

Scottish Law Commission

(SCOT LAW COM No 128)

TWENTY-FIFTH ANNUAL REPORT 1989-90

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

*Ordered by The House of Commons to be printed
14th November 1990*

EDINBURGH: HMSO

£6.00 net

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, 1990

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-Fifth Annual Report of the Scottish Law Commission.

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

KENNETH F BARCLAY, *Secretary*
3 September 1990

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

Twenty-Fifth Annual Report

Contents

<i>Page</i>	<i>Paragraph</i>	
1	1.1	PART I GENERAL SURVEY OF THE PAST YEAR
10	2.1	PART II PROGRESS OF LAW REFORM PROJECTS
10	2.2	Administrative law
10	2.4	Criminal law
10	2.4	General
10	2.5	Forfeiture and confiscation
10	2.6	Diligence
11	2.13	Evidence
12	2.15	Privilege and Family Conciliation
12	2.16	Family law
12	2.16	Law of children (incorporating legal capacity of minors and pupils)
12	2.18	Obligations
12	2.18	Corporeal moveables
12	2.19	The postal rule
13	2.20	Rights in security over moveable property
13	2.22	Sale and supply of goods
13	2.23	Supersession of missives
13	2.24	Other obligations topics
13	2.25	Prescription and limitation of actions
13	2.25	Prescription and limitation of action (latent damage)
14	2.27	Private international law
14	2.27	Choice of law rules in tort and delict
14	2.28	Extra-territorial effect of arrestments
14	2.29	Property law
14	2.29	Property law
14	2.30	Passing of risk in contracts for the sale of heritable property
15	2.31	Succession
15	2.33	Statute law
15	2.33	Consolidation
16	2.38	Statute law revision
16	2.39	Local legislation
16	2.41	Database group
16	2.42	Other matters
16	2.42	Class actions
16	2.43	Fiduciary duties and regulatory bodies
17	2.44	Floating charges and receivers
17	2.45	Judicial factors, powers of attorney and guardianship of the incapable
17	2.46	Personal injuries: damages
17	2.49	Miscellaneous: advice to Government Departments, etc
19	3.1	PART III CONSULTATION
19	3.1	The Law Commission for England and Wales
19	3.3	Working party on contract law
19	3.4	Other law reform organisations
19	3.5	The legal and other professions, etc
19	3.7	Conferences, seminars, etc

<i>Page</i>	<i>Paragraph</i>	
20	4.1	PART IV MISCELLANEOUS
20	4.1	Commissioners
20	4.3	Staff
20	4.5	Departmental committees and other bodies
21	4.6	Statute Law Committee
21	4.7	Scottish Advisory Committee
21	4.8	Scrutiny of Bills
21	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 The year covered by this report ended on 15 June 1990. That date marked the twenty-fifth anniversary of the two Law Commissions. On 25 June you and the Lord Chancellor were among those who celebrated the Silver Jubilee of the Commissions at a reception kindly given by the English Commission in the Old Hall at Lincoln's Inn. In his speech the Lord Chancellor reviewed in generous terms the achievements of the Commissions over their first quarter century and expressed admiration for the notable contribution which they had made, both jointly and separately, to the progress of law reform. As the English Chairman, Sir Peter Gibson, reminded us, the Lord Chancellor's tribute reflected his own close concern with law reform, having contributed as a Scottish Law Commissioner to the formulation of recommendations and thereafter as Lord Advocate and Lord Chancellor having been responsible for the implementation of reports submitted to him. Before proceeding to a review of our twenty-fifth year, we take this opportunity to express appreciation of the scholarship, industry and good sense that Commissioners and staff members have brought to their work over the past twenty-five years. In recent years we have addressed legal problems arising out of activities, such as computer misuse, which were scarcely contemplated at the date when the Commissions were constituted. In most areas of our work, however, we have to an increasing extent enjoyed the advantage of building on foundations carefully laid by our predecessors.

1.2 We are glad to report the virtual completion of a project relating to choice of law in tort and delict undertaken jointly with the English Commission. This project posed issues of unusual difficulty and gave rise to divergences of view between and within both Commissions. Recently our outstanding differences have been resolved, a report has been prepared, and a draft Bill is under consideration. We hope to submit our report in the near future.

1.3 Continuity in co-operation with the English Commission will be ensured by a reference made to each Commission in April 1990 by the Department of Trade and Industry. Our remit is to examine the principles which should govern the effect of statutory and non-statutory controls on the fiduciary duties of professional and business activities, particularly in relation to financial services. The two jurisdictions have different trust laws, but in answer to our preliminary enquiries Scottish financial institutions have indicated that a distinctively Scottish contribution to the reference will be based upon more than mere differences of law. Since we are not familiar with the workings of Scottish financial services, we intend, following the initiative taken by the English Commission, to find out from those who provide such services in Scotland what they consider to be the main difficulties. Once that enquiry has been completed, we intend to go on to the preparation of a consultation paper.

1.4 In August 1989 we published a Discussion Paper entitled *Bulk Goods—Section 16 of the Sale of Goods Act 1979 and Section 1 of the Bills of Lading Act 1855*.¹ Two months earlier the English Commission had published a Working Paper entitled *Rights to Goods in Bulk*.² Although the two papers revealed differences of approach to some of the issues raised, subsequent consultation between the two Commissions led to a harmonising of opinions. The Commissions agreed to concentrate attention in the first place upon reform of section 1 of the Bills of Lading Act 1855. The main defect of section 1 is that the rights which that provision confers upon the consignee of goods under a Bill of Lading depend on a passing of the property to him under the Bill. The option for reform of section 1 which we have found most attractive is a reformulation of the section so as to sever the link between passing of property

1. Discussion Paper No 83.

2. Law Commission Working Paper No 112.

and the rights of the consignee. A reform along these lines would, in broad generality, be consistent with the terms of current Conventions regulating the international carriage of goods by air, road and rail. We are confident that the terms of a joint report, together with a draft Bill, will be agreed in the near future. The Commissions have agreed that, once the report on the Bills of Lading Act 1855 has been submitted, we shall carry out a more detailed examination of section 16 of the Sale of Goods Act 1979 in order to determine whether or not it would be advantageous to reform that provision so as to enable a buyer of a quantity of goods out of an identified bulk to acquire an interest in the goods, as an owner in common, while the bulk remains undiminished.

