



Scottish Law Commission

promoting law reform

(SCOT LAW COM No 255)

annual report | 2019





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 | 2019

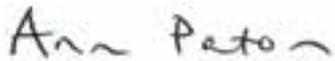


*Commissioners and Chief Executive in 2019
(back row) Malcolm McMillan (Chief Executive), David Johnston QC, and Lady Paton (Chair)
(front row) Professor Frankie McCarthy, Caroline Drummond and Kate Dowdalls QC*

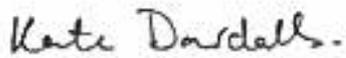
Annual Report 2019

To: Humza Yousaf MSP, Cabinet Secretary for Justice

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2019.



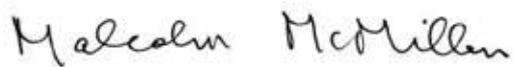
ANN PATON, *Chair*



KATE DOWDALLS



FRANKIE McCARTHY



Malcolm McMillan, *Chief Executive*

10 February 2020

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

February 2020

SCOT LAW COM No 255
SG/2020/23

© Crown copyright 2020



You may re-use this publication (excluding logos and any photographs) free of charge in any format or medium, under the terms of the Open Government Licence v3.0. To view this licence visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3>; or write to the Information Policy Team, The National Archives, Kew, Richmond, Surrey, TW9 4DU; or email: psi@nationalarchives.gov.uk

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available on our website at: www.scotlawcom.gov.uk

Any enquiries regarding this publication should be sent to us at: info@scotlawcom.gov.uk

ISBN: 978-0-9500276-7-8

Produced for the Scottish Law Commission by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA

Contents

Chair's foreword	7
Publications 2019	8
Implementation of our reports 2019	9
Law reform projects	11
Consolidation and statute law repeals	20
Promoting law reform	21
Publications planned for 2020	23
Commissioners and staff	24
The Commission's running costs 2019	25

Chair's foreword



I have pleasure in presenting the Annual Report for 2019, being the second year of the Scottish Law Commission's Tenth Programme 2018-2022, and my first year as Chair.

2019 was both busy and productive. Publications included a report on section 53 of the Title Conditions (Scotland) Act 2003; a discussion paper on heritable securities pre-default; and two joint consultation papers on surrogacy and autonomous vehicles (projects being carried out with the Law Commission of England and Wales). Work continues on those joint projects, together with projects on leases, damages for personal injuries, homicide, cohabitation, insurance, and heritable securities.

We have been encouraged by recent developments in the implementation of the Commission's recommendations. The Scottish Government have introduced a Defamation and Malicious Publication (Scotland) Bill. They have consulted on judicial factors.

Their current intention is to take forward the reform of the law of moveable transactions. Furthermore, increased capacity in the Scottish Parliament for the implementation of the Commission's recommendations is hoped to be achieved by a focused review of the criteria currently limiting the referral of Commission Bills to the Delegated Powers and Law Reform Committee. A working party has been set up for this purpose, and a report is eagerly awaited.

Throughout the year, there has been continuing constructive collaboration with the Scottish Government, the University Law Schools, legal practitioners, colleagues from abroad, and others. Meetings and conferences attended included the Commonwealth Association of Law Reform Agencies conference in Zambia, the Impact and Law Reform and Parliamentary Counsel conferences in London, and a colloque in Edinburgh on cohabitation. Further notable events included first, a talk by Lord Drummond Young in October 2019 on the pressing need for trust law reform followed by an article in the Journal of the Law Society of Scotland, and secondly, an evidential hearing in a Scottish Parliamentary committee on the question of reform of the law of moveable transactions.

During the year there were changes of personnel. We were sorry to lose two valued members of the Commission, our property law Commissioner, Dr Andrew Steven, and our consultant Parliamentary Counsel Gregor Clark CB. We were delighted to welcome Professor Frankie McCarthy as Dr Steven's successor.

My thanks are due to the Commissioners and to all the staff at the Commission for their committed and enthusiastic work during 2019, with a special thanks to all those legal staff who were seconded to Victoria Quay at the beginning of the year in order to assist the Scottish Government with legal work necessary to prepare for a possible no-deal Brexit.

