

Scottish Law Commission

(SCOT. LAW COM. No. 47)

**TWELFTH
ANNUAL REPORT
1976-1977**

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

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

The Honourable Lord Hunter, V.R.D., *Chairman*,
Mr. A. E. Anton, C.B.E.,
Mr. R. B. Jack,
Mr. J. P. H. Mackay, Q.C.,
Professor T. B. Smith, Q.C.

The Secretary of the Commission is Mr. J. B. Allan. Its offices are at 140 Causewayside, Edinburgh EH9 1PR.

SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15th JUNE, 1977

To The Right Honourable Ronald King Murray, Q.C., M.P.,
Her Majesty's Advocate

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

J. O. M. HUNTER
Chairman

23 December 1977

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

TWELFTH ANNUAL REPORT

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I. THE COMMISSION

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

The Honourable Lord Hunter, V.R.D., Chairman	(Full-time)
Mr. A. E. Anton, C.B.E.	(Full-time)
Mr. R. B. Jack	(Part-time)
Mr. J. P. H. Mackay, Q.C.	(Part-time)
Professor T. B. Smith, Q.C.	(Full-time)

The Secretary of the Commission is Mr. J. B. Allan.

STAFF

2. Our legal staff consists of two Parliamentary Draftsmen, both on a part-time basis, our Secretary and eight other qualified lawyers. On 31 March 1977 Sir John Gibson, our full-time draftsman, retired from the Public Service. We wish to record our appreciation of the services rendered by Sir John Gibson during his eight years with us. During the year we received assistance from Deputy Procurators Fiscal who have been members of our Criminal Law Working Party and who undertook research into criminal law matters under examination by us. Our non-legal staff increased from ten to eleven with the appointment of a messenger.

PREMISES

3. We have now completed our first year in our new premises which are proving satisfactory. We have retained the use of one room at the Old College of Edinburgh University.

MEETINGS

4. We continue to hold full Commission meetings twice a month.

II. GENERAL

5. During the year to 15 June 1977 we have published one major report on Law Reform and eighteen consultative memoranda. Some of these publications were referred to in our last Annual Report.¹ We will refer to those publications issued since the submission of that Report in November 1976, namely one report and eight memoranda.

6. The Report on *Liability for Defective Products*² was produced jointly with the Law Commission for England and Wales. This Report examines the law relating to liability for defective products and concludes that the remedies available under the existing law provide insufficient protection and rights of redress for persons suffering death or personal injuries caused by defective

¹(1977) Scot. Law Com. No. 43, paras. 19, 52 and 57.

²(1977), Cmnd. 6831; Scot. Law Com. No. 45; Law Com. No. 82.

products. The main recommendation is that as a general rule the producer of a defective product should in future be strictly liable for personal injuries caused by the defect and that, while existing grounds of action should be retained, proof of lack of reasonable care of the producer's part should not be essential to the success of a claim. While a large part of the Report is concerned with the reform of law within Great Britain, the Report also takes under consideration the European Convention on Products Liability in regard to personal injury and death and a draft Directive on the Liability of Producers for Defective Products which is being discussed in the European Communities.

7. We published a series of six memoranda¹ on various aspects of the law relating to the *Constitution and Proof of Voluntary Obligations*. Some of the rules of the existing law were formulated in social and economic conditions which no longer prevail while others were derived from decisions in the English law of contract which do not always accord readily with the principles of the Scots law of obligations. The problems considered in the memoranda affect a great variety of everyday transactions and are of importance to the business community, shoppers, housewives and consumers and to the public generally, and not merely to the legal profession. These six memoranda on *Voluntary Obligations* and the eight earlier memoranda² on *Corporeal Moveables* represent substantial progress on our Programme subject of Obligations. Our work on both these subjects has on the whole received favourable comment from those whom we have consulted. We are extremely grateful to those who have responded so helpfully to consultation and we are conscious of the strain which consultation in so wide a field of law may place upon the resources of those consulted, particularly the professional bodies and their members from whom we received frequent assistance. Our long-term object is to put forward comprehensive proposals for systematic reform and statement of areas of law covered by these memoranda. In proposing such reforms we take fully into account the solutions adopted or recommended in legal systems with which our own has affinities, especially those of the European Communities. Our own experience, however, suggests that attempts to evolve codes covering substantial areas of law or to unify two or more systems of law by means of such codes are unlikely to prove successful until steps have been taken by amendment and reform to correct faults and anomalies which exist in our own law.

8. Our Memorandum³ on *Confidential Information* is the result of our examination of the law relating to breach of confidence and the disclosure or use of information unlawfully obtained. We point out that there is a great deal of protection for confidential information under the existing law, especially the law of contract, and that when there is a contractual obligation not to use or disclose information it should be possible to recover damages. We also point out that the general law of delict is capable of providing redress where injury to a person's feelings has been sustained as a result of an unwarranted attack on his dignity or reputation. We discuss in some detail the extent to which disclosure should be permitted in the public interest. We propose the creation of certain criminal offences: for example, the entering of premises without the occupier's consent and without lawful authority in order to obtain confidential

¹Scottish Law Commission Memoranda Nos. 34-39.

²Scottish Law Commission Memoranda Nos. 24-31.

³Memorandum No. 40.

information, and the use in certain circumstances of technical surveillance devices.

9. In our Memorandum¹ on *Law of Rights in Security Company Law—Registration of Charges: Scotland* we suggest changes in the law relating to (a) the particulars of a debenture floating charge requiring to be registered in the Register of Charges; (b) the contents of a certificate of registration of a charge issued by the Registrar's Office; and (c) the signature and certification of documents relating to floating charges. We also suggest the amendment of statutory provisions concerning the registration of charges by foreign companies who have property in Great Britain.

10. We are pleased to mention the introduction of the Presumption of Death (Scotland) Bill which implements the recommendations contained in our Report on *Presumption of Death*² published on 3 September 1974. This Bill has almost completed its Parliamentary stages.³ We would also mention the introduction of the Unfair Contract Terms Bill⁴ which implements with certain modifications and additions the recommendations in the Joint Report on *Exemption Clauses—Second Report*⁵ which was published on 2 October 1975.

11. Experience with the latter Bill has raised questions whether fresh consideration should be given by Government to the procedure for implementing by legislation Law Commission reports. We recognise the very considerable contribution made by private members in promoting law reform legislation but the status of the Unfair Contract Terms Bill as a Private Members' Bill undoubtedly had considerable disadvantages. The Bill was introduced by Mr. Michael Ward M.P. and, although it was acknowledged that it had been drafted by Government draftsmen and in all respects represented Government policy, its status remained that of a Private Members' Bill. It was thus subject to the vicissitudes of a procedure which, in our opinion, proved unsuitable for the implementation of a measure of this nature. Before submitting their Report, the Commissions had consulted with all affected interests and the recommendations contained in their Report had, to a very large extent, been accepted as a matter of policy by the Government of the day. In the event, the Bill, which when first introduced did not extend to Scotland, ran into very serious procedural difficulties. Moreover, the status of the Bill as a Private Members' Bill may have contributed to the difficulties experienced by interested persons and bodies in making representations to Government Departments after publication of the Bill in time for these to be effective. It was also a factor in causing a great many amendments to be put down at very short notice, a practice deplored in Parliament on the ground that there is a risk that in such circumstances there will be insufficient opportunity to assess the merits of a particular amendment.

