in broad terms, insolvent or has been dissolved. The Third Parties (Rights against Insurers) Regulations 2016 made the necessary changes and the 2010 Act was brought fully into force on 1 August 2016.

As the last topic of this project, we have returned to the issue of insurable interest. The Investment and Life Assurance Group (ILAG), on behalf of life insurers, has told us that their members are under pressure to write policies which include cover for children and cohabitants, and to insure "key employees" for substantial amounts. Although these policies perform a useful social function, they may be considered void under the current law, strictly applied. This may put insurers and policyholders in a difficult position. In practice, if such issues did come before a court, we think that the court would make every effort to find an insurable interest where both parties had willingly entered into the agreement. However, we also think that it is unsatisfactory to have law which is so outdated that the only way in which the market can function is by ignoring it. It may even bring the law itself into disrepute. Following a further Issues Paper in 2015, we consulted on draft clauses in April 2016. The views of respondents demonstrated that there are different views as to the best way forward. Consultation with key stakeholders is ongoing.

## Intellectual property (unjustified threats)

### Project Team

**Professor Hector MacQueen**, Commissioner  
**Gillian Swanson**, Project Manager

2016 was a significant year in the reform of the law relating to groundless threats of infringement proceedings in relation to patents, trade marks and designs. The reform stemmed from a project on this topic, with which this Commission assisted, by the Law Commission for England and Wales. The Intellectual Property (Unjustified Threats) Bill is following the special procedure for Law Commission Bills at Westminster. It was introduced in the House of Lords in May 2016 and passed to the House of Commons in December 2016. The legislation, if implemented, would extend to the whole of the UK.

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

### Electoral law

### Project Team

**The Hon Lord Pentland**, Commissioner  
**Gillian Swanson**, Project Manager

The project to review legislation in relation to electoral law is a joint project with the Law Commission for England and Wales and the Northern Ireland Law Commission. It follows a reference to this Commission from the UK Cabinet Office as regards reserved areas of Scots law, and from Scottish Ministers as regards devolved areas.

In February 2016, we published an Interim Report which outlined the responses to the provisional proposals made in our joint Consultation Paper of 2014, and made recommendations for reform. In our view, there is considerable scope for technical improvement in the legislation governing elections backed by a broad consensus on the form that the improvement should take.

The publication of the Interim Report concluded the second stage of the project. Its publication was also the prompt for a review exercise by the respective Governments enabling them to consider whether the project should move to a final phase which might include the preparation of draft legislation. We await the initial response of Cabinet Office before asking for the views of the Scottish Government on the future of this project.



*Our current research and legal assistants, Tom Stafford, Joshua Hale, Calum Stewart and Anna Mackinnon*

Further information about our law reform projects is available on the law reform projects page on our website [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

## Progress on our law reform projects: summary

### Projects under our Ninth Programme

PROJECT	POSITION AT THE END OF 2016
<b>Moveable transactions</b> (Ninth Programme, item 1)	Working on our report and draft Bill, to be published in 2017
<b>Law of contract in the light of the Draft Common Frame of Reference</b> (Ninth Programme, item 2)	Our Report on Third Party Rights was published in 2016; a Discussion Paper on Penalty Clauses was published in 2016; and working on Remedies for Breach of Contract, to be published in 2017
<b>Compulsory purchase</b> (Ninth Programme, item 3)	A Report on the Consolidated Responses to our consultation was published in 2016
<b>Heritable securities</b> (Ninth Programme, item 4)	Some preliminary work undertaken but project not yet formally started
<b>Defamation</b> (Ninth Programme, item 5)	Working on our report and draft Bill, to be published in 2017
<b>Proprietary aspects of leases</b> (Ninth Programme, item 6)	Work on the scope of the project is being carried out
<b>Aspects of the law of prescription</b> (Ninth Programme, item 7)	Working on our report and draft Bill, to be published in 2017

### Joint projects with the Law Commission for England and Wales

PROJECT	POSITION AT THE END OF 2016
<b>Insurance contract law</b>	Working on a joint report and draft Bill on Insurable Interest, to be published in 2017

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

PROJECT	POSITION AT THE END OF 2016
<b>Electoral law</b>	Joint interim Report published in 2016

## Consolidation and statute law repeals

### Consolidation

#### Project Team

**The Hon Lord Pentland**, Chairman

Consolidation work involves preparing a draft Bill to bring together earlier enactments on an area of law with the aim of making the legislation easier to use. Consolidation is an important way of tidying up the statute book.

