



Scottish Law Commission  
*promoting law reform*

(SCOT LAW COM No 225)

annual report | 2011





# 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 | 2011



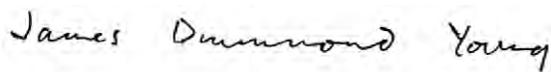
Commissioners and Chief Executive

Patrick Layden QC TD, Professor Hector L MacQueen, Dr Andrew J M Steven,  
Ms Laura J Dunlop QC, Lord Drummond Young (Chairman), Malcolm McMillan (Chief Executive)

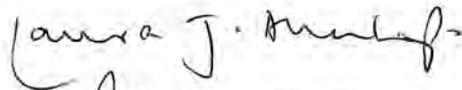
## Annual Report 2011

To: Kenny MacAskill MSP, Cabinet Secretary for Justice

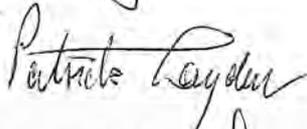
We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2011.



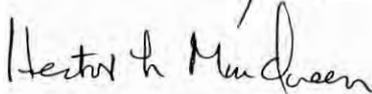
JAMES DRUMMOND YOUNG, Chairman



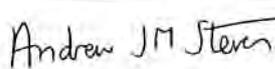
LAURA J DUNLOP



PATRICK LAYDEN



HECTOR L MACQUEEN



ANDREW J M STEVEN



Malcolm McMillan, Chief Executive  
15 February 2012

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

February 2012

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## Chairman's foreword



I am pleased to present the Commission's Annual Report for 2011. During the year we have continued with work on our Eighth Programme, and on a number of Government references. The projects on which we are currently working include the law relating to security over moveable property and the transfer of debts and other forms of incorporeal moveable property, trusts, judicial factors, the law of contract, adults with incapacity, prescription and moveable property, and similar fact evidence. We are also conducting projects jointly with the Law Commission for England and Wales in the fields of insurance, redress for unfair consumer practices, level crossings and the regulation of health care professionals.

During the year we have produced a Report on the criminal liability of partnerships and Discussion Papers on the interpretation of contract, a range of issues in trust law, the redress available to consumers for unfair trading practices, the criminal liability of partnerships, the law relating to security over moveable property and transfer of debts and other incorporeal moveable property, and the post-contract duties that arise in contracts of insurance.

In previous years I have referred to the poor record of implementation of Commission reports, both at Holyrood and at Westminster. I am pleased to say that matters have improved significantly; the Scottish Government and Scottish Parliament have both

shown a clear desire to improve the implementation rate, with a view to keeping Scots law up to the best international standards. We are encouraging Scottish Ministers in the United Kingdom Government to implement our Reports on Unincorporated Associations and the Criminal Liability of Partnerships. Last year the Damages (Scotland) Act, originating as a member's bill promoted by Bill Butler MSP, was based on our Report on Damages for Wrongful Death. In the current session of the Scottish Parliament two bills based on our recommendations have been introduced as government bills, the Long Leases (Scotland) Bill, based on our Report on Conversion of Long Leases (December 2006), and the Land Registration etc. (Scotland) Bill, based on our Report on Land Registration (February 2010). I am very pleased at the implementation of these two reports, which both represented very substantial pieces of work by the Commission. The land registration project was an excellent example of our modern method of working. Throughout the project we worked closely with Registers of Scotland, the agency that operates the Land Register, and with the Law Society of Scotland and its members, who are of course the persons who register transactions on behalf of their clients. At the same time we carried out detailed research into the systems of land registration found in other jurisdictions. At one time "comparative law" in Scotland largely consisted of looking at English law and adapting it, but now we range much more widely. In the case of land registration, we derived a great deal of assistance from the system in use in Germany, which we thought had major practical advantages over the English system that had largely formed the basis of existing legislation. This included direct discussions with German officials responsible for the operation of their system.

An important development in securing implementation of Commission reports is the use of special procedures to provide additional legislative capacity in Parliament for technical law reform bills. At Westminster such a procedure has been operating since 2009, with considerable success. The essence of

the procedure is that detailed consideration of the bill is carried out by a Special Committee of the House of Lords. This ensures effective legislative scrutiny, as the Committee normally includes a number of lawyers, and means that in particular non-controversial bills do not occupy significant time on the floor of the House of Commons or House of Lords. A joint Report of the Scottish Law Commission and the Law Commission for England and Wales on Third Parties (Rights Against Insurers) was implemented in this way, as the Third Parties (Rights Against Insurers) Act 2010. At present the recent joint Report of the two Commissions on Consumer Insurance Law is being implemented under the same procedure, in the form of the Consumer Insurance (Disclosure and Representations) Bill. It is hoped that the procedure can be used during 2012 to implement two of our outstanding Reports in reserved areas, those on Unincorporated Associations and the Criminal Liability of Partnerships. Both of these reports were the result of extensive and detailed consultation, and I can say confidently that our proposals would be warmly welcomed by the sectors that are affected.

There is a clear need for a similar procedure at Holyrood, and I am very pleased to say that discussions are well under way to establish such a procedure for the consideration of bills put forward by the Commission. This would involve a significant increase in legislative capacity, and would be of great assistance in the very important task of keeping Scots law up to date in a world where technology and business practices are moving forward very rapidly. The law must attempt to keep pace with these developments.

As part of the development of new procedures, we have undertaken to provide a detailed business and regulatory impact assessment for each of our bills. To some extent this is a new departure for law reform bodies, although any competent law reformer will obviously look closely at the probable impact of any reform that is suggested. We require to develop a form of impact assessment to reflect two common features of our projects, that they typically involve

the overhaul of a substantial area of law, rather than one specifically targeted reform, and that many of our recommendations are designed to provide facilities that people may use if they wish, but do not have to do so. Examples of the latter in our current work include facilities for execution of contracts in counterpart (by parties who are not in direct contact with each other), purpose trusts, and non-possessory securities over moveable property. Nevertheless, the formal consideration of the likely impact of our recommendations will be a significant aspect of our work in future.

I am pleased to note that the Scottish Ministers are continuing the practice of responding to our recommendations within a period of three months after submission of a report. I am also pleased to record that the Lord Chancellor and Secretary of State for Justice has written to me stating that he would write to the Commission Chairman each year giving a report as to implementation by the United Kingdom Government of Scottish Law Commission reports in reserved areas. These are very positive developments.