A handwritten signature in black ink that reads "Ann Paton". The signature is written in a cursive, slightly informal style.

The Rt Hon Lady Paton
Chair

Publications 2019

PUBLICATION	DATE OF PUBLICATION
Annual Report 2018 (Scot Law Com No 253)	28 February 2019
Report on Section 53 of the Title Conditions (Scotland) Act 2003 (Scot Law Com No 254)	17 April 2019
Joint Consultation Paper – Building families through surrogacy: a new law (DP No 167)	6 June 2019
Discussion Paper on Heritable Securities: Pre-default (DP No 168)	18 June 2019
Joint Consultation Paper – Automated Vehicles: Passenger Services and Public Transport (DP No 169)	16 October 2019

Implementation of our reports 2019

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 that would give effect to our recommendations. Most of our reports deal with matters devolved to the Scottish Parliament and are submitted to the Scottish Ministers. Our reports 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. The following developments towards implementation took place in 2019.

Defamation

The Defamation and Malicious Publication (Scotland) Bill was introduced in the Scottish Parliament on 2 December 2019 by the Scottish Government. If passed the Bill will implement the recommendations contained in our Report on Defamation published in December 2017.

The overarching policy objectives of the Bill are to modernise and simplify the law of defamation in Scotland. The Bill seeks to place certain key elements of Scots common law on a statutory basis and replace and restate, in one place, elements of the existing statutory provisions (including from the Defamation Acts of 1952, 1996 and 2013).

Moveable Transactions

The Scottish Government's Programme for Government in 2019 stated the intention to carry out a focused consultation on aspects of our Report on Moveable Transactions in 2017.

The Economy, Energy and Fair Work Committee of the Scottish Parliament took evidence on our Moveable Transactions Bill on 26 November 2019. Dr Andrew Steven, the former lead Commissioner for the project, gave evidence. Former Commissioner Professor George Gretton, and three members of our advisory group, also gave evidence.

Trusts

In October 2019 we hosted a meeting of interested parties to discuss ways in which trusts are used today in the commercial and public spheres. Lord Drummond Young, former Chairman of the Commission and the lead Commissioner for the Trusts project, made a presentation. He outlined the many ways in which trusts are useful in modern practice, putting forward a persuasive case for implementing our Report on Trust Law in 2014.



Lord Drummond Young, former Chairman and Lady Paton, current Chair

Judicial factors

In August 2019, the Scottish Government published a consultation on modernising the law in relation to judicial factors. The Government consulted on the Bill attached to our Report on Judicial Factors in 2013.

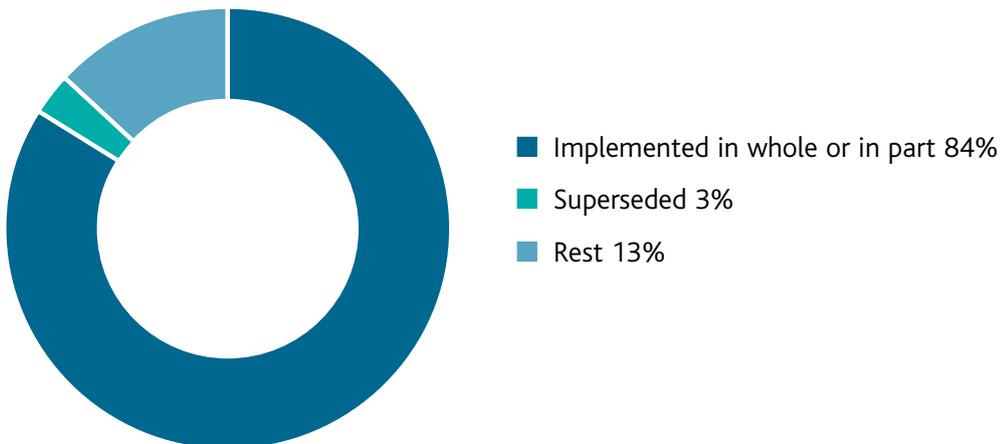
Overall implementation figures

The overall position on implementation of Scottish Law Commission reports from 1965 to December 2019 is:

- Law reform reports published: 189
- Implemented in whole or in part: 158 (84%)
- Superseded: 5 (3%)

A table providing information about implementation of our Reports can be found on the Publications page of our website: www.scotlawcom.gov.uk

Implementation rate of Commission reports



Law reform projects

The Commission's law reform work is based on our programmes of law reform and references from Scottish Ministers and from UK Ministers.