### Bankruptcy legislation in Scotland

Our Report on the consolidation of the legislation relating to bankruptcy in Scotland was published in 2013.

Following that Report, the Bankruptcy (Scotland) Act 2016 was passed by the Scottish Parliament and received Royal Assent on 28 April 2016.

### Statute law repeals

#### Project Team

**The Hon Lord Pentland**, Chairman

One of our functions is to recommend the repeal of obsolete legislation. We undertake this work jointly with the Law Commission for England and Wales.

The purpose of repealing obsolete legislation is to modernise and simplify the statute book, reduce its size and make it easier for people to use. This in turn helps to avoid unnecessary costs. It also helps to avoid people being misled by outdated legislation that appears to be current law.

The Commissions present their proposals to Government as statute law repeals reports, published with a draft Bill. The Commissions last published a report, their Twentieth Report and Draft Statute Law (Repeals) Bill on 3 June 2015. The Report proposes the repeal of more than 200 old laws that are cluttering up the statute book. An Act from 1979 allowing referendums for a Scottish Parliament and Welsh Assembly is among legislation being recommended for repeal.

The Bill awaits implementation by the UK Parliament.



*Our Parliamentary Counsel, Gregor Clark CB*

## Promoting law reform

The Commission aims to promote law reform, and share our expertise in the law and in law reform methodology, within Scotland and the UK, and beyond.

As the independent law reform agency for Scotland, we liaise closely with Scottish Ministers: the Cabinet Secretary for Justice, the Minister for Community Safety and Legal Affairs, the Minister for Parliamentary Business, and with Scottish Government officials, on law reform work and on planning to implement Commission recommendations in devolved areas. In relation to reserved areas of Scots law, we liaise with UK Ministers and the Scotland Office, and with the Advocate General for Scotland and his officials.

The Commission has strong links with the Scottish Parliament. Briefings are regularly provided by the Commission to Committees of the Parliament and their officials. The Chairman and Chief Executive met with the Presiding Officer to discuss law reform matters, such as the Parliamentary procedure involving the Delegated Powers and Law Reform Committee for certain types of Commission Bills.

We place a high value on our positive relationship with the judiciary. In 2016, for the first time, Commissioners gave a presentation to the Senators of the College of Justice at the Judicial Institute in Parliament House. The event gave us the opportunity to explain how we work, to discuss our current projects and to reflect on the importance of law reform. We are grateful to the Lord President and to the Judicial Institute for facilitating this event and for their support and interest.

The Commission enjoys close working relationships with the legal profession in Scotland. We are very grateful to members of the profession who serve as members of our advisory groups on law reform projects, and to those who respond to our consultations. Contributions from the profession contribute significantly to the law reform process, by virtue of their practical experience of the law.

The Commission has contacts with law reform bodies throughout the world, and a close relationship in particular with the Law Commission for England and Wales with whom we carry out joint law reform projects from time to time.

In June 2016, the Chairman and Chief Executive attended the annual conference of the law reform bodies of Scotland, England and Wales, Ireland, Northern Ireland and Jersey. This was hosted by the Jersey Law Commission. Each Commission gave a presentation on their progress with current law reform projects, and the conference discussed a number of law reform issues including how best to carry out the consultation process.

## Collaboration with the Universities

The Commission has valuable links with the Law Schools in Scotland. Seminars on our projects are hosted at the Universities. The Commission participated in 2016 in events hosted by Law Schools to explore the impact of research, and issues relating to consultation on law reform.

A landmark agreement to promote law reform was made this year between the Scottish Law Commission and Scotland's University Law Schools.

Lord Pentland, Chairman of the Commission and Kenneth Swinton, Convenor of the Committee of Heads of the Scottish Law Schools signed a Memorandum of Understanding on 12 September 2016 setting out the new arrangements.