12. We have continued to devote a considerable part of our resources to the preparation of advice both formal and informal to Government Departments. This type of work has steadily increased in recent years, and now makes considerable demands on our resources. Although such work sometimes interrupts

¹Memorandum No. 33.

²(1974) Scot. Law Com. No. 34.

³This Bill received the Royal Assent on 22 July 1977.

⁴This Bill received the Royal Assent on 26 October 1977.

⁵(1975) Scot. Law Com. No. 39; Law Com. No. 69.

progress on the Commission's programme subjects, we frequently feel compelled to undertake these more limited but often urgent projects, particularly if they are thought likely to affect areas of law in the reform of which we may be interested, or if no other Scottish agency seems likely to be involved. It is also often the case that such work enables us to keep in touch with legal developments taking place outside Scotland, which is under modern conditions a very necessary part of our functions. It must, however, be recognised that our resources are under increasing strain while, in the coming twelve months, our difficulties are likely to increase in consequence of our Chairman having had to undertake a substantial Government Inquiry unconnected with our work. This will inevitably, and for a relatively lengthy period, have adverse effects on the progress of programme subjects for which our Chairman is directly responsible, including Family Law and Diligence, as well as on the general work of the Commission.

13. Our resources are often heavily involved in responding, sometimes at short notice, to requests from Government for comments on proposals made by the Commission of the European Communities for regulations or directives on matters of concern to Scots law. We have frequently felt obliged to submit such comments since, if implemented, these regulations would have all the force of United Kingdom legislation and since even directives may leave little room for their specific adaptation to the needs of the United Kingdom and, in particular, to those of Scots law.

14. A recent initiative on the part of the Commission of the European Communities, the 'Proposal for a Council Directive to co-ordinate the laws of the Member States relating to (self-employed) commercial agents' was referred by the Department of Trade to us for comment.¹ We spent much time on its consideration since the draft Directive, if adopted, would have far reaching implications for our law. In our comments we questioned one of the premises on which the draft Directive was based, namely that the economically weak position of commercial agents justified conceding to them a peculiarly privileged position in the law of contract. The factual basis of this premise is controversial but we consider that, even if in some instances agents may be in an economically weak position, this fact could not justify a Directive which leans so heavily in favour of commercial agents as to be clearly discriminatory in its effect.

15. We are, however, in this Annual Report concerned more with certain general implications of the Proposal. The draft Directive proposes the introduction of rules of a special character which would, in relation to commercial agents' contracts, preclude the application of the general law of contract. The draft Directive even proposes special requirements of form in relation to the transactions with which it is concerned. These and other special derogations from the general law of contract constitute traps for the unwary and would certainly increase the burden on practitioners. This policy, if extrapolated to other special areas of the law of contract, would deprive that branch of the law of its present simplicity and consistency.

16. The second general point to which we wish to draw attention is that, by imposing often with little justification rules of a mandatory character, the draft Directive offends against the general principle of the Scots law of contract that, unless strong reasons of public policy otherwise require, the parties should be

¹See para. 84.

able to contract as they please. There are certainly wide differences in the practical needs of the parties in different agency relationships and the parties themselves are best able to take account of these needs in drafting their contracts. In our comments we gave ample illustrations of the difficulties which the mandatory framework of the draft Directive would present.

17. A third general point is that, although bearing to be a proposal for a Directive, the instrument contains rules of such particularity that it would have the practical effect of a regulation. Article 189(3) of the Treaty of Rome provides that 'a directive should be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.' The Directive is so drafted that it would be very difficult for the United Kingdom legislature to depart from the actual language of the Directive to take account of the special needs of the legal systems of the United Kingdom. This draft Directive is merely one illustration of the increasing tendency of what are in practical effect regulations to be couched in the form of directives. The difficulties presented by this approach are accentuated by the obscurity of the drafting of the Directive. We have read with interest the Report¹ of the House of Lords Select Committee on the European Communities on this draft Directive and other recent initiatives of the European Commission in the domain of contract. We respectfully endorse the views that these initiatives often fail adequately to take into account the local circumstances, habits, and sentiments of the people and that the European Commission should intervene 'only with care and where real need can be demonstrated' Δ

18. Elsewhere² in this Report we mention that our Commissioners and legal staff have represented the United Kingdom Government at The Hague, in Rome and in Strasbourg and have sought to ensure that the special interests of Scots law and its potential contribution in an international context are given due weight. We would particularly mention the contribution by one of our Commissioners, Mr. Anton, as leader of the United Kingdom Delegation at the Thirteenth Session of the Hague Conference on Private International Law held on 4 to 23 October 1976. Through personal contact made at meetings of legal experts abroad, our work has benefited substantially.

19. We would wish to make particular mention of assistance which was generously given by Sheriff J. Aikman-Smith T.D. to enable progress to be made on our programme work on the law of evidence. Sheriff Aikman-Smith undertook on a gratuitous basis more than six weeks work in Glasgow Sheriff Court and thus enabled Sheriff I. D. Macphail to be given leave of absence in order to complete research for us on the law of evidence. We think it right to recognise this public service for which we are most grateful.

¹51st Report; H.L. 267.

²Paras. 51, 87 and 90.

III. LAW REFORM PROGRAMMES

1. FIRST PROGRAMME¹

Item 1: Evidence

20. During the past few years Sheriff I. D. Macphail has carried out extensive research into the law of evidence with a view to identifying areas which should be considered by us with a view to reform. We have received from Sheriff Macphail the remaining chapters of his paper. This paper (comprising 23 chapters) is being examined by us with the intention of producing a consultative document.

Item 2: Obligations

21. We continue to make progress on various matters falling within this Programme subject which in many respects is inter-related with the law of property. Our ultimate objective is comprehensive reform and restatement of this chapter of the law.

(a) *Corporeal Moveables*

22. On 31 August 1976 we published a series of Memoranda² on the law relating to Corporeal Moveables. The individual Memoranda deal with

- (1) General introduction and summary of provisional proposals
- (2) Passing of risk and of ownership
- (3) Some problems of classification
- (4) Protection of the onerous *bona fide* acquirer of another's property
- (5) Mixing, union and creation
- (6) Lost and abandoned property
- (7) Usucapion or acquisitive prescription
- (8) Remedies

We are in the process of analysing the comments we have received on these Memoranda.

(b) *Exemption Clauses*

23. We are pleased to report that the legislation to implement the Joint Report on *Exemption Clauses: Second Report*³ is nearing the end of its Parliamentary stages. We anticipate that the Unfair Contract Terms Bill will receive the Royal Assent⁴ before the end of the Parliamentary Session.

(c) *Security over Moveables*

24. We stated in our last Annual Report⁵ that our Working Party⁶ on Security Over Moveable Property had considered the implications of the introduction into Scots law of a system of security over moveable property based upon Article 9 of the Uniform Commercial Code of the United States of America (which makes possession of the security subjects or registration essential to the completion

¹(1965) Scot. Law Com. No. 1.

²Scottish Law Commission Memoranda Nos. 24-31.

³(1975) Scot. Law Com. No. 39; Law Com. No. 69.

⁴This Bill received the Royal Assent on 26 October 1977.

⁵(1977) Scot. Law Com. No. 43 para. 21.