I must also pay tribute to Scottish Ministers, in particular the Cabinet Secretary for Justice and the Minister for Parliamentary Business, for their interest in the Commission's work and their help with ensuring more effective implementation procedures. This extends to the help and encouragement that we continue to receive generally from Scottish Ministers, and also from officials in the Scottish Government Justice Directorate.

Overall, I am very pleased to record that the need for law reform is now generally recognised in Scotland. In previous publications I have drawn attention to the way in which other relatively small jurisdictions, such as New Zealand and Jersey, have very active programmes of law reform and make a serious point of keeping their law up to date. The work of a law reform agency is very important in smaller jurisdictions because, owing to the limited number of cases that come to court, it is difficult to achieve extensive judicial development of the law.

During the year we have had extensive discussions with representatives of the financial and business communities in Scotland in connection with our projects, and a feature that has been stressed in these discussions, notably with the financial community, is the need for certainty in the law. This can best be achieved by well-targeted legislation which clarifies doubtful areas and sets a clear and coherent conceptual structure within which both lawyers and the public can work.

It is widely thought to be important that Scotland should be perceived internationally as an attractive place to do business and to invest funds. To achieve that end, it is essential that our system of commercial law should be adapted to current needs. Three of our current projects are of direct relevance to this task. First, the law of contract is obviously the bedrock of economic transactions, and we are currently considering how contracts may be negotiated and concluded remotely, using electronic communications and advanced electronic signatures. This should, we hope, be of great utility in cases where the parties negotiating a contract or a series of contracts are remote from one another or are numerous, or where both of these elements are present. Secondly, our project on security over moveable property is addressing what is probably the single greatest deficiency in Scots law, the lack of a non-possessory security over moveable property that is available for general use. We have consulted widely on this issue and we are now moving towards a proposed reform of the law. Thirdly, our project on the law of trusts, which is to report in the course of 2012, will recommend the complete overhaul of the legislation governing trusts in Scotland, to bring it in to line with current best practice and the best international standards. In this project we are particularly concerned to take account of the use of the trust in a wide variety of commercial transactions, which has been one of the most noticeable developments in the law over the last 20 years or so. We have consulted with representatives of the financial services industry, which is of course a major component in the Scottish economy, to

ensure that the Scottish trust meets their needs. I very much hope that all of these projects will result in legislation in the near future; if that is achieved it will be a very major step towards the thorough modernisation of Scots commercial law.

A further development that I should note involves projects undertaken with the Law Commission for England and Wales. Over the years we have carried out a large number of joint projects, and we are continuing at present with a number of such projects. In their current programme, the English Commission has undertaken a number of projects in areas of law that, under the Scotland Act 1998 are reserved to Westminster and which have an impact in Scotland, in some cases a very important impact. We have taken the view that we ought to be involved in these projects to some extent, but owing to a lack of resources we cannot treat them as full joint projects; to do so would take away resources from our programme work and from references from Scottish Ministers. What we will do, therefore, is to concentrate on three objectives: first, we will ensure that any distinctive aspects of Scots law are fully taken into account; secondly, we will ensure that the consultation exercise includes appropriate representatives of Scottish interests, so that the Scottish position is properly understood; and thirdly, we will have an input into policy, once again to ensure that Scottish interests are properly considered. The first such project relates to the Electronic Communications Code, the statute and subsidiary legislation that permits the providers of electronic services of every sort to obtain access to land and buildings to insert connections and equipment. That is obviously an area of immense importance, and it is one where there may be a distinctive Scottish point of view. Future similar projects may include data sharing by public bodies and unjustified threats of trademark and design litigation.

In other fields, we have developed links with the Malawi Law Commission; this forms part of the Scottish Government's Programme to assist the development of the legal system in Malawi. Our links with Malawi are set out on page 31 of this Report.

During the year we have been visited by representatives of a number of other law commissions and other legal bodies. In September Sir Grant Hammond, the President of the New Zealand Law Commission, came to see us, to discuss the position of law reform agencies in our two jurisdictions and the projects that we are both currently carrying out on the law of trusts. We very much value our links with the New Zealand Law Commission; Scotland and New Zealand are of comparable size, and in large measure confront similar challenges. In September we received a visit from a delegation from the Uganda Law Reform Commission, and in March we were visited by Mr Justice Cromwell, of the Supreme Court of Canada.

So far as the Commission itself is concerned, Professor George Gretton demitted office as a Commissioner in April, to return to Edinburgh University. I must express my gratitude for all the very valuable work that he has performed at the Commission, both generally and in the field of property law. In the field of property law, his major work was in the project on land registration, which has resulted in the Land Registration etc. (Scotland) Bill, and the project on moveable property. In both projects his personal contribution was of the highest quality. He has been replaced as a Commissioner by Dr Andrew Steven, who joined us from Edinburgh University in September. I should also record that my own term of office as Chairman came to an end in December 2011. I am currently continuing as Acting Chairman until a successor is appointed, probably in April 2012. This will accordingly be my last foreword to the Commission's annual reports. I would at this point like to record my appreciation of the dedication and enthusiasm of my fellow Commissioners and the entire staff of the Commission over the last five years. I very much hope that in the years ahead they will continue with their work, to make Scots law one of the world's best legal systems.



THE HON LORD DRUMMOND YOUNG  
Chairman

## Publications 2011

PUBLICATION	DATE OF PUBLICATION
Annual Report 2010 (Scot Law Com No 223)	23 February 2011
Review of Contract Law: Discussion Paper on Interpretation of Contract (DP No 147)	25 February 2011
Discussion Paper on Supplementary and Miscellaneous Issues relating to Trust Law (DP No 148)	7 April 2011
Consumer Redress for Misleading and Aggressive Practices: a Joint Consultation Paper (Joint Consultation Paper with the Law Commission) (DP No 149)	12 April 2011
Discussion Paper on Criminal Liability of Partnerships (DP No 150)	11 May 2011
Discussion Paper on Moveable Transactions (DP No 151)	24 June 2011
Report on Criminal Liability of Partnerships (Scot Law Com No 224)	13 December 2011
Insurance Contract Law: Post Contract Duties and other Issues: a Joint Consultation Paper (Joint Consultation Paper with the Law Commission) (DP No 152)	20 December 2011

These publications are available on our website [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

## Other publications

We also published the following papers during 2011. These papers are not included in our numbered series of printed discussion papers and reports but are available in electronic form on our website.

