

Scottish Law Commission

(SCOT. LAW COM. No. 43)

**ELEVENTH
ANNUAL REPORT
1975-1976**

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

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

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

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

SCOTTISH LAW COMMISSION
REPORT FOR THE YEAR ENDED 15th JUNE, 1976

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

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

J. O. M. HUNTER
Chairman

26 November 1976

¹The Transfer of Functions (Secretary of State and Lord Advocate) Order 1972 (S.I. 1972, No. 2002), removes the requirement to submit Reports to the Secretary of State for Scotland.

ELEVENTH ANNUAL REPORT

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I. THE COMMISSION

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

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

2. On 1 January 1976 Mr. J. P. H. Mackay, Q.C. took office as a part-time member of the Commission.

STAFF

3. During the year there have been no changes in our staff complement. Our legal staff now consists of three Parliamentary Draftsmen, one employed on a full-time basis and two on a part-time basis, our Secretary and eight other qualified lawyers. During the last six months we have had the services of a Depute Procurator Fiscal who has acted as a research assistant to our Criminal Law Working Party and who has prepared papers relative to any aspect of criminal law under consideration by us. Our non-legal staff remains at ten. During the 1975 summer vacation we employed four graduates in law to assist in research work. We wish to thank them for their assistance.

PREMISES

4. On 7 June 1976 we moved to new premises at 140 Causewayside, Edinburgh. For the first time for several years all our staff are now under one roof. Arrangements are being made to retain the use of one room at the Old College of Edinburgh University. We wish to express our appreciation of the co-operation and goodwill we received from the University of Edinburgh especially from the Administration and the members of the Law Faculty of Edinburgh University during the ten year period that we were there.

MEETINGS

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

II. GENERAL

6. In the year to 15 June 1976 we have made considerable progress on our programme subjects. Such progress is apparent, for example, in the material published and in course of preparation in pursuance of our programme subjects of Obligations, Damages for Personal Injuries, and Family Law. A detailed account of what has been achieved on both programme and other subjects will be found in later parts of this Report. Our work covers a large variety of areas of law and practice, some of general importance and others of a much more specialist nature. Having regard to the volume, variety and complexity of the

work and to the resources available it is thought that the accomplishment of the past 12 months can on the whole be regarded as satisfactory.

7. We have succeeded in deploying resources to achieve results in other projects and activities, including the preparation of a memorandum on Devolution. Proposals for Devolution, which have been under active discussion throughout the year under review, may obviously involve very important consequences for the detailed structure of Scots law, for the Scottish legal system and for the Commission as an institution. In view of the importance of the constitutional changes which may be involved and of the potential consequences of these changes on the Commission's functions we felt it right in response to requests from you to devote considerable resources to the preparation of a memorandum¹ of comments on those parts of the White Paper *Our Changing Democracy: Devolution to Scotland and Wales*² which related to matters of direct interest to the Commission. We appended to this memorandum our earlier Memorandum on Devolution, Scots Law and the Role of the Commission which had been prepared by us on a confidential basis some 12 months earlier.

8. We would observe that much of our work, even on programme subjects, does not necessarily result in published material. The most obvious illustration of this proposition relates to matters connected with the European Communities and our Third Programme on Private International Law.³ One of our Commissioners has been concerned with matters connected with the necessary adaptations to the European Judgments Convention to permit of its ratification by the United Kingdom and also, through his membership of the Advisory Committee on the EEC Bankruptcy Convention,⁴ with the giving of advice as to the acceptability of the European Bankruptcy Convention in the context of the law of the United Kingdom as a whole and that of Scotland in particular. It has, of course, been necessary to take account of that Convention in formulating our own proposals for the reform of bankruptcy law.⁵

9. Our Third Programme⁶ has required us, in collaboration with the Law Commission for England and Wales, to consider the draft European Convention on Contractual and Non-Contractual Obligations.⁷ Both Law Commissions have briefed the United Kingdom delegates to the Brussels negotiations and, for this purpose, have prepared a series of confidential papers. Under the same programme we have been concerned, in collaboration with the Law Commission for England and Wales, with the briefing of the United Kingdom delegates to the Thirteenth Session of the Hague Conference on Private International Law, particularly in respect of the proposed Convention on Conflict of Laws in respect of Marriage⁸ and on the law applicable to Matrimonial Property.⁹ In addition to this work in connection with international conventions, we have been required, often at short notice, to consider the implications for Scots law

¹Circulated on 10 August 1976 as Scottish Law Commission Memorandum No. 32.

²(1975) Cmnd. 6348.

³(1973) Scot. Law Com. No. 29.

⁴Para. 89.

⁵Para. 26.

⁶(1973) Scot. Law Com. No. 29.

⁷Para. 41.

⁸Para. 43.

⁹Para. 44.

of various draft instruments of the European Communities. Among the more important of these are the proposed directives relating to securities over moveables,¹ products liability² and suretyship.³ Much of this work, in particular that relating to European Community matters, is of considerable importance for the future of Scots law. Its time-table, however, is a matter outwith our control and we have often felt bound, though with regret, to interrupt other work to ensure that the Scottish implications of these projects are adequately and timeously considered. The nature of the work and the need for consultations outside Scotland has placed a heavy burden on Commissioners.

10. The satisfactory progress of the Divorce (Scotland) (No. 2) Bill⁴ makes it probable that long overdue reforms of the family law of Scotland will shortly reach the statute book. This is not only valuable in itself but is also welcome because it enables us to make proposals for the reform of other important branches of family law and because it has released us and members of our legal staff from what had become an annual and somewhat substantial employment of resources in affording technical assistance to the sponsors of successive Private Members' Bills designed to give effect to the reforms originally proposed by us in our Report on *Divorce—the Grounds Considered*⁵ published on 12 May 1967.

11. During the preparation and passage of this Bill the opportunity has been taken to incorporate a number of other useful and welcome changes in the law of Scotland. These additional reforms—some of which were already under consideration by us under our examination of family law and evidence—included (a) the removal of the anomaly regarding the 'standard' of proof of adultery, (b) the abolition of the oath of calumny, (c) useful procedural changes in actions of interim aliment and (d) the abolition of the right of a husband to cite a paramour as co-defender and to claim or obtain damages from him. The reforms in (d) were recommended by us in our Report on *Liability for Adultery and Enticement of a Spouse*⁶ which we took the opportunity of publishing while the Divorce Bill was in preparation.

12. If, as we expect, the Divorce Bill becomes law we will as we have indicated be in a position to proceed with systematic proposals for reform of other large areas of family law. We have in fact anticipated the passing into law of the Divorce Bill by publishing earlier this year a wide ranging and detailed consultative memorandum on *Aliment and Financial Provision*.⁷ In the preparation of that memorandum we received most valuable research assistance from Dr. E. M. Clive of Edinburgh University.

