

Scottish Law Commission

(SCOT LAW COM No 123)

TWENTY-FOURTH ANNUAL REPORT 1988–89

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:

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SCOTTISH LAW COMMISSION

Report for the year ended 15th June, 1989

To: The Right Honourable the Lord Fraser of Carmyllie, QC,
Her Majesty's Advocate

In accordance with 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 Twenty-Fourth Annual Report of the Scottish Law Commission.

(Signed) C K DAVIDSON, *Chairman*
E M CLIVE
PHILIP N LOVE
GORDON NICHOLSON
W A NIMMO SMITH

KENNETH F BARCLAY, *Secretary*
7 September 1989

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

Twenty-Fourth Annual Report

Contents

<i>Page</i>	<i>Paragraph</i>	
1	1.1	PART I GENERAL SURVEY OF THE PAST YEAR
8	2.1	PART II PROGRESS OF LAW REFORM PROJECTS
8	2.2	Administrative law
8	2.4	Criminal law
8	2.4	General
8	2.5	Forfeiture and confiscation
8	2.6	Diligence
9	2.9	Evidence
10	2.11	Blood group tests, DNA tests and related matters
10	2.12	Family law
10	2.12	Law of children (incorporating legal capacity of minors and pupils)
10	2.14	Divorce
10	2.15	Obligations
10	2.15	Corporeal moveables
10	2.16	Rights in security over moveable property
11	2.18	Requirements of writing
11	2.19	Sale and supply of goods
11	2.20	Rights of relief and contributory negligence
11	2.21	Supersession of missives
11	2.22	Other obligations topics
11	2.24	Prescription and limitation of actions
11	2.24	Prescription and limitation of action (latent damage)
11	2.25	Private international law
11	2.25	Choice of law rules in tort and delict
11	2.26	Property law
11	2.26	Property law
12	2.27	Passing of risk in contracts for the sale of land
12	2.28	Recovery of possession of heritable property
12	2.29	Succession
13	2.31	Statute law
13	2.31	Consolidation
13	2.36	Statute law revision
13	2.38	Local legislation
14	2.41	Database group
14	2.42	Other matters
14	2.42	Class actions
14	2.43	Judicial factors
15	2.46	Powers of attorney
15	2.47	Floating charges and receivers
15	2.48	Miscellaneous: advice to Government Departments, etc
16		PART III CONSULTATION
16	3.1	The Law Commission for England and Wales
16	3.3	Working party on contract law
16	3.4	Other law reform organisations
16	3.5	The legal and other professions, etc
16	3.7	Conferences, seminars, etc

Page *Paragraph*

17 **PART IV MISCELLANEOUS**

17 **4.1** **Commissioners**

17 **4.3** **Staff**

17 **4.5** **Departmental committees and other bodies**

18 **4.6** Statute Law Committee

18 **4.7** Advisory committees on arbitration law

18 **4.8** **Scrutiny of Bills**

18 **4.9** **Appendices**

Appendix I

Membership of Working Parties

Appendix II

1. Scottish Law Commission—reports, etc published by Her Majesty's Stationery Office
2. Scottish Law Commission—consultative memoranda and discussion papers circulated for comment and criticism
3. Scottish Law Commission—other published documents
4. Scottish Law Commission—consultative documents not published and with restricted circulation
5. Scottish Law Commission—unpublished confidential documents

Appendix III

Statutory provisions relating to the Scottish Law Commission's proposals

Part I General survey of the past year

1.1 During the past year we have made substantial progress in our task of preparing and submitting proposals for law reform.

1.2 In April 1989 our Report on *Reform of the Ground for Divorce*¹ was published. We recommended that the ground for divorce in Scotland should continue to be the irretrievable breakdown of the marriage. As well as seeking views from consultees upon a Discussion Paper which was published in May 1988, we had regard to the results of a public opinion survey carried out on our behalf by System Three Scotland. Consultation revealed a wide range of proposals for reform, some of them being of a radical nature. A substantial number of consultees favoured the substitution of separation as the sole ground for divorce, the period required ranging from three months to more than two years. There was also a fair measure of support for a proposal that the sole ground of divorce should be the giving by one spouse to the other and to the court notice of an intention to divorce. Neither of these radical proposals won majority support. But it was plain from a study of the responses that most consultees agreed that the existing periods of separation, namely two years (with the defender's consent to divorce) or five years (even without such consent), are too long and give rise to avoidable rancour and recrimination. Among the consequences of this delay are protracted disturbance to the children of a marriage and intransigence in financial disputes. It was strongly maintained by experienced consultees that each of the two radical reforms proposed was objectionable in that it did not provide an adequate remedy for the spouse who had become the victim of a serious matrimonial offence. We therefore declined to recommend any fundamental change in the structure of the present divorce law. Our proposed reduction of the periods of separation to one year and two years respectively is a modest one, but we believe that it is likely to win a broad measure of public approval. The prime aim of our proposals is to make it easier for spouses, once they recognise that the marriage has broken down, to reach a financial settlement and to agree upon arrangements for the children. In this connection we have been favourably impressed by the work of the Scottish Association of Family Conciliation Services. One particular merit of that Association's work is that it encourages spouses to enter into discussion about these matters at an early stage, and thereby avoid the stress and anxiety associated with contested court proceedings.

1.3 During the past year our review of the law of succession has come near to completion. We are keenly aware in this area of the need to win a wide measure of public support for our recommendations. We consider it especially desirable to have broad public support for reform in relation to rights in intestacy. In this area also we have had regard to the results of public opinion surveys. The response from consultation has stimulated fresh thinking on critical areas of policy. During the year several revised proposals have been submitted to certain consultees. Among these consultees we set much store on the solicitor branch of the profession. Unfortunately, during the past year the legal profession in Scotland has been required to respond to an unusually heavy load of consultative work, not least that demanded of them by the Scottish Home and Health Department's Discussion Paper on the Legal Profession in Scotland. That additional burden is one of the reasons why the Law Society has found it difficult to meet all of our requests in time. Not only do we sympathise with their difficulty, but we take this opportunity to express our appreciation of, and admiration for, the care and public spirit shown by those professional bodies whose members are prepared to give much time in studying our papers and commenting perceptively and positively upon them.

1. (1989) Scot Law Com No 116.

1.4 Our Report on *Civil Liability—Contribution*¹ was published in December 1988. That Report contains proposals for reform in an area of law which, although technical and complex, has important practical application. The Report deals with rights of relief among joint wrongdoers and contributory negligence. On rights of relief we were concerned that the existing law has not kept pace with the need to apportion liability fairly. In recent years, with the revival of the third party procedure and the continuing extension of delictual liability, notably in relation to economic loss, the number of defenders and third parties cited in some types of action has increased. Grounds of liability alleged may be breach of contract or delict. We found general support for our dissatisfaction with the existing law which, while it allows the court to allocate liability among negligent wrongdoers as it considers just in the circumstances, in cases where breach of contract is the basis of liability against more than one party requires the contribution to be awarded in fixed proportions. As part of a new and comprehensive scheme regulating relief we have proposed that, whether the parties are found liable in delict or for breach of contract, relief should be awarded on an equitable basis against all those who have contributed to the pursuer's loss and injury. We were also concerned that the existing law may not encourage the early settlement of actions in that, to found a claim for contribution, one wrongdoer may have to wait until decree has been given against him before he can pursue a claim for contribution against a fellow wrongdoer. To alleviate that problem we have proposed that a claim for contribution should be competent whenever one wrongdoer has made a payment which has the effect of reducing or extinguishing the liability of another. At present there is doubt as to whether a plea of contributory negligence is available against a pursuer who avers a duty of care based upon contract. This point arises in, among others, reparation actions brought by pursuers who allege that the defender has failed in a duty of care arising out of a professional relationship. We consider that it is unfair for the pursuer to disable a defender from pleading contributory negligence simply by basing the action solely upon breach of contract. As part of our proposed reform of the law of contributory negligence we have recommended that the plea should be competent against a pursuer who has founded upon breach of a contractual duty of care.

1.5 We have made good progress in formulating proposals for reform of the law of diligence. In November 1988 two Discussion Papers were published, the first, No 78, entitled *Adjudications for Debt and Related Matters*, and the second, No 79, *Equalisation of Diligences*. Both of these papers are the fruit of prolonged research. As regards adjudications for debt, they reveal that for centuries the remedy has been clumsy and defective. Among criticisms levelled against the diligence are the long period, ten years, that has to elapse before the creditor can obtain full ownership of the subjects, the absence of any rule requiring an adjudger to account to the debtor for the value of the property on foreclosure, and the lack of provision for holding a compulsory sale with a view to satisfying the debt out of the sale of proceeds. So unjust is the operation of the diligence to creditors and debtors alike that its use has become very rare. Under our provisional proposals for reform adjudications are to be transformed into an attachment followed by the remedy of sale which can be exercised relatively quickly, leaving foreclosure as an alternative remedy to be authorised by the court in default of sale. We recognise that the rare use of adjudication in its present form effectively protects many debtors from potential hardship. If, as a result of our proposals, the transformed diligence becomes popular, we consider that it will be necessary to enact safeguards designed to minimise hardship for debtors and their families. Among the proposals which we have made in this connection are a provision empowering the court to restrict the scope of an exorbitant adjudication to particular items of immovable property, allowing the debtor or other affected persons time to obtain alternative accommodation before the property is sold, and means for ensuring that the value of the property adjudged is not disproportionate to the amount of the relevant debt. In our paper on the equalisation of diligences we trace the development of the sharing (outside insolvency proceedings) of the fruits of adjudications, poindings and arrestments among competing creditors rateably according to the amounts of their debts. The law on this subject is complicated and, in many instances, difficult to apply. We suspect that, whereas a century ago numerous

1. (1988) Scot Law Com No 115.

practitioners claimed to be both fluent and competent in these arcane complexities, there are very few today who are. In any event, we are not satisfied that the practical benefits of this tract of law match the time and effort required to master it. Our provisional recommendation therefore is that equalisation of diligences should be abolished. In the event of that recommendation being rejected, we submit various proposals for reform.