⁶A list of members of this Working Party appears in Appendix I to this Report.

of a security interest over moveable property). The Working Party have met 14 times during the year under review and are now in process of framing their provisional views on the questions so far considered by them. Those questions relate primarily to the regulation of priorities as between holders of competing interests in the security subjects. We note, however, that the policy of the draft European Bankruptcy Convention regarding reservation of ownership clauses cannot readily be harmonised with the American Uniform Commercial Code, Article 9, nor with the thinking of the Crowther Committee on Consumer Credit.

(d) Constitution and Proof of Voluntary Obligations

25. On 10 March 1977 we published a series of Memoranda¹ containing provisional proposals relating to the constitution and proof of voluntary obligations and invited commentators to submit their views before 30 September 1977. The individual Memoranda deal with

- (1) General introduction and summary of provisional proposals
- (2) Unilateral promises
- (3) Formation of contract
- (4) Abortive constitution
- (5) Stipulations in favour of third parties
- (6) Formalities of constitution and restrictions on proof.

(e) Defective Consent and Consequential Matters

26. Work has progressed on the preparation of a memorandum on the scope and effect in law of defects of will or consent such as error, force and fear, and fraud. Among the consequential matters likely to be considered are delictual liability for misrepresentation, money as a *surrogatum* for restitution and procedure for securing judicial authority to annul obligations. We hope that this memorandum will be circulated for consultation in the course of 1978.

(f) Penalties and Irritancies

27. Work has started on the preparation of a memorandum dealing with the general law relating to irritancies, penalty clauses and liquidated damages clauses in contracts.

(g) Civil Liability in relation to Animals

28. Since the passing of the Animals Act 1971, which applies only to England and Wales, we have from time to time received suggestions that we should recommend that the provisions of section 9 of the Act (which relates to the killing of or injury to dogs worrying livestock) should be extended to Scotland. We have taken the view that it is preferable not to deal with this specific problem apart from a general review of the law on civil liability in relation to animals. Work has now started with a view to the preparation of a memorandum on this subject.

(h) Economic Loss

29. A research paper is in course of preparation which surveys, and examines the possibility of reform of the present law of Scotland on the subject of the

¹Scottish Law Commission Memoranda Nos. 34-39.

damages which may be awarded in contractual and delictual actions in respect of economic loss not, or not necessarily, associated with physical damage to person or property.

Item 3: Prescription and Limitation of Actions

(a) *Limitation of Actions in Personal Injury Claims*

30. A research paper was prepared for us which surveyed the present law in Scotland and England on the subject of limitation of actions in personal injury claims, and examined the possibility of reform. A draft Memorandum has been given preliminary consideration by us, and it is hoped to publish this Memorandum during 1978.

(b) *Acquisitive Prescription*

31. Consultation has now been carried out on Memorandum No. 30—*Corporeal Moveables: Usucapion or Acquisitive Prescription*.¹

2. SECOND PROGRAMME²

Item 6: Insolvency, Bankruptcy and Liquidation

32. We stated in our last Annual Report³ that our Report on Bankruptcy would be aimed not simply at the improvement and modernisation of existing law but rather at the creation of a new bankruptcy code. Our Bankruptcy Team have continued their work on this formidable task and have met on 15 occasions during the year under review. The Team were fortunate in having the assistance of Dr. Enid Marshall, Senior Lecturer in Law at Stirling University, during much of the period under review, and we would like to thank her most warmly for her valuable contribution to the work of the Team. The team are now in process of constructing the draft Report and draft Bill to be appended to it.

33. On 26 October 1976 there was set up a committee under the chairmanship of Mr. K. R. Cork, F.C.A. F.I.C.M., to carry out a fundamental and exhaustive reappraisal of all aspects of the insolvency laws of England and Wales⁴. The importance of an exchange of views between our Bankruptcy Team and that committee was recognised. With your agreement, lines of communication have been established with that committee and Mr. Jack has been appointed as the Scottish observer with Mr. Sim as his substitute. In this way we can be kept in touch with progress of the review in England and Wales and in return the Insolvency Law Review Committee will be kept informed of the progress made on our studies of the bankruptcy laws in Scotland.

Item 7: Succession

34. The commitment of our resources to other subjects has continued to prevent progress being made with this Programme subject. As indicated in our last Annual Report⁵ we are considering the possibility of examining succession in the wider context of possible changes in family property law.

¹See para. 22.

²(1968) Scot. Law Com. No. 8.

³(1977) Scot. Law Com. No. 43, para. 26.

⁴See para. 103 for the Committee's terms of reference.

⁵(1977) Scot. Law Com. No. 43, para. 27.

Item 8: Diligence

35. In our last Annual Report¹, we mentioned that it was our intention to issue a series of consultative memoranda on diligence. In the course of this year, progress has been made in the preparation of memoranda on two new types of diligence—debt arrangement orders and earnings transfer orders (modelled respectively on the administration order system in use in England and other Commonwealth countries and on the system for the attachment of earnings) and also a memorandum on the collection and enforcement of alimentary debt. We are also pleased to report that the Central Research Unit of the Scottish Office has initiated research on our behalf into the social aspects of diligence and in May 1977 produced an interim report for limited circulation giving provisional conclusions and proposals for further socio-legal research in this domain. These further research projects are now being undertaken and it is hoped that the final reports will be published in 1979.

36. It was originally contemplated that our Working Party should produce a comprehensive report to the Commission on the whole field of diligence which might form the basis of a consultative memorandum. Such a memorandum would, however, be so large and unwieldy as to impose an undue strain on the persons and bodies whom it would be necessary to consult. In the light of this, and of our decision to prepare within the Commission a series of consultative memoranda, dealing amongst other subjects with the administration of diligence and reform of existing methods of diligence, such as poinding and arrestment, we have decided not to convene further meetings of the Working Party but instead to keep it in being as an advisory body whose members may be consulted in connection with the proposed papers. It follows that, although we have received a great deal of valuable material from the Working Party, it is not proposed they should present a formal report for publication.

Item 10: Damages arising from Personal Injuries and Death

37. On 1 December 1975 we issued Memorandum No. 21—*Damages for Personal Injuries: Deductions and Heads of Claim*. We have considered the comments we received on this Memorandum and have prepared a draft Report. The draft clauses of the Bill to be annexed to the Report are at present being prepared. We hope to submit this Report to you during 1978.

Item 11: Presumption of Death

38. We are glad to note that the Presumption of Death (Scotland) Bill, when enacted,² will give effect to the recommendations contained in our Report on *Presumption of Death*.³

Item 12: Legal Capacity of Minors and Pupils

39. Once again work had to be suspended through our inability to devote staff resources to the project. The relationship between guardianship and capacity prevents the latter topic from being treated in isolation. We intend to recommence work on this item as soon as our staff resources allow.

¹(1977) Scot. Law Com. No. 43, para. 29.

²This Bill received the Royal Assent on 22 July 1977.

³(1974) Scot. Law Com. No. 34.

Item 14: Family Law

(a) *Divorce*

40. The Divorce (Scotland) Act 1976 (c. 39) which was based on two of our earlier Reports,¹ received the Royal Assent on 22 July 1976 and came into operation on 1 January 1977. We are attempting to keep the operation of this important Act under review.

(b) *Aliment and Financial Provision*

41. We received an encouraging response to our consultative Memorandum No. 22 on *Aliment and Financial Provision* issued on 31 March 1976. We have commenced work on a report but it is not known when this will be completed.