Programmes of law reform

Our Tenth Programme outlined our law reform projects for the period of five years from 2018 to the end of 2022. It was published in February 2018, 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 Tenth Programme of Law Reform

Item 2 – Heritable securities

Project Team

Professor Frankie McCarthy, Commissioner

Stephen Crilly, Project Manager

Alexander Matheson, Legal Assistant

The reform of the law of heritable securities, first mooted in our Eighth Programme of Law Reform, has been carried over to our Tenth Programme.

This major project is reviewing the law of security over heritable property (land, and associated rights).

The law was last systematically reformed by the Conveyancing and Feudal Reform (Scotland) Act 1970, and that remains the main legislation.

The 1970 Act created the standard security over land, sometimes described as a 'mortgage'. The Act was a great improvement, but is not without difficulty. The rules about enforcement are complex and hard to understand, and a section-by-section review of the Act also reveals numerous technical problems.

In addition, there has been considerable change since 1970. The law should develop where that is needed to help ensure the efficient operation of the economy and of property markets.

We have scoped the project, and intend to consult on two discussion papers. The first paper on pre-default issues was published in June 2019. We have received around 20 responses which we are in the process of analysing. We aim to publish a second discussion paper on post-default issues by the end of 2020/early 2021. We intend to publish a single Report and draft Bill, which will be informed by the responses to both discussion papers.

We have established good links with the relevant academic and legal communities, and have set up an advisory group of legal practitioners in this field. We held three meetings of this group prior to the publication of our first discussion paper and undertook a series of seminars around various law firms following publication. We intend to have further meetings of the advisory group in spring and autumn 2020 to inform our work on the second discussion paper on post-default issues.

A research paper by Dr John MacLeod, Senior Lecturer in Law at the University of Edinburgh, on enforcement of heritable securities has been published on our website. His paper is one of the first fruits of the arrangement between the Scottish Law Schools and the Commission, which enables law academics to collaborate with us. This paper will provide great assistance in the work we take forward on the second discussion paper.

Item 3 – Aspects of leases

Project Team

Caroline Drummond, Commissioner

Charles Garland, Project Manager

Scott Cormack, Legal Assistant

A project on leases has formed part of our Ninth and now Tenth Programmes of Law Reform. In order to focus efforts on specific areas of difficulty within the current law we have chosen to concentrate on commercial leases, as residential and agricultural leases are considered to be more fully provided for under the present law.

We chose to begin with consideration of matters relating to termination. A number of different issues arose when we spoke to interested parties in preparing our discussion paper, which was published in May 2018. It contains questions on the following topics: tacit relocation; notices to quit; apportionment of rent; the Tenancy of Shops (Scotland) Act 1949; irritancy; and *confusio*.

We received around 40 responses to the consultation and, in the light of consultees' views, we have made considerable progress in drafting a report and instructing a Bill to give effect to our proposed recommendations. We expect to publish a report in the course of 2020.

Item 4 – Homicide

Project Team

The Rt Hon Lady Paton, Chair

Graham McGlashan, Project Manager

Robbie Reid, Legal Assistant

This medium-term project to review the law of homicide was announced in our Tenth Programme of Law Reform in February 2018 and is expected to take five years to complete. The topic has been included in some of the Commission's previous programmes, but the need to give priority to other projects meant that it has not been possible to take the matter forward until now.

In the case of *Petto v HMA*, Lord Justice Clerk Gill stated that a comprehensive re-examination of the mental element in homicide was long overdue and that it was "pre-eminently an exercise to be carried out by the normal processes of law reform". We have begun to consider this area in order to assess whether the law requires reform.