It is the first agreement of this type to be signed by the Commission in its 50-year history.

The document provides the framework for enhanced joint working between the Commission and the academic community.

The new scheme will involve University academic staff, post-graduate students or others contributing research to Commission law reform projects.

The first placement under the Memorandum began in September, with Dr John MacLeod of the School of Law at the University of Glasgow working at the Commission on reform of the law on enforcement of securities over land and buildings (mortgages).



*Our Chairman, Lord Pentland, and Mr Kenneth Swinton of the Dundee Business School at the University of Abertay*

## Publication: Fifty years of the Law Commissions

A new book on law reform, and the work of the Scottish Law Commission and the Law Commission for England and Wales, was published in 2016: *Fifty Years of the Law Commissions: The Dynamics of Law Reform*.

The chapters of the book were developed from papers presented at a conference in 2015 at the UK Supreme Court in London to mark the fiftieth anniversary of the Law Commissions Act 1965.

The book features contributions from our Chairman, Lord Pentland, and former Chairman, Lord Drummond Young; from Commissioners, Professor Hector MacQueen and David Johnston QC; from former Commissioners Lord Hodge, Laura Dunlop QC, Professor George Gretton and Professor Eric Clive; from our Chief Executive, Malcolm McMillan; and from the co-editor of the book, Dr Shona Wilson Stark, College Teacher and affiliated Lecturer, University of Cambridge and one of our former legal assistants.

## Joan Melville MBE

We are delighted at the award of an MBE in the Queen's Birthday Honours list in 2016 to Joan Melville, Personal Secretary to our Chairman and Chief Executive. Joan has worked for the Commission, contributing to law reform, for over 40 years. This is a significant achievement and a unique one in the international world of law reform.



*Joan Melville*

## Publications planned for 2017

The Commission's ongoing work on projects under our Ninth Programme of Law Reform, and on other projects referred to us, will produce a number of publications in the course of 2017.

On our project on aspects of the law on prescription, our report with a draft Bill will be published in the course of this year.

Following our review of the law of defamation, a report and draft Bill will be submitted by the end of 2017.

The Commission expects to complete our project on moveable transactions by the end of 2017, with the publication of a substantial report and draft Bill.

Our work on contract law will continue with the publication of a discussion paper on remedies for breach of contract this year, with a view to producing a final report and draft Bill in 2018.

As regards further joint work with the Law Commission for England and Wales, we anticipate that a joint report on insurable interest will be published this year. This would complete the Commissions' joint review of insurance law.

# Commissioners and staff

(as at 31 December 2016)

## Commissioners

The Hon Lord Pentland, Chairman  
Caroline Drummond  
David Johnston QC  
Professor Hector MacQueen  
Dr Andrew Steven

## Chief Executive

Malcolm McMillan

## Parliamentary Counsel (Consultant)

Gregor Clark CB\*

## Project Managers (Solicitors)

Andrew Crawley  
Graham Crombie  
Gillian Swanson

## Solicitor

Susan Robb

\* Part-time staff

## Legal Assistants

Joshua Hale  
Anna Mackinnon  
Calum Stewart

## Librarian

Emma McLarty\*

## Office Manager

Susan Cutsforth\*

## Personal Secretaries

Wilma MacAskill\*  
Joan Melville MBE

## Administrative Staff

Iain Ritchie  
Gordon Speirs

## The Commission's running costs 2016

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2016 were offset by payments received from Skills for Justice and Historic Environment Scotland for use of part of our office accommodation.

EXPENDITURE	YEAR TO 31 DECEMBER 2016
<b>Salaries – Commissioners</b> (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£633,200
<b>Salaries – Chief Executive and legal staff</b> (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£518,415
<b>Salaries – Administrative staff</b> (including national insurance contributions and superannuation payments)	£146,441
<b>Accommodation</b> (including maintenance, rates and utilities)	£98,690
<b>Printing and publishing</b> (including costs of books and library purchases, binding, maintenance of equipment, printing costs of publications, photocopying and stationery)	£32,138
<b>Telephone and postage</b>	£4,568
<b>Travel and subsistence</b>	£4,532
<b>Miscellaneous</b> (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£71,362
<b>Total</b>	£1,509,346