(c) *Damages for Adultery and Enticement*

42. On 23 June 1976 our Report on *Damages for Adultery and Enticement of a Spouse*² was published. Some of the recommendations of the Report were implemented in the Divorce (Scotland) Act 1976 which came into operation on 1 January 1977.

(d) *Personal and Occupancy Rights of Spouses*

43. We have continued work on the preparation of a consultative memorandum on occupancy and other rights in the matrimonial home and civil remedies for protection of spouses from violence in marriage. We anticipate that this document will be the next publication in our programme of family law reform. Certain other topics specified under this head in our last Annual Report³ will be the subject of a separate memorandum.

(e) *Family Property Law*

44. As mentioned in our last Annual Report,⁴ work on this subject will take several years to complete.

(f) *Miscellaneous*

45. We refer elsewhere in this Report to other family law topics on which work is in progress.

3. THIRD PROGRAMME⁵

Item 15: Private International Law

(a) *EEC Convention on the Law applicable to Contractual and Non-Contractual Obligations*

46. The Joint Steering Committee⁶ continues to assist the United Kingdom Delegation⁷ to the EEC Group of Experts in Brussels in their consideration of the Articles of the draft Convention by preparing memoranda and reasoned

¹Report on *Divorce: The Grounds Considered* (1967) Cmnd. 3256 Scot. Law Com. No. 6; and Report on *Liability for Adultery and Enticement of a Spouse* (1976) Scot. Law Com. No. 42.

²(1976) Scot. Law Com. No. 42.

³(1977) Scot. Law Com. No. 43, para. 38.

⁴(1977) Scot. Law Com. No. 43, para. 39.

⁵(1973) Scot. Law Com. No. 29.

⁶A list of members of the Steering Committee appears in Appendix I to this Report.

⁷The Hon. Lord Maxwell, Mr. K. M. H. Newman, Professor A. L. Diamond and Mr. A. Akbar.

amendments to Articles of the draft Convention and by considering the approach to be adopted on various aspects of the draft Convention.

(b) *Proposed EEC Convention on the Law applicable to Corporeal and Incorporeal Property*

47. Since no progress has been made with the proposed Convention by the EEC Working Group we have nothing further to report.

(c) *EEC Draft Regulation on Conflict of Laws on Employment Relationships in the Community*

48. On 11 February 1977 we and the Law Commission were invited by the Department of Employment to comment on the draft Regulation on Conflict of Laws on Employment Relationships within the Community. Both Commissions referred this draft Regulation to the Steering Committee¹ whose Report was submitted to that Department on 12 March 1977. This Report contained a comparison between the provisions of the draft Regulation and the relevant Articles of the draft Convention on Contractual and Non-Contractual Obligations.

(d) *Hague Conference: Draft Convention on Celebration and Recognition of the Validity of Marriage*

49. At the Thirteenth Session of the Hague Conference on Private International Law held on 4-23 October 1976 the draft Convention on the Celebration and Validity of Marriages and on the Recognition of Decisions relating to Marriages was concluded. This Convention will be open for signature as from October 1977.

(e) *Hague Conference: Draft Convention on the Law applicable to Matrimonial Property*

50. At the Thirteenth Session of the Hague Conference on Private International Law held on 4-23 October 1976 the draft Convention on the Law applicable to Matrimonial Property was concluded. This Convention will be open for signature as from October 1977.

(f) *Hague Conference: Draft Convention on the Law applicable to Agency*

51. At the Thirteenth Session of the Hague Conference on Private International Law held on 4-23 October 1976 agreement was not reached on the draft Convention on the Law applicable to Agency and the draft was remitted to a Special Commission. Mr. Anton attended the Special Commission held in The Hague from 6 to 16 June 1977 at which the draft Convention was concluded.

IV. CONSOLIDATION AND STATUTE LAW REVISION

1. CONSOLIDATION

52. As in previous Reports we comment on current progress under the following heads:

(a) *Consolidation of enactments applying to Scotland only, and consolidation separately for Scotland of enactments which apply to other parts of the United Kingdom as well as for Scotland.*

¹A list of members of the Steering Committee appears in Appendix 1 to this Report.

Second Programme¹

(1) *Education (Scotland) Acts*—Work on the consolidation of this legislation has proceeded and in January 1977 the draftsmen produced an up to date print of the Bill. This print of the Bill is being considered in the hope of it being introduced in the forthcoming session.

(2) *Enactments relating to the functions of the Scottish Electricity Boards*—Consolidation of these enactments has reached the stage of a final print of a Bill being ready for the next Parliamentary Session.

(3) *National Health Service (Scotland) Acts*—Work has been proceeding on the consolidation of this legislation and we anticipate having a Bill ready for the next Parliamentary Session.

(4) *Enactments relating to Solicitors in Scotland*—Following the receipt of instructions in October 1976 initial progress has been made towards a first print of a Bill until work was interrupted in consequence of the retirement of our full-time draftsman.

(5) *Criminal Law Amendment Acts*—The Sexual Offences (Scotland) Bill referred to in our last Annual Report² received the Royal Assent on 15 November 1976.

Third Programme

Preparation of our Third Programme³ is in its final stages and we hope to submit it to you for approval in the autumn.

(b) *Consolidation of enactments applying to other parts of the United Kingdom as well as to Scotland.*

(1) During the year under review the following Acts were passed:

Lotteries and Amusements Act 1976
Restrictive Practices Court Act 1976
Restrictive Trade Practices Act 1976
Police Pensions Act 1976
Adoption Act 1976
Resale Prices Act 1976
Supplementary Benefits Act 1976
British Airways Board Act 1977

(2) A Bill on the following subject is before Parliament:
Employment Protection (Consolidation) Bill⁴

(3) Bills on the following subjects are being prepared:

Alcoholic Liquor Duties
Capital Gains
Commonwealth Development Corporation
Customs and Excise (General Relief)
Customs and Excise (Management and Power)

¹(1973) Scot. Law Com. No. 27.

²(1977) Scot. Law Com. No. 43 para. 45(a)(5).

³This Programme was submitted to the Lord Advocate on 3 November 1977.

⁴This Bill was withdrawn because of further amending legislation but it is hoped to reintroduce the Bill in the next session.

Hydrocarbon Oil
Interpretation
Prices and Charges¹
Price Commission¹
Refuse (Disposal)
Reserve and Auxiliary Forces
Tobacco Duties
Trade Unions and Employers Associations
Trustee Savings Bank

2. STATUTE LAW REVISION

53. All the proposals for repeals which we have received have been or are in the course of being examined and consultations on these proposals are being conducted with interested representative bodies and with Government Departments.

54. We co-operated with the Law Commission in producing an Eighth Report² on Statute Law Revision which was published on 27 January 1977. The Statute Law (Repeals) Bill, which was referred to as under preparation in our last Annual Report, received the Royal Assent on 16 June 1977. In conjunction with our English colleagues material is now being assembled for another Report and Statute Law (Repeals) Bill.

3. PRIVATE ACTS

55. Work is proceeding on the task of reading through the Private Acts and noting all repeals, amendments and expiries and recording them in the list of Acts already prepared.

V. OTHER STATUTORY FUNCTIONS

1. ADVICE TO GOVERNMENT DEPARTMENTS AND OTHER BODIES

56. We continue to give advice to Government Departments and other bodies under section 3(1)(e) of the Law Commissions Act 1965 and some of the matters on which we have advised are mentioned in the following paragraphs. In the first nine of these paragraphs we report progress on the subjects which have been formally referred to us for advice under that section.