### Consolidation of bankruptcy legislation

On 15 August 2011 we issued a Consultation Paper on the Consolidation of Bankruptcy Legislation in Scotland, inviting comments on our provisional proposals for pre-consolidation amendments to the Bankruptcy (Scotland) Act 1985.

### Proposal for a Common European Sales Law

On 10 November 2011 we and the Law Commission for England and Wales published joint advice to the UK Government on the potential advantages of and problems with the proposed Common European Sales Law. Links to the joint advice (including a summary of its conclusions), the European Commission's proposed Regulation on a Common European Sales Law and sources of background information can be found on our website.

### Consultation Paper on Defects in the Exercise of Fiduciary Powers

On 9 December 2011, as part of our review of trust law, a Consultation Paper on Defects in the Exercise of Fiduciary Powers was published on our website. The Paper invites views on whether decisions made by trustees and other fiduciaries should be capable, in certain circumstances, of being reduced in order that a further decision can be made.

Please see our website for further information about our publications

[www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)



## Implementation of our reports

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

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

During 2011 we continued our efforts to work with the Scottish Government and the UK Government in relation to Commission reports which have not so far been implemented.

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

### Acts passed by the Scottish Parliament in 2011

#### Damages (Scotland) Act 2011

The Damages (Scotland) Act 2011 was passed by the Scottish Parliament on 3 March 2011 and received Royal Assent on 7 April 2011. The Act implements recommendations in our Report on Damages for Wrongful Death, published in September 2008.

#### Double Jeopardy (Scotland) Act 2011

The Double Jeopardy (Scotland) Act 2011 was passed by the Scottish Parliament on 22 March 2011, received Royal Assent on 27 April and came fully into force on 28 November 2011. It implements our Report on Double Jeopardy, published in December 2009, although in a number of respects it goes beyond the Commission's recommendations.

### Bills introduced in the Scottish Parliament in 2011

#### Land Registration etc. (Scotland) Bill

The Land Registration etc. (Scotland) Bill was introduced in the Scottish Parliament on 1 December 2011. The Bill follows a consultation paper issued by the Registers of Scotland on behalf of the Scottish Ministers on the recommendations contained in our Report on Land Registration, published in February 2010. The Bill is heavily based on the draft in our Report and also contains additional provisions, for example relating to the use of electronic documents.

#### Long Leases (Scotland) Bill

Our Report on Conversion of Long Leases was published in December 2006. The Report recommended the conversion of ultra-long leases in Scotland to ownership.

A Bill was introduced in the Scottish Parliament in November 2010, following a consultation exercise undertaken by the Scottish Government in March 2010. Due to time pressures, the Bill fell in March 2011 when the Parliament was dissolved for the election.

Following the announcement in the Scottish Government's Programme for Government 2011-2012, the Bill was re-introduced in the Scottish Parliament shortly after the end of the reporting year (on 12 January 2012). It will be the final part of a series of legislative reforms to the structure of land law in Scotland based on Reports published by the Commission.

### Act passed by the United Kingdom Parliament in 2011

#### Charities Act 2011

The Charities Act 2011 was passed by the UK Parliament on 13 December and received Royal Assent on 14 December 2011. The Act consolidates the Charities Act 1993 and other enactments which relate to charities. It implements a Bill drafted by the Law Commission for England and Wales with

assistance from the Scottish Law Commission in connection with the Scottish aspects of the consolidation.

## Bill introduced in the UK Parliament in 2011

### Consumer Insurance (Disclosure and Representations) Bill

The Consumer Insurance (Disclosure and Representations) Bill was introduced in the UK Parliament on 16 May 2011. The Bill completed the House of Lords stages on 17 January 2012 and is now proceeding through the House of Commons. It is following a special procedure for consideration of certain Law Commission Bills.

The Bill seeks to give effect, with minor modifications, to the recommendations in the joint Report by the Scottish Law Commission and the Law Commission for England and Wales on Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation, published in December 2009.

## Government responses to our recommendations

### Consumer remedies for faulty goods

Our Report on Consumer Remedies for Faulty Goods was published jointly with the Law Commission for England and Wales in November 2009. The subject matter is reserved to the UK Parliament in terms of the Scotland Act 1998. The UK Government is considering the Report in the context of the EU Consumer Rights Directive which was formally adopted by Member States in October 2011 and our understanding is that the topic may form part of the proposed UK Consumer Bill of Rights which was announced in September 2011.

### Unfair terms in contracts

Our joint Report with the Law Commission for England and Wales on Unfair Terms in Contracts was published in February 2005. The recommendations have been accepted in principle by the UK Government and we understand that, as is the case with consumer remedies for faulty goods, the topic may be included in the proposed UK Consumer Bill of Rights.

## The law of damages

The Scottish Government intends to publish a consultation paper in early 2012 seeking views on implementation of our Reports on Psychiatric Injury, published in August 2004 and Personal Injury Actions: Limitation and Prescribed Claims, published in December 2007. The consultation paper will also cover issues from our Report on Damages for Wrongful Death, published in September 2008, which were not dealt with in the Damages (Scotland) Act 2011.

## Proposal for a Common European Sales Law

Following publication in November 2011 of our joint advice with the Law Commission for England and Wales on the European Commission's proposal for a Common European Sales Law, the UK Ministry of Justice has indicated that it intends to undertake consultation on the advice during 2012. The aim of consultation would be to gather the views of a wider public in order to inform the negotiations on the European Commission's proposal which are being undertaken by the EU Member States.

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

## Law reform projects

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

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

During 2011 work continued on projects under our Eighth Programme of Law Reform which covers the period from 2010 to the end of 2014.

#### Item 1 - Moveable transactions

##### *Project Team*

**Dr Andrew Steven**, Commissioner

**John Dods**, Project Manager

**Neil Campbell**, Legal Assistant

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

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

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

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

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

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

The consultation period for this project has now closed and we have received nearly 40 responses. We are about to start work on analysing the responses in detail. We would then intend to discuss some of the major issues with interested parties.

In developing our recommendations for reform we also have the benefit of the views of the practitioners and academics who took part in a Symposium on Reform of Security over Moveable Property in October 2011. This was organised by the Centre for Private Law at the University of Edinburgh and considered the proposals for reform put forward by the Commission.

## Item 2 - Trusts

### *Project Team*

**The Hon Lord Drummond Young**, Chairman

**Charles Garland**, Project Manager

**Afson Barekat**, Legal Assistant

We have continued to work on the major long-term project on trust law, which was carried forward into our Eighth Programme.