## 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.

For more information about the Commission please contact:

Malcolm McMillan, Chief Executive

**Scottish Law Commission**

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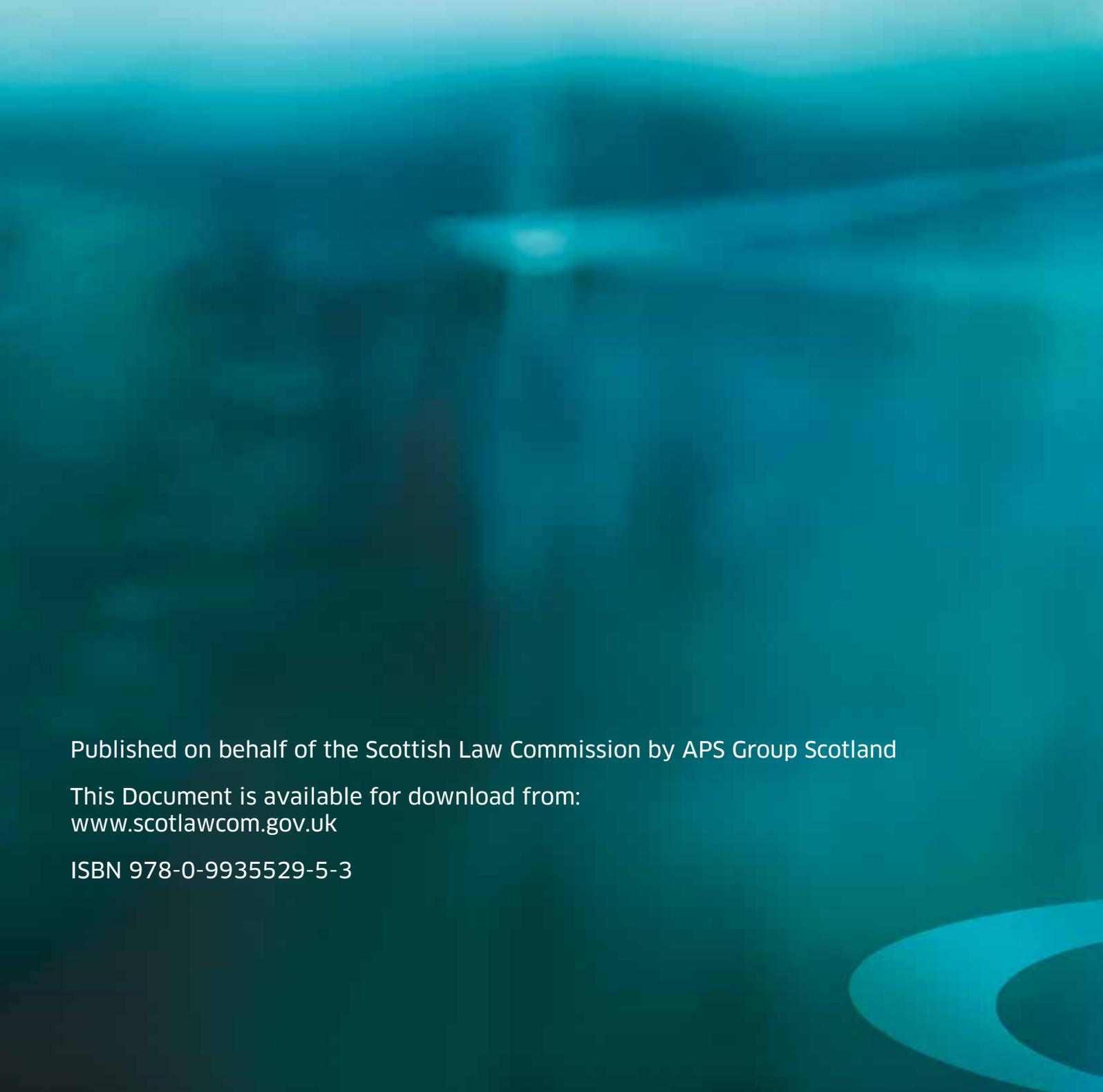
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