(1) *Administrative Law*

57. As we explained in our last Annual Report,³ work has not been restarted on our examination of remedies in administrative law.⁴ Among the reasons which were given in our last Annual Report⁵ is that it would be premature for us to report with a draft Bill in this area of the law pending legislation on Devolution.

¹The Bill referred to in the last Annual Report as 'Counter Inflation' is now superseded by these two Bills.

²(1977) Scot. Law Com. No. 44, Law Com. No. 80.

³(1977) Scot. Law Com. No. 43, para. 49.

⁴Memorandum No. 14 on *Remedies in Administrative Law* was issued on 23 August 1971.

⁵(1977) Scot. Law Com. No. 43, para. 50.

(2) *Foreign Money Liabilities*

58. We have resumed work on the request for advice from the Foreign and Commonwealth Office on the problems that may arise if a sum of money is due in a currency other than that of the place of payment or the place where payment is sought and for this purpose and in co-operation with the Law Commission have reconstituted the Joint Working Party.¹

(3) *Conflicts of Jurisdiction affecting the Custody of Children*

59. On 26 August 1976 the Joint Working Paper/Memorandum on *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*² was published and comments were invited by 1 March 1977. These comments are under consideration.

60. In our last Annual Report³ we indicated that progress would be made with the preparation of a second consultative working paper/memorandum dealing with jurisdiction and enforcement in custody cases containing a foreign element. This second paper would be prepared in collaboration with the Law Commission, and a Joint Working Party was set up to assist both Commissions.⁴ In addition to the formulation of draft Conventions on child custody by the Council of Europe,⁵ we understand that further initiatives are contemplated at an international level to deal with conflicts of jurisdiction affecting the custody of children.⁶ The decision to publish a second consultative working paper memorandum has therefore to be reconsidered in the light of future international developments and we are therefore consulting the Law Commission and the Government Departments concerned as to how we should proceed.

(4) *Mental Element in Crime*

61. We have received from the Law Commission their draft Report on the *Mental Element in Crime*. This draft Report is at present being considered by the Working Party under the chairmanship of Lord Cameron.⁷

(5) *Products Liability*

62. In October 1971 we were asked by your predecessor 'to consider whether the existing law governing compensation for personal injury, damage to property or any other loss caused by defective products is adequate, and to recommend what improvements, if any, in the law are needed to ensure that additional remedies are provided and against whom such remedies should be available'. The Law Commission received a similar request from the Lord Chancellor. After

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

²Scottish Law Commission Memorandum No. 23; Law Commission Working Paper No. 68.

³Scot. Law Com. No. 43, para. 52.

⁴A list of members of this Working Party appears in Appendix I to this Report.

⁵See para. 89.

⁶As a result of decisions made at the Commonwealth Law Ministers' Conference at their meeting in Winnipeg in August 1977, custody conflicts are to be given further study within the Commonwealth. Moreover, we understand that the Hague Conference on Private International Law intend to include an item concerned with custody of children on their agenda for their meeting in 1980.

⁷See para. 93.

considering the comments received on the consultative Working Paper/Memorandum¹ we have co-operated with the Law Commission in producing a Joint Report, entitled *Liability for Defective Products*, which was submitted to you on 21 April 1977 and published on 15 June 1977.²

(6) *Breach of Confidence*

63. In June 1973 we were asked by your predecessor, 'with a view to the protection of privacy—

- (1) to consider the law of Scotland relating to breach of confidence and to advise what statutory provisions, if any, are required to clarify or improve it;
- (2) to consider and advise what remedies, if any, should be provided in the law of Scotland for persons who have suffered loss or damage in consequence of the disclosure or use of information unlawfully obtained, and in what circumstances such remedies should be available.'

On 14 April 1977 we circulated our Memorandum No. 40—*Confidential Information* with a request for comments to be submitted by 31 October 1977.

(7) *Hague Convention on the International Administration of the Estates of Deceased Persons*

64. Work continues on the preparation of a report on the legislation required to give effect in Scotland to the Convention concerning the International Administration of the Estates of Deceased Persons which was signed on behalf of the United Kingdom on 2 October 1973. The Law Commission is engaged in the preparation of a similar report on the legislation that would be needed to give effect in England and Wales to the Convention, and we are consulting with the Law Commission with the aim of formulating proposals which will be as nearly as possible in harmony.

(8) *Irritancies in Leases*

65. On 16 September 1976 we received from the Secretary of State for Scotland a reference in the following terms:

'Without prejudice to the Commission's freedom to offer advice on any possibilities of reform of this branch of the law I should be glad if the Commission would in the light of *Dorchester Studios (Glasgow) Limited v. Stone and Another* 1975 S.L.T. (H.L.) 153 and the observations made in the judgments in that case consider and advise on the operation of irritancy clauses in leases of commercial and industrial property (including leases of land for commercial or industrial development) and on related matters.'

Work is proceeding on the preparation of a consultative memorandum which it is hoped to publish in 1978.

(9) *Law of Incest in Scotland*

66. On 9 February 1977 we received from you a reference in the following terms:

¹Circulated in June 1975 as Scottish Law Commission Memorandum No. 20 and Law Commission Working Paper No. 64.

²(1977) Cmnd. 6831; Scot. Law Com. No. 45; Law Com. No. 82.

'To review the law of Scotland on incest, to consider what changes in that law may be desirable, to report their findings, and to make recommendations to the Secretary of State for Scotland on possible legislation to reform the law on incest.'

Work is proceeding on the preparation of a consultative memorandum.

(10) *The Control of Scrap Metal Dealing in Scotland*

67. We were invited by the Scottish Home and Health Department to comment on a consultative document outlining a possible new system of controlling scrap metal dealing in Scotland. We submitted our comments to that Department on 6 August 1976.

(11) *Working Party on Civic Government*

68. We were invited by the Scottish Development Department to comment on some of the proposals contained in the Report of the Working Party on Civic Government. We submitted our comments to that Department on 30 December 1976.

(12) *Report of the Departmental Committee on Evidence of Identification in Criminal Cases*

69. We were invited by the Scottish Home and Health Department to comment on the recommendations of the Report on *Evidence of Identification in Criminal Cases*. We submitted our comments to that Department on 24 December 1976.

(13) *Miscellaneous Law Reforms*

70. On 8 February 1977 we were invited by the Scottish Courts Administration to comment on thirteen proposals of law reform (relating to Sheriff Court Practice and other matters) to be included in a proposed Law Reform (Miscellaneous Provisions) Bill. On 14 April 1977 we submitted our comments on these proposals to the Scottish Courts Administration.

2. OTHER MATTERS DEALT WITH UNDER SECTION 3(1)

71. As part of our function we have to examine the law for anomalies and defects; consider the simplification and modernisation of the law; and consider proposals for law reform. In fulfilment of this function the following matters have been or are being examined.

(1) *Proposals*

72. We continued to receive at various times throughout the year proposals for changes in the law. We take under consideration all such proposals and in subsequent paragraphs we mention what action is being taken in relation to some of them.

(2) *Married Women's Policies of Assurance (Scotland) Act 1880*

73. We are completing the preparation of a Report with clauses annexed. We hope to submit this Report to you during 1978.