1.6 The next stage in our work upon the proposed reform of the law of diligence is in relation to diligence on the dependence and admiralty arrestments. A discussion paper on these subjects has been prepared and will be published in the near future. Our main proposal is that a warrant for diligence on the dependence should no longer be automatically available to a pursuer as of right in a court action. Instead the court should have a discretion to grant or refuse warrant on an *ex parte* application made by the pursuer. Where the pursuer used diligence on the dependence under a discretionary warrant in an informally regular manner, he would be liable in damages for wrongful diligence if he had misled the court into granting the warrant. The foregoing proposal is our preferred solution. If that is rejected, we suggest, as an alternative solution, that the pursuer should be entitled to elect between (a) obtaining a warrant automatically in the ordinary course of process, as under the present law, with this difference that he would be strictly liable in damages for wrongful diligence if his action was unsuccessful, and (b) applying for a discretionary warrant such as we have just described with its less stringent consequences in terms of liability for wrongful diligence.

1.7 While the paper on Diligence on the Dependence was being prepared we received a request from the Scottish Clearing Banks to consider a proposal that these banks, all of which have many branches, should be entitled to charge arresters a fee to cover the expenses of complying with an arrestment. We considered that the request was one that deserved investigation, and our initial intention was to incorporate the item into our overall discussion of arrestments. On further examination, however, we have come to the conclusion that the clearing banks' request can most conveniently and speedily be dealt with in a separate discussion paper; we intend to begin work on this paper in the near future.

1.8 In June 1989 we submitted to you and the Secretary of State for Scotland our Report on the *Recovery of Possession of Heritable Property*.¹ This Report arises out of a reference which we received in 1983. In that reference we were requested to advise on the rationalisation and simplification of the relevant law with particular reference to notices to quit, and title to sue and defend actions for recovery of possession. On pursuing this reference we found that the law is confusing and complicated. The proposals for reform contained in our Report are designed to provide landlords and tenants of agricultural and urban subjects alike with procedures for terminating leases which both interests should find to be clear and fair. We have also attempted to clarify the law regulating title to sue and defend in actions for recovery of heritage. This task called for specialist legal knowledge as well as extensive research. Much of that burden was shouldered by staff members who were associated with the reference. Now that the Report is complete, it is a pleasure to record appreciation of the contribution made to this work by Lord Maxwell, the previous Chairman, and by Lord Dervaird. In addition, we recommend as a valuable exposition of the existing law the Research Paper on Actions of Ejection and Removing which Mr A G M Duncan, formerly Senior Lecturer in Scots Law at Edinburgh University, prepared for us in 1984.

1.9 During the past year we completed our Report on Prescription and Limitation of Actions (Latent Damage and Related Issues). The main recommendations of that Report relate to the short and long negative prescriptions so far as these apply to obligations to make reparation for damage sustained, especially if that damage is not immediately discoverable when it occurs. The aim of our proposals has been to allow sufficient time to a potential claimant to identify the damage and sue for reparation

1. Published in August 1989, Scot Law Com No 118.

while protecting the defender against stale claims. In addition, we have attempted to provide for a degree of certainty regarding the period of risk. On the short prescription we have made proposals designed to confer upon claimants unaware that damage has been sustained some of the advantages enjoyed under legislation on limitation by victims of personal injuries who do not know that they have sustained injury, that the injury is attributable wholly or partly to an act or omission, or the identity of the person liable. In the light of our own researches as well as responses to consultation we have been persuaded that a long negative prescription is needed in relation to an obligation to make reparation. The need for such provision seems to be particularly desirable in respect of latent damage to buildings which is attributable to defects of design, materials or workmanship. If the proposals for amendment of the short negative prescription are implemented, in many cases there would be a possibility that that prescription would never come into operation. It is therefore necessary to have an effective long negative prescription unqualified by equitable exception. It was strongly represented to us that the existing 20 year period provided under the long negative prescription is too long; in this connection we were informed that in some instances contractors and professional concerns engaged in the construction industry have found it difficult and expensive to obtain indemnity insurance. In weighing the conflicting considerations urged upon us we attempted to make recommendations for the starting point and length of the long negative prescription which we hope will be received as being broadly fair and at the same time consistent with legal principle. Under the existing law the date when the long negative prescription begins to run is when damage attributable to the act or omission complained of occurs. In some cases of latent damage we recognise that it is difficult to prove when the period begins to run. On the other hand we are firmly of the opinion, on grounds of equity and principle, that it would be unjust to provide for the period to commence before any damage had been sustained. We have therefore recommended, as regards the starting point, that the existing law should remain. We have, however, been persuaded that the existing period of 20 years for the long negative prescription in relation to claims for reparation is too long. After careful consideration we have come to the conclusion that the period should be reduced to 15 years. We have not been convinced by any of the representations made to us that the length of the long negative prescription should be shorter than 15 years. At the same time we recognise that in certain areas of activity a 15 year long negative prescription may raise practical difficulties. That consideration, together with the absence of any obvious public policy reasons to the contrary, has moved us to recommend that it be no longer illegal for parties to contract for a reduction in the length of the prescriptive period.

1.10 In June 1989 the Law Commission for England and Wales published a Working Paper entitled Rights to Goods in Bulk. Production of this paper was prompted by a request made to that Commission by an international commodity trade association requesting an examination of the law relating to the rights of purchasers of goods at sea forming part of a larger bulk. Section 16 of the Sale of Goods Act 1979 prevents property in unascertained goods from passing in circumstances where property would have passed had the goods been ascertained. One effect of this provision has been to defeat contractual expectations and to put purchasers at risk in that, although the goods have been paid for, no property rights have passed, and creditors of the seller may be preferred on the latter's subsequent bankruptcy. Section 1 of the Bills of Lading Act 1885 does not resolve all the difficulties for the consignee of goods under a Bill of Lading, because the rights conferred on the consignee under that provision depend upon a passing of the property to him under the Bill. We are grateful for the initiative taken by the English Commission in this matter. We have commented upon, and have derived much profit from, the research and preparatory work which went into their paper. In the light of certain specialities of Scots law we have found it convenient to prepare our own Discussion Paper entitled Bulk Goods—Section 16 of the Sale of Goods Act 1979 and Section 1 of the Bills of Lading Act 1855. This paper will be published in the near future.¹ In due course we intend to discuss the reaction of Scottish consultees with our colleagues in the English Commission.

1. Discussion Paper No 83 published in August 1989.

1.11 We continue to co-operate with the English Commission in relation to conflict of laws. For some years now the two Commissions have been examining rules regulating conflict of laws in tort and delict. Recently there has been a reappraisal within each Commission of certain preliminary conclusions which had been reached at an earlier stage. During next year we hope to make further progress in the search for acceptable proposals for reform in this difficult area.

1.12 We are making good progress in our consideration of land tenure reform. Although legislation enacted during the past 20 years has excised much of the feudal system, the task of removing the residual shell has required prolonged and detailed research. In the near future we intend to publish a discussion paper containing provisional proposals for ending the payment of feu duty, making land tenure so far as practicable a matter of unlimited ownership, and for reforming the law of the tenement.

1.13 In July 1988 your predecessor asked us by formal reference to consider the desirability and feasibility of introducing in Scottish court proceedings arrangements to provide a more effective remedy in situations where a number of persons have the same or similar rights, to consider how such arrangements might be funded, and to make recommendations. The terms of this reference are apt to cover a wide range of civil claims, including actions of damages brought by victims of mass disasters or their representatives, as well as actions in which a large number of persons complain that they have been wronged by an administrative decision. This reference requires us to examine experience of other jurisdictions, notably in North America, where procedures exist for regulating what are called "class actions". Recent experience in the United Kingdom of disasters affecting large numbers of claimants and attempts to co-ordinate litigations on their behalf have aroused widespread interest within, and outside, the legal profession. In our study of this topic we have already derived benefit from conferences organised in England and in Scotland which were addressed by lawyers who have had first hand experience of the difficulties of conducting court litigation on behalf of a multiplicity of claimants. In addition we have benefited from consultation with members of other law reform bodies which have devised procedures for such actions. So far we have not reached the stage of making provisional recommendations, but we anticipate that satisfactory provisions for the funding of such litigations will be essential to the successful operation of any new procedures.

1.14 We continue to make progress with our work on reform of certain aspects of the criminal law and on the law of evidence in criminal proceedings. During part of the year under review we have been assisted by a member of the Procurator Fiscal Service. Because of staff shortages in that Service, the secondment of the member in question was terminated in October 1988, and to date there has been no replacement. The Commission has derived great benefit in the past from the secondment of members of the Procurator Fiscal Service who have afforded valuable insights into the practical workings of the criminal legal system. We therefore hope that a member of the Service will be seconded to us in the near future. Among our criminal evidence projects has been the evidence of children and other potentially vulnerable witnesses. Here there is a need for reform which is effective, which is economical of resources and at the same time does not prejudice the rights of the accused. Recently there has been increasing public anxiety about the incidence of sexual abuse. That anxiety tends to heighten the importance of securing a balance between the rights of the accused and the desirability of minimising the stress to which children and other vulnerable witnesses are subjected while giving evidence at a trial. Among several expedients which we have considered has been the use of closed circuit television. In assessing the merits of this, and other, methods we have been assisted by demonstrations of closed circuit television and other equipment and information of experimental use in English courts. In addition, another aim of our enquiry is to explore the practicability of reducing the number of occasions on which a child witness is subjected to interview before a trial begins. With the increased use of video equipment to record pre-trial statements made by potential witnesses, a difficult question of principle arises regarding the use which may legitimately be made of such evidence at the trial. This issue of principle affects not just children and other vulnerable witnesses, but all witnesses who have supplied information in this manner

prior to the commencement of the trial. We are therefore considering the responses of consultees to our Discussion Paper No 77, entitled *Criminal Evidence—Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings*, in the course of preparing our report on the evidence of children and other vulnerable witnesses.