13. We are pleased to record that there has passed into law during the present Session of Parliament the Damages (Scotland) Act 1976 which gives effect to the recommendations contained in our Report on the *Law Relating to Damages for Injuries Causing Death* published on 24 October 1973.⁸ We consider that these

¹Para. 21.

²Paras. 54 and 90.

³Para. 91.

⁴(1975-76) [Bill 23].

⁵(1967) Scot. Law Com. No. 6.

⁶(1976) Scot. Law Com. No. 42.

⁷Circulated as Scottish Law Commission Memorandum No. 22.

⁸(1973) Scot. Law Com. No. 31.

reforms make a useful contribution to the removal of anomalies in this branch of law and to simplification and modernisation. It has fortunately proved possible for Parliament to enact these reforms during a period when wider and very important issues in the law relating to reparation or compensation for personal injuries are under consideration by a Royal Commission.

14. We would like to draw your attention to the progress made in other areas of our work including conflicts of jurisdiction affecting the custody of children, liability for defective products and a wide variety of questions relating to corporeal moveables. The two former subjects are amongst those which are being considered by us in conjunction with the Law Commission for England and Wales. The start made in increasing our resources¹ for considering, commenting and advising on questions of criminal law and practice has been particularly welcome, and we hope in due course to be able to make a positive contribution in this important field.

15. Regrettably there are one or two large subjects to which it has not so far proved possible to devote adequate resources. We are conscious for example that our programme work on diligence has not progressed at the pace which we would have wished, and we have not so far been able to obtain assistance from social and economic research which would reinforce our work in this field. This is disappointing although a great deal of useful material has with the assistance of our Working Party already been accumulated. Until it is possible to release resources which are at present fully employed on other programme work, in particular bankruptcy, progress on the subjects of diligence and also succession will inevitably be slow. We must through force of circumstances and often without much prior warning from time to time divert resources to urgent matters, such as requests for advice. This factor, coupled sometimes with changes of Commissioners and legal staff, can result in major interruptions in the day to day work of law reform, but we are satisfied that we should, wherever possible, respond to such requests for assistance.

16. In view of criticisms which have come to our notice it should be emphasised that in carrying out our statutory functions we have very frequently sought and received valued and generous assistance from many outside persons and bodies, including members of the judiciary, both in the Court of Session and Sheriff Courts, practising lawyers in both branches of the profession and academic lawyers in the Law Faculties of Scottish Universities. Any idea that we do not seek or make use of such assistance particularly in the field of legal research is wholly misconceived, and as our experience has widened, such assistance has been obtained on an increasing scale in a large number of our projects and has greatly assisted their progress. It should be appreciated that such assistance is frequently given without remuneration and that the work done by our Working Parties is entirely voluntary and unpaid.

17. We were reinforced at the beginning of 1976 by the appointment of a part-time Commissioner some 12 months after his predecessor, who was a full-time Commissioner, ceased to hold office. While this reinforcement was extremely welcome we wish to point out (a) that we have now returned to a position where two out of our five Commissioners are part-time, and (b) that for nearly the

¹See Para. 3.

whole of 1975 we were reduced to three full-time Commissioners and one part-time Commissioner. This last factor had immediate adverse effects on the progress of certain of our work, including unfortunately the reference on breach of confidence. It is a matter of judgment to what extent the appointments to the Commission should be full-time and to what extent part-time. We recognise that circumstances will sometimes dictate that part-time appointments should be made and in our view Commissioners who have day to day contact with practice either as advocates or solicitors have a substantial contribution to make to the work of the Commission. For this reason it is likely that for the foreseeable future one Commissioner at least will be part-time. However, it is only right to point out that part-time appointments necessarily involve some disadvantages both for the Commission as a body and for the individual Commissioners. If the composition of the Commission is substantially part-time the volume and speed of work is inevitably affected and limits are necessarily set to the frequency and duration of Commission meetings and also of meetings of teams working on law reform projects. Part-time Commissioners do not have the day to day contacts, discussions and exchanges of views with their colleagues and members of our legal staff which experience shows are of inestimable value in a body concerned with law reform. Moreover, at a time when we are increasingly involved in cross-border and international work it is difficult for part-time Commissioners to undertake the travelling involved and to accept the consequent absences from their own practices with the result that pressures on full-time Commissioners tend to increase.

III. LAW REFORM PROGRAMMES

1. FIRST PROGRAMME¹

Item 1: Evidence

18. Extensive research has been carried out on this subject and will be incorporated in a paper extending to 23 chapters of which 18 have been written. It is hoped to receive the remaining chapters by the end of 1976.

Item 2: Obligations

(a) *General*

19. We continue to make progress on various matters falling within this programme subject. We think it appropriate to mention at this stage one of our projects which, although dealt with separately, does have important implications for the law of obligations. We refer to our examination of the law relating to corporeal moveables and to the fact that we have approved for publication a series of memoranda² dealing with

- (1) General introduction and summary of provisional proposals
- (2) Passing of risk and of ownership
- (3) Some problems of classification
- (4) Protection of the onerous *bona fide* acquirer of another's property
- (5) Mixing, union and creation

¹(1965) Scot. Law Com. No. 1.

²Circulated on 31 August 1976 as Scottish Law Commission Memoranda Nos. 24-31.

- (6) Lost and abandoned property
- (7) Usucapion or acquisitive prescription
- (8) Remedies

(b) *Exemption clauses*

20. On 27 September 1971 we published, jointly with the Law Commission, a paper¹ containing provisional proposals relating to

- (1) the exclusion of liability for negligence in the sale of goods; and
- (2) exemption clauses in contracts for the supply of services and other contracts.

In co-operation with the Law Commission we completed a Joint Report² on these subjects which was submitted to you in July 1975 and published on 2 October 1975.

(c) *Security over Moveables*

21. We referred in our last Annual Report³ to the setting up of a Working Party to examine the problems likely to arise in connection with the creation in Scotland of a new system of security over moveable property. The Working Party have met 18 times during the year under review. They have considered the implications of the introduction into Scots law of a system of security over moveable property based upon Article 9 of the Uniform Commercial Code of the United States of America (which makes possession of the security subjects or registration essential to the completion of a security interest over moveable property).⁴ The Working Party have had particular regard to the problems associated with the institution of a register of security interests over moveable property and with the resolution of the conflicts which would inevitably arise between holders of registered security interests and holders of competing interests in the security subjects.

(d) *Constitution and Proof of Voluntary Obligations*

22. Work has progressed on the preparation of a memorandum on constitution and proof of voluntary obligations. It is hoped that this memorandum will be circulated for consultation in the course of next year.