1.5 In April 1990 the Lord Chancellor asked the English Commission to examine the law relating to payments made but not legally due, and in particular the common law rule that payments made under a mistake of law are irrecoverable. At present the common law of the two jurisdictions on recovery of money paid under error of law is substantially the same. One reason for this similarity is that English rules have influenced Scots law on the subject. If proposals made for the amendment of the English rules are implemented, and our law is left unchanged, unacceptable anomalies could arise, especially in respect of payments made to or by public authorities. We have therefore decided to carry out a limited exercise on the redress of unjustified enrichment arising from benefits conferred under error, with particular reference to the need to abolish or amend the error in law rule, and possible amendment of the law on benefits conferred under error of fact. The scope of this exercise is wider than that undertaken by the English Commission in so far as it includes error of fact as well as error of law, and that it is not restricted to money payments but extends to benefits of all kind however conferred. We are aware of an imbalance in Scottish legal literature in that, whereas obligations having their origin in contract and delict are elaborately discussed in modern textbooks, the treatment of unjustified enrichment has been sparse. As a first step therefore we consider it essential to frame a research paper on the existing law which may become the basis of a discussion paper. Mr D R Macdonald of Dundee University has undertaken to submit to us a research paper covering, among others, the question whether the common law error of law rule should be abolished or amended. His paper will also discuss the extent to which error of fact is a ground for the redress of unjustified enrichment and advise whether the law relating to that ground should be amended or its scope clarified by statute.

1.6 Our report on *Succession*, which was published in January 1990,¹ contains important recommendations for reform. Our own researches, the contributions of consultees and the result of public opinion surveys have persuaded us that the existing rules for distributing intestate estate of a deceased person are unduly complicated and often do not achieve a fair result. Factors giving rise to complexity include the three sets of rights which vest in a surviving spouse, namely prior rights, legal rights and rights in residue as well as the distinction maintained in succession between heritable and moveable property. The element of unfairness can be illustrated in the case of the surviving spouse of a childless marriage who may be obliged to share a small estate with a brother, sister and parent of the deceased. Unfairness can also arise in the succession to a deceased who is survived by a spouse and children. The amount of the estate taken by the surviving spouse depends not only on the size of the estate, but on whether the deceased was the owner or tenant of the family house; if he was the owner, whether the house was subject to a building society loan; and on the respective values of the heritable and moveable parts of the estate. One major reform which we recommend is elimination for the purposes of succession of the distinction between the heritable and moveable parts of the estate. In another major reform we recommend a simplification in intestate succession so that, in the event of the deceased leaving no descendants, the surviving spouse would inherit the entire estate. In the event of the deceased leaving descendants, the surviving spouse would succeed to £100,000 and one half of any excess, the descendants succeeding to the remaining half. If these recommendations are implemented, one consequence will be an improvement in the position of the surviving spouse, who in most cases will

1. (1990) Scot Law Com No 124.

succeed to the entire intestate estate, a result which we believe would be approved over a wide range of informed opinion.

1.7 In our report on *Succession* we also recommend modifications to the legal protection against disinheritance afforded to the surviving spouse and children of a deceased person. Under existing law the surviving spouse and children can opt between taking whatever the will gives them and taking a fixed share of the moveable estate, the amount of that share being one half or one third, depending on circumstances. Our recommended reform would retain the system of fixed shares for the surviving spouse and children, but subject to important modifications. A legal share would be payable out of the entire estate, heritable and moveable, and it would have to be claimed within two years of the deceased's death. In cases where all or most of the estate is bequeathed to the surviving spouse, the amount of the children's legal share would be restricted. In all cases the surviving spouse would be entitled to 30% of the first £200,000 and 10% of any excess. The same level of legal share is recommended for the children in the event of the deceased's spouse not surviving. If a spouse does survive, the amount of the children's legal share would be halved, and they could not claim any legal share out of the first £100,000 of an estate which a surviving spouse inherits as fiar either by will or on intestacy.

1.8 We have made the following additional recommendations about succession:

- (a) Unless the will provides otherwise, testamentary bequests in favour of a spouse should be cancelled automatically by a later divorce.
- (b) Abolition of the rule that a child born after the execution of a will containing no provision in its favour can apply to the court for the entire will to be set aside. In our view it would be fairer to provide that the few children who fall into this category should, like other children for whom no testamentary provision is made, claim a legal share of the estate.
- (c) Occasionally wills are not properly signed or witnessed, with the result that the writing has no testamentary effect. We recommend that the court should be entitled, on being satisfied about the deceased's testamentary intention, to declare such a writing to be a valid will.
- (d) The court should also be entitled to order rectification of a will where the person drawing it up has not given effect to the deceased's instructions.

1.9 The recommendations for reform of the law of succession which are summarised above are the most important and wide-ranging to be put forward since the enactment of the Succession (Scotland) Act 1964. The 1964 Act gave effect to recommendations published by Lord Mackintosh's Committee in 1950. While we recognise that some of our recommendations are controversial and that adequate time must be allowed for them to be publicised and debated, we trust that no delay such as that which befell the Mackintosh Committee's reforms will separate the publication of our report and the introduction of a Bill in Parliament. These latest proposals for reform of the law of succession are the fruit of detailed investigation and the commitment of substantial resources over several years. If, as we believe, their enactment, in whole or in part, is likely to confer considerable public advantage, then it is plainly desirable that a draft Bill be presented to Parliament without undue delay so that, if it is enacted, the benefit of a new regime can be enjoyed by the Scottish public at an early date.

1.10 During the year under review we have made good progress on various aspects of the law of diligence. Before the end of 1990 we hope to publish a discussion paper on the Extra-Territorial Effect of Arrestments and Related Matters. Although the main issue is one of general importance, it is of prime concern to clearing banks and other financial institutions which have branch offices both in England and in Scotland. If an arrestment is laid in Scotland, there is doubt as to whether, and, if so, in what circumstances, that arrestment attaches debts which for ordinary purposes are located outside Scotland. Since the total credit and indebtedness of the defender have to be taken into account in determining whether he is truly a creditor of the arrestee, there is obvious force in the contention that such an arrestment has, and should have, extra-territorial effect. Doubts have, however, been expressed as to whether, on the

ground that it is exorbitant, such an arrestment would be refused recognition in other jurisdictions. We shall therefore invite views as to whether, and, if so, how the law on the extra-territorial effect of arrestments should be clarified by statute. In the discussion paper we shall also canvass a proposal that where a creditor and a debtor both bring enforcement proceedings against a third party in Scotland and in another country in respect of the same debt, the Scottish courts should have a statutory power to protect the third party from double jeopardy by recalling the Scottish enforcement proceedings. The absence of such a power in the Scottish courts at present is in contrast to the position in England, where the courts have recently intervened to protect third party garnishees from double jeopardy.

1.11 We are grateful to the Law Society of Scotland for drawing our attention to the current failure of Scots law to conform to the Brussels Arrest Convention of 1952 or to English law in respect that in an action *in personam* against a demise charterer of a ship arrestment on the dependence of that ship is not competent. Since this is a matter of restricted interest, in March 1990 we circulated a consultation paper on *Arrestments of Ships Securing Claims Against Demise Charterers* among a short list of consultees.

1.12 In December 1989 we published Discussion Paper No 84 on *Diligence on the Dependence and Admiralty Arrestments*. One of the main proposals submitted for consultation in that paper is that a warrant for diligence on the dependence should no longer be automatically available to a pursuer. Instead of that it is suggested that a discretionary power should be conferred on the court to grant or refuse a warrant in response to the pursuer's *ex parte* application. Alternatively, it is suggested that the pursuer should have to elect between obtaining a warrant automatically, but subject to the condition that in the event of the action failing the pursuer would incur strict liability for any loss suffered by the defender in consequence of the diligence, and making application to the court for a warrant on cause shown. If the pursuer opts for the latter course he would not be liable to the defender in damages in the event of the action failing unless he had caused the court to grant the warrant by making misleading statements.