During 2019 we continued work on the project, in particular developing a discussion paper on the mental element in homicide. We conducted a number of focus groups with legal practitioners comprising practising judges, prosecutors and defence counsel, all experienced in homicide trials. We obtained their views on how the law was operating in practice, and whether there were any problems requiring attention. In November 2019 we met with our advisory group (experienced legal practitioners, academics and other interested parties) in order to discuss issues which had arisen from our researches. We are consulting with bodies such as Scottish Women's Aid and Victim Support Scotland in relation to issues involving domestic abuse and homicide. We hope to be in a position to publish the paper in the first half of 2020.

Item 5 – Aspects of family law

Project Team

Kate Dowdalls QC, Commissioner

Lorraine Stirling, Project Manager

Victoria Hayward, Legal Assistant

This medium-term project began in July 2018, with the appointment of Kate Dowdalls QC as lead Commissioner.

Aspects of family law was chosen for inclusion in the Commission's Tenth Programme due to the considerable support for review of a number of family law topics from those responding.

Following a scoping exercise to determine the extent, focus and level of support for review, two particular aspects of family law were identified by us for inclusion in the project: the law relating to cohabitants (specifically the definition of "cohabitant" and financial provision on cessation of cohabitation otherwise than on death) and civil remedies for domestic abuse (considering whether the existing legislative framework is adequate and sufficient to provide victims of domestic abuse with prompt and effective protection and remedies).

We decided to focus on the law relating to cohabitants first, while we awaited details of any proposals for reform the Scottish Government would make following its Consultation on Protective Orders for People at Risk of Domestic Abuse (published in December 2018).

We have spent much of 2019 meeting with legal and non-legal stakeholders to discuss the difficulties with the law relating to cohabitants on cessation of their relationship (to be found in sections 25 to 28 of the Family Law (Scotland) Act 2006). We also established an advisory group of academics, legal practitioners, decision makers and equality group members with whom we have worked closely while drafting our discussion paper on this area of the law. We are grateful to them for their contribution to this project.



*Former Commissioner Professor Eric Clive and Commissioner, Kate Dowdalls QC
Cohabitation Law Colloquy, October 2019*

The team has carried out an extensive comparative law exercise, focusing on the law relating to cohabitation in Ireland, the Nordic countries, Canada, Australia, and New Zealand to help to inform our work.

We expect to publish our discussion paper in early 2020.

Item 6 – Surrogacy

Project Team

David Johnston QC, Commissioner

Gillian Swanson, Project Manager

Victoria Hayward, Legal Assistant

We are carrying out a joint project on surrogacy with the Law Commission of England and Wales. As the subject matter is reserved in terms of the Scotland Act 1998, the Department of Health and Social Care has asked us to undertake the project as a reference and to work alongside the Law Commission. For further details please see page 16 under the heading "Joint projects".

Item 7 – Damages for personal injury

Project Team

David Johnston QC, Commissioner

Gillian Swanson, Project Manager

Robbie Reid, Legal Assistant

Work on our project on damages for personal injury (Item 7 of our Tenth Programme of Law Reform) began in the summer of 2019. We are working towards the publication of a discussion paper in 2020.

The discussion paper will cover four topics, three of which relate to provisions in Part II of the Administration of Justice Act 1982 ("the 1982 Act"). They are (i) awards of damages in respect of (a) services provided to an injured person and (b) services provided by the injured person prior to the injury (sections 8 and 9); (ii) deductions from awards of damages (section 10); and (iii) awards of provisional damages (section 12). The 1982 Act implemented recommendations made by the Commission in our 1978 Report on Damages for Personal Injuries (Report on (1) Admissibility of Claims for Services and (2) Admissible Deductions).

There has been substantial social change since the provisions in the 1982 Act referred to above were enacted with the result that it is now appropriate to review them. Another reason for undertaking a review at this time is that the developing case law has demonstrated that some of the provisions of the 1982 Act appear to be unduly complex or to give rise to uncertainty.