In April 2011 we published our eighth Discussion Paper on this area of the law, which sought views on a number of new issues as well as further views on revised proposals in areas we had already covered in previous Discussion Papers. The new topics included: private purpose trusts, protectors, trusts to hold the controlling interests in companies, information to be provided to beneficiaries, and error and other defects in trustees' exercise of discretionary powers. We raise these topics because we think that it is vital that the law of trusts in Scotland should meet contemporary needs in the fields of investment, financial services and estate planning. Investment and financial services are of great importance to the Scottish economy, and the trust is one of the main legal vehicles used in these fields. At present, we do not think that the Scots law of trusts is adequate in this respect. We also note a very welcome movement in various parts of the world to review and reform trust law. A current example of this can be found in the work of the New Zealand Law Commission, which has embarked on a general review of the law, taking account of the commercial importance of the trust for the financial services industry.

We also published a short Consultation Paper in December 2011 on Defects in the Exercise of Fiduciary Powers, seeking comments on proposals which we developed in the light of responses to our eighth Discussion Paper, which contained a discussion of this topic. Our intention is to issue a further very brief consultation paper early in 2012 on the new

topic of whether charitable and other public trusts might have a statutory power to amalgamate certain of their functions.

In addition to this, we have begun work on a report which will cover the topics on which we have consulted, with the exception of the subject-matter of our Discussion Paper on the Nature and Constitution of Trusts (published in 2006), on which we do not presently envisage the need for legislation. We have also begun the drafting process for a new Trusts (Scotland) Bill to replace and update the Trusts (Scotland) Act 1921 and a number of other pieces of legislation. We intend to include provisions contained in the draft Bill annexed to our Report on Variation and Termination of Trusts, published in March 2007. We plan to have the report completed in 2012.

## Item 3 - Judicial factors

### *Project Team*

**Patrick Layden QC TD**, Commissioner

**Gillian Swanson**, Project Manager

**Andrew Blain**, Legal Assistant

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

A judicial factor, who can be appointed in a variety of circumstances, is someone appointed by the court to look after or gather in and distribute property belonging to someone else, often when there is no other course of action available. In practice, most judicial factors are solicitors or accountants, although anyone can be appointed.

The law in this area is governed mainly by 19th century legislation which is so out of date that it is no longer fit for purpose. Accordingly, the principal aim of this project is to modernise and simplify the legislation.

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

We are now working towards the publication of a report and draft Bill.

#### Item 4 - Homicide

##### *Project Team*

**Patrick Layden QC TD**, Commissioner

**Alastair Smith**, Project Manager

**Andrew Blain**, Legal Assistant

The Seventh Programme of Law Reform included a criminal law project to review the defences of provocation, self-defence, coercion, and necessity. Due to the need to concentrate on urgent references on Crown appeals and double jeopardy, we were not able to start work on the project before the Programme came to an end. We have therefore included the project in our current Programme to be undertaken as part of a review of homicide generally.

We have started our research work with a view to preparing a discussion paper. The aim is to complete the project during the period of the Eighth Programme.

#### Item 5 - Criminal liability of partnerships

##### *Project Team*

**Patrick Layden QC TD**, Commissioner

**Alastair Smith**, Project Manager

**Andrew Blain**, Legal Assistant

Our Report on Criminal Liability of Partnerships was published in December 2011. It recommended that, pending the introduction of the more general reform proposed in the Law Commissions' Joint Report on Partnership Law, published in 2003, targeted legislation should be introduced to provide that the dissolution of a partnership will not prevent its prosecution.

The Report proposed that it should be competent to prosecute a partnership during a period of 5 years from the date of its dissolution and that it should be made clear that dissolution does not affect the individual liability of partners. A draft Bill, annexed to the Report, would give effect to these recommendations.

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

##### *Project Team*

**Professor Hector MacQueen**, Commissioner

**Charles Garland**, Project Manager

**Afson Barekat**, Legal Assistant

As part of our Eighth Programme, we are currently engaged on a wide-ranging review of contract law, the first publication in which was our Discussion Paper on Interpretation of Contract, published in February 2011.

Since then we have been working on a discussion paper on formation of contract, which we aim to publish in 2012. In the discussion paper we will

return to the "postal acceptance rule" and the "battle of the forms", both of which were discussed in our Report on Formation of Contract, published in 1993, which took as its yardstick the UN Convention on Contracts for the International Sale of Goods. Following the publication in 2009 of the Draft Common Frame of Reference (DCFR) which contains, amongst other things, a set of rules on contract law and was drafted by a team of eminent academics from a variety of European countries, we are using the DCFR as a means of "health-checking" the current rules of Scots contract law.

Our discussion paper on formation of contract will also examine the issue of "execution in counterpart", which governs the way in which a contract – or, more typically, a suite of contracts forming a single deal – is signed. This topic has attracted little commentary or academic study yet is of some significance for the way in which contracts are formed.

Looking to the future, our project will cover an examination of other topics including remedies, third party rights, and penalty clauses.

### Item 7 - Adults with incapacity

#### Project Team

**Ms Laura Dunlop QC**, Commissioner

**Susan Sutherland**, Project Manager

**Susan Robb**, Solicitor

Our Eighth Programme includes a project to consider the potential application of Article 5 of the European Convention on Human Rights (the right to liberty) in relation to care arrangements of people who fall within the scope of the Adults with Incapacity (Scotland) Act 2000.

In particular we are considering whether the 2000 Act should be amended following the decision of the European Court of Human Rights in the case of *HL v UK* (2004) 40 EHRR 761, often referred to

as the "Bournewood case", which concerned the detention in a psychiatric hospital of a person with learning disabilities. The Court held that there had been a violation of Article 5 of the Convention because the person concerned had not been detained in accordance with a procedure prescribed by law. Following the case, specific procedures were introduced in England and Wales and we are considering whether the 2000 Act needs to be amended to introduce such procedures in Scotland.



Ms Laura Dunlop QC

We have been studying a number of English decisions on this topic which we have found useful in developing our proposals for reform. During the year we attended several events organised by bodies involved in this area. These included a discussion forum held by Alzheimer Scotland on decision-making in relation to adults with incapacity, and a seminar held by the Legal Services Agency on developments in incapacity law. We also organised a meeting of the project advisory group at the Dementia Services Centre at Stirling University. The

visit to the centre gave us an opportunity to see examples of the practical ways in which adults with dementia can be assisted. Towards the end of the year we attended the Mental Welfare Commission's annual road show about the working of the 2000 Act.