1.15 We have recently completed our Discussion Paper on Forfeiture and Confiscation in Criminal Cases. This discussion paper covers the whole range of criminal activity, with the exception of misuse of drugs offences. In part our recommendations are designed to strengthen the protection which the law affords to innocent owners. On the other hand we consider that forfeiture should not be limited to items which are in the control of the convicted person at the time of arrest, but should also extend to items in his control at the time when the offence was committed. Under the head of confiscation we propose a change of the law which would allow the court to freeze assets of an accused person before the trial. After conviction the court should be entitled to pronounce an order confiscating the profits of the crime of which the accused was convicted. We also recommend that the court should be entitled to pronounce compensation orders in respect of forfeited and confiscated property.

1.16 In October 1988 your predecessor asked us to consider the whole question of obtaining bodily samples for the purposes of evidence in civil and criminal cases. In July 1989 we completed our Report entitled *Evidence: Blood Group Tests, DNA Tests and Related Matters*. As the title of the report indicates, we have considered the legal implications of the process known as DNA profiling which is sometimes called genetic fingerprinting. This technique has attracted a great deal of public interest because it enables blood and certain other body tissue or fluid to be very precisely identified. In criminal law we have examined the options available in the event of a suspected person refusing to allow a sample of his blood to be taken. We have recommended that the current practice of applying to the court for a warrant authorising the taking of blood samples should be retained. Two options arise if the suspect still refuses his consent while faced with a warrant. First, at the subsequent trial the court could be entitled to draw such inferences from the refusal as the circumstances might warrant. Secondly, reasonable force might be justified in taking a blood sample where warrant has been granted. We have rejected the first option on the ground that it would infringe the principle that in a criminal trial evidence rather than inference must be the basis for conviction. In considering the second option we examined, among others, ethical objections voiced on behalf of the medical profession. We recognise that on principle some doctors may be unwilling to be party to the forcible taking of a blood sample. We were not convinced that this factor outweighed the public interest in the investigation of serious crime, especially when the blood sample required is so small that it can be obtained with minimal invasion of bodily integrity. Different considerations obtain in civil law. Although we do not think it appropriate that a party to an action should be compelled to submit a blood sample, we recommend that the court should be empowered to draw any adverse inferences that may be appropriate from a failure or refusal to consent.

1.17 Apart from the criminal law projects already mentioned we have responded to the invitation of the Select Committee of the House of Lords on Murder and Life Imprisonment. In supplement of a written Memorandum three Commissioners appeared as witnesses before the Committee in May 1989. Among the matters discussed in evidence was the desirability of harmonising the definition of murder within the two jurisdictions by enacting a statutory definition applicable to both. After considering the current definition in each jurisdiction as well as various judicial and academic writings upon them, we submitted to the Select Committee that such a course would not be desirable. Among the reasons which influenced us in reaching this conclusion were the apparent satisfaction within Scotland with the existing definition, the importance of allowing the maximum degree of simplicity in relation to definitions of serious crime, and the extreme difficulty of harmonising the Scottish concept of wicked recklessness with recklessness as that term is currently defined in England and Wales. In this connection we have had regard to the warning uttered recently by Lord Hunter, a previous Chairman of this Commission, that misconceived changes in the law of Scotland, and most of all in the criminal law of Scotland, once enacted by Parliament are very difficult indeed to remedy or remove.

1.18 In April 1989 the Thirteenth Joint Report on Statute Law Revision was submitted, and the Bill embodying its recommendations was published in June 1989. The major responsibility for drafting the report and framing the Bill rested with the Law Commission for England and Wales. The formulation of proposals for statute law reform places heavy demands upon the skill and resources of each Commission. The extensive recommendations for reform contained in the Thirteenth Joint Report reflect the efficient and harmonious co-operation of both Commissions in this task. Among the measures recommended for repeal are three Scottish statutes enacted prior to 1707. One of these, relating to innkeepers, has in our view been superseded by common law and is no longer necessary. The remaining two, which relate to Sunday trading, are in our opinion obsolete and satisfy the test of desuetude. In relation to consolidation our work is proceeding on prisons, town and country planning and crofting.

1.19 During the 1988-89 Session the following Scottish Bills giving effect to recommendations made by us were introduced: Requirements of Writing (Scotland) Bill; Age of Legal Capacity (Scotland) Bill. Both of these measures were introduced as Private Members' Bills at the instance of Mr Allan Stewart MP and Sir Nicholas Fairbairn QC, MP respectively. These Bills are designed to modernise and to simplify the law in areas which affect many people in the conduct of their business affairs. We therefore regret that on account of procedural delays neither of these measures will be enacted during the current session of Parliament.

1.20 On 30 September 1988 Lord Maxwell retired from the Chairmanship of the Commission. We wish to record our appreciation of the wisdom and energy which characterised his seven year term of office. It is a tribute to his skill that during his term of office many important measures for law reform were recommended by the Commission and subsequently enacted. We also record with regret the recent death of two former Commissioners who made outstanding contributions to the work of the Commission and to the development of Scots law. Professor John Halliday, who died in April 1988, while he was a Commissioner laid the foundations for reform of prescription and limitation, and subsequently made notable contributions to the reform of feudal law and the law of security over moveables. Professor Sir Thomas Smith, who died in October 1988, served the Commission with distinction for 15 years. Many of the proposals for law reform emanating from the Commission during that time bear his distinctive stamp. In addition, he enhanced the reputation of the Commission and of the United Kingdom by scholarly papers delivered at international conferences.

1.21 In the light of the foregoing review we believe that we are justified in claiming to have made satisfactory progress with the work of formulating proposals for law reform during the past year. Although occasional unavoidable delays have affected certain projects, the range of topics undertaken and the flexible nature of our organisation have enabled us to use our available time and resources economically and effectively.

Part II Progress of law reform projects

2.1 The present position¹ in each of our current law reform projects is set out in more detail in this Part of our report. The main subject headings are presented in alphabetical order. Programme subjects, which derive from our published programmes,² are denoted by the use of an asterisk.

Administrative law

2.2 Work is continuing on our project on administrative law,³ but has been greatly held up during the past year because of other priorities. In particular, more staff time has had to be diverted to our work on statute law revision.⁴ We have also given precedence to our project on class actions,⁵ which has links with our administrative law project, because of current public concern with the issues it deals with.

2.3 In our last annual report we described the progress of research at the University of Edinburgh into the administrative jurisdiction of the sheriff.⁶ The empirical phase of that research will be completed within the next few months and the results should be available to us in the course of next year.

Criminal law

General 2.4 Our work in the criminal law field derives from proposals for law reform projects under section 3(1)(a) of the Law Commissions Act 1965 and references under section 3(1)(e) of that Act.

Forfeiture and confiscation 2.5 We have now published a discussion paper⁷ seeking views on ways to widen the powers of the courts to order forfeiture of goods and articles used for the purpose of committing a crime and to order the confiscation of property representing the profits or proceeds of crime. This exercise is being carried out in terms of a reference from the Secretary of State for Scotland which we received on 2 October 1987. We would hope to be in a position to submit a report in the course of 1990.

Diligence*

(Second Programme, Item 8)

2.6 We have continued to make progress in our work on the discussion papers referred to in our annual report for 1986-87.⁸ As anticipated in our last annual report,⁹ we published two discussion papers in November 1988, namely Discussion Paper No 78 on *Adjudications for Debt and Related Matters* and Discussion Paper No 79 on *Equalisation of Diligences*.

1. For the sake of presenting a more complete picture, we mention also certain developments which have taken place since the end of our reporting period (15 June 1989).

2. First Programme, (1965) Scot Law Com No 1; Second Programme, (1968) Scot Law Com No 8; Third Programme, (1973) Scot Law Com No 29. Our Fourth Programme will be published shortly.

3. See (1988) Scot Law Com No 114, paras 2.2, 2.4.

4. See para 2.36.

5. See para 2.42.

6. (1988) Scot Law Com No 114, para 2.3.

7. Discussion Paper No 82—*Forfeiture and Confiscation*.

8. (1987) Scot Law Com No 109, paras 2.9 to 2.12.

9. Scot Law Com No 114, paras 2.10 to 2.12.

*Denotes programme subject.