1.13 In considering whether the courts should be required to exercise a discretion over the grant or refusal of a warrant for diligence on the dependence, one of the factors which has to be weighed is the likely effect of such a change upon court resources. It will also be necessary to assess the strength of the objection that automatic granting of warrant for diligence on the dependence is productive of hardship and injustice to some defenders. In May 1990 we published Discussion Paper No 87 on *Statutory Fees for Arrestees*. It is possible that implementation of the proposals contained in this paper could ease the difficulty involved in making the allowance of diligence on the dependence a matter of discretion for the court. Information supplied by the Committee of Scottish Clearing Bankers has revealed that during the decade between 1978 and 1988 the total number of arrestments used increased sixfold. On the other hand, the figures supplied for 1987 show that 94% of all the arrestments used attached no funds. In Discussion Paper No 87 we submit for consultation a statutory scheme for payment of arrestees whereby deposit-taking institutions would not be bound to comply with arrestments served upon them unless the arrester first tenders payment of a statutory fee determined in accordance with a sliding scale which broadly reflects the number of branch offices where search has to be made. In the event of the action succeeding the arrester would be entitled to recover the expenses of the arrestment from the defender; should the action fail, these expenses would not be recoverable by the arrester.

1.14 If a statutory scheme for payment for arrestees were to be brought into effect, it is reasonable to suppose that the total number of arrestments used would fall appreciably. On that assumption the case for allowing the court a discretion to grant or refuse warrant for diligence on the dependence might be strengthened. While we are aware of support in certain quarters for the granting of a discretionary power, the objections which we have outlined to such a regime indicate that it will be unusually difficult to work out a recommendation that secures a proper balance between the

competing interests. We are therefore anxious that all those who have practical experience in this important area of law should contribute positively to the debate.

1.15 We also made good progress with Adjudications for Debt and the Equalisation of Diligences. Although comments on our Discussion Papers No 78 and 79 have been few, they have been most valuable. In considering the modernisation of adjudications for debt we have also had regard to the position of creditors of the defender other than the adjudger. In this exercise we are grateful to the Joint Committee of the Law Society of Scotland and the Society of Messengers-at-Arms and Sheriff Officers for sharing their knowledge and experience with us.

1.16 We report significant progress in our work on property law. In the course of the year we have studied responses from consultees to Discussion Paper No 81 on *Passing of Risk in Contracts for the Sale of Land*. In considering the suggestion that the law be changed so that the risk of damage to or destruction of land should not pass from the seller to the buyer until the date of entry in the normal type of case, we have had to evaluate options for reform concerning such important details as identification of the date when risk should pass in various unusual circumstances and the legal consequences of the sale subjects being damaged or destroyed while the risk remains with the seller. We hope to submit our report on this matter in the near future.

1.17 We have made satisfactory progress with the preparation of a discussion paper on Land Tenure Reform. In directing our attention to abolition of the residue of the feudal system we have encountered difficulties, and consequently delays, in dealing with matters of detail, some of which are ancient and obscure. We have decided to give separate treatment to proposals for reform of the Law of the Tenement. A review of the existing law has revealed a surprising degree of uncertainty over detailed items which, although superficially of small consequence, are notoriously productive of tension and dispute between neighbours. We are therefore considering a new regime for the regulation of future tenements which would combine the merits of simplicity and broad equity. While we recognise that it would be disruptive to reform the law retrospectively for all existing tenements, we favour an extension of the jurisdiction of the Lands Tribunal whereby on payment of appropriate compensation by benefited to adversely affected proprietors the new rules should become applicable to an existing tenement by order of the Tribunal. We hope to publish our discussion papers on these subjects within the next few months.

1.18 In family law we have completed, and will soon publish, a discussion paper on *Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property*. These areas of the law relating to children depend largely on the common law, much of which has become outmoded. In preparing our preliminary proposals we have studied the relevant experience of other jurisdictions, in particular the provisions of the Children Act 1989 which has introduced substantial changes into English family law.

1.19 In May 1990 we published Discussion Paper No 86 on the *Effects of Cohabitation in Private Law*. In recent years more and more couples have been living together in Great Britain as husband and wife without being married. Although this development has been more apparent in the south of England than in Scotland, the Scottish trend has in our view been sufficiently marked to make it necessary to canvass opinion as to whether, and, if so, how this phenomenon calls for a response in certain areas of private law. We have invited reaction from consultees on the following, among other, questions. If a cohabiting couple have bought household goods for joint domestic purposes while they have been living together, should each item belong to the buyer or should it belong to both of them equally? On the termination of cohabitation should the law allow one cohabitant to obtain financial compensation for economic advantages derived by the other party from contributions made by the claimant? Should the law allow a cohabitant any right to succeed to part of the other cohabitant's property if the latter dies intestate? If so, in what circumstances should such a claim be admitted? In the discussion paper we have attempted to set out the competing arguments on these matters fairly. We hope that they will stimulate an

informed public debate. In this area of law we are particularly concerned to have an accurate assessment of public perceptions. To that end we commissioned a public opinion survey which was carried out by System Three Scotland. Broadly, the results of this survey support our opinion that rights of cohabitants deserve to receive attention from law reformers. In addition, a large majority of those interviewed in the survey favoured an extension of the existing rights of cohabitants, especially in respect of intestate succession.

1.20 We hope that our programme on family law reform will culminate in consolidating legislation. In March 1990 we published Discussion Paper No 85 entitled *Family Law: Pre-Consolidation Reforms*. Among the reforms proposed for the modernisation and simplification of the law are the following:

- (1) Marriage by cohabitation with habit and repute is the only form of irregular marriage which has survived. We propose its abolition, mainly on the ground that the relevant law is uncertain and potentially dangerous in its effect, because a later regular marriage may be challenged by an earlier unregistered marriage by cohabitation with habit and repute.
- (2) Under existing law a person can marry the parent of a former spouse provided that both parties are over 21 years of age and that the former spouse and the other parent of that former spouse are both dead. We are not satisfied that these restrictions are justified, and we believe that our paper affords the first opportunity for a wide range of consultees in Scotland to express a view upon them.
- (3) A marriage in Scotland is void if either party has gone through the ceremony with a secret mental reservation to the effect that no marriage is to result. While we accept that marriage is a contract of an unusual kind, we consider that, having regard to the nature and form of the ceremony, it should not be void merely because one of the parties had a tacit mental reservation.
- (4) Our law provides that a marriage is voidable if at the time of the marriage either party was incurably impotent. Our preliminary view is that the appropriate way to dissolve such a marriage is not by an action of declarator of nullity but by an action of divorce.
- (5) Because of the improved remedies available by way of aliment and occupancy rights we suggest that judicial separation has become outmoded and should be abolished.
- (6) In conformity with the trend of recent legislation relating to family law we suggest that by express statutory provision no person whose status is governed by Scots law should be regarded as illegitimate.