Work is progressing on a discussion paper which we aim to publish in 2012.

### Item 8 - Compulsory purchase

#### Project Team

**Patrick Layden QC TD**, Commissioner

**Dr Andrew Steven**, Commissioner

**John Dods**, Project Manager

**Neil Campbell**, Legal Assistant

The Eighth Programme includes a medium-term project to examine the law and practice of compulsory purchase in Scotland. Much of the law is still based on the Lands Clauses (Consolidation) (Scotland) Act 1845 and is clearly in need of review and updating. The project involves a number of major issues relating to both the procedure of compulsory purchase and the issue of compensation. Our work will complement the steps taken by the Scottish Government to help local authorities, and others, increase their understanding of compulsory purchase procedures and policy.

Mr Layden gave a presentation on the Commission's project at a conference in October organised by the Scottish Government entitled "Moving forward with compulsory purchase: working together to promote good practice". He also chaired a workshop on law reform at the conference.

In view of the need to concentrate resources on other projects, we have so far only carried out preliminary work but we hope that more substantial progress will be possible in the course of 2012.

### Item 9 - Heritable securities

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

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

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



Dr Andrew Steven

The law of heritable security is of considerable economic significance and is relevant to property of every type. It is time for the legislation to be given a thorough overhaul. Finally, the question of "Islamic mortgages" needs to be reviewed.

The issues are complex and will require considerable research. We have carried out some very preliminary work but we will not be able to set up a project team and take things forward until some of our other property law projects have been completed.

#### Item 10 - Prescription and title to moveable property

##### Project Team

**Dr Andrew Steven**, Commissioner

**Alastair Smith**, Project Manager

**Neil Campbell**, Legal Assistant

As part of our Eighth Programme we are reviewing the law of prescription and title to moveable property.

The principal focus of the project is on positive (acquisitive) prescription of moveable property: that is, with the question of whether the passage of time converts possession to ownership. This is mainly of relevance to art and antiquities, since most other corporeal moveable property has a short life-span and declines in value over time. The present law is unclear.

The project also addresses the negative prescription of title to moveable property and the question of whether abandoned moveable property should continue to fall to the Crown.

We published our Discussion Paper on Prescription and Title to Moveable Property, in December 2010, inviting comments on a number of questions and proposals for reform, and received helpful responses from consultees. We expect to publish our report in the first half of 2012.

#### References from Scottish Ministers

During 2011 we also continued work on our remaining reference from Scottish Ministers on criminal law. We received no new references from Scottish Ministers during 2011.

#### Similar fact evidence and the *Moorov* doctrine

##### Project Team

Patrick Layden QC TD, Commissioner

Alastair Smith, Project Manager

Andrew Blain, Legal Assistant

Our project on similar fact evidence and the *Moorov* doctrine is the final project to be conducted under the reference made by the Scottish Ministers in November 2007. (The previous Reports were Crown Appeals, published in 2008 and Double Jeopardy, published in 2009.)

The current project is reviewing the rules as to when it is permissible in proving a criminal charge to lead evidence showing that the accused has committed other crimes, or is otherwise of "bad character". Currently, a person's previous convictions cannot be presented as evidence in Scottish courts, but such convictions can be used in England and can be used in sentencing in Scotland once someone has been convicted.

We published our Discussion Paper on Similar Fact Evidence and the *Moorov* Doctrine in December 2010. We expect to publish a report, together with draft Bill, in the first half of 2012. The report will consider whether the blanket rule against leading evidence of previous convictions remains appropriate, or whether it should be possible, in some cases, to refer to the accused's record in proving a charge. It will also consider the *Moorov* doctrine, whereby evidence of a single witness to one offence may be corroborated by the evidence of a single witness to another offence that is the subject of a charge in the same trial, and whether this should be reformed and restated in statute or treated as part of a broader rule regarding the use of evidence of similar facts.

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

We continued work during 2011 on a number of joint projects with the Law Commission for England and Wales. The projects relate mainly to areas of the law which are reserved to the United Kingdom Parliament in terms of the Scotland Act 1998.

### Insurance contract law

#### Project Team

**Professor Hector MacQueen**, Commissioner

**Gillian Swanson**, Project Manager

**Victoria Wright**, Legal Assistant

We are assisting the Law Commission with this major project which they are carrying out under their Tenth Programme of Law Reform.

In 2011, we turned our attention to a number of topics on which Issues Papers had been published during the previous year. This culminated in the publication, in December 2011, of the second joint Consultation Paper relating to this project. It covers post contract duties and other issues, namely damages for late payment, insurers' remedies for fraudulent claims, insurable interest and policies and premiums in marine insurance.

Under English law, an insured is not entitled to damages for any loss suffered through delay in receiving payment of a valid claim. This differs from the law in Scotland, and appears increasingly anomalous. There was strong support from respondents to the Issues Paper for bringing the law of England and Wales into line with the law in Scotland, which follows the principles of normal contract law. The key proposals are that an insurer's primary obligation should be to pay valid claims after a reasonable time; insurers who unreasonably



Our current legal assistants (left to right) Neil Campbell, Afson Berekat, Andrew Blain and Victoria Wright

delay or do not pay a valid claim should be liable for damages for foreseeable loss, as they would under general contract law; and, in business insurance, contract terms could be used to limit or exclude an insurer's liability to pay damages provided that the delay is due to an honest error made in good faith.

The law on insurers' remedies for fraudulent claims is convoluted and confused. We propose that fraud should not avoid the contract from the beginning; instead the fraudster should forfeit the whole claim and all subsequent claims. We also propose that, in some circumstances, the insurer should be entitled to claim damages from a fraudulent insured for the costs of investigating the claim.

Responses to the Issues Paper on Insurable Interest revealed strong support for retaining the principle of insurable interest for all types of insurance. For indemnity insurance we propose to replace the mix of archaic statutes and common law with a clear restatement of the principles. For life insurance, we propose to widen the categories of those who may insure the life of another.

We propose to abolish the requirement of a formal marine policy, set out in section 22 of the Marine Insurance Act 1906. Responses to the Issues Paper indicated that this section was out-dated and no longer used. We also propose reforms to section 53(1) of the Marine Insurance Act 1906 which makes a broker liable to pay premiums to the insurer. This is a complex provision which could have surprising consequences for an insurer if the broker were to become insolvent.