The fourth topic we will explore in the discussion paper is the management of awards of damages made for the benefit of children. An award of damages to meet, for example, the costs of care or accommodation for the rest of a child's lifetime may be extremely substantial. The discussion paper will examine the various provisions currently available to ensure that such damages are invested appropriately in the best interests of the child, and so that the needs of the child will be protected for as long as that is required, and will seek views on whether any reform is required.

An advisory group of experts in the field of damages for personal injury has assisted us in our consideration of all four topics. We are grateful to them for their valuable contribution to this project.

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

Project Team

Dr Andrew Steven, then Commissioner

Andrew Crawley, then Project Manager

Paul Brogan, then Legal Assistant

We were asked by the Minister for Community Safety 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.

It can be difficult to establish whether or not there is a common scheme, and if so, whether any two properties are related for that purpose. The law is said to lack clarity in that respect, so creating difficulties for (for example) proprietors who may need agreement from those with a right to object to a proposed development.

The work on this reference was led by Dr Andrew Steven during his time as a Commissioner. We published a discussion paper in May 2018, and held an extensive series of seminars with legal practitioners during the consultation period.

We carried out a further short consultation on a draft Bill during early 2019, and published a report with our recommendations and a draft Bill in April 2019. Our recommendations seek to clarify the law in this area by replacing section 53 (and section 52) of the 2003 Act with clear provisions governing implied rights to enforce real burdens in common schemes including specification of rules to determine when properties are “related” and a definition of the term “common scheme”. Our proposed reforms in this area attracted strong support from consultees.



Our current Legal Assistants, Scott Cormack, Victoria Hayward, Robbie Reid and Alex Matheson

Joint projects

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

Joint projects with the Law Commission of England and Wales

Insurance contract law

Project Team

David Johnston QC, Commissioner

Gillian Swanson, Project Manager

The Consumer Insurance (Disclosure and Representations) Act 2012, and the Insurance Act 2015 as amended by the Enterprise Act 2016, Part 5, have given effect to all of our recommendations to date in this joint project with the Law Commission of England and Wales.

There is one remaining issue which the Commissions are keen to address, namely insurable interest in the context of life-related insurance. In 2018, we consulted on a working draft of a Bill the aim of which was to address issues in the current law of insurable interest which appear to be hindering the development of socially useful life-related insurance products. Since then, competing priorities of the Law Commission of England and Wales have meant that it has not yet been possible to bring this project to a conclusion. A report and draft Bill will be finalised and published as soon as resources permit.

Surrogacy

Project Team

David Johnston QC, Commissioner

Gillian Swanson, Project Manager

Victoria Hayward, Legal Assistant

A joint project on surrogacy is Item 6 of our Tenth Programme of Law Reform and is also the subject of a reference from the Department of Health and Social Care.

Surrogacy describes the situation where a surrogate bears a child on behalf of another person or persons who intend to become the child's parent or parents for all purposes. The intended parents can become the legal parents of the child born to the surrogate by obtaining a parental order from a court after the child has been born.

The law governing surrogacy dates, in part, from the mid-1980s, when societal views on surrogacy differed greatly from those of today. In short, the law relating to surrogacy is now outdated and requires to be changed to reflect current attitudes. We have been informed by those involved in surrogacy arrangements that the law does not match their expectations; crucially, both surrogates and intended parents have expressed the view that they consider that the child born of a surrogacy arrangement should be the child of the intended parents from birth, rather than waiting for parenthood to be transferred by means of a parental order.

In June 2019, we published a joint Consultation Paper – Building families through surrogacy: a new law. Our key provisional proposals for reform included the creation of a new pathway to legal parenthood in surrogacy.

The new pathway to parenthood would take a different approach to the current route of obtaining a parental order. We provisionally proposed that the pathway should not involve an application to court. Instead, we proposed a rigorous administrative process incorporating safeguards which, if followed, would mean that the intended parents would become the legal parents of the child from birth. We provisionally proposed a further, post-birth, safeguard; an opportunity, for a defined period after birth, for a surrogate to object to the intended parents being the legal parents of the child. Should a surrogate object, the surrogacy arrangement would fall out of the new pathway, and the intended parents would have to apply for a parental order.