1.21 As part of our work on Evidence we have made good progress on a topic which may have an important bearing on family law. Recent additions to the Rules of Court have empowered the court in actions concerned with the custody of, or access to, a child to refer the parties to a conciliation service. A question has arisen as to whether, and, if so, to what extent, communications passing between a conciliator and the parties to such a dispute should be confidential. There is a strong argument in favour of according a high degree of confidentiality to such communications, because otherwise the success of the conciliation procedure may be put at risk. On the other hand, the court has a duty to protect the interests of the child. Confidentiality would have to yield if a conciliator were to learn from one of the parties that the child had been, or was likely to be, the victim of a crime. Although this topic is being treated as an urgent one, before we publish a discussion paper we think it is desirable to obtain information about the working of conciliation in other jurisdictions. Once these enquiries have been completed, we intend to publish a paper without delay.

1.22 In September 1989 the Secretary of State for Scotland made a reference asking us to consider the case for amending the law of damages having regard to the possibility that there may be an incentive inherent in the present law for a defender to postpone settlement of a claim until after the pursuer's death in order to minimise the amount of any compensation to be paid. This reference requires us to reappraise the arguments that persuaded this Commission in 1973 to submit proposals for reform of the

law which were implemented in the Damages (Scotland) Act 1976. Under that Act the executor of a person who dies after sustaining personal injuries is entitled to claim in respect of patrimonial loss—for example, loss of earnings—incurred by the deceased between the date when he sustained the injuries and his death. On the other hand, any claim that the deceased may have had for solatium in respect of pain and suffering dies with him. It has been represented that this rule has produced hardship, especially among the victims of dust diseases and their families. In some instances the solatium awards made to such of these victims who survive long enough to obtain a decree or a settlement are considerable, and very much higher than the awards for loss of society made to dependants of those victims who die before obtaining decree or settlement in their own claims. Having regard to the terms of the reference, we obtained information by way of interview and written questionnaire from a number of legal firms experienced in handling personal injury claims. Although fewer firms responded to our request for information than we had hoped, we believe that we gathered sufficient information from those who did respond to enable us to prepare a discussion paper which we intend to publish very soon.

1.23 Our report on the *Evidence of Children and Other Potentially Vulnerable Witnesses* was published in February 1990.¹ We propose changes in law procedure in three areas.

- (1) We recommend that the Lord Justice General be invited to issue a memorandum of guidance to judges on how best, in the exercise of their discretion, to ease the strain experienced by children giving evidence by conventional means. Expedients to be considered by the judge include the removal of wig and gowns by those participating in the trial, enabling a child witness to give evidence seated at a table along with the judge, counsel and solicitors, and allowing a relative or other person to sit with the child while he or she gives evidence.²
- (2) It is recommended that primary legislation should empower a judge, subject to certain conditions, to sanction any one of three procedures for taking a child's evidence. These methods are the recording of the child's evidence on video film at a commission held shortly before the date of the trial, the use of screens in court to keep the accused out of sight of the witness, and the use of closed-circuit television whereby the child's evidence is filmed in a room apart from the court room.
- (3) Relaxation of the law governing hearsay evidence. Instances have been reported of a child who in an interview recorded on audio or video tape before the trial gave a detailed and coherent account of a crime failing to repeat that account at the trial. Under the existing law the account given at the interview cannot be competent evidence of its contents at the trial. Our report recommended that that restriction should be removed on condition that the court is reasonably satisfied that the statement in question is complete and has been accurately recorded and that it is adopted by the witness in court as being a true account.

1.24 Implementation of parts (2) and (3) of our recommendations above would create practical difficulties. The importance attached in Scotland to identification of the accused in court means that in some trials the commission procedure may be of little or no value, and the same factor may lessen the value of closed circuit television. In relation to child witnesses therefore it may become necessary to place greater reliance upon pre-trial identification of the accused. Further, if there is any merit in our recommendations for modification of the hearsay rule, then, on principle, these recommendations should not be restricted to the evidence of children and other vulnerable witnesses. Because this latter reform, if implemented, may have an important bearing on the outcome of many criminal trials, we have agreed to reconsider the recommendations about hearsay in preparing our report on *Criminal Evidence, Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings*.

1. Scot Law Com No 125.

2. The Lord Justice General has now issued an appropriate memorandum in the light of our recommendations.

1.25 The need to give priority to some commitments in law reform has forced us to slow down the pace of other projects. Our examination of procedures for regulating multiple claims has been delayed both by reason of other more urgent work and by difficulties inherent in the remit. Further, we do not consider it worthwhile to resume work on rights in security over moveable property until the Department of Trade and Industry has indicated whether, and, if so, how it proposes to implement for Scotland the report on the *Review of Security Interests in Property* prepared by Professor A L Diamond. In criminal law we have nearly completed work on our remit on Forfeiture and Confiscation. We are, however, reluctant to embark upon any substantial criminal reference so long as no staff member of the Procurator Fiscal Service is seconded to us.

1.26 Following on submission of the *Thirteenth Report on Statute Law Reform*,¹ the Statute Law (Repeals) Act 1989 was enacted in November 1989. We report, with regret, that during part of the year under review owing to the urgent demands of law reform we have been unable to maintain our normal level of co-operation with the English Commission. This unsatisfactory state of affairs was temporary and has been remedied. We have continued to help our English colleagues on the preparation of the chronological table of local legislation. In addition, we have advanced the rationalisation of pre-1975 Scottish local authority private legislation. This latter exercise requires co-operation from Scottish local authorities. Our work has suffered because the resources available for this purpose to local authorities, as well as to ourselves, are exiguous.

1.27 The work of consolidating Scottish legislation proceeds steadily. The topics currently being dealt with are crofting, criminal procedure and town and country planning. In accordance with recent practice we have, where appropriate, broken down the legislation into constituent parts in order to make the resulting consolidation more convenient for the reader. We believe that the pace of consolidation would be considerably quickened once a computer database is created containing all United Kingdom public acts. We contributed to the feasibility study submitted by the Lord Chancellor's Department to the Treasury in March 1990. We are firmly of the opinion that the recommendation made in the study that funds be made available for the project is soundly based, and we look forward to a favourable response from the Treasury.

1.28 We draw attention to the fact that recently the number of our recommendations awaiting implementation has increased substantially. Among them are those contained in our reports on the *Legal Capacity and Responsibility of Minors and Pupils*,² the *Requirements of Writing*,³ *Civil Liability—Contribution*,⁴ *Recovery of Possession of Heritable Property*⁵ and *Prescription and Limitation of Actions—Latent Damage and other Related Issues*.⁶ There is, however, cause for satisfaction in that the Consumer Guarantee Bill at present before Parliament seeks to implement recommendations made by both Commissions in a joint report on *Sale and Supply of Goods* published in 1987.⁷ In addition the Term and Quarter Days (Scotland) Bill, which implements our report on the *Scottish Term and Quarter Days*⁸ and was introduced by Mr Bill Walker MP, successfully completed its passage through Parliament and received Royal Assent on 13 July 1990.