In 2012 we will be publishing a third consultation paper. It will cover business insurance and warranties.

## Consumer redress for misleading and aggressive practices

### *Project Team*

**Professor Hector MacQueen**, Commissioner

**Gillian Swanson**, Project Manager

**Victoria Wright**, Legal Assistant

This is a joint project with the Law Commission which stems from a reference from the UK Department for Business, Innovation and Skills.

The targeting of consumers by misleading or aggressive commercial practices is a problem affecting a large proportion of the population with many of those affected being among the most vulnerable members of society.

The Consumer Protection from Unfair Trading Regulations 2008 (the "CPRs") outline two categories of prohibited commercial practices: those which are unfair if they would cause the average consumer to make a transactional decision he or she would otherwise not have made (misleading practices, misleading omissions and practices which are contrary to professional diligence); and those which are unfair in all circumstances (a blacklist of 31 banned practices). The CPRs do not, however, provide consumers with a direct cause of action where they have suffered loss as a result of an unfair commercial practice. Consumers must rely instead upon the remedies which they are afforded under the existing private law; for example, under the law of misrepresentation. Our review of the current private law in this area has found that it is fragmented, complex and unclear.

Our joint Consultation Paper on Consumer Redress for Misleading and Aggressive Practices was published in April 2011. As part of the consultation process, the proposals were discussed at a workshop, organised by the London School of Economics, which took place in May.



Professor Hector MacQueen, with David Hertzell and Tamara Goriely of the Law Commission, and Gillian Swanson

Our aim is to provide a simpler, clearer, and more cohesive framework for consumer protection from misleading or aggressive commercial practices.

We propose a new scheme of remedies which would apply if consumers proved that the aggressive or misleading commercial practice was likely to cause the average consumer to enter a contract or make a payment which would not otherwise have been made and that it was a significant factor in their own decision. The proposed remedies are set out in two tiers; tier 1 remedies would be provided where the consumer establishes a misleading or aggressive practice, and the focus would be on returning consumers to the position in which they would have been had the misleading or aggressive practice not occurred. Tier 2 remedies resemble traditional damages, and would be awarded if consumers could prove they had suffered actual loss over and above the tier 1 recovery.

We aim to produce a final report in the spring of 2012.

## Level crossings

### *Project Team*

**Dr Andrew Steven**, Commissioner

**Susan Sutherland**, Project Manager

**Susan Robb**, Solicitor

We are assisting the Law Commission with a project to review the law relating to level crossings. The project is included in the Law Commission's Tenth Programme of Law Reform, but is being taken forward as a joint project because much of the relevant legislation applies to Scotland as well as to England and Wales.

The law governing level crossings is complex and difficult to find. It involves Victorian legislation relating to the railways as well as more recent legislation on health and safety, planning, roads

and access to land. The key aim of the project is to simplify the legislative framework.

The Commissions published a joint Consultation Paper on Level Crossings in July 2010, inviting comments on proposals and questions on reform of the legislation governing the regulation of safety, management and closure of level crossings. We received over 100 responses from a wide range of interested bodies and individuals. We have reviewed the policy in light of the responses we received.

We are now working on a report and draft Bill which we expect to publish in the autumn of 2012.

#### Advice on the European Commission's proposal for a common European Sales Law

##### Project Team

**Professor Hector MacQueen**, Commissioner

**Charles Garland**, Project Manager

**Afson Barekat**, Legal Assistant

Following a request by the UK Government for advice on a number of questions on the European Commission's proposals for the reform of European contract law, we produced advice, jointly with the Law Commission for England and Wales, in November 2011. The UK Ministry of Justice intends to consult on the advice during 2012.

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

##### Regulation of health care professionals

##### Project Team

**Patrick Layden QC TD**, Commissioner

**John Dods**, Project Manager

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

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

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

A consultation paper is likely to be published in the spring of 2012.

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

## Progress in 2011 on our law reform projects: summary

Project	Publications 2011	Position at the end of 2011
Moveable transactions (Eighth Programme, item 1)	Discussion Paper on Moveable Transactions (DP No 151) published June 2011	Considering responses with a view to preparation of a report and draft Bill
Trusts (Eighth Programme, item 2)	Discussion Paper on Supplementary and Miscellaneous Issues relating to Trust Law (DP No 148) published April 2011 Consultation Paper on Defects in the Exercise of Fiduciary Powers, published on our website December 2011	Working on report and draft Bill, to be published in 2012
Judicial factors (Eighth Programme, item 3)		Working on report and draft Bill, to be published in 2012
Homicide (Eighth Programme, item 4)		Research work started
Criminal liability of partnerships (Eighth Programme, item 5)	Discussion Paper on Criminal Liability of Partnerships (DP No 150) published May 2011 Report on Criminal Liability of Partnerships (Scot Law Com No 224) published December 2011	Project completed December 2011
Law of contract in the light of the DCFR (Eighth Programme, item 6)	Review of Contract Law: Discussion Paper on Interpretation of Contract (DP No 147) published February 2011	Working on a discussion paper on formation of contract, to be published in 2012
Adults with incapacity (Eighth Programme, item 7)		Working on discussion paper to be published in 2012
Compulsory purchase (Eighth Programme, item 8)		Some preliminary work undertaken
Heritable securities (Eighth Programme, item 9)		Some preliminary work undertaken
Prescription and title to moveable property (Eighth Programme, item 10)		Working on report and draft Bill, to be published in 2012

Project	Publications 2011	Position at the end of 2011
Similar fact evidence and the <i>Moorov</i> doctrine (Reference from Scottish Ministers)		Working on report and draft Bill, to be published in 2012
Insurance contract law (Joint project with the Law Commission for England and Wales)	Insurance Contract Law: Post Contract Duties and other Issues: a Joint Consultation Paper (DP No 152) published December 2011	Working on third joint consultation paper, to be published in 2012
Consumer redress for misleading and aggressive practices (Joint project with the Law Commission for England and Wales)	Consumer Redress for Misleading and Aggressive Practices: a Joint Consultation Paper (DP No 149) published April 2011	Working on joint report and draft Bill, to be published in 2012
Level crossings (Joint project with the Law Commission for England and Wales)		Working on joint report and draft Bill, to be published in 2012
Regulation of health care professionals (Joint project with the Law Commission for England and Wales and the Northern Ireland Law Commission)		Working on joint consultation paper, to be published in 2012
Proposal for a Common European Sales Law (Joint project with the Law Commission for England and Wales)	An Optional Common European Sales Law: Advantages and Problems: Advice to the UK Government published November 2011	Project completed November 2011

## Consolidation and statute law repeals

### Consolidation

#### Project Team

**The Hon Lord Drummond Young**, Chairman

**Susan Sutherland**, Project Manager

**Susan Robb**, Solicitor

One of the Commission's statutory functions is to undertake work on the consolidation of legislation. The work involves preparing a draft Bill to bring together earlier enactments on an area of law, with a view to making the legislation easier to find and more user-friendly while at the same time tidying up the statute book.