2.7 We have almost completed our work on a Discussion Paper on *Diligence on the Dependence and Admiralty Arrestments* which we hope to publish in the next few months. This will be principally concerned with three topics of great practical importance. First, it will provisionally propose that warrants for diligence (ie arrestments and inhibitions) on the dependence of actions for payment should cease to be available to pursuers as a matter of legal right, and granted automatically by clerks of court in the ordinary course of process. Instead, such warrants should be a matter for judicial discretion (as in those other legal systems which we have examined) exercised by the Lord Ordinary or sheriff on a special application by the pursuer. Other options for reform will be canvassed including the possibility that a pursuer should be entitled to elect between obtaining a warrant as of right or seeking a warrant at the discretion of the court: in the former case there would be strict liability for wrongful diligence if the action was unsuccessful, while in the latter case there would be liability only if the pursuer had misled the court into granting the warrant. We are satisfied that the existing law is open to abuse, can cause great injustice and is badly in need of reform. We also take the opportunity of proposing an extensive revision of the detailed rules and procedures. Second, we review the law on arrestments of ships and their cargo on the dependence of Admiralty actions in personam and on Admiralty arrestments in rem enforcing maritime liens.¹ Though these special diligences are of great importance in modern legal practice, they have received scant attention and are in some need of review. Third, we seek views on whether it should be competent to obtain a judicial discretionary warrant to attach on the dependence moveable goods in the defender's possession, and if so by what means. While we do not favour the introduction of poinding on the dependence, we think (not without hesitation) that there may be a case for introducing a form of interim attachment not requiring a sheriff officer or messenger-at-arms to enter premises, and not applying to goods in dwelling-houses.

2.8 We have received representations from the Committee of Scottish Clearing Bankers that arrestees should receive recompense for operating arrestments. Information supplied to us by the Committee shows that a large and increasing number of arrestments are served on the four Scottish clearing banks. We propose to consider the topic of recompense to banks and other arrestees for operating arrestments in a separate discussion paper, and to follow it up with a separate report in advance of our main report on this phase of the law of diligence.

Evidence*

(First Programme, Item 1)

2.9 Following on the publication in 1988 of Discussion Paper No 75—*The Evidence of Children and Other Potentially Vulnerable Witnesses* we have received comments on our proposals from a wide range of consultees. We have begun to prepare our report to you on this topic, and we shall be submitting it in due course.

2.10 As we anticipated in our last annual report² Discussion Paper No 77—*Criminal Evidence—Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings* was published in October 1988 with a request for comments to be submitted by 11 March 1989. The principal proposals contained in the paper relate to a procedure for evidence of a witness to be given in the form of a written statement in certain circumstances; the possible extension of existing exceptions to the rule against hearsay evidence in criminal proceedings; the admissibility of prior statements of a witness; and miscellaneous proposals covering the admissibility of statements contained in documents including those produced by computers. The responses to consultation are currently being analysed and we hope to commence preparation of a report and draft Bill in the near future.

1. These present special features. The arrestment is directed against the ships not against an arrestee, and may be executed though the ship is in the defender's possession. In all other arrestments, the subjects arrested must be in the possession of a person other than the defender or debtor.

2. (1988) Scot Law Com No 114, para 2.15.

*Denotes programme subject.

**Blood group tests, DNA tests
and related matters**

2.11 On 13 October 1988 we received from your predecessor a reference asking us to consider the questions arising from the provision of bodily samples in both civil and criminal cases. As we had already done some preliminary work on this topic we were able to issue a discussion paper¹ in December 1988 requesting the submission of comments by 28 February 1989. Comments have been received, analysed and considered by us. Our report to you has been finalised and we would hope to submit it to you within the next month.

Family law*
(Second Programme, Item 14)

**Law of children
(incorporating legal capacity
of minors and pupils)**

2.12 As mentioned in our last annual report,² our report on *Legal Capacity and Responsibility of Minors and Pupils*³ was submitted to you on 1 October 1987 and published on 16 December 1987. A Bill to implement the recommendations in the report is currently before Parliament.

2.13 Our last annual report⁴ also indicated that the next stage of our project on reform of the law of children would concern the law of guardianship and parental rights. Work on this topic commenced in the Spring of this year and, in due course, a discussion paper will be published. Our useful contact with the review body set up by the Secretary of State for Scotland to identify options for change in child care law⁵ continues on a regular basis by way of the presence of one of our legal staff as an Observer at the review body's meetings.

Divorce

2.14 Our report on *Reform of the Ground for Divorce*⁶ was submitted to you on 13 February 1989 and published on 27 April 1989. In it we recommended that the ground for divorce in Scotland should continue to be the irretrievable breakdown of the marriage. Although we did not recommend any fundamental change in the structure of the present divorce law we did recommend that the periods of separation referred to in the Divorce (Scotland) Act 1976 should be reduced to one and two years respectively.

Obligations*
(First Programme, Item 2)

Corporeal moveables

2.15 No further work is being undertaken in this area for the time being.

**Rights in security over
moveable property**

2.16 As we indicated in our last annual report⁷ work on the above topic was suspended pending the outcome of the review for Great Britain of the law of security over moveable property commissioned by the Department of Trade and Industry and undertaken by Professor A L Diamond (formerly Director of the Institute of Advanced Legal Studies, University of London) together with Mr A J Sim, a recently retired senior member of our staff. The Report on the Review of Security Interests in Property prepared by Professor A L Diamond was published on 27 January 1989. The Department of Trade and Industry have now invited comments by 1 September 1989 on certain of the proposals for reform put forward in the report.

2.17 The question of the extent of any future involvement by us in this area of the law will fall to be re-assessed after the current consultation has been completed and it is ascertained what action the Department proposes to take in response to the report and consultation.

1. Discussion Paper No 88—*Blood Group Tests, DNA Tests and Related Matters*.

2. (1988) Scot Law Com No 114, para 2.16.

3. Scot Law Com No 110.

4. (1988) Scot Law Com No 114, para 2.17.

5. (1988) Scot Law Com No 114, para 2.17.

6. (1989) Scot Law Com No 116.

7. (1988) Scot Law Com No 114, para 2.19.

*Denotes programme subject.

Requirements of writing 2.18 As reported in our last report¹ our report was submitted to you on 29 April and published on 13 July 1988. A Bill to implement the recommendations in the report is currently before Parliament.

Sale and supply of goods 2.19 The position remains unchanged since our last report.²

Rights of relief and contributory negligence 2.20 Our report³ on this topic was submitted to you on 30 September 1988 and was published on 14 December 1988. The report deals with a technical and complex area of the law concerning rights of relief among joint wrongdoers and contributory negligence and our recommendations propose the introduction of a more comprehensive scheme which we hope will enable an award to be apportioned fairly against all who have contributed to a pursuer's loss and injury. The new scheme should have the effect of encouraging an earlier settlement of actions where more than one person may be responsible for the loss or injury.

Supersession of missives 2.21 We had hoped that an appeal would be made to the Court of Session resulting in a clarification of the law which would have meant that it was not necessary for us to investigate this area. Unfortunately, this did not take place and we are proceeding with our small exercise with a view to publishing a discussion paper shortly.

Other obligations topics 2.22 A short Discussion Paper No 83—*Bulk Goods* will be published shortly with a request for comments by 31 October 1989. In this paper we seek comments on possible amendments to section 1 of the Bills of Lading Act 1855 and section 16 of the Sale of Goods Act 1979 to meet difficulties which arise in the case of goods forming part of a bulk. A similar consultation exercise is currently being undertaken by the Law Commission for England and Wales: their discussion paper⁴ was completed on 28 April 1989.

2.23 The position regarding other topics in the obligations field mentioned in our Twentieth Annual Report⁵ remains unchanged.

Prescription and Limitation of Actions*

(First Programme, Item 3)

Prescription and limitation of actions (latent damage) 2.24 The preparation of a report and draft Bill is almost completed. We expect to submit this report to you in the very near future.

Private International Law*

(Third Programme)

Choice of law rules in tort and delict 2.25 As mentioned in our last report⁶ the two Commissions published in 1984 a joint consultative document on the *Choice of Law Rules in Tort and Delict*.⁷ Certain aspects of our proposals proved particularly difficult and little progress has yet been made. We hope, however, to resolve these difficulties soon and work will commence in the near future on the preparation of a joint report.

Property Law*

Property law 2.26 Work on a first discussion paper in a proposed series on the topic of land tenure reform is now well advanced and we hope to be able to publish a discussion paper

1. Scot Law Com No 114, para 2.21.

2. Scot Law Com No 114, para 2.23.

3. (1988) Scot Law Com No 115—*Report on Civil Liability—Contribution*.

4. Law Commission Working Paper No 112.

5. (1985) Scot Law Com No 93, para 2.32.

6. Scot Law Com No 114, para 2.29.

7. Law Commission Working Paper No 87; Scottish Law Commission Consultative Memorandum No 62—*Choice of Law in Tort and Delict*.

*Denotes programme subject.

during the next few months proposing the abolition of feudal tenure and its replacement by a system of absolute ownership. It is proposed that this discussion paper will also include a section proposing a statutory reformulation of the existing common law rules comprising the law of the tenement.

Passing of risk in contracts for the sale of land

2.27 Discussion Paper No 81—*The Passing of Risk in Contracts for the Sale of Land*—was published on 6 March 1989 with a request for comments by 12 May 1989. In this paper we examine the problems arising from the present law which provides, subject to certain exceptions, that the risk of damage to or destruction of land passes from the seller to the purchaser once a binding contract of sale has been concluded. Our main proposal for reform is that the risk of damage or destruction in this context should remain with the seller until the purchaser takes possession or becomes entitled to take possession of the property, whichever is the earlier. Subsidiary proposals are also put forward for consideration in relation to the regulation of the rights of the parties to the contract where the property has been damaged or destroyed while the risk remains with the seller. We have received a reasonable response to this consultation, and hope to analyse the comments received and to formulate recommendations for reform in the near future.