1.29 In January 1990 Sheriff C G B Nicholson QC left the Commission to take up duty as Sheriff Principal of Lothian and Borders. His place was taken by Sheriff Iain Macphail QC. We welcome Sheriff Macphail whose wide knowledge of evidence and procedure has already proved most valuable to our work. It is a pleasure to record our gratitude to Sheriff Principal Nicholson who during his seven year period of

1. (1989) Law Com No 179, Scot Law Com No 117.

2. (1988) Scot Law Com No 110.

3. (1988) Scot Law Com No 112.

4. (1988) Scot Law Com No 115.

5. (1989) Scot Law Com No 118.

6. (1989) Scot Law Com No 122.

7. (1987) Law Com No 160, Scot Law Com No 104.

8. (1987) Scot Law Com No 108.

service with the Commission initiated important recommendations for law reform, particularly in evidence and criminal law. It is satisfying to note that our report on *Computer Crime*,¹ for whose preparation he was largely responsible, has recently found widespread acceptance and, in part, has been implemented in the Computer Misuse Act 1990.

1. (1987) Scot Law Com No 106.

Part II Progress of law reform projects

2.1 The present position 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,¹ are denoted by the use of an asterisk.

Administrative Law

2.2 We have now devoted more resources to this project and work is proceeding on the preparation of the first of a series of discussion papers. The first paper—which we hope to publish during the current year—will be mainly concerned with title and interest to sue under the common law supervisory jurisdiction of the Court of Session.

2.3 The research project being carried out by the University of Edinburgh on the impact of decisions of the sheriff on administrative authorities subject to his statutory powers of review² has been held up, but we anticipate that the results of this research should be made available to us within the next few months.

Criminal Law

General 2.4 Our work in the criminal 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 As reported in our last annual report³ we published a discussion paper⁴ 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. A number of our consultees sought an extension of the period for comments and we agreed to their requests. The comments have been received and have been analysed and we would hope to submit a report during the current year to the Secretary of State for Scotland who gave us the reference on the matter.

Diligence*

(Second Programme, Item 8)

2.6 We have made further progress in our work on the discussion papers referred to in our annual report for 1986-87.⁵ Two of these papers were published in 1988-89⁶ namely Discussion Paper No 78 on *Adjudications for Debt and Related Matters* and Discussion Paper No 79 on *Equalisation of Diligences*. We continue to receive comments on these and await further comments from important organisations whom we have consulted. In the year under review, we have had two meetings with representatives of the Joint Committee of the Law Society of Scotland and the Society of Messengers-at-Arms and Sheriff Officers on the issues raised by these papers.

1. First Programme, (1965) Scot Law Com No 1; Second Programme, (1968) Scot Law Com No 8; Third Programme, (1973) Scot Law Com No 29; Fourth Programme, (1990) Scot Law Com No 126.

2. (1989) Scot Law Com No 123, para 2.3 and (1988) Scot Law Com No 114, para 2.3.

3. Scot Law Com No 123, para 2.5.

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

5. (1987) Scot Law Com No 109, paras 2.9 to 2.12.

6. See our Annual Report for 1988-89, (1989) Scot Law Com No 123, para 2.6.

*Denotes programme subject.

2.7 In December 1989 we published Discussion Paper No 84 on *Diligence on the Dependence and Admiralty Arrestments* dealing in detail with the matters described in our last annual report.¹

2.8 In March 1990, in response to representations from the Law Society of Scotland, we issued to a limited number of consultees a Consultation Paper on *Arrestments of ships securing claims against demise charterers* in which we seek views on whether an arrestment of a ship should be competent on the dependence of an action in personam against a demise charterer of the ship, in a case where the ship is the particular ship with which the action is concerned, and on consequential reforms. Implementation of this proposal would, in our view, make Scots law conform more closely than at present to the probable intention of the Brussels Arrest Convention of 1952,² and would harmonise the Scots law with the English law so far as practicable,³ thereby giving to that extent effect to a uniform interpretation of the Convention within the United Kingdom.

2.9 In May 1990, we published Discussion Paper No 87 on *Statutory Fees for Arrestees* in response to representations received from the Committee of Scottish Clearing Bankers referred to in our last annual report.⁴ This seeks views on provisional proposals enabling persons receiving arrestments of moveable property and funds other than earnings⁵ to charge statutory fees as recompense for the expense incurred in complying with the arrestment.

2.10 The discussion paper proposes a statutory sliding scale of fees for arrestees who are deposit-taking institutions as defined by the Banking Act 1987, the scale being broadly proportionate to the number of offices in the arrestee's branch network. Arrestees holding arrested moveable goods in warehouses and the like, or discharging arrested cargo from ships, would be entitled to claim a flat rate fee plus an additional fee for any higher expense actually incurred.

2.11 At present there are no reliable and comprehensive statistics showing the number of arrestments of moveables and funds (other than earnings) which are executed. The Central Research Unit of the Scottish Office, at our request, have undertaken to conduct a survey to fill this gap and have obtained the agreement of the Society of Messengers-at-Arms and Sheriff Officers to provide the data on which the survey will be carried out in 1990-91.

2.12 We have also made progress in the preparation of a discussion paper on the extra-territorial effect of arrestments, and on the protection of arrestees from double jeopardy arising from concurrent enforcement processes in Scotland and another country. The paper is described at paragraph 2.28 below under the head of Private International Law.

Evidence*

(First Programme, Item 1)

2.13 Our Report on *The Evidence of Children and other Potentially Vulnerable Witnesses*⁶ was submitted to you on 20 December 1989 and published on 14 February 1990. It recommends the adoption of various practices designed to reduce the anxiety or distress which a child is likely to suffer when he or she gives evidence in court. These practices would not require statutory authority. Legislation is recommended,

1. Ibid, para 2.7.

2. See Article 3(4) of the *International Convention Relating to the Arrest of Seagoing Ships*, signed at Brussels on May 10, 1952 and ratified by the United Kingdom on March 18, 1959, (1960) Cmnd 1128.

3. See Supreme Court Act 1981, s 21(4); County Courts Act 1984, s 28(4).

4. (1989) Scot Law Com No 123, para 2.8.

5. The Debtors (Scotland) Act 1987, s 71, enables employers to charge fees for operating earnings arrestments.

6. (1990) Scot Law Com No 125.

*Denotes programme subject.

however, to enable the court in the exercise of its discretion to permit the use of pre-trial depositions, screens or closed-circuit television where evidence is to be given by a child or an adult witness who would be likely to suffer undue distress or anxiety if required to give evidence by conventional means. The report further recommends legislation, applicable to all witnesses, as to uncontentious evidence of identification and as to the admissibility of certain prior statements of witnesses as evidence of the facts stated in them. We have agreed to reconsider the later point.¹ As yet, no legislation has been introduced to implement the report.