#### Bankruptcy legislation

During 2011 we continued work on preparation of a Bill to consolidate the legislation relating to bankruptcy in Scotland. We are being assisted by officials in the Accountant in Bankruptcy's Office who are supporting the project.

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

Our Consultation Paper on the Consolidation of the Bankruptcy Legislation in Scotland was published in electronic form in August 2011. It outlined our provisional proposals for changes to the 1985 Act. The changes largely relate to technical matters and are intended to remove anomalies, treat like cases in the same way or to omit provisions that no longer serve any purpose. In the Consultation Paper, we invited comments on drafts of a consolidation Bill and of an order which we envisage would be made under section 104 of the Scotland Act 1998 to give effect to certain provisions of the Bill in other parts of the UK.

The consultation period ended on 30 November 2011 and we received a considerable number of helpful responses. Consultees agreed that the 1985 Act was in need of consolidation and most of them strongly supported the proposed Bill. Some consultees raised matters of policy in relation to bankruptcy which we have brought to the attention of the Scottish Government and the Accountant in Bankruptcy.

We aim to publish our report on the consolidation during 2012.

#### Charities legislation

Some of our consolidation work involves assisting in the drafting of Bills prepared by the Law Commission for England and Wales. Joint consolidation projects relate to legislation applying to Great Britain or the United Kingdom. The consolidation Bills are introduced in the UK Parliament but in so far as they include matters within the legislative competence of the Scottish Parliament require the approval of that Parliament before introduction.

In 2011 the Law Commission completed work on a Bill to consolidate the legislation relating to charities. We assisted the Commission in relation to the Scottish aspects of the consolidation Bill. We also provided comments on a draft Order to make pre-consolidation amendments to the existing legislation to facilitate the consolidation.

The consolidation Bill was introduced in the UK Parliament in March 2011 and received Royal Assent on 14 December 2011.

We have no outstanding consolidation projects with the Law Commission.

## Statute law repeals

### *Project Team*

**The Hon Lord Drummond Young**, Chairman

**Susan Sutherland**, Project Manager

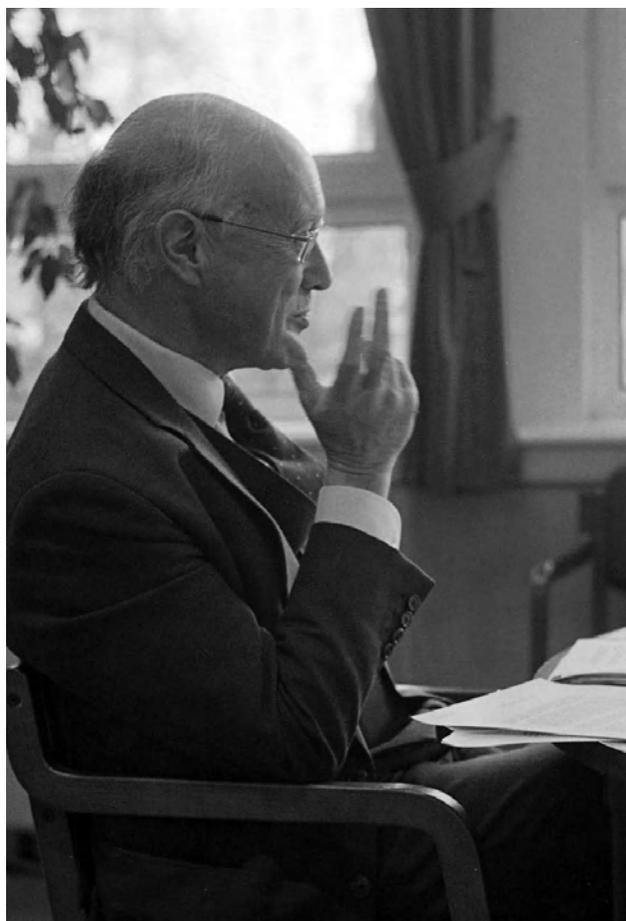
**Susan Robb**, Solicitor

Another of our functions under the Law Commissions Act 1965 is to recommend the repeal of legislation which has become redundant or otherwise unnecessary.

The aim of this work is to keep legislation up to date and make it easier for people to use. This is particularly important as legislation becomes more widely accessible on statute databases. Since 1965 the Commissions have published eighteen Statute Law Repeals Reports containing draft Bills which have all been implemented by the UK Parliament.

We undertake this work jointly with the Law Commission for England and Wales, who take the lead in preparing a report including a draft Repeals Bill. We assist with the preparation of repeal proposals and consult with appropriate bodies on any repeal proposals relating to Scotland.

We continued to work with the Law Commission during 2011 on preparation of the Nineteenth Report and draft Bill, which includes a number of Scottish repeals. The aim is to publish the Report in the first half of 2012. It is expected that the Bill will be introduced in the UK Parliament shortly thereafter. It will be considered by a joint committee of the Parliament under a special procedure for such Bills.



Lord Drummond Young, Chairman, at a Commission meeting

## Promoting law reform

The Commission continues to liaise with Government Ministers and officials, and other bodies, in order to promote law reform in Scotland. In planning for law reform work, including implementation of Commission reports, the Commission works closely with the Scottish Government; and with the UK Government, including the Scotland Office, and the Advocate General for Scotland and his Office.

We also work closely with the Law Society of Scotland and the Faculty of Advocates. We are indebted to members of the profession who serve as members of our advisory groups on particular law reform projects, in particular for the practical experience of the law that these members contribute to the law reform process.