(3) *Powers of Attorney*

74. Our available resources are so heavily committed to other items that no work is at present being done on this subject.

(4) *Powers of Judicial Factors*

75. We explained in our last Annual Report¹ that an analysis was being prepared of the comments received by us on our Memorandum² containing provisional proposals for the amendment of the Trusts (Scotland) Acts 1921 and 1961 to facilitate the exercise by judicial factors of certain of their statutory powers. Certain of the views expressed in the comments have called for further consideration of proposals for amendment of the relative legislation. We hope, however, to report on the topic in the course of the coming year.

(5) *Agricultural Holdings*

76. Resources are still not available to proceed with the preparation of a memorandum.

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

77. In our last Annual Report³ we mentioned that we intended to publish shortly a memorandum containing our provisional conclusions on certain points in connection with the Companies (Floating Charges and Receivers) (Scotland) Act 1972. The relative Memorandum⁴ was published on 1 December 1976 and invited comments by 31 March 1977. A number of interesting and valuable comments were received by us, and we are grateful to the contributors of those comments. The comments are in course of being analysed and in due course we shall submit a report on the topic. There have been drawn to our attention a number of other points affecting the operation of the Act and we propose to examine these in a future memorandum.

(7) *Criminal Law*

(a) *Insanity*

78. The proposal that we should examine the availability in criminal proceedings of the defence of insanity where self-induced (as by the voluntary taking of drugs) is being considered by our Working Party on Criminal Law⁵ at the same time as they are considering other aspects of insanity.

(b) *Conspiracy—Mobbing and Rioting*

79. Our examination of the proposal that we should review the law relating to conspiracy (including the law relating to mobbing and rioting) has temporarily ceased due to priority being given to other work.

(8) *Criminal Legal Aid*

80. Before taking further action, we are still awaiting the views of the Scottish Home and Health Department on the proposal that applications for criminal legal aid in Scotland should be dealt with under conditions similar to those laid

¹(1977) Scot. Law Com. No. 43, para. 67.

²Memorandum No. 19—*Powers of Judicial Factors*.

³(1977) Scot. Law Com. No. 43, para. 68.

⁴Memorandum No. 33—*Law of Rights in Security—Company Law—Registration of Charges: Scotland*.

⁵See para. 93.

down in Part II of the Legal Aid Act 1974 (which Act applies to England and Wales).

(9) *Law on Actions of Ejection and Removings*

81. We have been considering a proposal to the effect that the law of ejection should be examined to cure defects in procedure relating to unauthorised occupation of heritable property. Our preliminary examination of this proposal ended in the preparation of a small research paper. However, we have come to the conclusion that a wider review of this area of law is required. We have decided to put in hand the preparation of a consultative memorandum on the reform of the law on actions of ejection and removings. We have been pleased to retain the services of Mr. A. G. M. Duncan, Senior Lecturer in the Department of Scots Law, University of Edinburgh, to undertake research into this area of the law.

VI. FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

(1) *EEC Draft Convention on Bankruptcy etc.*

82. On 24 January 1977 we were asked by the Scottish Courts Administration for advice on Article 17 (which relates to jurisdiction in actions arising from the bankruptcy) of the EEC draft Convention on Bankruptcy, Winding up, Arrangements, Compositions and Similar Proceedings. On 1 February 1977 we submitted to the Scottish Courts Administration a Note containing our advice.

(2) *EEC Draft Directive on the Law relating to Suretyship*

83. In May 1976 we were invited by the Scottish Home and Health Department to submit comments on the latest revision of the draft Directive on Suretyship which had been prepared by the EEC Commission. We studied this draft Directive in detail and our comments were sent to that Department on 8 October 1976.

(3) *EEC Draft Directive on (Self-employed) Commercial Agents*

84. In January 1977 we were invited by the Department of Trade to submit comments on the draft Directive on (Self-employed) Commercial Agents which had been adopted by the EEC Commission and submitted to the Council of Ministers. We accepted this invitation and our comments were forwarded to the Department of Trade on 29 April 1977.

(4) *EEC Draft Directive on Products Liability*

85. In September 1976 the European Communities Council issued an explanatory memorandum and proposal for a Council Directive on liability for defective products, to be considered by the Governments of individual Member States. We dealt with this Directive in the Joint Report on *Liability for Defective Products*.¹

(5) *EEC Draft Directive on Contracts negotiated away from Business Premises*

86. On 14 February 1977 we were invited by the Department of Prices and Consumer Protection to comment on a draft EEC Directive on Contracts

¹(1977) Cmnd. 6831; Scot. Law Com. No. 45, Law Com. No. 82.

negotiated away from Business Premises. We have not yet submitted comments but since some of the provisions of the Articles in the draft Directive were counter to our proposals in Memorandum No. 35 *Unilateral Promises* and Memorandum No. 37 *Abortive Constitution* we sent copies of these Memoranda to that Department.

(6) *Council of Europe—Study of Penalty Clauses*

87. Professor Smith attended the final meeting of the Council of Europe's Committee of Experts on Penalty Clauses in Private Law held in Strasbourg from 8 to 12 November 1976. The Final Activity Report of this Committee is to be considered by the European Committee on Legal Co-operation (CDCJ) at their next meeting to be held from 27 June to 1 July 1977.

(7) *Council of Europe—Draft Convention on Products Liability*

88. The draft Convention, drawn up by the Committee of Experts received the approval of the European Committee on Legal Co-operation (CDCJ). The Convention is open for signature. We considered this Convention in the Joint Report on *Liability for Defective Products*.¹

(8) *Council of Europe—Draft Conventions relating to Custody*

89. On 30 June 1976 we were invited by the Scottish Courts Administration to comment on a draft Convention on the Recognition and Enforcement of Custody Orders and a draft Convention setting up an International Tribunal to resolve Custody Disputes. We submitted our comments to the Scottish Courts Administration on 26 July 1976.

(9) *UNIDROIT—Draft Convention on the Hotelkeeper's Contract*

90. A member of our legal staff represented the United Kingdom at the first meeting of the Committee of Governmental Experts, held in Rome from 28 March to 1 April 1977 under the auspices of the International Institute for the Unification of Private Law (UNIDROIT), to consider a draft Convention on the Hotelkeeper's Contract.

VII. CONSULTATION

THE LAW COMMISSION

91. We continue our close co-operation with the Law Commission. During the year under review we have worked together on the preparation of the Joint Report on *Liability for Defective Products*¹ and on the various subjects falling within our Third Programme.²

92. The Annual Joint Meeting was held in London on 26/27 April 1977. The main item for discussion was the tort/delict aspects of the draft EEC Convention on Contractual and Non-Contractual Obligations. We wish to thank our English colleagues for the generous hospitality accorded to us on the occasion of this Joint Meeting.

¹(1977) Cmnd. 6831; Scot. Law Com. No. 45, Law Com. No. 82.

²(1973) Scot. Law Com. No. 29.

(1) *Codification of the Criminal Law*

93. The Working Party set up under the chairmanship of the Honourable Lord Cameron, D.S.C., D.L. to examine Working Papers, draft Reports and Reports produced by the Law Commission under their programme subject 'Codification of the Criminal Law' met on four occasions during the year and considered various draft documents. The Working Party has examined and commented on the

Working Paper No. 44—*Criminal Liability of Corporations*

Working Paper No. 62—*Offences relating to the Administration of Justice*

The Working Party has under consideration the draft Report on *Mental Element in Crime* and is continuing with its consideration of the paper received from the Scottish Home and Health Department on insanity in bar of trial and insanity at the time of the crime.