2.14 Our consideration of comments received from consultees in response to our Discussion Paper No 77—*Criminal Evidence—Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings*,² has now been completed. We have begun to prepare our report to you on this topic and we shall be submitting it in due course.

**Privilege and family
conciliation**

2.15 New rules of court have been enacted which empower the court, in a litigation as to the custody of, or access to, a child, to refer the parties to a specified conciliation service.³ We have started work on a discussion paper which will investigate the question whether confidentiality should attach to communications between a conciliator and the parties to such a dispute.

Family Law*

(Second Programme, Item 14)

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

2.16 Our last annual report⁴ mentioned that our Report on *Legal Capacity and Responsibility of Minors and Pupils*⁵ was submitted to you on 1 October 1987 and published on 16 December 1987. A Private Member's Bill to implement our report was introduced in 1989 but failed to make progress because of lack of time.

2.17 As we also indicated in our last annual report⁶ the next stage of our project on reform of the law of children concerns parental responsibilities and rights, guardianship, custody and access. The preparation of a discussion paper is well advanced with a view to publication during the next few months. One of our legal staff has continued to attend as an observer at meetings of the Child Care Law Review,⁷ the review body set up by the Secretary of State for Scotland to identify options for change in child care law, and it is anticipated that the review body will also publish their report during the next few months.

Obligations*

(First Programme, Item 14)

Corporeal moveables

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

The postal rule

2.19 In our Report on *Requirements of Writing*⁸ we indicated that we had not covered in the report the law on the communication of offer and acceptance in order to constitute a contract. We further indicated that it was our intention to consult separately on the questions whether the so-called "postal rule" (that posting of an acceptance may complete the contract) should be replaced by a rule requiring an acceptance to be communicated to the offeror before the contract is complete, and in that

1. Para 1.24 above.

2. Discussion Paper No 77 was published in October 1988.

3. AS (Rules of the Court of Session Amendment No 1) (Miscellaneous) 1990 (SI 1990, No 705), para 2(15) inserts a new rule 170B(15) in the Rules of the Court of Session. AS (Amendment of Sheriff Court Ordinary Cause, Summary Cause, and Small Claim Rules) 1990 (SI 1990, No 662) adds a new rule 132F to the Ordinary Cause Rules of the Sheriff Court.

4. (1989) Scot Law Com No 123, para 2.12.

5. Scot Law Com No 110.

6. (1989) Scot Law Com No 123, para 2.13.

7. (1989) Scot Law Com No 123, para 2.13.

8. (1988) Scot Law Com No 122, para 1.3.

*Denotes programme subject.

connection to discuss the implications of modern methods of communication for the law on the constitution of contracts. It has been necessary to give priority to other projects, but we propose to start work on this topic and publish a discussion paper in due course.

Rights in security over moveable property

2.20 As we indicated in our last annual report¹ 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, after which the Department of Trade and Industry invited comments by 1 September 1989 on certain of the proposals for reform put forward in that report.

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

Sale and supply of goods

2.22 A Private Member's Bill, the Consumer Guarantees Bill, introduced by Mr Martyn Jones MP, is currently before Parliament. The Bill would implement the recommendations contained in the joint report by the two Law Commissions on Sale and Supply of Goods which was published in May 1987.²

Supersession of missives

2.23 Work is again proceeding on this topic and we hope to publish a short discussion paper this year.

Other obligations topics

2.24 Following on the publication in August 1989 of our Discussion Paper No 83—*Bulk Goods*, we have received comments on our proposals and are discussing with the Law Commission for England and Wales the terms of joint reports which we shall submit to you in due course. The intention is to submit a report on the bills of lading aspects of the problem as soon as possible and a further report on the sale of goods aspects after further investigations have taken place.

Prescription and Limitation of Actions*

(First Programme, Item 3)

Prescription and limitation of actions (latent damage)

2.25 Our Report on *Prescription and Limitation of Actions (Latent Damage and Other Related Issues)*³ was submitted to you on 17 August and published on 12 October 1989. Although some of the recommendations involve wider issues, the primary objective of the report is to put forward proposals for the reform of the rules of the short and long negative prescriptions as they apply to a claim to make reparation for damage sustained (other than personal injury) particularly where that damage is not immediately apparent to the claimant when it occurs. The recommendations aim to achieve an equitable balance between the interests of the claimant, who requires sufficient time in which to discover the damage and proceed with his claim for compensation, and those of the defender, who requires protection against stale claims, and a degree of certainty as to the period during which a claim can be made against him.

2.26 A Consultation Paper on *The Effect of the Execution of Diligence on the Operation of Prescription* was circulated (but not published) in April with a request for comments by 30 June 1990. In this paper our main proposal for reform is that diligence executed for the purpose of enforcing a court decree, arbitration award or an order of a tribunal or some other statutory authority should not affect the running of the twenty year long negative prescription. Subsidiary proposals are also put

1. (1989) Scot Law Com No 123, para 2.3 and (1988) Scot Law Com No 114, para 2.3.

2. (1987) Law Com No 160; Scot Law Com No 104.

3. Scot Law Com No 122.

*Denotes programme subject.

forward for consideration in relation to certain miscellaneous diligences which are infrequently used in practice—poinding of the ground, maills and duties, an arrestment *in rem* of a ship or her cargo in an Admiralty action *in rem*, and the landlord's sequestration for rent.

Private International Law*

(Third Programme, Item 15)

Choice of law rules in tort and delict

2.27 The outstanding difficulties arising from the joint consultative document on the choice of law rules in tort and delict¹ mentioned in our last report,² have now been resolved and work is in hand on the preparation of a joint report.

Extra-territorial effect of arrestments

2.28 We have made considerable progress in preparing a discussion paper on the *Extra-territorial effect of arrestments and related matters*, which we hope to publish in the next few months. The paper covers two main topics. First, there is some doubt concerning the circumstances in which an arrestment has the effect under Scots law of attaching debts which are for ordinary purposes located outside Scotland. Although the better view is that an arrestment does have that effect, there is some doubt about whether an arrestment having extra-territorial effect in this respect will win international recognition or be refused recognition as exorbitant. The paper will therefore seek views on whether or how the law on the extra-territorial effect of arrestments of debts and moveable goods should be clarified by statute. Second, the paper will provisionally propose that where a creditor and his debtor both bring separate enforcement proceedings by arrestment or other legal process in Scotland and in another country against an innocent third party in respect of the same debt, the Scottish courts should have a statutory power to protect the third party from the double jeopardy by recalling the Scottish arrestment or other form of diligence as the case may be. The paramount need to protect arrestees and innocent third parties receiving foreign attachments from double jeopardy was brought to our attention by the recent case of *Deutsche Schachtbau v SIT Co*³ which shows that the English Courts have powers (for which there is no Scottish equivalent) to protect innocent third party garnishees (equivalent to arrestees) from double jeopardy. The paper will also consider some related matters, eg as to jurisdiction in actions of furthcoming.