The new pathway would not replace the parental order route for intended parents to gain legal parenthood; we proposed that it should only be suitable for surrogacy arrangements in which all the elements of the process take place in the United Kingdom. We also provisionally proposed strict conditions that would have to be met for a surrogacy arrangement to qualify for the new pathway. Where these strict conditions were not met, to become legal parents, intended parents would be required to make an application for a parental order.

Further details about the proposed new pathway and other key provisional proposals can be found in the joint Consultation Paper and accompanying Summary.

Both prior to and during the consultation period, which closed in October 2019, we held a large number of meetings throughout the UK in order to engage with interested parties. The interest shown in the project has been vast, and we are grateful to all of those who shared their views with us at meetings or who sent us their comments on our provisional proposals. We aim to publish a report, containing recommendations for reform of the law of surrogacy, in 2021.

Automated Vehicles

Project Team

Caroline Drummond, Commissioner

Charles Garland, Project Manager

Scott Cormack, Legal Assistant

This joint project will provide a wide-ranging review of the legal framework surrounding the safe and effective deployment of automated vehicles on British roads. The review has been requested by the UK Government's Centre for Connected and Autonomous Vehicles (CCAV) and will run from 2018 to 2021. It aims to make the UK a premier development location for connected and automated vehicles. The technology supporting automated (and connected) vehicles is developing rapidly, in Scotland and elsewhere in the UK as well as in many countries worldwide, and there is a clear need for the legal framework to be considered alongside the technological changes.

We have published two joint Consultation Papers so far. The first examines the law in a range of different fields, including criminal offences and civil liability, how safety can be assured both before and after automated driving systems are deployed, and how current road rules might need to be adapted to take account of artificial intelligence. The second focuses on passenger services and public transport; it invites comments on a suggestion that there be a single national scheme of operator licensing for highly

automated road passenger services (or HARPS), and asks how they would be integrated with public transport. Questions of accessibility, notably for those with a disability, and of road pricing are also raised. The consultation closed on 3 February 2020.

We plan to publish a third, and final, consultation paper in 2020 followed by a report in 2021.



Scott Cormack, Legal Assistant, with "Kar-Go" at the CAV Scotland Conference in November 2019

Electoral law

Project Team

The Rt Hon Lady Paton, Commissioner

Gillian Swanson, Project Manager

Together with the Law Commission of England and Wales, we have been working, throughout a large part of 2019, on a final report on electoral law. The report follows a joint Consultation Paper published in December 2014, and a joint Interim Report published in February 2016. We aim to publish the report shortly.

As noted in our Interim Report, the response to our Consultation Paper revealed a clear need for technical reform of electoral law that would streamline the rules governing the conduct of elections and challenges to them, removing inefficiencies and saving costs. Since the publication of our Interim Report, calls for reform of electoral law have continued.

Our Interim Report also noted the continuing process of devolution, giving rise to a need for separate legislation by the devolved legislatures. Legislative competence in relation to certain elections has now been further devolved by the Scotland Act 2016 and the Wales Act 2017.

There have, inevitably, been changes to both electoral law and policy since the publication of our Interim Report in 2016. Where appropriate, our report will take these into account. The report will consider the legislative framework governing elections and referendums, setting out recommendations for rationalising that framework. It will also contain recommendations in discrete areas of electoral law, namely: the management and oversight of elections; the registration of electors; the manner of voting; voting by post or proxy; the nomination of candidates; the polling process, including events which frustrate the poll; the count and determination of the result; election timetables and the combination of polls; electoral offences; the regulation of campaign expenditure; legal challenge to elections; and national and local referendums, including parish polls.