(2) *Working Papers on Contract*

94. The small Working Party set up under the chairmanship of Professor Smith to examine Working Papers, draft Reports and Reports produced by the Law Commission under their Programme subjects relating to aspects of the law of contract has examined three Working Papers published by the Law Commission; namely:

No. 69—*The Incapacitated Principal*

No. 70—*The Parol Evidence Rule*

No. 71—*Implied Terms in Contracts for the Supply of Goods*

We hope to forward the Committee's comments on these Working Papers to the Law Commission soon.¹

OTHER LAW REFORM ORGANISATIONS

95. We continue to inform the Law Reform Consultant and Northern Ireland Office of the Legislative Draftsmen on matters of common interest.

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

THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

97. We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. We have also continued to hold informal quarterly meetings with representatives of the Faculty of Advocates and the Law Society of Scotland and have found these meetings most useful. As in previous years we wish to record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have served on our Working Parties.

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

¹The comments were sent to the Law Commission on 16 August 1977.

SEMINARS, COLLOQUIA ETC.

99. (1) Our Chairman and Mr. Anton attended the Ford Legal Workshop on 'Conflict of Laws' held in London from 29 June to 1 July 1976.

(2) Professor Smith attended the Second International Congress of Private Law held in Rome on 9 to 15 September 1976. This Congress, held under the auspices of UNIDROIT on the 50th anniversary of its foundation, studied Private and Public Aspects of the Law of International Trade.

(3) A member of our legal staff attended the Annual Conference of the Scottish Association for the Study of Delinquency held in Peebles on 12 to 14 November 1976.

(4) Commissioners and members of our legal staff attended a Seminar on 'Cross-border Securities' held in Glasgow on 25 November 1976. Mr. Jack presented a paper on the Scottish aspects of the problem.

(5) Our Chairman and a member of our legal staff attended the Annual Conference of the Scottish Legal Action Group held in Stirling on 29 and 30 January 1977.

(6) A member of our legal staff attended a Conference on 'Commercial and Industrial Leases' held in St. Andrews University on 31 March to 2 April 1977.

(7) Mr. Jack attended the Annual Conference of the Law Society of Scotland held at Aviemore on 13 to 14 May 1977.

VIII. MISCELLANEOUS

DEPARTMENTAL AND OTHER COMMITTEES

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

(1) *Statute Law Committee*

101. The Chairman continues to serve on the Statute Law Committee and continues as a member of the Editorial Board.

(2) *Civil Judicial Statistics*

102. A member of the legal staff continues to represent us at meetings of the Working Party of officials set up by the Scottish Courts Administration to review the Annual Civil Judicial Statistics for Scotland.

(3) *Insolvency Law Review Committee*

103. There has been set up by the Department of Trade a Committee under the chairmanship of Mr. Kenneth Cork, F.C.A. F.I.C.M. whose terms of references are as follows:

- (i) to review the law and practice relating to insolvency, bankruptcy, liquidation and receiverships in England and Wales and to consider what reforms are necessary or desirable;

- (ii) to examine the possibility of formulating a comprehensive insolvency system and the extent to which existing procedures might, with advantage, be harmonised and integrated;
- (iii) to suggest possible less formal procedures as alternatives to bankruptcy and company winding-up proceedings in appropriate circumstances; and
- (iv) to make recommendations.

One of our Commissioners¹ attends meetings of this Committee.

(4) *European Judgments Convention*

104. You have set up a Committee, under the chairmanship of Lord Maxwell, to consider, in the light of current developments, the Scottish rules of jurisdiction in civil and commercial matters and the procedure for the recognition and enforcement in Scotland of external judgments. Mr. A. E. Anton is a member of this Committee.

SCRUTINY OF BILLS

105. We now confine our scrutiny to Bills which particularly touch upon areas of law under current examination by us. This year we considered the Marriage (Scotland) Bill and the Scottish provisions of the Criminal Law Bill.

APPENDICES

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

¹See para. 33.

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

Working Party on Security over Moveable Property

Professor J. M. Halliday, C.B.E. (Chairman)	Solicitor, Glasgow
Mr. R. H. Barclay	Solicitor, Glasgow
Mr. T. Gardiner	Solicitor, Glasgow
Mr. A. M. Hamilton	Solicitor, Glasgow
Mr. R. B. Jack	Scottish Law Commission
Mr. G. R. H. Reid	Solicitor, Glasgow
Professor W. A. Wilson	University of Edinburgh
Secretary: Mr. A. J. Sim, Scottish Law Commission	

Steering Committee on Private International Law

The Hon. Lord Hunter, V.R.D.	} Joint Chairmen	Scottish Law Commission
The Hon. Mr. Justice Cooke		Law Commission
Mr. A. Akbar		Law Commission
Mr. J. B. Allan		Scottish Law Commission
Mr. A. E. Anton, C.B.E.		Scottish Law Commission
Dr. P. M. North		Law Commission
Secretary: Miss J. A. Killick, Law Commission		

Joint Working Party on Foreign Money Liabilities

Dr. P. M. North (Chairman)	Law Commission
Mr. A. Akbar	Law Commission
Mr. A. E. Anton, C.B.E.	Scottish Law Commission
Mr. R. Armitage	Treasury Solicitor's Department
Mr. R. J. Ayling	Department of Trade, Industry, Prices and Consumer Protection
Mr. R. K. Batstone	Foreign and Commonwealth Office
Mr. R. Brodie	Scottish Courts Administration
Mr. R. Cassels	Royal Bank of Scotland
Sir Stanley Krusin, C.B.	Law Commission
Mr. J. P. H. Mackay, Q.C.	Scottish Law Commission
Mr. H. V. Richardson, O.B.E.	Lord Chancellor's Office
Secretary: Miss J. A. Killick, Law Commission	

Joint Working Party on International Conflicts of Jurisdiction affecting the Custody of Children

The Hon. Lord Hunter, V.R.D.	} Joint Chairmen	Scottish Law Commission
The Hon. Mr. Justice Cooke		Law Commission
Mr. A. E. Anton, C.B.E.		Scottish Law Commission
Mr. R. K. Batstone		Foreign Commonwealth Office
Mr. M. C. Blair		Lord Chancellor's Office
Mr. John Churchill		Law Commission
Sir Denis W. Dobson, K.C.B., O.B.E., Q.C.		
Mr. G. C. Duke		Scottish Courts Administration
Lady Johnston		Law Commission
Mr. R. L. Jones		Home Office
Dr. P. M. North		Law Commission
Mr. N. R. Whitty		Scottish Law Commission
Mr. J. W. Wilson		Supreme Court of Northern Ireland
Secretary: Mr. T. L. Rees, Law Commission		

Working Party to examine Law Commission Working Papers on Criminal Law

The Hon. Lord Cameron, D.S.C., D.L.

(Chairman)

Mr. J. D. Allan

Sheriff G. H. Gordon, Q.C.