(e) *Defective Consent*

23. Work is proceeding on the preparation of a memorandum on defects of consent such as error, force and fear, and fraud.

Item 3: Prescription and Limitation of Actions

24. A research paper has been prepared which surveys the present law in Scotland and England on the subject of limitation of actions in personal injury

¹Circulated as Scottish Law Commission Memorandum No. 15 and Law Commission Working Paper No. 39.

²(1975) Scot. Law Com. No. 39; Law Com. No. 69.

³(1976) Scot. Law Com. No. 41 para. 21.

⁴Article 9 has received a measure of acclaim and was strongly influential in the formulation of the recommendations of the *Report of the Departmental Committee on Consumer Credit* (the Crowther Report. (1971) Cmnd. 4596) in relation to the creation of a system of security over moveable property.

claims, and examines the possibility of reforms. Work is proceeding on the preparation of a memorandum.

25. In addition, a Memorandum¹ has been prepared on acquisitive prescription of corporeal moveables—a topic which we deliberately excluded from our Report on the *Reform of the Law relating to Prescription and Limitation of Actions*² so that further study could be undertaken.

2. SECOND PROGRAMME³

Item 6: Insolvency, Bankruptcy and Liquidation

26. We stated in our last Annual Report⁴ that we estimated that completion of our report on bankruptcy could not be expected for some considerable time. That is still the position. Our aim is not simply to improve and modernise the existing law and practice but rather to create a new bankruptcy code which will both give access to the remedies of bankruptcy in appropriate situations and provide an efficient procedure and just result in relation to the distribution of a bankrupt's estate. Aided by the further views expressed by those whom we consulted⁵ our bankruptcy team have made good progress in matters of principle and detail in what are likely to be the most controversial and difficult areas of bankruptcy law reform. The team will continue to press on as speedily as possible with the construction of the draft report and the draft Bill to be appended to it.

Item 7: Succession

27. The commitment of our resources to other exercises has continued to prevent progress being made with this programme subject. However in previous Annual Reports⁶ we have mentioned the possibility of examining succession in the wider context of possible changes in family property law. We are now undertaking research in that direction.⁷

Item 8: Diligence

28. The Working Party met on two occasions during the year, the last meeting being a week-long meeting from 21 to 26 September 1975 to review the whole of the preceding four years' work. The concentrated discussions at that meeting have rendered necessary revision, and in some cases reconsideration and re-writing, of many of the existing papers, and have also identified a number of gaps, some relatively important, which still require fuller treatment.

29. Since the last meeting of the Working Party work has been continuing with a view to the production of a completed draft in the form of a consultative memorandum. However due to the demands of current work in the fields of

¹This Memorandum entitled *Corporeal Moveables: Usucapion, or Acquisitive Prescription*, was published for comment and criticism as Memorandum No. 30 on 31 August 1976.

²(1970) Scot. Law Com. No. 15.

³(1968) Scot. Law Com. No. 8.

⁴(1976) Scot. Law Com. No. 41 para. 15.

⁵(1976) Scot. Law Com. No. 41 para. 24.

⁶Sixth Annual Report (1971) Scot. Law Com. No. 23 para. 13; Ninth Annual Report (1975) Scot. Law Com. No. 37 para. 22.

⁷See para. 39.

family law and bankruptcy it has been decided to prepare in advance of the main memorandum consultative papers on (1) Administration Orders and (2) the Collection and Enforcement of Alimentary Debt. It is hoped that these two consultative papers can be completed and published in time to elicit comment which would prove of value not only to the diligence exercise but also to our programme work on family law and bankruptcy. It must be recognised that the main consultative memorandum on diligence may, because of the size and extent of the subject matters to be covered, have to be split up into a series of consultative papers. Progress will depend to a substantial extent on the availability of resources of Commissioners and legal staff. During the period since authority was refused¹ we have made approaches to sources outside Government for research in this field but so far without positive results.

30. The Working Party had under consideration the period of effectiveness of pouncing which point of law had been discussed in the case of *New Day Furnishing Stores Limited v. Curran*.² Although the Working Party had not reached any final consensus on this point of law we considered it advisable to make their views known to the Sheriffs Principal with a view to encouraging a move towards uniformity of practice in the six sheriffdoms in Scotland. We consulted the Sheriffs Principal because we feared that one of the consequences of any failure to standardise the practice of the sheriff courts in relation to the period of effectiveness of pouncing might be to make the preparation of future legislation or rules of court in this field of law and practice more difficult. The Working Party were also asked to comment on draft Practice Notes on other matters concerned with diligence and in this way we were able to assist the Sheriffs Principal in obtaining a degree of uniformity in practice which had not previously existed.

Item 10: Damages arising from Personal Injuries and Death

31. The Damages (Scotland) Act 1976, which implements the recommendations contained in our Report on the *Law Relating to Damages for Injuries Causing Death*,³ received the Royal Assent on 13 April 1976, and came into force on 13 May 1976.

32. On 1 December 1975 we issued Memorandum No. 21 entitled *Damages for Personal Injuries: Deductions and Heads of Claim*. The first section of the memorandum considers whether the receipt of various kinds of benefits which an injured person may receive as a result of an accident, or the possession of independent financial resources, should lead to any reduction in an award of damages. The remainder of the Memorandum examines the rights of injured persons and others to recover certain losses in the event of an accident. Consultation has now been completed, and work has commenced on preparation of a report.

Item 12: Legal Capacity of Minors and Pupils

33. Work has continued on this subject and we are aiming at the publication of a consultative memorandum in the course of next year.

¹(1975) Scot. Law Com. No. 37 para. 23.

²1974 S.L.T. (Sh. Ct.) 20.

³(1973) Scot. Law Com. No. 31.

Item 13: Criminal Procedure

34. Following the publication of the *Criminal Procedure in Scotland (Second Report)*¹ we were invited by the Scottish Home and Health Department to comment on the recommendations in that Report and on any specific recommendation which was of particular interest to us. We submitted our comments to you and to the Scottish Home and Health Department on 31 March 1976.

Item 14: Family Law

(a) *Divorce*

35. On 25 November 1975, the Earl of Selkirk introduced a Bill in the House of Lords² which was substantially the same as the six previous Bills introduced to implement our Report, *Divorce: The Grounds Considered*.³ The Bill completed its stages in the House of Lords and was then withdrawn to make way for the Divorce (Scotland) (No. 2) Bill,⁴ a Private Member's Bill introduced by Mr. Iain MacCormack, M.P. in the House of Commons. With the permission of Ministers, we rendered technical assistance to the sponsors. The second Bill is likely to reach the statute book⁵ and its main provisions will in that event come into operation on 1 January 1977.