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

Progress on our law reform projects: summary

Projects under our Tenth Programme

PROJECT	POSITION AT THE END OF 2019
Heritable securities (Tenth Programme, item 2)	A Discussion Paper on pre-default issues was published in June 2019. We are analysing responses, and working towards publication of a second discussion paper on post-default issues by the end of 2020/early 2021.
Aspects of leases (Tenth Programme, item 3)	Working on a report and draft Bill to be published in 2020.
Homicide (Tenth Programme, item 4)	Working on a discussion paper on the mental element in homicide to be published in the first half of 2020.
Aspects of family law (Tenth Programme, item 5)	Working on a discussion paper on cohabitation to be published in early 2020.
Surrogacy (Tenth Programme, item 6)	See below under "Joint projects with the Law Commission of England and Wales".
Damages for personal injury (Tenth Programme, item 7)	Working on a discussion paper to be published in 2020.

Reference from Scottish Ministers

PROJECT	POSITION AT THE END OF 2019
Reference on section 53 of the Title Conditions (Scotland) Act 2003	Report published in April 2019.

Joint projects with the Law Commission of England and Wales

PROJECT	POSITION AT THE END OF 2019
Insurance contract law	Working towards publication of a joint report and draft Bill.
Automated vehicles	Joint Consultation Paper on Automated Vehicles: Passenger Services and Public Transport published in October 2019. Working towards a further joint consultation paper to be published in 2020.
Surrogacy	Joint Consultation Paper published in June 2019. Consultation period closed on 11 October 2019. Comments are being analysed.
Electoral law	Working towards publication of a joint final report in 2020.

Consolidation and statute law repeals

Consolidation

Project Team

The Rt Hon Lady Paton, Chair

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.

The Commission has not carried out any work this year on consolidation of legislation.

Any consolidation project by the Commission requires agreement with the Scottish Government, including the provision of support and resources for a particular project. A Government policy lead is required to provide policy direction and guidance on the area being consolidated; and a significant legislative drafting resource has to be provided to prepare any Bill.

Statute law repeals

Project Team

The Rt Hon Lady Paton, Chair

One of our functions is to recommend the repeal of obsolete legislation. We undertake this work jointly with the Law Commission of 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. Since 1965, 19 such Bills have been enacted, repealing more than 3,000 Acts. 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.

The Bill awaits implementation by the UK Government. The Commission has not carried out any further statute law repeal work in the meantime.

Promoting law reform

The Commission works to promote law reform in Scotland, the UK, and on the international front.

As the independent law reform body for Scotland, we liaise closely with Scottish Ministers in particular the Cabinet Secretary for Justice, the Minister for Community Safety, the Minister for Parliamentary Business and Veterans and with Scottish Government officials. We assist in the implementation of Commission recommendations in devolved areas.

In relation to reserved areas of Scots law, we liaise with UK Ministers, the Office of the Secretary of State for Scotland and with the Advocate General for Scotland and his officials.

The Commission has strong links with the Scottish Parliament. Briefings on our recommendations are regularly provided by the Commission to committees of the Parliament and their officials.

The Commission continues to engage closely with the legal profession in Scotland, in particular the Law Society of Scotland and the Faculty of Advocates. 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 of England and Wales with whom we carry out joint law reform projects.

Law reform in the Commonwealth

At the Commonwealth Law Conference in Livingstone, Zambia in April 2019, Lady Paton gave a presentation about the value of law reform and of law reform bodies.

The Commission was represented by Lady Paton and the Chief Executive, Malcolm McMillan, at the conference of the Commonwealth Association of Law Reform Agencies (CALRAs). Malcolm McMillan led a session on the implementation of law reform recommendations, focussing on the process for referring Commission Bills to the Delegated Powers and Law Reform Committee of the Holyrood Parliament.



CALRAs conference attended by Lady Paton and Malcolm McMillan

Law reform conference

The annual conference of the law reform bodies for Scotland, England and Wales, Ireland and Jersey was held in London in October 2019. The conference included an interesting session on the economic and strategic value of law reform.



Attendees at the law reform conference in London

Working with academics: Conference on impact and law reform, London

A conference on Impact and Law Reform was held at the Institute of Advanced Legal Studies in London in June 2019.

The conference was organised by the Socio-Legal Studies Association and the Society of Legal Scholars, in association with the Law Commission of England and Wales and the Scottish Law Commission.