Mr. J. Martin¹

Mr. A. C. Normand²

Dr. A. F. Rodger

Mr. W. A. P. Weatherston

Procurator Fiscal's Office, Glasgow

Sheriff's Chambers, Hamilton

Crown Office, Edinburgh

Procurator Fiscal's Office, Edinburgh

Advocate, Edinburgh

Scottish Home and Health Department

Secretary: Mr. A. J. F. Tannock, M.C., Scottish Law Commission³

Mr. R. M. Henderson, Scottish Law Commission

Working Party to examine Law Commission Working Papers relating to the Law of Contract

Professor T. B. Smith, Q.C. (Chairman)

Mr. R. Black

Mr. J. T. Cameron, Q.C.

Mr. M. G. Clarke

Mr. W. W. McBryde

Scottish Law Commission

Scottish Law Commission

Faculty of Advocates

University of Edinburgh

University of Aberdeen

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

¹Mr. Martin was assigned to the Commission on 1 May 1977.

²Mr. Normand left the Commission on 31 December 1976.

³Mr. Tannock demitted office as Secretary on 1 December 1976 on transfer to other work and was succeeded as Secretary by Mr. Henderson.

APPENDIX II

1 SCOTTISH LAW COMMISSION—PAPERS PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE (as at 31 October 1977)

		<i>Commission</i>
		<i>No.</i>
1965	1	First Programme of Law Reform
<hr/>		
1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66
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1967	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd. 3223)
	6	Divorce—The Grounds Considered (Cmnd. 3256)
	6A	*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd. 3267)
	7	Second Annual Report 1966-67
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1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967-68
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1969	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968— Trustee Savings Banks Bill (Cmnd. 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968-69
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1970	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd. 4336)
	15	Reform of the Law Relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd. 4542)
	17	Fifth Annual Report 1969-70
	18	*Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd. 4544)
	19	*Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd. 4547)
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1971	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd. 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd. 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic— Road Traffic Bill (Cmnd. 4731)
	23	Sixth Annual Report 1970-71

*Produced jointly with the Law Commission.

*Commission
No.*

- 1972 24 Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland—Town and Country Planning (Scotland) Bill (Cmnd. 4949)
- 25 Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
- 26 *Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5108)
-
- 1973 27 Second Programme of Consolidation and Statute Law Revision
- 28 Seventh Annual Report 1971–72
- 29 Third Programme of Law Reform
- 30 Report on Liability for Antenatal Injury
- 31 Report on the Law relating to Damages for Injuries Causing Death
- 32 *Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5493)
-
- 1974 33 Eighth Annual Report 1972–73
- 34 Report on Presumption of Death
- 35 *Friendly Societies Bill—Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd. 5634)
- 36 *Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5792)
-
- 1975 37 Ninth Annual Report 1973–74
- 38 *Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd. 5850)
- 39 *Exemption Clauses—Second Report
- 40 *Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd. 6303)
-
- 1976 41 Tenth Annual Report 1974–75
- 42 Family Law—Report on Liability for Adultery and Enticement of a Spouse
-
- 1977 43 Eleventh Annual Report 1975–76
- 44 *Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd. 6719)
- 45 *Report on Liability for Defective Products

2 SCOTTISH LAW COMMISSION—MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM

- 1966 Memorandum No. 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964
- Memorandum No. 2—Expenses in Criminal Cases
- 1967 Memorandum No. 3—Restrictions on the Creation of Liferents
- Memorandum No. 4—Applications for Planning Permission
- Memorandum No. 5—Damages for Injuries Causing Death
- *Memorandum No. 6—Interpretation of Statutes

*Produced jointly with the Law Commission.

- 1968 *Memorandum No. 7—Provisional Proposals Relating to Sale of Goods
Memorandum No. 8—Draft Evidence Code—First Part
- 1969 Memorandum No. 9—Prescription and Limitation of Actions
Memorandum No. 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961
Memorandum No. 11—Presumptions of Survivorship and Death
Memorandum No. 12—Judgments Extension Acts
- 1970 Memorandum No. 13—Jurisdiction in Divorce
- 1971 Memorandum No. 14—Remedies in Administrative Law
*Memorandum No. 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses in Contracts for the Supply of Services and Other Contracts
Memorandum No. 16—Insolvency, Bankruptcy and Liquidation
- 1972 Memorandum No. 17—Damages for Injuries Causing Death
- 1974 Memorandum No. 18—Liability of a Paramour in Damages for Adultery and Enticement of a Spouse
Memorandum No. 19—Powers of Judicial Factors
- 1975 *Memorandum No. 20—Liability for Defective Products
Memorandum No. 21—Damages for Personal Injuries—Deductions and Heads of Claim
- 1976 Memorandum No. 22—Aliment and Financial Provision (2 Vols.)
*Memorandum No. 23—Custody of Children—Jurisdiction and Enforcement within the United Kingdom
Memorandum No. 24—Corporeal Moveables—General Introduction and Summary of Provisional Proposals
Memorandum No. 25—Corporeal Moveables—Passing of Risk and of Ownership
Memorandum No. 26—Corporeal Moveables—Some Problems of Classification
Memorandum No. 27—Corporeal Moveables—Protection of the Onerous *bona fide* Acquirer of Another's Property
Memorandum No. 28—Corporeal Moveables—Mixing Union and Creation
Memorandum No. 29—Corporeal Moveables—Lost and Abandoned Property
Memorandum No. 30—Corporeal Moveables—Usucapion or Acquisitive Prescription
Memorandum No. 31—Corporeal Moveables—Remedies
Memorandum No. 32—Comments on White Paper '*Our Changing Democracy: Devolution to Scotland and Wales*' Appendix—Devolution Scots Law and the Role of the Commission
Memorandum No. 33—Law of Rights in Security—Company Law—Registration of Charges: Scotland
- 1977 Memorandum No. 34—Constitution and Proof of Voluntary Obligations—General Introduction and Summary of Provisional Proposals
Memorandum No. 35—Constitution and Proof of Voluntary Obligations—Unilateral Promises
Memorandum No. 36—Constitution and Proof of Voluntary Obligations—Formation of Contract
Memorandum No. 37—Constitution and Proof of Voluntary Obligations—Abortive Constitution
Memorandum No. 38—Constitution and Proof of Voluntary Obligations—Stipulations in Favour of Third Parties
Memorandum No. 39—Constitution and Proof of Voluntary Obligations—Formalities of Constitution and Restrictions on Proof
Memorandum No. 40—Confidential Information

*Produced jointly with the Law Commission.

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

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

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

1969 Married Women's Policies of Assurance (Scotland) Act 1880—Working Paper

1973 Consultation Paper on Divorce for Incurable Insanity

1974 Insolvency, Bankruptcy and Liquidation in Scotland—Consultative Paper

5 SCOTTISH LAW COMMISSION—UNPUBLISHED CONFIDENTIAL DOCUMENTS

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

*Produced jointly with the Law Commission.

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 31 October 1977)

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

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Statute Law Revision—Seventh Report: (Draft Statute Law (Repeals) Bill (Joint Report with Law Commission) (Scot. Law Com. No. 40) (Cmnd. 6303)	8.12.75	Statute Law Repeals Act 1976 (c. 16).
Family Law—Report on Liability for Adultery and Enticement of a Spouse (Scot. Law Com. No. 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c. 39).
Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Joint Report with Law Commission) (Scot. Law Com. No. 44) (Cmnd. 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c. 18).
Liability for Defective Products (Joint Report with Law Commission) (Scot. Law Com. No. 45) (Cmnd. 6831)	15.6.77	None.

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