Recovery of possession of heritable property

2.28 Our report on *Recovery of Possession of Heritable Property*¹ was submitted to you and to the Secretary of State for Scotland on 7 June 1989. We expect to publish the report in the near future. The report makes detailed recommendations concerning the following areas of law. First, the form and content of notices of termination of leases, and the minimum period of notice to be given. Second, various miscellaneous matters relating to termination of leases, such as resumption by a landlord of leased property, and withdrawal of notice of termination. Third, the entitlement of parties to a lease to contract out of statutory notice provisions relating to termination of the lease. Fourth, the giving of notice of termination and other notices in cases which involve special problems. These include for example the giving of notice of termination where there is more than one landlord of the property, each being the landlord of a separate part or each having an interest in common in the property. Fifth, the problems associated with the existing statutory provisions relating to agricultural holdings in connection with the bequest or other transfer on death of an interest in the lease, and the introduction of similar provisions in relation to non-agricultural leases; and the giving of notice where a party to a lease has died. Sixth, questions of title to sue and to defend in relation to proceedings for removing. Seventh, proceedings for removing under both the ordinary cause and the summary cause in the sheriff court, and in the Court of Session. Eighth, certain issues arising in relation to proceedings for removing, namely the law of violent profits, proceedings against persons in illegal occupation of property who cannot be identified by the pursuer, and the acceleration of procedures in an action for removing persons in unlawful occupation of property. Ninth, general and ancillary matters such as requirements in connection with the giving of notice.

Succession*

(Second Programme, Item 7)

2.29 In September 1986 we published three consultative memoranda on the law of succession. Consultative Memorandum No 69—*Intestate Succession and Legal Rights*—discussed possible reforms of the law of intestate succession and the claims which can be made by a person who is excluded from inheriting either by a will or by the law of intestate succession. This memorandum took account of the results of a public opinion survey carried out for us by System Three Scotland on attitudes to various issues arising in succession law. Consultative Memorandum No 70—*The Making and Revocation of Wills*—looked at the possible validation of improperly executed wills, rectification of wills to correct errors of expression and what effect the testator's subsequent marriage or divorce should have on his or her will. Consultative

1. (1989) Scot Law Com No 118. (Published in August 1989)

*Denotes programme subject.

Memorandum No 71—*Some Miscellaneous Topics in the Law of Succession*—covered a variety of matters including criminal heirs, the Forfeiture Act 1982, presumptions of survivorship and special destinations.

2.30 We received a large number of comments from organisations and individuals on these memoranda, on the short “popular pamphlet” that was published at the same time, and at three public meetings held in different cities to discuss our provisional proposals for reform. Work is now well advanced on the preparation of a report on this subject. However, several areas of difficulty have emerged and we have been consulting those primarily interested in order to resolve them. These further consultations have necessarily delayed completion of the project but we anticipate that our report will be submitted to you in the course of the next year.

Statute law

Consolidation 2.31 As in previous reports, progress is recorded under two heads: consolidation of legislation applying to Scotland only; and consolidation of legislation extending to other parts of the United Kingdom as well as to Scotland.

(a) *Scotland-only consolidations First Programme*¹ 2.32 Work on the consolidation of the Prisons legislation resumed and has now been completed. The Bill was introduced into Parliament on 27 April 1989, received its second reading in the House of Lords on 4 May 1989, and was approved by the Joint Committee on Consolidation Bills on 10 May 1989. It is likely to receive Royal Assent during October 1989.

*Fourth Programme*² 2.33 Work is presently proceeding on the consolidation of the Crofting Acts and of the Scottish Town and Country Planning legislation.

(b) *United Kingdom and Great Britain consolidations* 2.34 Bills on the following subjects introduced in the current Parliamentary Session have yet to receive the Royal Assent:

Extradition Bill
Opticians Bill.

2.35 Bills on the following subject are in the course of preparation.

Tribunals and Inquiries Act 1971
Capital Allowances.

Statute law revision 2.36 The Thirteenth Report on Statute Law Revision (a joint report by the two Law Commissions)³ was submitted on 7 April and published on 4 May 1989. The Statute Law (Repeals) Bill appended to the report was introduced into Parliament on 8 June, received its second reading in the House of Lords on 13 June and was approved by the Joint Committee on Consolidation and Statute Law Revision on 21 June.

2.37 The ordinary work of statute law revision is also proceeding, in association with our English colleagues, with a view to assembling proposals for inclusion in future Statute Law (Repeals) Bills. However, the resources we are able to devote to this work continue to be limited. We hope, therefore, to supplement the contributions of our permanent staff by using the services of temporary research assistants whom we regularly employ under the Civil Service Students' Vacation Scheme.

Local legislation 2.38 The Joint Working Party on Local Legislation⁴ has not met during the period covered by this report.

2.39 Work is continuing on the Chronological Table of Local Legislation. This is a joint project of the two Law Commissions. However, it is largely organised and

1. (1978) Scot Law Com No 46.

2. (1982) Scot Law Com No 71.

3. (1989) Law Com No 179, Scot Law Com No 117.

4. See Appendix I.

resourced by our English colleagues, which is greatly to our benefit, and indeed to the benefit of all users of local legislation in Scotland. The first stage of the project dealing with the period 1925-1973 was completed in 1985.¹ The second stage, covering the research period 1850-1925 and establishing a complete list of all local Acts since 1797, is now well advanced. The intention is to publish the information on this period in an amalgamated text which will also include the complete list of local Acts, as well as the information contained in the first stage and in Section 4 of the *Chronological Table of Statutes* (covering the period from 1974).

2.40 When the results of this research are available, we will be able to extend our review of pre-1975 local authority private legislation in Scotland backwards in time from 1925. As we mentioned in our last annual report,² we are trying to promote rationalisation of this body of legislation which has been left in a state of uncertainty as a result of its repeal in general terms, subject to exceptions, by section 225(6) of the Local Government (Scotland) Act 1973. However, a priority will be to translate the work already done for the period 1925-1975 into proposals for inclusion in a Statute Law (Repeals) Bill. Much will depend for the success of this project on the resources which the local authorities in Scotland can devote to the work. Material which we prepared for the first stage has been under consideration by the local authorities concerned since the end of 1986. It is unlikely, therefore, that we will be able to extend our work into the earlier period for some time yet.

Database Group 2.41 We are represented on the Statute Law Secretariat Database Group which is part of a project to create a computer database containing all United Kingdom public Acts and statutory instruments. The Group, originally set up by and reporting to the Secretariat, is a body of specialist users of statute law whose needs will have to be catered for by the database, if it is to be useful. Under existing arrangements, the project is financed and managed by the Lord Chancellor's Department. However, at an earlier stage we ourselves made direct financial contributions to the initial feasibility studies commissioned by the Group, since we strongly support the proposed computerisation of the statute book. Currently, the project team set up by the Lord Chancellor's Department is preparing a feasibility study for consideration by the Treasury. A preliminary study report was completed in May 1989 and submitted to the Treasury. A full study report will be prepared for submission in the autumn. During the period covered by this report we have received numerous papers from those running the project for consideration and comment and have attended three meetings of the Group in London.

Other matters

Class actions 2.42 We have begun work on the preparation of a discussion paper on this reference mentioned in our last annual report.³ The subject has turned out to be more complex than originally envisaged. We have found it necessary to take account of a wide range of substantive law bases capable of being invoked in class procedures. A range of options has been identified and alternative approaches to the full class action procedure are being considered. We have also found it necessary to consider the impact of class procedures on our work on administrative law. Nevertheless, we hope to publish a discussion paper on class action procedures in early 1990.

Judicial factors* 2.43 We had commenced work on this subject as a result of a proposal from the Law Society of Scotland under section 3(1)(a) of the Law Commissions Act 1965.⁴ Following discussions with your predecessor this proposal has been replaced by an item in the Fourth Programme of Law Reform, "Judicial Factors, Powers of Attorney and Guardianship of the Incapable". We welcome the widening of our examination to include personal welfare since deciding where people are to live and what medical

1. *Chronological Table of Local Legislation* (1985), 2 vols, 781 pages.

2. (1988) Scot Law Com No 114, para 2.45.

3. (1988) Scot Law Com No 114, para 2.46.

4. Twenty-Second Annual Report 1986-87, Scot Law Com No 109, para 2.46.

*Denotes programme subject.

and other treatment they are to have are almost inextricably connected with the management of their property and financial affairs. Within this enlarged field of enquiry we are now giving priority to the management and control of the personal welfare and financial affairs of adults who lack the capacity to look after themselves. Work has already started on the preparation of a discussion paper.

2.44 The Commission sent two participants to Scottish Action on Dementia's seminar on "Dementia: Consent to Treatment Issues" held in Edinburgh in February 1989. In addition Dr Clive addressed a seminar in London organised by the Law Society on "Decision-Making and Mental Incapacity" in May 1989.

2.45 We intend to turn our attention to other aspects of the law of judicial factors once work on the discussion paper mentioned in paragraph 2.41 above has been completed.

Powers of attorney*

2.46 As is the case with judicial factors we had commenced work as a result of a proposal from the Law Society of Scotland. Following the expansion of the scope of our enquiry by the item on the guardianship of the incapable in the Fourth Programme of Law Reform, we now intend to deal with the major issue of the role of powers of attorney in the management of the financial affairs and personal welfare of granters who subsequently lose capacity in the discussion paper mentioned in paragraph 2.41 above. We would hope to deal with other aspects of powers of attorney in a later discussion paper.

Floating charges and receivers

2.47 As we indicated in our last annual report,¹ Consultative Memorandum No 72—*Floating Charges and Receivers*—was published on 3 October 1986 with an invitation to submit comments by 31 March 1987. An analysis of the comments received has been carried out, but the nature and timing of any further work in this area may well be influenced by the outcome of the general review for Great Britain of the law relating to security over moveable property commissioned by the Department of Trade and Industry.²

Miscellaneous: advice to Government Departments, etc

2.48 It has been our practice to mention under this heading items which do not readily fit into any of the other classifications adopted in this report, including matters of an international character on which our advice has been sought by Government departments. In some instances such matters have been the subject of formal references to us under section 3(1)(e) of the Law Commissions Act 1965 and have resulted in our undertaking law reform projects. Matters in this category are covered elsewhere in this report. In other cases, however, the requests have been dealt with informally. We do not think it would be appropriate for us to give an exhaustive list of matters in the second category in this report.