(b) *Aliment and Financial Provision*

36. We issued our Consultative Memorandum No. 23 on *Aliment and Financial Provision* on 31 March 1976 and invited commentators to submit their views before 31 October 1976. We hope to submit a report for reform of this branch of the law in the summer of 1977. We note with satisfaction the Government amendment to the Divorce (Scotland) Bill⁶ which will enable most actions of interim aliment between spouses to be raised as summary causes instead of ordinary actions when the new summary cause procedure comes into force on 1 September 1976.

(c) *Damages for Adultery and Enticement*

37. On 3 June 1976, we submitted to you our Report on *Liability for Adultery and Enticement of a Spouse*⁷ which was laid before Parliament by your Lordship on 23 June 1976. The recommendations in the Report concerning abolition of damages for adultery were subsequently implemented by Government amendments in the House of Lords to the Divorce (Scotland) (No. 2) Bill.⁸

(d) *Personal and Occupancy Rights of Spouses*

38. We have begun the preparation of a consultative memorandum which, as presently contemplated, will contain provisional proposals for reform of the law on a number of matters in this field, including judicial separation, actions of adherence, protection orders for a deserted wife's property, rights of occupancy

¹(1975) Cmnd. 6218.

²Divorce (Scotland) Bill [H.L.] (1975-76) (10).

³(1967) Cmnd. 3256.

⁴(1975-76) [Bill 23].

⁵The Bill received the Royal Assent on 22 July 1976 and became the Divorce (Scotland) Act 1976 (c. 39).

⁶Now Divorce (Scotland) Act 1976, section 8.

⁷(1976) Scot. Law Com. No. 42.

⁸Now Divorce (Scotland) Act 1976 section 10.

of spouses in the matrimonial home, and civil remedies for protection of spouses from violence in marriage. You asked us to expedite consideration of the last two topics in response to the First Report of the Select Committee of the House of Commons on Violence in Marriage.¹ We will endeavour to issue the proposed consultative memorandum covering these and possibly other topics during the early part of 1977.

(e) *Family Property Law*

39. We have again been very fortunate to receive the services of Dr. E. M. Clive, Reader in the Department of Scots Law, University of Edinburgh, our consultant on family law, whom we have commissioned to assist us in the preparation of a consultative memorandum for the revision and reform of family property law, including aspects of the law of succession.² This topic overlaps to some extent with the law on occupancy rights of spouses in the matrimonial home, and with the law on support obligations, to which we have just referred. We would expect that a consultative memorandum on this topic will take some two or three years to complete.

(f) *Miscellaneous*

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

3. THIRD PROGRAMME³

Item 15: Private International Law

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

41. The Interim Report of the Joint Working Party⁴ was submitted to you on 11 July 1975. The Steering Committee⁵ has assumed the responsibility of briefing the United Kingdom members⁶ of the EEC Group of Experts on Private International Law in their consideration of the draft Convention. In the year under review the Steering Committee has prepared seven memoranda and also reasoned amendments to several articles of the draft Convention.

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

42. No further progress has been made on the proposed Convention by the EEC Working Group on Private International Law and consequently no meeting of the Joint Working Party has been convened.

(c) *Hague Conference: Conflict of Laws in respect of Marriage*

43. Mr. Anton, as the United Kingdom representative, attended a second meeting of a Special Commission of the Hague Conference on Private Inter-

¹(1974-75) H.C. 553, Report, Minutes of Evidence and Appendices.

²See para. 27.

³(1973) Scot. Law Com. No. 29.

⁴(1976) Scot. Law Com. No. 41 para. 36.

⁵A list of members of the Steering Committee appears in Appendix I to this Report.

⁶The Hon. Lord Maxwell, Mr. K. M. H. Newman, Professor Aubrey L. Diamond and Mr. R. J. Holmes.

national Law from 6–15 October 1975. At this meeting a preliminary draft Convention on the Celebration and Validity of Marriages and on the Recognition of Decisions relating to Marriages was prepared. The Joint Working Party¹ has examined the draft Convention and prepared the United Kingdom's comments on the text of the draft Convention which will be discussed at the Thirteenth Session of the Hague Conference on Private International Law in October 1976.

(d) *Hague Conference: Proposed Convention on the Law applicable to Matrimonial Property*

44. As mentioned in our last Annual Report,² a Special Commission of the Hague Conference on Private International Law met on 9–17 June 1975 at which the United Kingdom was represented by Mr. M. D. A. Freeman, University College, London. At this Special Commission a preliminary draft Convention on the Law applicable to Matrimonial Property was adopted and a Report upon it has subsequently been prepared by Mr. Alfred von Overbeck. The Joint Working Party¹ has examined the draft Convention and Report and prepared the United Kingdom's comments on the text of the draft Convention which will be discussed at the Thirteenth Session of the Hague Conference on Private International Law in October 1976.

IV. CONSOLIDATION AND STATUTE LAW REVISION

1. CONSOLIDATION

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

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

Second Programme³

(1) *Education (Scotland) Acts*—Consolidation of this legislation was deferred because of the introduction in Parliament of the Education (School Leaving Dates) Bill, which received the Royal Assent on 25 March 1976 and the Education (Scotland) Bill which received the Royal Assent on 10 May 1976.

(2) *Enactments relating to the functions of the Scottish Electricity Boards*—Work is proceeding on the preparation of a first print of a Bill.

(3) *National Health Service (Scotland) Acts*—Work on this consolidation had proceeded to the stage of a second print by January 1976. With the introduction of the Health Service Bills in the present Session of Parliament, work has had to be deferred.

(4) *Enactments relating to Solicitors in Scotland*—Work is proceeding on the preparation of Instructions.⁴

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

²(1976) Scot. Law Com. No. 41 para. 39.

³(1973) Scot. Law Com. No. 27.

⁴These Instructions were received on 28 October 1976.

(5) *Criminal Law Amendment Acts*—The consolidation of this legislation is now at present before Parliament under the title of the Sexual Offences (Scotland) Bill. This Bill¹ has been examined by the Joint Committee on Consolidation Bills and will be recommitted in the autumn.

Third Programme

Until further progress has been made with items on our Second Programme, we did not complete the preparation of this programme.

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

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

Export Guarantees Act 1975

Salmon and Freshwater Fisheries Act 1975

[The following provisions extend to Scotland:

Subsections (1) and (2) of section 28—General powers and duties of water authorities and Minister;

Subsections (1) and (4) of section 39—Border rivers and Solway Firth;

Subsection (1) of section 42 (Repeals etc.) so far as it relates to the repeal of section 15 of the Salmon and Freshwater Fisheries Act 1972 and section 18 of the Water Act 1973; and

Paragraph 3 of Schedule 4 (Offences).]