Property Law*

(Fourth Programme, Item 16)

Property law

2.29 In our last report⁴ we suggested that the publication of a discussion paper proposing the abolition of feudal tenure and its replacement by a system of absolute ownership with a section proposing a statutory reformulation of the existing common law rules comprising the law of the tenement would be published within a few months from the date of our report. Unfortunately the wide scope of this topic has led to some delays and we now hope to publish two papers during the course of the next few months, the first dealing with the law of the tenement and the second dealing with the abolition of feudal tenure.

Passing of risk in contracts for the sale of land

2.30 We expect to submit our report to you on the Passing of Risk in Contracts for the Sale of Heritable Property in the near future.

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

2. Scot Law Com No 123, para 2.25.

3. [1990] 1 AC 295, HL(E).

4. Scot Law Com No 123, para 2.26.

*Denotes programme subject.

Succession*

(Second Programme, Item 7)

2.31 Our Report on *Succession*¹ was submitted to you on 13 November 1990 and published on 25 January 1990. The report follows on the three consultative memoranda published in September 1986² and covers a wide variety of topics. The recommendations contained in the report include:

- (a) Major changes in the law of intestate succession, in particular improving the position of the surviving spouse.
- (b) Replacement of legal rights by legal share as a means of protecting spouse and issue from disinheritance. Legal rights are calculated by reference to moveable property only and arise automatically. Legal share would be calculated by reference to the deceased's total net estate (heritable and moveable) and would have to be claimed within a certain period from the date of death of the deceased.
- (c) Validation of an improperly executed will, or an unexecuted will, if the court is satisfied that the testator intended the document to be his or her will.
- (d) Rectification of a will that fails to give effect to the testator's instructions.
- (e) Automatic revocation of bequests in favour of a spouse by the subsequent divorce of the testator.
- (f) Abolition of the common law rule (*conditio si testator*) which entitles a child born after the date of a parent's will that does not leave him or her anything to apply to the court for the will to be set aside.
- (g) Vesting of succession rights only if the successor survives the deceased for a period of at least 5 days. The deceased's will may provide for a different period in respect of testamentary provisions.

2.32 The Central Research Unit of the Scottish Office carried out research on a representative sample of testate and intestate estates to which confirmation was sought in late 1986 or early 1987. The results of this research³ were of great value to us in preparing our report.

Statute Law

Consolidation 2.33 As in previous reports we report 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* 2.34 The Prisons (Scotland) Act 1989 (c 45) received Royal Assent on 16 November 1989. Work is presently proceeding on the consolidation of the Criminal Procedure legislation, the Crofting legislation and the Scottish Town and Country Planning legislation. We recently received a proposal that the Land Clauses legislation should be consolidated. This has been considered as a candidate for consolidation in the past but difficulties in connection with land tenure have prevented a consolidation proceeding. We are now looking at a possible consolidation in the light of the changes in the law to be suggested by our discussion paper on the abolition of the feudal system.

(b) *United Kingdom and Great Britain consolidations* 2.35 The Extradition Act 1989 (c 33) received the Royal Assent on 27 July 1989. The Opticians Act 1989 (c 44) received the Royal Assent on 16 November 1989.

2.36 The Capital Allowances Bill has been introduced and should receive Royal Assent in the current Parliamentary Session.

1. (1990) Scot Law Com No 124.

2. No 69—*Intestate Succession and Legal Rights*; No 70 - *The Making and Revocation of Wills*; No 71—*Some Miscellaneous Topics in the Law of Succession*.

3. *Succession Law*, Scottish Office Central Research Unit Papers (January 1990).

*Denotes programme subject.

2.37 Bills on the following subjects are in the course of preparation:

Tribunals and Inquiries Act 1971
Clean Air.

Statute law revision 2.38 The Statute Law (Repeals) Act 1989, following on the Thirteenth Report on Statute Law Revision,¹ was enacted on 16 November 1989. Work is now proceeding in association with our English colleagues on the Fourteenth Report on Statute Law Revision.

Local legislation 2.39 The Joint Working Party on Local Legislation² has not met during the period covered by this report.

2.40 We are continuing to assist our English colleagues in their work on the Chronological Table of Local Legislation.³ We are also continuing to pursue the rationalisation of pre-1975 local authority private legislation in Scotland, which work on the Table showed was necessary. Our resources for this work, however, remain limited, so the main burden of preparing the Table rests on our English colleagues. Our project with the Scottish local authorities is also giving rise to problems, because they too have very limited resources for the work.

Database Group 2.41 We continue to be represented on the Statute Law Committee Secretariat Database Group which is part of a project to create a computer database containing all United Kingdom public Acts.⁴ The project team set up by the Lord Chancellor's Department submitted a feasibility study to the Treasury at the end of March 1990, recommending that funds be made available for the project. The Treasury's response is still awaited. We were involved in commenting on papers prepared for the feasibility study and, assuming that approval for the project is forthcoming, we expect to be involved in subsequent phases of the project. In particular, we anticipate that the editorial work, which is scheduled to start later this year, will produce material for the statute law revision process.

Other Matters

Class actions 2.42 Work has continued on the preparation of a discussion paper on this reference. In addition to the complex problems referred to in our last annual report,⁵ it has become apparent that a full treatment of the subject requires consideration not only of the civil court procedures, but also of the funding and expenses arrangements. There are legal aid implications that require exploration with the appropriate authorities. In view of the extensive work involved in this reference, we have found it necessary to reallocate our priorities in favour of more pressing commitments. We nonetheless hope to publish a discussion paper on class action procedures in 1991.

Fiduciary duties and regulatory bodies 2.43 In April 1990 we received from the Department of Trade and Industry a reference under section 3(1)(e) of the Law Commissions Act 1965 in the following terms:

“Certain professional and business activities are subject to public law regulation by statutory or self-regulatory control. The Scottish Law Commission is to consider the principles which should govern the effect of such controls on the fiduciary and analogous duties of those carrying on such activities, and to make recommendations. The inquiry will consider examples from differing areas of activity but will be with particular reference to financial services.”

Work has started on this reference and we will be co-operating with the Law Commission for England and Wales who have received a similar reference.

1. (1989) Law Com No 179, Scot Law Com No 117.

2. See Appendix I.

3. See Twenty-Fourth Annual Report 1988-89, Scot Law Com No 123, paras 2.39-2.40.

4. See Twenty-Fourth Annual Report 1988-89, Scot Law Com No 123, para 2.41.

5. (1989) Scot Law Com No 123, para 2.42.

Floating charges and receivers

2.44 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 whatever action the Department of Trade and Industry proposes to take in response to the Report on the Review of Security Interests in Property prepared by Professor A L Diamond and published on 27 January 1989, and the results of the Department's subsequent consultation on certain of the report's proposals for reform.