1. Scot Law Com No 114, para 2.51.

2. See para 2.16 above regarding 'Rights in Security over Moveable Property'.

*Denotes programme subject.

Part III Consultation

The Law Commission for England and Wales

3.1 We continue our close co-operation with the Law Commission for England and Wales. During the year under review we have continued to work together on various matters, including choice of law rules in tort and delict,¹ the ground of divorce² and bulk goods.³ We are presently exploring the possibility of working together in other areas.

3.2 We are grateful to the Law Commission for England and Wales for continuing to keep us informed of the progress of its work on topics of interest to us, and for affording us the opportunity to comment from time to time on the possible implications for Scotland of certain of its projects.

Working party on contract law

3.3 Our Working Party⁴ on Contract Law has remained in being although it has not met during the year under review.

Other law reform organisations

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

The legal and other professionals, etc

3.5 We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. In this regard, we have continued to hold informal 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 assisted us in various ways.

3.6 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 Advocates' Library, the Signet Library and the Institute of Advanced Legal Studies, London.

Conferences, seminars, etc

3.7 Commissioners and members of our legal staff attended a number of conferences, seminars and colloquia in the course of the year under review.

1. See para 2.25.

2. See para 2.14.

3. See para 2.22.

4. A list of the present members of the Working Party appears in Appendix I to this report.

Part IV Miscellaneous

Commissioners

4.1 The Commission consists of a full-time Chairman, two full-time Commissioners, and two part-time Commissioners. The present Commissioners are:

The Honourable Lord Davidson, <i>Chairman</i>	(Full-time)
Dr E M Clive	(Full-time)
Professor P N Love, CBE	(Part-time)
Sheriff C G B Nicholson, QC	(Full-time)
Mr W A Nimmo Smith, QC	(Part-time)

4.2 Mr W A Nimmo Smith, QC was appointed as a part-time Commissioner from 1 September 1988.

Staff

4.3 Our legal staff consists of one full-time and two part-time Parliamentary Draftsmen, our Secretary and eight other qualified lawyers. During the summer vacation of 1988 we employed four honours graduates in law to assist with our research work. We wish to thank them all for their assistance. Our complement of non-legal staff remains at eleven.

4.4 At the date of preparation of this report the principal members of staff were:

Parliamentary draftsmen

Mr J F Wallace, QC	(Full-time)
Mr G S Douglas, QC	(Part-time)
Mr W C Galbraith, QC	(Part-time)

Secretary

Mr K F Barclay

Grade 5 Solicitors

Mrs L A Lilleker
Mr N R Whitty

Other members of legal staff

Mrs A F Bevan
Ms G B Inch
Mr J G S Maclean
Mr M McMillan
Dr D I Nichols
Mr C Robertson

Librarian

Mr N G T Brotchie

Chief Clerk

Mrs M J W Turnbull

Departmental committees and other bodies

4.5 Our Commissioners and legal staff are from time to time appointed to serve on Government and departmental committees and as members of other bodies concerned with the development and reform of the law.

Statute Law Committee 4.6 Our Chairman serves on the Statute Law Committee and is a member of the Editorial Board for Statutes in Force. The Commission's full-time Parliamentary Draftsman continues to act as an alternative member of the Editorial Board. In addition, our Secretary is a member of the 'Secretariat' set up under the chairmanship of Sir Derek Oulton, KCB, QC,¹ to assist the Statute Law Committee in its work.

Scottish Advisory committee 4.7 A member of our legal staff, Mrs A F Bevan, is a member of the Scottish Advisory Committee on Arbitration Law, but not in a representative capacity. The Committee has made its recommendations to you on implementation of the United Nations Model Law on International Commercial Arbitration in Scotland.² The Committee is now considering the system of arbitration in Scotland.

Scrutiny of Bills

4.8 As indicated in previous annual reports we now confine our detailed scrutiny of Bills to those which particularly touch upon areas of law under current examination by us.

Appendices

4.9 Membership of Working Parties appears in Appendix I. In Appendix II we list reports, consultative memoranda and other documents prepared by the Commission. These lists include certain consultative documents which were given restricted circulation. The extent to which our proposals have been incorporated in legislation is indicated in Appendix III.

1. Permanent Secretary of the Lord Chancellor's Department.

2. The Committee's recommendations were submitted to you on 5 June 1989.

Appendix I

Membership of Working Parties

Joint Working Party on Local Legislation

The Hon Mr Justice Beldam (Chairman)

The Hon Lord Davidson

Mr H W Gamon, CBE MC

Mr J G S Maclean (as alternate for Lord Davidson)

Mr R J B Morris

Mr D Rippengal, CB QC

Mr R H Streeten

Mr M J Ware, CB QC

Secretary: Mr A M Rowland, Law Commission for England and Wales

Law Commission for England and Wales

Scottish Law Commission

Society of Parliamentary Agents

Scottish Law Commission

Chief Executive and Town Clerk, Northampton Borough Council

Counsel to Chairman of Committees

Law Commission for England and Wales

Solicitor, Department of the Environment

Working Party on Contract Law

Professor P N Love, CBE (Chairman)

Professor R Black

Mr M G Clarke

Professor W W McBryde

Secretary: Mrs A F Bevan, Scottish Law Commission

Scottish Law Commission

University of Edinburgh

Faculty of Advocates

University of Dundee

Appendix II

1 Scottish Law Commission—Reports, Etc Published by Her Majesty's Stationery Office

	<i>Commission No</i>	
1965	1	First Programme of Law Reform
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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
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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)
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1973	27	Second Programme of Consolidation and Statute Law Revision
	28	Seventh Annual Report 1971–72
	29	Third Programme of Law Reform

*Produced jointly with the Law Commission for England and Wales.

*Commission**No*

	30	Report on Liability for Antenatal Injury (Cmnd 5371)
	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)
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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)
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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)
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1976	41	Tenth Annual Report 1974–75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
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1977	43	Eleventh Annual Report 1975–76
	44	*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd 6719)
	45	*Report on Liabilities for Defective Products (Cmnd 6831)
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1978	46	Third Programme of Consolidation and Statute Law Revision
	47	Twelfth Annual Report 1976–77
	48	*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd 7189)
	49	Electricity (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd 7178)
	50	Adoption (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd 7187)
	51	Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions
	52	Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Cmnd 7245)
	53	*Interpretation Bill—Report on Interpretation Act 1889 and Certain other Enactments relating to the Construction and Operation of Acts of Parliament and other Instruments (Cmnd 7235)
	54	*Customs and Excise Management Bill—Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd 7418)
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1979	55	Thirteenth Annual Report 1977–78
	56	Fourteenth Annual Report 1978–79
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1980	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd 7688)
	59	Report on Powers of Judicial Factors (Cmnd 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979–80
	62	*Judicial Pensions Bill—Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd 8097)
	63	*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd 8089)
<hr/>		
1981	64	Report on Section 5 of the Damages (Scotland) Act 1976
	65	*Trustee Savings Banks Bill—Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd 8257)
	66	*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd 8318)
	67	Family Law—Report on Aliment and Financial Provision

Commission

	<i>No</i>	
	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation ¹
	69	Report on the Law of Incest in Scotland (Cmnd 8422)
	70	Sixteenth Annual Report 1980–81
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1982	71	Fourth Programme of Consolidation and Statute Law Revision
	72	Family Law—Report on Financial Provision after Foreign Divorce
	73	Seventeenth Annual Report 1981–82
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1983	74	Prescription and the Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions
	75	Report on Irritancies in Leases (Cmnd 8760)
	76	Family Law—Report on Outdated Rules in the Law of Husband and Wife
	77	*Medical Bill—Report on the consolidation of the Medical Acts 1956 to 1978 and certain related provisions (Cmnd 8839)
	78	Evidence—Report on Evidence in Cases of Rape and Other Sexual Offences
	79	Obligations—Report on Rectification of Contractual and Other Documents
	80	Report on the Mental Element in Crime (Cmnd 9047)
	81	Eighteenth Annual Report 1982–83
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1984	82	Family Law—Report on Illegitimacy
	83	*Amendment of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd 9114)
	84	*Dentists Bill—Report on the Consolidation of the Dentists Acts 1957 to 1983 (Cmnd 9119)
	85	*Road Traffic Regulation Bill—Report on the Consolidation of the Road Traffic Regulation Act 1967 and certain related enactments (Cmnd 9162)
	86	Family Law—Report on Matrimonial Property
	87	*Further Amendments of the Companies Acts 1948–1983—Report under section 116 of the Companies Act 1981 (Cmnd 9272)
	88	*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Cmnd 9341)
	89	Nineteenth Annual Report 1983–84
	90	Report on Breach of Confidence
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1985	91	*Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Cmnd 9419)
	92	Obligations—Report on Negligent Misrepresentation
	93	Report on Art and Part Guilt of Statutory Offences (Cmnd 9551)
	94	*Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Cmnd 9515)
	95	Report on Diligence and Debtor Protection
	96	*Private International Law—Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Cmnd 9595)
	97	Obligations—Report on Civil Liability in relation to Animals
	98	Twentieth Annual Report 1984–85
	99	Statute Law Revision—Twelfth Report: Draft Statute Law (Repeals) Bill (Cmnd 9648)
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1986	100	Evidence—Report on Corroboration, Hearsay and Related Matters in Civil Proceedings
	101	Twenty-First Annual Report 1985–86
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1987	102	Report on Child Abduction (Cm 64)
	103	Housing (Scotland) Bill—Report on the Consolidation of Certain Enactments relating to Scotland (Cm 104)
	104	*Report on Sale and Supply of Goods (Cm 137)

1. This report was not in fact published until 26 February 1982 though submitted on 11 August 1981.

*Produced jointly with the Law Commission for England and Wales.