Iron and Steel Act 1975

Airports Authority Act 1975

Recess Elections Act 1975

(2) Bills on the following subjects are before Parliament:

Lotteries and Amusements Bill²

Restrictive Practices Court Bill²

Restrictive Trade Practices Bill²

Police Pensions Bill²

Adoption Bill²

[The following provisions extend to Scotland:

Clause 22—Notification to local authority of adoption application

Clause 23—Reports where child placed by agency

Clause 51—Disclosure of birth records of adopted children

Subsection (2) of clause 73—Transitional provisions amendments and repeals

Clause 74—Short title commencement and extent

Part II of Schedule 3—consequential]

Resale Prices³

Supplementary Benefits Bill⁴

¹This Bill received the Royal Assent on 15 November 1976.

²This Bill received the Royal Assent on 22 July 1976.

³This Bill received the Royal Assent on 26 October 1976.

⁴This Bill received the Royal Assent on 15 November 1976.

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

Countryside
Employment Protection¹
Alcoholic Liquors (Excise)
British Airways Board
Capital Gains
Patents
Trustee Savings Bank

2. STATUTE LAW REVISION

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

47. We co-operated with the Law Commission in producing a Seventh Report² on Statute Law Revision which was published on 5 December 1975. The Statute Law (Repeals) Bill, which was referred to as under preparation in our last Annual Report³ received the Royal Assent on 27 May 1976. In conjunction with our English colleagues, material is now being assembled for another Report and Statute Law (Repeals) Bill.

3. PRIVATE ACTS

48. As we indicated in our Ninth Annual Report⁴ we agreed to co-operate with the Law Commission on this project. The initial task of listing the Private Acts back to the year 1539 has been completed.

V. OTHER STATUTORY FUNCTIONS

1. ADVICE TO GOVERNMENT DEPARTMENTS AND OTHER BODIES

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

(1) *Administrative Law*

50. Due to priority being given to programme work, we had deferred our examination of the comments which we received on our Memorandum on *Remedies in Administrative Law*⁵ which was issued on 23 August 1971. It has now been decided, with your approval, not to restart work on this subject for

¹This Bill was referred to in para. 40(b)(3) of our Tenth Annual Report as 'Rights of Employees'.

²(1975) Scot. Law Com. No. 40; Law Com. No. 70.

³(1976) Scot. Law Com. No. 41; para. 42.

⁴(1975) Scot. Law Com. No. 37; para. 45.

⁵(1971) Memorandum No. 14.

the time being. The reasons for this decision are, first, that it would be premature for us to report with a draft Bill in this area of the law pending legislation on Devolution; and, second, some research is to be undertaken for us on administrative applications in the Sheriff Court, and we would in any event prefer to examine the results of this research before preparing a report.

(2) *Foreign Money Liabilities*

51. There has been no meeting of the Working Party set up jointly by the two Commissions to examine the problems which may arise if a sum of money is due in a currency other than that of the place of payment or the place where payment is sought. Now that the House of Lords in *Miliangos v. George Frank (Textiles) Ltd.* [1976] AC 443 have decided that English courts can now give judgment in a foreign currency instead of sterling when deciding claims for the recovery of a debt owed in a foreign country, consideration will have to be given to what aspects of the reference need further attention.

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

52. The Joint Working Party set up by the Law Commission and ourselves under the Chairmanship of Lord Justice Scarman completed work on that part of their terms of reference which relates to conflicts of jurisdiction within the United Kingdom and allied administrative problems. On 15 June 1976 the two Law Commissions completed the preparation of a consultative Working Paper/Memorandum on *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*.¹ Members of the Working Party have continued to attend meetings of the Council of Europe's Committee of Experts on the Legal Representation and Custody of Minors, whose terms of reference include the recognition and enforcement of custody orders. In relation to the remaining part of the terms of reference we hope to make progress towards the preparation of a second consultative working paper/memorandum dealing with jurisdiction and enforcement in custody cases containing foreign elements, having regard to the results of the work of the Council of Europe Committee.

(4) *Mental Element in Crime*

53. The Law Commission's Working Paper No. 31 on the *Mental Element in Crime* has been remitted to the Working Party under the Chairmanship of Lord Cameron.²

(5) *Products Liability*

54. In October 1971 we were asked by your predecessor 'to consider whether the existing law governing compensation for personal injury, damage to property or any other loss caused by defective products is adequate, and to recommend what improvements, if any, in the law are needed to ensure that additional remedies are provided and against whom such remedies should be available'. The Law Commission received a similar request from the Lord Chancellor. We published in June 1975 a consultative Working Paper/Memorandum on *Liability*

¹Circulated on 26 August 1976 as Scottish Law Commission Memorandum No. 23 and Law Commission Working Paper No. 68.

²See para. 80.

for *Defective Products*.¹ Consultation on this paper has now been completed, and work has begun with a view to the preparation of a report.

(6) *Breach of Confidence*

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

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

Now that the vacant Commissioner post has been filled—albeit not on a full-time appointment—work has been resumed on the preparation of a memorandum.

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

56. Work continues on the preparation of a report on the legislation that would be needed to give effect in Scotland to the Convention concerning the International Administration of the Estates of Deceased Persons which was signed on behalf of the United Kingdom on 2 October 1973.

(8) *Devolution*

57. At your request we considered certain of the proposals in the White Paper *Our Changing Democracy: Devolution to Scotland and Wales*² and submitted to you on 23 June 1976 our Memorandum No. 32³ containing our comments. We received your authority to publish as an Appendix to this Memorandum the Memorandum referred to in our last Annual Report.⁴

(9) *Patent Law Reform*

58. We considered the proposals in the White Paper on *Patent Law Reform*⁵ and the Green Paper on *Patent Law Reform* which set out in detail the Government's proposals on implementing the recommendations of the Banks Committee.⁶ On 5 March 1976 we submitted our comments on these proposals to the Scottish Courts Administration and to the Patents Office.

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

59. We were invited by the Scottish Home and Health Department to comment on a consultative document outlining a possible new system of controlling

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

²(1975) Cmnd. 6348.

³Circulated on 10 August 1976.

⁴(1976) Scot. Law Com. No. 41 para. 52.

⁵Cmnd. 6000.

⁶*Report of the Committee to Examine the Patent System and Patent Law* (Cmnd. 4407).

scrap metal dealing in Scotland. We have almost completed our consideration of these proposals and hope to submit our comments shortly.¹

(11) *Working Party on Civic Government*

60. We were invited by the Scottish Development Department to comment on some of the proposals contained in the Report by the Working Party on Civic Government. We are considering certain of these proposals.