Judicial factors, powers of attorney and guardianship of the incapable*

2.45 This item in the Fourth Programme has replaced two separate law reform proposals made to us by the Law Society of Scotland on judicial factors and powers of attorney.² The item has also enlarged our field of examination by adding guardianship so enabling us to examine personal guardianship along with management of property. As mentioned in our last annual report³ we are giving priority to the management and control of the personal welfare and financial affairs of adults who lack the capacity to look after themselves. We are currently engaged in preparing a wide-ranging discussion paper on these areas and the associated topics of enduring powers of attorney and directions for future health care—the so-called living wills. We anticipate that the discussion paper will be published in the course of the next year.

Personal injuries: damages

2.46 On 14 September 1989 we received a reference on behalf of the Secretary of State for Scotland, under section 3(1)(e) of the Law Commissions Act 1965:

“To consider the case for amending the law of damages in Scotland having regard to the possibility that there may be an incentive inherent in the present law for a defender to postpone making settlement or reaching proof until after the death of the pursuer in order to minimise the amount of any compensation to be paid.”

2.47 In Scotland, the right of an injured person to claim compensation for pain and suffering terminates with his death, in contrast with the right to claim compensation for pecuniary loss. In certain circumstances, therefore, a defender may pay considerably less by way of damages when a claimant dies before his claim is resolved. It is this possibility which is thought to constitute at least an incentive to delay where a claimant seems likely to die. In recent months several asbestos-related deaths have been reported, where the victim died just before the conclusion of legal proceedings. The fact that compensation for the victim's suffering cannot be recovered by his family in these circumstances has caused public concern.

2.48 As a first step we decided to gather some basic facts from selected legal firms with substantial experience of handling claims for personal injuries. We prepared a short questionnaire and sent it to some 45 firms in Aberdeen, Edinburgh and Glasgow. We also carried out interviews with individual solicitors who have extensive reparation practices. Although the number responding to our questionnaire was lower than we had hoped, we nevertheless learned a great deal from those who did respond and those who gave time to be interviewed. We are now working on a discussion paper which we hope to publish within the next few months.

Miscellaneous: advice to Government Departments, etc

2.49 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

1. (1989) Scot Law Com No 123, para 2.47.

2. See Twenty-Second Annual Report 1986-87, Scot Law Com No 109, paras 2.46 and 2.48.

3. Twenty-Fourth Annual Report 1988-89, Scot Law Com No 123, para 2.43.

*Denotes programme subject.

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.

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 and bulk goods.² We shall also be working together on fiduciary duties and regulatory bodies.³

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 2.27.

2. See para 2.24.

3. See para 2.43.

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 I D Macphail, QC	(Full-time)
Mr W A Nimmo Smith, QC	(Part-time)

4.2 Sheriff I D Macphail QC was appointed as a full-time Commissioner from 1 January 1990 when Sheriff C G B Nicholson QC was appointed Sheriff Principal of the Lothian and Borders.

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 1989 we employed three 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
Mr J M Dods
Ms G B Inch
Mr J G S Maclean
Dr D I Nichols
Mr C Robertson

Librarian

Mr N G T Brotchie

Chief Clerk

Mr J Dodson

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 the Permanent Secretary of the Lord Chancellor's Department 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 published a discussion paper on the operation of arbitration in Scotland in the light of the UNCITRAL Model Law in May of this year.

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.

Appendix I

Membership of Working Parties

Joint Working Party on Local Legislation

The Hon Mr Justice Peter Gibson (Chairman)
The Hon Lord Davidson (Chairman)
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

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

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

Working Party on Contract Law

Professor P N Love, CBE (Chairman)
Professor R Black, QC
Mr M G Clarke, QC
Professor W W McBryde

Scottish Law Commission
University of Edinburgh
Faculty of Advocates
University of Dundee

Secretary: Mrs A F Bevan, Scottish Law Commission

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)
-
- 1974** 33 Eighth Annual Report 1972–73
- 34 Report on Presumption of Death
- 35 *Friendly Societies Bill—Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd 5634)
- 36 *Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd 5792)
-
- 1975** 37 Ninth Annual Report 1973–74
- 38 *Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd 5850)
- 39 *Exemption Clauses—Second Report
- 40 *Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd 6303)
-
- 1976** 41 Tenth Annual Report 1974–75
- 42 Family Law: Report on Liability for Adultery and Enticement of a Spouse
-
- 1977** 43 Eleventh Annual Report 1975–76
- 44 *Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd 6719)
- 45 *Report on Liabilities for Defective Products (Cmnd 6831)
-
- 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)
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- 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

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

Commission

	<i>No</i>	
	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation
	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)
	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

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

*Commission**No*

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

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
	122	Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Cm 790)
	123	Twenty-Fourth Annual Report 1988–89

1990	124	Report on Succession
	125	Report on the Evidence of Children and Other Potentially Vulnerable Witnesses
	126	Fourth Programme of Law Reform

2 Scottish Law Commission—Consultative memoranda/Discussion papers 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	

*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: Poidings 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

	<i>No of Resulting Report</i>
1986	
Memorandum No 68—Computer Crime	106
Memorandum No 69—Intestate Succession and Legal Rights	124
Memorandum No 70—The Making and Revocation of Wills	124
Memorandum No 71—Some Miscellaneous Topics in the Law of Succession	124
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)	122
1988	
Discussion Paper No 75—The Evidence of Children and Other Potentially Vulnerable Witnesses	125
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	
Discussion Paper No 84—Diligence on the Dependence and Admiralty Arrestments	
1990	
Discussion Paper No 85—Family Law: Pre-Consolidation Reform	
Discussion Paper No 86—The Effects of Cohabitation in Private Law	
Discussion Paper No 87—Statutory Fees for Arrestees	

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

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

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

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

1990 Arrestments of Ships Securing Claims against Demise Charterers
The Effect of the Execution of Diligence on the Operation of Prescription

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).

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<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.

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<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.

<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	In part by Computer Misuse Act 1990 (c 18).
*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	Term and Quarter Days (Scotland) Act 1990 (c 22).
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	None.
Report on Reform of the Ground for Divorce (Scot Law Com No 116)	28.4.89	None.
*Statute Law Revision Thirteenth Report—Draft Statute Law (Repeals) Bill (Scot Law Com No 117) (Cm 671)	4.5.89	Statute Law Repeals Act 1989 (c 43)
Report on Recovery of Possession of Heritable Property (Scot Law Com No 118) (Cm 724)	25.8.89	None.
*Extradition Bill—Report on the Consolidation of Legislation Relating to Extradition (Scot Law Com No 119) (Cm 712)	27.6.89	Extradition Act 1989 (c 33)
Evidence: Blood Group Tests, DNA Tests and Related Matters (Scot Law Com No 120)	19.10.89	None.
*Opticians Bill—Report on the Consolidation of Legislation Relating to Opticians (Scot Law Com No 121) (Cm 738)	11.7.89	Opticians Act 1989 (c 44)
Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Scot Law Com No 122) (Cm 790)	12.10.89	None.
Report on Succession (Scot Law Com No 124)	25.1.90	None.
Report on the Evidence of Children and Other Potentially Vulnerable Witnesses (Scot Law Com No 125)	15.2.90	None.

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