The Commission has also raised the role of the Commission and the profile of law reform at the Scottish Parliament, in order to encourage the implementation of law reform measures and consideration of ways in which the capacity of the Parliament can be enhanced in order to deal with certain law reform Bills. The Commission held a seminar at Holyrood in June 2011 for MSPs and Parliamentary officials, to explain the role of the Law Commission and our current law reform projects. The Commission is grateful to Mr Rod Campbell MSP for hosting that event on behalf of the Commission. Lord Drummond Young and the Chief Executive Malcolm McMillan attended the business planning session of the Justice Committee of the Parliament in August 2011 and gave a presentation on the current and future work of the Commission. They also met with individual MSPs to discuss law reform.

We also value our links with the Universities in Scotland, and the contribution that legal academics make to our work. Last year the University of Edinburgh hosted two seminars with the Commission, one in February on our project on prescription and title to moveable property and one in October on our proposals on moveable transactions. These seminars were both well attended and the discussions were most useful to the Commission in taking forward these projects.

The Commission enjoys close links with other law reform bodies; in particular the Law Commission for England and Wales and the Northern Ireland Law Commission, with whom we carry out joint law reform projects. We have had regular contact also with the law reform bodies in Ireland and in Jersey, with very useful discussions in Jersey with experts on the law of trusts.

The Commission is pleased to make a regular contribution to the promotion of law reform at a wider level, on occasion welcoming to the Commission representatives from other jurisdictions and law reform bodies across the world. The Commission was delighted to receive a visit in September 2011 from the Honourable Sir Grant Hammond, President of the New Zealand Law Commission. The Commission maintains close links with the New Zealand Law Commission, and this visit afforded an opportunity to discuss a number of matters of common interest, such as organisation of the Commission, how we undertake research, and aspects of the law of trusts and of judicial factors. Exchanges with the New Zealand Law Commission have been particularly helpful for our projects on moveable transactions and trusts.

We enjoyed too a visit by a deputation from the Uganda Law Reform Commission in September 2011, who were undertaking a study tour in the UK in order to establish best practice with regard to statute law revision. An interesting meeting was held to discuss various aspects of statute law revision.

In November 2011 the Commission also received a visit from delegates from the Shanghai Intellectual Property Administration, who had a meeting with

Professor MacQueen to discuss aspects of intellectual property.



Delegates from the Shanghai Intellectual Property Administration with Professor Hector MacQueen and the Chief Executive, Malcolm McMillan



### Links with the Malawi Law Commission

The Commission's relationship with the Malawi Law Commission was developed during 2011, following the establishment of a link between the Commissions in 2010 as part of the Scottish Government's Programme on Capacity Building for Justice in Malawi. The Commission works closely with Challenges Worldwide, the development agency appointed by Scottish Ministers to prepare and deliver the Programme for the justice sector in Malawi.

One of the Commission's former legal assistants, Garry MacLean, continues to work, on a part-time basis now, at the Malawi Law Commission, assisting their intellectual property team which is currently undertaking a review of the law of patents.

The Chairman, Lord Drummond Young, and the Chief Executive, Malcolm McMillan, visited Malawi in March 2011. The first part of the visit, in Lilongwe, was used to promote law reform and was hosted by the Malawi Law Commissioner, Mrs Gertrude Hiwa. The second part of the visit, in Blantyre, was hosted by the Chief Justice for Malawi, and opened links with the judiciary and members of the legal profession. Lord Drummond Young delivered two keynote addresses. One was on law reform to an audience comprising judges, Government law officers, senior Government officials, the Malawi Law Commission, ambassadors or their representatives, and the media. The second address covered judicial ethics and judicial training, and was delivered to an audience of members of the judiciary and the legal profession.

The Chief Executive was then invited by the Malawi Law Commissioner to give a paper on law reform at a Conference of the Association of Law Reform Agencies of Eastern and Southern Africa in November 2011. The conference was hosted by the Law Commission in Malawi, with the theme of the Role of Law Reform in Constitutionalism, the Rule of Law and Democratic Governance.

A copy of these addresses can be found on the Commission's website.

Further development work was carried out at the Malawi Law Commission in September 2011, at the request of that Commission. Training sessions and discussions on project management of law reform projects, and on legal research, were delivered by two of the Commission's Project Managers, Charles Garland and Alastair Smith.



Garry MacLean, Alastair Smith and Charles Garland in Lilongwe

# Law reform publications planned for 2012

## Scottish Law Commission Discussion Papers

- Formation of Contract
- Adults with Incapacity

## Joint Consultation Paper with the Law Commission for England and Wales

- Insurance Contract Law: Business Insurance – Pre-Contract Disclosure and Warranties

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

- Regulation of Health Care Professionals  
Regulation of Social Care Professionals in England

## Scottish Law Commission Reports

- Trust Law
- Judicial Factors
- Similar Fact Evidence and the *Moorov* Doctrine
- Prescription and Title to Moveable Property

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

- Consumer Redress for Misleading and Aggressive Practices
- Level Crossings

## Commissioners and staff

### Commissioners

The Hon Lord James Drummond Young, Chairman

Ms Laura Dunlop QC

Patrick Layden QC TD

Professor Hector MacQueen

Dr Andrew Steven

### Chief Executive

Malcolm McMillan

### Parliamentary Counsel (Consultant)

Gregor Clark CB

### Project Managers (Solicitors)

John Dods

Charles Garland

Alastair Smith

Susan Sutherland

Gillian Swanson

### Solicitor

Susan Robb

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Andrew Blain

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### Librarian

Nick Brotchie

### Office Manager

Jim Barbour

### Personal Secretaries

Joan Melville

Heather Ryan

### Administrative Staff

Iain Ritchie

Gordon Speirs

## The Commission's running costs 2011

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2011 were offset by payments received from Skills for Justice and the Royal Commission on the Ancient and Historic Monuments of Scotland for use of part of our office accommodation.

Expenditure	Year to 31 December 2011
<b>Salaries – Commissioners</b> (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£532,139
<b>Salaries – Chief Executive and legal staff</b> (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£668,348
<b>Salaries – Administrative staff</b> (including national insurance contributions and superannuation payments)	£214,623
<b>Accommodation</b> (including maintenance, rates and utilities)	£82,014
<b>Printing and publishing</b> (including costs of books and library purchases, binding, maintenance of equipment, printing costs of publications, photocopying and stationery)	£86,447
<b>Telephone and postage</b>	£9,045
<b>Travel and subsistence</b>	£3,909
<b>Miscellaneous</b> (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£30,314
<b>Total</b>	£1,626,839



### 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:

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