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

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

(1) *Proposals*

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

(2) *Corporeal Moveables*

63. We have already referred earlier² in this Report to the future publication of eight memoranda dealing with various aspects of the law relating to corporeal moveables. The publication of these memoranda completes our consideration of the extensive and comprehensive research papers prepared by us on this subject.

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

64. A draft report and draft Bill have been considered by us and as a result some rewriting is required. This rewriting was deferred because other work had to take priority, but it is hoped to resume work soon.

(4) *Powers of Attorney*

65. We have not yet made any further progress in our examination of this subject. It is hoped to start the writing of a draft memorandum in the course of the coming year.

(5) *Agricultural Holdings*

66. Resources are still not available to proceed with the preparation of a memorandum on the provisions of the legislation relating to the termination of leases of agricultural holdings.

(6) *Powers of Judicial Factors*

67. We mentioned in our last Annual Report³ that we had received, and might yet receive, comments on our Memorandum⁴ containing provisional proposals

¹Our comments were submitted to the Scottish Home and Health Department on 6 August 1976.

²Para. 19.

³(1976) Scot. Law Com. No. 41 para. 59.

⁴Memorandum No. 19.

for the amendment of the Trusts (Scotland) Acts 1921 and 1961 to facilitate the exercise by judicial factors of certain of their statutory powers. All the comments have now been received and are in process of being analysed. In due course we shall submit a report on this topic.

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

68. In our last Annual Report¹ we mentioned that we were examining the points raised in the article entitled *Between Two Companies Bills: a Note on Registration of Charges*² and certain other points in connection with the Companies (Floating Charges and Receivers) (Scotland) Act 1972. We intend to publish shortly a memorandum containing our provisional conclusions on some of those points.

(8) *Lands Tribunal Orders*

69. In our last Annual Report³ we stated that we had received from the Chairman of the Lands Tribunal for Scotland a memorandum drawing attention to two questions which had given rise to doubts in connection with the Lands Tribunal Orders made under section 1 of the Conveyancing and Feudal Reform (Scotland) Act 1970. We examined the questions and thereafter sent a detailed statement of our views on the questions to the Chairman of the Lands Tribunal. The resolution of the doubts does not, in our view, call for amendment of the 1970 Act.

(9) *Criminal Law*

70. We have received the following proposals:

- (1) that we should examine the availability in criminal proceedings of the defence of insanity where it is self-induced (as by the voluntary taking of drugs);
- (2) that we should review the law relating to conspiracy (including the law relating to mobbing and rioting).

Both these proposals are under consideration.

(10) *Criminal Legal Aid*

71. We received a proposal that applications for criminal legal aid in Scotland should be dealt with under conditions similar to those laid down in Part II of the Legal Aid Act 1974 (which Act applies to England and Wales). Before taking action ourselves we have asked for the views of the Scottish Home and Health Department on the proposal and whether the Department themselves have this proposal under consideration.

(11) *Ejection of Squatters*

72. We received a proposal to the effect that the law of ejection should be examined to cure a defect to deal with persons occupying heritable property without authority. Our examination of this proposal is nearing completion.

¹(1976) Scot. Law Com. No. 41 para. 60.

²1974 S.L.T. (News) pp. 161-163.

³(1976) Scot. Law Com. No. 41 para. 62.

(12) *Irritancies in Leases*

73. In the case of *Dorchester Studios (Glasgow) Limited v. Stone and Another*¹ and in particular in the speeches of Lord Kilbrandon and Lord Fraser of Tullybelton it was suggested that we should consider whether there should be any change in the existing law that a conventional irritancy in a lease cannot be purged after it has been incurred. We noticed an article entitled *Irritancy in Leases*² in which it was proposed that we should, after the widest professional discussion, suggest a code to cover deficiencies in the existing law on leases. We carried out research in order to identify the scope of the project. After considering this research we have decided to restrict our exercise to the operation of irritancy clauses in commercial leases and not to extend our investigation to leases of residential property or mineral or agricultural leases. Before continuing work on this proposal we have requested a section 3(1)(e) reference from the Secretary of State for Scotland.³

VI. FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

74. In our last Annual Report⁴ we indicated that the Council of Europe had set up a Committee of Experts to examine the subject of penalty clauses in private law. Professor Smith and Mr. Holmes, a member of the legal staff of the Law Commission, represented the United Kingdom at the third meeting of this Committee which was held in Strasbourg from 15 to 18 March 1976.

75. The Department of Trade continue to keep the Commission informed on the progress of negotiations with EEC officials on the draft Directive on Commercial Agents.

76. A member of our legal staff attended, as one of the United Kingdom delegates, a meeting of a sub-committee of the CCJ which was held at Strasbourg from 3 to 7 May 1976. This sub-committee was set up by the CCJ to examine the draft European Convention on Products Liability in the light of comments by the governments of Member States.

77. Our Working Party on Security over Moveables⁵ devoted a number of meetings to the preparation of comments upon an EEC draft Directive on Security over Moveables without Dispossession.⁶ We duly forwarded those comments to the Department of Trade and indicated to the Department that we were in full agreement with the views expressed by the Working Party.

¹1975 S.L.T. (H.L.) 153.

²Journal of the Law Society of Scotland January 1976 Vol. 21, No. 1, p. 4.

³This reference was received on 16 September 1976 and is in the following terms:

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

⁴(1971) Scot. Law Com. No. 41, para. 63.

⁵See para. 21.

⁶(1976) Scot. Law Com. No. 41 para. 12.

VII. CONSULTATION

THE LAW COMMISSION

78. We continue our close co-operation with the Law Commission. During the year under review we have worked together on the preparation of a working paper/memorandum on the *Custody of Children—Jurisdiction and Enforcement within the United Kingdom*.¹ We also continue to work together on joint exercises under our third programme.

79. We wish to record our appreciation of the generous hospitality provided by the University of Edinburgh on the occasion of the annual joint meeting of the two Commissions in Edinburgh on 27 April 1976.

80. As indicated in our last Annual Report² we set up a Working Party under³ the Chairmanship of The Hon. Lord Cameron, D.S.C., to examine Working Papers, Draft Reports and Reports produced by the Law Commission under their Programme subject 'Codification of the Criminal Law'. This Working Party met on some eight occasions during the year and completed their consideration of the draft documents which became the Law Commission's Report on *Conspiracy and Criminal Law Reform*.⁴ The Working Party prepared comments on the particular aspects of (1) Conspiracy to Defraud and (2) Trespass: Offences of Forcible Entry, which were forwarded by us to the Law Commission. We remitted to this Working Party for comment a Paper received from the Scottish Home and Health Department on Insanity in Bar of Trial and Insanity at the Time of the Crime and consideration of that Paper had up to the end of the year under review occupied four meetings and is still in progress.