The conference reflected on how academic legal research can influence and inform law reform, with debate on current law reform projects.

Lady Paton gave a presentation at the plenary session.

Dr Andrew Steven, then Commissioner, led a workshop, along with Dr John Macleod of the University of Edinburgh, discussing their experience of working together on the Commission's heritable securities project.

Professor Hector MacQueen gave a presentation, reflecting on his experience of law reform as an academic and as a former Commissioner.

International links: Visit by Justice Sarah Derrington



Lady Paton and Justice Derrington

We were delighted to welcome Justice Sarah Derrington, the President of the Australian Law Reform Commission, in June this year. The family law team had a very useful and interesting discussion with Justice Derrington about the Australian Law Reform Commission's recent review of the Australian family law system which included a review of the law of "de facto" or cohabiting relationships.



Kate Dowdalls QC, Lady Paton, Justice Derrington, Emma McLarty and Malcolm McMillan

Publications planned for 2020

In 2020 the Commission will continue to work on projects in our Tenth Programme of Law Reform. We also expect to continue work with the Law Commission of England and Wales on joint law reform projects referred to us by UK Ministers. The Commission aims to produce a number of publications during 2020.

We aim to publish a report and draft Bill on aspects of leases during 2020.

On the homicide project, we plan to publish a discussion paper on the mental element in homicide in the first half of 2020.

We aim to publish a discussion paper on damages for personal injury in 2020.

In the aspects of family law project, we expect to publish a discussion paper on cohabitation in early 2020.

On our heritable securities project we aim to publish a second discussion paper on post-default issues by the end of 2020/early 2021.

As regards joint law reform work with the Law Commission of England and Wales, publication of a third joint consultation paper on automated vehicles is expected in 2020. We intend to publish a joint report on electoral law in early 2020. We also hope to publish a joint report and draft Bill on insurable interest as soon as resources of the Law Commission of England and Wales permit.

Commissioners and staff

(as at 31 December 2019)

Commissioners

The Rt Hon Lady Paton, *Chair**

Kate Dowdalls QC

Caroline Drummond

David Johnston QC*

Professor Frankie McCarthy

Chief Executive

Malcolm McMillan

Project Managers (Solicitors)

Stephen Crilly

Charles Garland*

Graham McGlashan

Lorraine Stirling*

Gillian Swanson

Legal Assistants

Scott Cormack

Victoria Hayward

Alexander Matheson

Robbie Reid

Librarian

Emma McLarty*

Office Manager

Helen Stevenson*

Personal Secretaries

Wilma MacAskill*

Joan Melville MBE

Administrative Staff

Iain Ritchie

Gordon Speirs

* Part-time staff

The Commission's running costs 2019

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2019 were offset by payments received from Historic Environment Scotland for use of part of our office accommodation.

EXPENDITURE	YEAR TO 31 DECEMBER 2019
Salaries – Commissioners (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£637,027.00
Salaries – Chief Executive and legal staff (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£611,433.00
Salaries – Administrative staff (including national insurance contributions and superannuation payments)	£135,621.00
Accommodation (including maintenance, rates and utilities)	£117,037.00
Printing and publishing (including costs of books and library purchases, binding, maintenance of equipment, publishing costs of publications, photocopying and stationery)	£26,986.00
Telephone and postage	£2,210.00
Travel and subsistence	£10,232.00
Miscellaneous (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£34,300.00
Total	£1,574,846.00

Scottish Law Commission www.scotlawcom.gov.uk

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
140 Causewayside, Edinburgh EH9 1PR
Tel: 0131 668 2131 E-mail: info@scotlawcom.gov.uk

Freedom of Information enquiries: FOI@scotlawcom.gov.uk

Website: www.scotlawcom.gov.uk
Twitter: [@scotlawcom](https://twitter.com/scotlawcom)

This Report is available on our website.





Produced for the Scottish Law Commission by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA

This publication is available on our website at <http://www.scotlawcom.gov.uk>

ISBN: 978-0-9500276-7-8

PPDAS696514 (02/20)