*Commission**No*

- 105 *Private International Law—Report on Choice of Law Rules in Marriage
 106 Report on Computer Crime (Cm 174)
 107 *Private International Law—Report on the Law of Domicile (Cm 200)

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- 1988** 108 Report on the Scottish Term and Quarter Days (Cm 208)
 109 Twenty-Second Annual Report 1986–87
 110 Report on the Legal Capacity and Responsibility of Minors and Pupils
 111 Court of Session Bill (Cm 315)
 112 Report on Requirements of Writing
 113 *Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill—Report on the Consolidation of Certain Enactments relation to Road Traffic (Cm 390)
 114 Twenty-Third Annual Report 1987–88
 115 Report on Civil Liability—Contribution
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- 1989** 116 Report on Reform of the Ground for Divorce
 117 *Statute Law Revision—Thirteenth Report: Draft Statute Law (Repeals) Bill (Cm 671)
 118 Report on Recovery of Possession of Heritable Property
 119 *Extradition Bill—Report on the Consolidation of Legislation Relating to Extradition
 120 Evidence: Blood Group Tests, DNA Tests and Related Matters
 121 *Opticians Bill—Report on the Consolidation of Legislation Relating to Opticians

2 Scottish Law Commission—Consultative memoranda/Discussion papers¹ circulated for comment and criticism

		<i>No of Resulting Report</i>
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	11
1968	*Memorandum No 7—Provisional Proposals Relating to Sale of Goods	12
	Memorandum No 8—Draft Evidence Code—First Part	
1969	Memorandum No 9—Prescription and Limitation of Actions	15
	Memorandum No 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961	14
	Memorandum No 11—Presumptions of Survivorship and Death	34
	Memorandum No 12—Judgments Extension Acts	
1970	Memorandum No 13—Jurisdiction in Divorce	25
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 for the Supply of Services and other Contracts	39
	Memorandum No 16—Insolvency, Bankruptcy and Liquidation	68
1972	Memorandum No 17—Damages for Injuries Causing Death	31 and 64
1974	Memorandum No 18—Liability of a Paramour in Damages for Adultery and Enticement of a Spouse	42
	Memorandum No 19—Powers of Judicial Factors	59
1975	*Memorandum No 20—Liability for Defective Products	45
	Memorandum No 21—Damages for Personal Injuries—Deductions and Heads of Claim	51
1976	Memorandum No 22—Aliment and Financial Provision (2 Vols)	67
	*Memorandum No 23—Custody of Children—Jurisdiction and Enforcement within the United Kingdom	91
	Memorandum No 24—Corporeal Moveables—General Introduction and Summary of Provisional Proposals	
	Memorandum No 25—Corporeal Moveables—Passing of Risk and of Ownership	

1. In the past, papers circulated by the Commission for consultation purposes were known as memoranda and subsequently as consultative memoranda. Such papers are now known as discussion papers. The numerical sequence used to identify discussion papers continues that used for consultative memoranda.

*Produced jointly with the Law Commission for England and Wales.

	<i>No of Resulting Report</i>
Memorandum No 26—Corporeal Moveables—Some Problems of Classification	
Memorandum No 27—Corporeal Moveables—Protection of the Onerous <i>bona fide</i> Acquirer of Another's Property	
Memorandum No 28—Corporeal Moveables—Mixing, Union and Creation	
Memorandum No 29—Corporeal Moveables—Lost and Abandoned Property	57
Memorandum No 30—Corporeal Moveables—Usucapion or Acquisitive Prescription	
Memorandum No 31—Corporeal Moveables—Remedies	
Memorandum No 32—Comments on White Paper ' <i>Our Changing Democracy: Devolution to Scotland and Wales</i> ' 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	112
Memorandum No 40—Confidential Information	90
1978	
Memorandum No 41—Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence (2 Vols)	60
Memorandum No 42—Defective Consent and Consequential Matters (2 Vols)	92
1979	
Memorandum No 43—Defective Expression and its Correction	79
1980	
Memorandum No 44—The Law of Incest in Scotland	69
Memorandum No 45—Time-Limits in Actions for Personal Injuries	74
Memorandum No 46—The Law of Evidence	78 and 100
Memorandum No 47—First Memorandum on Diligence—General Issues and Introduction	95
Memorandum No 48—Second Memorandum on Diligence: Poindings and Warrant Sales	95
Memorandum No 49—Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings	95
Memorandum No 50—Fourth Memorandum on Diligence: Debt Arrangement Schemes	95
Memorandum No 51—Fifth Memorandum on Diligence: Administration of Diligence	95
1981	
Memorandum No 52—Irritancies in Leases	75
1982	
Memorandum No 53—Family Law: Illegitimacy	82
Memorandum No 54—Some Obsolete and Discriminatory Rules in the Law of Husband and Wife	76
Memorandum No 55—Civil Liability in relation to Animals	97
*Memorandum No 56—Polygamous Marriages (Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage)	96
1983	
Memorandum No 57—Matrimonial Property	86
*Memorandum No 58—Sale and Supply of Goods	104
1984	
Memorandum No 59—Recovery of Possession of Heritable Property	118
Memorandum No 60—Mobbing and Rioting	
Memorandum No 61—Attempted Homicide	
*Memorandum No 62—Private International Law: Choice of Law in Tort/Delict	
1985	
*Memorandum No 63—Private International Law: The Law of Domicile	107
*Memorandum No 64—Private International Law: Choice of Law Rules in Marriage	105
Memorandum No 65—Legal Capacity and Responsibility of Minors and Pupils	110
Memorandum No 66—Constitution and Proof of Voluntary Obligations and the Authentication of Writings	112
Memorandum No 67—Child Abduction	102

*Produced jointly with the Law Commission for England and Wales.

	<i>No of Resulting Report</i>
1986	
Memorandum No 68—Computer Crime	106
Memorandum No 69—Intestate Succession and Legal Rights	
Memorandum No 70—The Making and Revocation of Wills	
Memorandum No 71—Some Miscellaneous Topics in the Law of Succession	
Memorandum No 72—Floating Charges and Receivers	
Memorandum No 73—Civil Liability—Contribution	115
1987	
Memorandum No 74—Prescription and Limitation of Actions (Latent Damage)	
1988	
Discussion Paper No 75—The Evidence of Children and Other Potentially Vulnerable Witnesses	
Discussion Paper No 76—The Ground for Divorce—Should the law be changed?	116
Discussion Paper No 77—Criminal Evidence—Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings	
Discussion Paper No 78—Adjudications for Debt and Related Matters	
Discussion Paper No 79—Equalisation of Diligences	
Discussion Paper No 80—Blood Group Tests, DNA Tests and Related Matters	120
1989	
Discussion Paper No 81—Passing of Risk in Contracts for the Sale of Land	
Discussion Paper No 82—Forfeiture and Confiscation	
Discussion Paper No 83—Bulk Goods: Section 16 of the Sale of Goods Act 1979 and Section 1 of the Bills of Lading Act 1885	

3 Scottish Law Commission—Other published documents

1974	*Private International Law—Consultative Document on EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations
1979	Research Paper on the Law of Evidence of Scotland by Sheriff I D Macphail
1984	Research Paper on Actions of Ejection and Removing by Mr A G M Duncan
1986	Report of Working Party on Security over Moveable Property
1988	Research Paper on Evidence from Children—Alternatives to In-court Testimony in Criminal Proceedings in the United States of America by Kathleen Murray.

4 Scottish Law Commission—Consultative documents not published and with 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
1978	Consultation Document—Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive
1979	Consultation Paper—Bankruptcy: <i>Gibson v Hunter Home Designs Ltd</i> Consultative Note on section 5 (6) of the Damages (Scotland) Act 1976
1980	Consultation Paper—Prescription and Limitation in Private International Law
1981	Consultation Paper—Financial Provision after Foreign Divorce
1982	Consultation Paper—Exchange of Standard Term Forms in Contract Formation Consultation Paper—Breach of Confidence
1983	Consultation Paper—Custody of Children: Jurisdiction and Enforcement within the United Kingdom: Jurisdiction of the Sheriff Court Supplementary Consultation Paper—Conflicts of Jurisdiction affecting the Custody of Children Consultation Paper—Illegitimacy and the Guardianship Acts *Consultation Paper—Recognition of Foreign Nullity Decrees and Related Matters
1984	Consultation Paper—Art and Part Guilt of Statutory Offences

*Produced jointly with the Law Commission for England and Wales.

- 1986 Consultation Paper—The Scottish Term and Quarter Days: A Statutory Definition (Resulting Report—Scot Law Com No 108)
Consultation Paper—Termination of Leases: Contracting Out of the Statutory Notice Provisions

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

Appendix III

Statutory Provisions relating to the Scottish Law Commission's Proposals

<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 Liferents (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 (Scot Law Com No 6A) (Cmnd 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c 83).
*Trustee Savings Banks Bill (Scot Law Com No 10)	17.4.69	Trustee Savings Banks Act 1969 (c 50).
*Interpretation of Statutes (Scot Law Com No 11)	11.6.69	None.
*Exemption Clauses in Contracts—First Report: Amendment to the Sale of Goods Act 1893 (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 (Scot Law Com No 16) (Cmnd 4542)	1.12.70	Recognition of Divorce and Legal Separations Act 1971 (c 53).
*Coinage Bill (Scot Law Com No 18) (Cmnd 4544)	26.11.70	Coinage Act 1971 (c 24).
*Vehicles (Excise) Bill (Scot Law Com No 19) (Cmnd 4547)	2.12.70	Vehicles (Excise) Act 1971 (c 10).
*National Savings Bank Bill (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 (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 (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).