81. The Working Party⁵ set up by us to examine Working Papers, draft Reports and Reports produced by the Law Commission under their Programme subjects relating to aspects of the law of contract, has examined four Working Papers published by the Law Commission during the last year. These were:

No. 59: *Contribution*;

No. 60: *Firm offers*;

No. 61: *Penalty clauses and forfeiture of monies paid*; and

No. 65: *Pecuniary restitution on breach of contract*.

Comments were submitted to the Law Commission by the Working Party on each of these Working Papers.

OTHER LAW REFORM ORGANISATIONS

82. We continue to inform the Northern Ireland Office of the Legislative Draftsmen on matters of common interest.

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

¹See para. 52.

²(1976) Scot. Law Com. No. 41 para. 72.

³A list of members of this Working Party appears in Appendix I to this Report.

⁴(1976) Law Com. No. 76.

⁵A list of members of this Working Party appears in Appendix I to this Report.

THE LEGAL AND OTHER PROFESSIONS IN SCOTLAND

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

85. 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 and the Signet Library.

SEMINARS, COLLOQUIA ETC.

86. (1) Our Chairman, and a member of our legal staff attended the Annual Conference of the Scottish Legal Action Group in Stirling on 31 January and 1 February 1976.

(2) Our Chairman, one Commissioner and one member of our legal staff attended a Seminar on 'Devolution and the Law of Scotland' (sponsored by the Unit for the Study of Government in Scotland) on 13 March 1976.

VIII. MISCELLANEOUS

DEPARTMENTAL AND OTHER COMMITTEES

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

(1) *Statute Law Committee*

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

(2) *Advisory Committee on EEC Bankruptcy Convention*

89. Mr. Anton continued to serve as a member of the Advisory Committee set up by the Department of Trade to consider the terms of the draft EEC Bankruptcy Convention and to advise that Department upon the effect of the implementation of the Convention in its present terms and to recommend any necessary modifications. The Committee submitted its Report¹ to the Department on 15 January 1976.

(3) *EEC Draft Directive on Products Liability*

90. One of our legal staff is a member of an inter-departmental working group, under the Chairmanship of the Department of Prices and Consumer Protection, which was set up in April 1975 to consider a draft EEC Directive on Products Liability.

¹This Report was published in August 1976 as a Command Paper (Cmnd. 6602).

(4) *EEC Draft Directive on Suretyship*

91. A member of our legal staff attended in November 1975 a meeting held in the Department of Prices and Consumer Protection to discuss the attitude of the United Kingdom towards an EEC draft Directive on Suretyship and Indemnity Obligations, and to consider the procedure to be followed in obtaining the views of interested persons and bodies.

(5) *Civil Judicial Statistics*

92. A member of our legal staff has attended meetings of the Working Party of officials set up by the Scottish Courts Administration to review the annual Civil Judicial Statistics for Scotland.

COMPUTERS

93. We continue to be represented on the Executive Committee of the Scottish Legal Computer Research Trust by a member of our legal staff. There were no meetings of the Executive Committee of the Trust during the year.

SCRUTINY OF BILLS

94. Our work on the scrutiny of Bills continues so far as our resources permit.

APPENDICES

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

APPENDIX I

MEMBERSHIP OF WORKING PARTIES ETC.

Working Party on Security over Moveable Property

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

Secretary: Mr. A. J. Sim, Scottish Law Commission

Working Party on Diligence

The Hon. Lord Hunter, V.R.D. (Chairman)	Scottish Law Commission
Mr. J. A. Anderson	Law Society of Scotland
Mr. J. M. Bell	Society of Messengers-at-Arms and Sheriff Officers
Mr. J. R. Cowie	Sheriff-Clerk, Dumbarton
Mr. J. Donald	Society of Messengers-at-Arms and Sheriff Officers
Mr. J. G. Gray	Scottish Chamber of Commerce
Mr. J. A. D. Hope	Advocate, Edinburgh
Mr. A. C. Macpherson	Solicitor, Glasgow

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

Steering Committee on Private International Law

The Hon. Lord Hunter, V.R.D.	} Joint } Chairmen	Scottish Law Commission
The Hon. Mr. Justice Cooke		Law Commission
Mr. A. E. Anton, C.B.E.		Scottish Law Commission
Mr. A. L. Diamond ¹		Law Commission

Joint Secretaries:
Mr. J. B. Allan, Scottish Law Commission
Mr. J. M. Cartwright Sharp, Law Commission

Note: The Steering Committee is assisted by Mr. J. A. E. Davies and Mr. R. J. Holmes.

Joint Working Party on Private International Law (Conflict of Laws in respect of Marriage)

Mr. A. E. Anton, C.B.E. (Chairman)	Scottish Law Commission
Mr. John Churchill	Law Commission
Dr. E. M. Clive	University of Edinburgh
Mr. A. Cope	Law Commission
Mr. A. L. Diamond	Law Commission
Mr. H. V. Richardson, O.B.E.	Lord Chancellor's Office
Mr. I. A. Saunders	Queen Mary College, London

Secretary: Mrs. P. J. Manfield, Law Commission

¹On 30 September 1976 Mr. A. L. Diamond was succeeded as Law Commissioner by Dr. P. M. North.

*Joint Working Party on Private International Law
(Matrimonial Property)*

Mr. A. E. Anton, C.B.E.	} Joint Chairmen	Scottish Law Commission
Mr. Norman S. Marsh, Q.C.		Law Commission
Mr. A. Akbar		Law Commission
Mr. John Churchill		Law Commission
Mr. G. C. Duke		Scottish Courts Administration
Mr. M. D. A. Freeman		University College, London
Mr. I. K. Mathers		Foreign and Commonwealth Office
Mr. K. M. H. Newman		Lord Chancellor's Office

Secretary: Mrs. P. J. Manfield, Law Commission

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

The Rt. Hon. Lord Justice Scarman, O.B.E. (Chairman)	
The Hon. Mr. Justice Cooke	Law Commission
Mr. A. E. Anton, C.B.E.	Scottish Law Commission
Mr. R. K. Batstone	Foreign and Commonwealth Office
Mr. M. C. Blair	Lord Chancellor's Office
Mr. John Churchill	Law Commission
Mr. G. C. Duke	Scottish Courts Administration
Mr. R. L. Jones	Home Office
Mr. W. J. Pickering	Principal Registry of the Family Division
Mr. N. R. Whitty	Scottish Law Commission
Mr. J. W. Wilson	Assistant Secretary to the Supreme Court of Northern Ireland

Secretary: Mr. A. Akbar, Law Commission

Working Party to examine Law Commission Working Papers on Criminal Law

The Hon. Lord Cameron, D.S.C. (Chairman)	
Mr. J. D. Allan	Crown Office
Professor G. H. Gordon, Q.C.	University of Edinburgh
Dr. A. F. Rodger	Advocate, Edinburgh
Mr. W. A. P. Weatherston	Scottish Home and Health Department

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

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

Professor T. B. Smith, Q.C. (Chairman)	Scottish Law Commission
Mr. R. Black	Scottish Law Commission
Mr. J. T. Cameron, Q.C.	Faculty of Advocates
Mr. M. G. Clarke	University of Edinburgh
Mr. W. W. McBryde	University of Aberdeen

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

APPENDIX II

1 SCOTTISH LAW COMMISSION—PAPERS PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE
(as at 31 October 1976)

<i>Commission</i>		
<i>No.</i>		
1965	1	First Programme of Law Reform

1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66

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

1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967-68

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

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)

1971	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd. 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd. 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic— Road Traffic Bill (Cmnd. 4731)
	23	Sixth Annual Report 1970-71

*Produced jointly with the Law Commission.

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No.</i> | |
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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) |
| ————— | | | |
| 1973 | 27 | | Second Programme of Consolidation and Statute Law Revision |
| | 28 | | Seventh Annual Report 1971–72 |
| | 29 | | Third Programme of Law Reform |
| | 30 | | Report on Liability for Antenatal Injury |
| | 31 | | Report on the Law relating to Damages for Injuries causing Death |
| | 32 | | *Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5493) |
| ————— | | | |
| 1974 | 33 | | Eighth Annual Report 1972–73 |
| | 34 | | Report on Presumption of Death |
| | 35 | | *Friendly Societies Bill—Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd. 5634) |
| | 36 | | *Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd. 5792) |
| ————— | | | |
| 1975 | 37 | | Ninth Annual Report 1973–74 |
| | 38 | | *Supply Powers Bill—Report on the Consolidation of Enactments relating to Supply Powers (Cmnd. 5850) |
| | 39 | | *Exemption Clauses—Second Report |
| | 40 | | *Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill |
| ————— | | | |
| 1976 | 41 | | Tenth Annual Report 1974–75 |
| | 42 | | Family Law: Report on Liability for Adultery and Enticement of a Spouse |

2 SCOTTISH LAW COMMISSION—MEMORANDA CIRCULATED FOR COMMENT AND CRITICISM

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

*Produced jointly with the Law Commission.

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

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

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

*Produced jointly with the Law Commission.

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

- 1969 Married Women's Policies of Assurance (Scotland) Act 1880—Working Paper
1973 Consultation Paper on Divorce for Incurable Insanity
1974 Insolvency, Bankruptcy and Liquidation in Scotland—Consultative Paper

5 SCOTTISH LAW COMMISSION—UNPUBLISHED CONFIDENTIAL DOCUMENTS

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

*Produced jointly with the Law Commission.

APPENDIX III

STATUTORY PROVISIONS RELATING TO THE SCOTTISH LAW COMMISSION'S PROPOSALS (as at 31 October 1976)

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restrictions on the Creation of Life-rents (Memorandum No. 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 18.
Applications for Planning Permission (Memorandum No. 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c. 30), section 79.
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot. Law Com. No. 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 9.
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot. Law Com. No. 5) (Cmnd. 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c. 22); Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70), section 5.
Divorce—The Grounds Considered (Scot. Law Com. No. 6) (Cmnd. 3256)	12.5.67	Divorce (Scotland) Act 1976 (c. 39).
Sea Fisheries (Shellfish) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 6A) (Cmnd. 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c. 83).
Trustee Savings Banks Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 10) (Cmnd. 4004)	17.4.69	Trustee Savings Banks Act 1969 (c. 50).
Interpretation of Statutes (Joint Report with the Law Commission) (Scot. Law Com. No. 11)	11.6.69	None.
Exemption Clauses in Contracts—First Report: Amendments to the Sale of Goods Act 1893 (Joint Report with the Law Commission) (Scot. Law Com. No. 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c. 13).
The Companies (Floating Charges) (Scotland) Act 1961 (Scot. Law Com. No. 14) (Cmnd. 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c. 67).
Reform of the Law Relating to Prescription and Limitation of Actions (Scot. Law Com. No. 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c. 52).
Hague Convention on Recognition of Divorces and Legal Separations (Joint Report with the Law Commission) (Scot. Law Com. No. 16) (Cmnd. 4542)	1.12.70	Recognition of Divorces and Legal Separations Act 1971 (c. 53).
Coinage Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 18) (Cmnd. 4544)	26.11.70	Coinage Act 1971 (c. 24).
Vehicles (Excise) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 19) (Cmnd. 4547)	2.12.70	Vehicles (Excise) Act 1971 (c. 10).

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
National Savings Bank Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 20) (Cmnd. 4574)	13.1.71	National Savings Bank Act 1971 (c. 29).
Taxation of Income and Gains derived from Land (Joint Report with the Law Commission) (Scot. Law Com. No. 21) (Cmnd. 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c. 41).
The Road Traffic Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 22) (Cmnd. 4731)	26.7.71	Road Traffic Act 1972 (c. 20).
Town and Country Planning (Scotland) Bill (Scot. Law Com. No. 24) (Cmnd. 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c. 52).
Family Law—Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot. Law Com. No. 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c. 45).
Statute Law Revision—Fourth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 26) (Cmnd. 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c. 39).
Report on Liability for Antenatal Injury (Scot. Law Com. No. 30)	30.8.73	None.
Report on the Law relating to Damages for Injuries causing Death (Scot. Law Com. No. 31)	24.10.73	Damages (Scotland) Act 1976 (c. 13).
Statute Law Revision—Fifth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 32) (Cmnd. 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c. 22).
Report on Presumption of Death (Scot. Law Com. No. 34)	3.9.74	None.
Friendly Societies Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 35) (Cmnd. 5634)	27.6.74	Friendly Societies Act 1974 (c. 46).
Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 36) (Cmnd. 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c. 10).
Supply Powers Bill (Joint Report with the Law Commission) (Scot. Law Com. No. 38) (Cmnd. 5850)	6.1.75	Supply Powers Act 1975 (c. 9).
Exemption Clauses—Second Report (Joint Report with the Law Commission) (Scot. Law Com. No. 39)	2.10.75	None.
Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Joint Report with Law Commission) (Scot. Law Com. No. 40) (Cmnd. 6303)	8.12.75	Statute Law Repeals Act 1976 (c. 16).
Family Law—Report on Liability for Adultery and Enticement of a Spouse (Scot. Law Com. No. 42)	23.6.76	In part by Section 10 of the Divorce (Scotland) Act 1976 (c. 39).

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