*Produced jointly with the Law Commission for England and Wales.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
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 (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) (Cmnd 5371)	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 (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 (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 (Scot Law Com No 36) (Cmnd 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c 10).
*Supply Powers Bill (Scot Law Com No 38) (Cmnd 5850)	6.1.75	Supply Powers Act 1975 (c 9).
*Exemption Clauses—Second Report (Scot Law Com No 39)	2.10.75	Unfair Contract Terms Act 1977 (c 50).
*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (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 (Scot Law Com No 44) (Cmnd 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c 18).
*Liability for Defective Products (Scot Law Com No 45) (Cmnd 6831)	15.6.77	None.
*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 48) (Cmnd 7189)	11.5.78	Statute Law (Repeals) Act 1978 (c 45).
Electricity (Scotland) Bill (Scot Law Com No 49) (Cmnd 7178)	23.5.78	Electricity (Scotland) Act 1979 (c 11).
Adoption (Scotland) Bill (Scot Law Com No 50) (Cmnd 7187)	3.5.78	Adoption (Scotland) Act 1978 (c 28).
Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot Law Com No 51)	18.7.78	Administration of Justice Act 1982 (c 53), Part II.
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot Law Com No 52) (Cmnd 7245)	27.7.78	Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980 (c 56).
*Interpretation Bill (Scot Law Com No 53) (Cmnd 7235)	8.6.78	Interpretation Act 1978 (c 30).

*Produced jointly with the Law Commission for England and Wales.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Customs and Excise Management Bill (Scot Law Com No 54) (Cmnd 7418)	7.12.78	Customs and Excise Management Act 1979 (c 2).
Report on Lost and Abandoned Property (Scot Law Com No 57)	16.1.80	In part by the Civic Government (Scotland) Act 1982 (c 45), Part VI.
Education (Scotland) Bill (Scot Law Com No 58) (Cmnd 7688)	2.4.80	Education (Scotland) Act 1980 (c 44).
Report on Powers of Judicial Factors (Scot Law Com No 59) (Cmnd 7904)	3.7.80	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c 55), section 8.
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot Law Com No 60)	17.7.80	Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c 59).
*Judicial Pensions Bill (Scot Law Com No 62) (Cmnd 8097)	27.11.80	Judicial Pensions Act 1981 (c 20).
*Statute Law Revision—Tenth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 63) (Cmnd 8089)	10.12.80	Statute Law (Repeals) Act 1981 (c 19).
Report on Section 5 of the Damages (Scotland) Act 1976 (Scot Law Com No 64)	29.4.81	Administration of Justice Act 1982 (c 53), Part II.
*Trustee Savings Banks Bill (Scot Law Com No 65) (Cmnd 8257)	11.6.81	Trustee Savings Banks Act 1981 (c 65).
*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Scot Law Com No 66) (Cmnd 8318)	28.7.81	None required.
Family Law—Report on Aliment and Financial Provision (Scot Law Com No 67)	5.11.81	Family Law (Scotland) Act 1985 (c 37).
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot Law Com No 68)	26.2.82	Bankruptcy (Scotland) Act 1985 (c 66).
Report on the Law of Incest in Scotland (Scot Law Com No 69) (Cmnd 8422)	23.12.81	Incest and Related Offences (Scotland) Act 1986 (c 36).
Report on Financial Provision after Foreign Divorce (Scot Law Com No 72)	28.10.82	Matrimonial and Family Proceedings Act 1984 (c 42), Part IV.
Prescription and Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions (Scot Law Com No 74)	10.2.83	Prescription and Limitation (Scotland) Act 1984 (c 45).
Report on Irritancies in Leases (Scot Law Com No 75) (Cmnd 8760)	17.2.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Family Law—Report on Outdated Rules in the Law of Husband and Wife (Scot Law Com No 76)	12.5.83	Law Reform (Husband and Wife) (Scotland) Act 1984 (c 15).
*Medical Bill (Scot Law Com No 77) (Cmnd 8839)	24.3.83	Medical Act 1983 (c 54).
Report on Evidence in Cases of Rape and Other Sexual Offences (Scot Law Com No 78)	21.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Report on Rectification of Contractual and Other Documents (Scot Law Com No 79)	28.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
The Mental Element in Crime (Scot Law Com No 80)	23.11.83	None required.

*Produced jointly with the Law Commission for England and Wales.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Family Law—Report on Illegitimacy (Scot Law Com No 82)	26.1.84	Law Reform (Parent and Child) (Scotland) Act 1986 (c 9).
*Amendment of the Companies Acts 1948–1983 (Scot Law Com No 83) (Cmnd 9114)	21.12.83	Companies Acts (Pre-Consolidation Amendments) Order 1983 (S.I. 1983/134) Companies Act 1985 (c 6).
*Dentists Bill (Scot Law Com No 84) (Cmnd 9119)	18.1.84	Dentists Act 1984 (c 24).
*Road Traffic Regulation Bill (Scot Law Com No 85) (Cmnd 9162)	21.2.84	Road Traffic Regulation Act 1984 (c 27).
Family Law—Report on Matrimonial Property (Scot Law Com No 86)	21.6.84	Family Law (Scotland) Act 1985 (c 37).
*Further Amendments of the Companies Acts 1948–1983 (Scot Law Com No 87) (Cmnd 9272)	25.6.84	Companies Acts (Pre-Consolidation Amendments) (No 2) Order 1984 (S.I. 1984/1169) Companies Act 1985 (c 6).
*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Scot Law Com No 88) (Cmnd 9341)	19.9.84	Family Law Act 1986 (c 55).
Report on Breach of Confidence (Scot Law Com No 90)	20.12.84	None required.
*Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Scot Law Com No 91) (Cmnd 9419)	15.1.85	Family Law Act 1986 (c 55).
Obligations—Report on Negligent Misrepresentation (Scot Law Com No 92)	24.1.85	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73).
Report on Art and Part Guilt of Statutory Offences (Scot Law Com No 93) (Cmnd 9551)	18.7.85	Criminal Justice (Scotland) Act 1987 (c 41).
*Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Scot Law Com No 94) (Cmnd 9515)	10.5.85	Housing Associations Act 1985 (c 69).
Report on Diligence and Debtor Protection (Scot Law Com No 95)	14.11.85	In part by Debtors (Scotland) Act 1987 (c 18).
*Private International Law—Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Scot Law Com No 96)	8.8.85	None.
Obligations—Report on Civil Liability in relation to Animals (Scot Law Com No 97)	8.11.85	Animals (Scotland) Act 1987 (c 9).
*Statute Law Revision—Twelfth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 99) (Cmnd 9648)	14.11.85	Statute Law (Repeals) Act 1986 (c 12).
Evidence—Report on Corroboration, Hearsay and Related Matters in Civil Proceedings (Scot Law Com No 100)	22.5.86	Civil Evidence (Scotland) Act 1988 (c 32).
Report on Child Abduction (Scot Law Com No 102) (Cm 64)	12.2.87	None.
Housing (Scotland) Bill (Scot Law Com No 103) (Cm 104)	17.3.87	Housing (Scotland) Act 1987 (c 26)
*Report on Sale and Supply of Goods (Scot Law Com No 104) (Cm 137)	28.5.87	None.

*Produced jointly with the Law Commission for England and Wales.

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Private International Law—Report on Choice of Law Rules in Marriage (Scot Law Com No 105)	2.7.87	Foreign Marriage Amendment Act 1988 (c 44).
Report on Computer Crime (Scot Law Com No 106) (Cm 174)	23.7.87	None.
*Private International Law—Report on the Law of Domicile (Scot Law Com No 107) (Cm 200)	3.9.87	None.
Report on the Scottish Term and Quarter Days (Scot Law Com No 108) (Cm 208)	29.10.87	None.
Report on the Legal Capacity and Responsibility of Minors and Pupils (Scot Law Com No 110)	17.12.87	None.
Court of Session Bill—Report on the Consolidation of Certain Enactments and the Repeal of Other Enactments relating to the Court of Session (Scot Law Com No 111) (Cm 315)	9.3.88	Court of Session Act 1988 (c 36).
Report on Requirements of Writing (Scot Law Com No 112)	13.7.88	None.
*Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill—Report on the Consolidation of Certain Enactments relating to Road Traffic (Scot Law Com No 113) (Cm 390)	6.6.88	Road Traffic Act 1988 (c 52) Road Traffic Offenders Act 1988 (c 53) Road Traffic (Consequential Provisions) Act 1988 (c 54).
Report on Civil Liability Contribution (Scot Law Com No 115)	15.12.88	
Report on Reform of the Ground for Divorce (Scot Law Com No 116)	28.4.89	
*Statute Law Revision Thirteenth Report—Draft Statute Law (Repeals) Bill (Scot Law Com No 117) (Cm 671)	4.5.89	
Report on Recovery of Possession of Heritable Property (Scot Law Com No 118) (Cm 724)	25.8.89	
*Extradition Bill—Report on the Consolidation of Legislation Relating to Extradition (Scot Law Com No 119) (Cm 712)	27.6.89	
Evidence: Blood Group Tests, DNA Tests and Related Matters (Scot Law Com No 120)		
*Opticians Bill—Report on the Consolidation of Legislation Relating to Opticians (Scot Law Com No 121) (Cm 738)	11.7.89	

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