



Scottish Law Commission

*promoting law reform*

(SCOT LAW COM No 253)

annual report | 2018





# Scottish Law Commission

*promoting law reform*

The Commission was established under the Law Commissions Act 1965

## Our function

To recommend reforms to improve, simplify and update the law of Scotland

## Our role

To play a leading role in developing the law for the people of Scotland so that it is just, principled, responsive and easy to understand

annual report | 2018



*Commissioners and Chief Executive  
(back row) Dr Andrew Steven, The Hon Lord Pentland (Chairman), Kate Dowdalls QC  
(front row) David Johnston QC, Malcolm McMillan (Chief Executive), Caroline Drummond*

## Annual Report 2018

To: Humza Yousaf MSP, Cabinet Secretary for Justice

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2018.



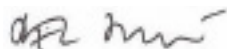
PAUL B CULLEN, *Chairman*



KATE DOWDALLS



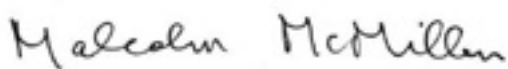
CAROLINE S DRUMMOND



DAVID E L JOHNSTON



ANDREW J M STEVEN



Malcolm McMillan, *Chief Executive*

12 February 2019

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

February 2019

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## Chairman's foreword



I am pleased to introduce the Annual Report of the Scottish Law Commission for 2018. The report explains our work over the past year. It also brings to a close my five-year term as Chairman of the Commission.

The Scottish Law Commission has statutory responsibility for promoting reform of the law of Scotland. We are non-political and independent of government. Our remit extends to the whole of Scots law: in both devolved and reserved areas. We develop our proposals for reform on the basis of extensive public consultation. We work closely with stakeholders throughout our law reform projects. We produce detailed proposals for improving the law.

I have previously highlighted that systematic law reform is of vital importance for the success and prosperity of the people of Scotland. The pressures on government mean that it cannot be expected to keep the whole legal system under constant review. Development of the law by the courts is subject to suitable cases coming forward. These realities mean that the work of the Commission is key in ensuring that the law is kept up to date, that it develops in harmony with the values and thinking of modern society, and that it supports the needs of the economy.

In 2018 we published a report, two discussion papers and a joint consultation paper. We also embarked on our Tenth Programme of law reform. The new Programme includes a wide range of work: on family law; on the law of homicide; on surrogacy; on self-driving vehicles; on securities over land; on the law of leases; and on damages for personal injury. Further details can be found in this report.

As I leave the Commission, I would offer the following thoughts for the future.

Successful law reform depends on prompt implementation of our recommendations; otherwise these are liable to become outdated.

I would like to commend here the work of the Delegated Powers and Law Reform Committee of the Scottish Parliament. The Committee has considered a number of our Bills since its remit was widened in 2013 to include some law reform work. I was delighted to see the Committee scrutinise the Bill based on our 2017 Report on Prescription, which as passed by the Parliament is now the Prescription (Scotland) Act 2018. The criteria for referral of our Bills to the Committee are, however, in my view unduly narrow; for instance, they exclude all criminal law reform. It would be appropriate to consider whether the criteria should now be expanded.

Other committees in the Scottish Parliament have been less active in dealing with Commission measures in recent years. I hope that this will change in the near future.

Whilst it is encouraging to note that the Scottish Government intends to move ahead with our recommendations on defamation law, on judicial factors, and on succession, important proposals for reform in other key areas are yet to be taken forward. I mention three.

First, the position in respect of trust law is concerning. Modernisation is strongly supported by key stakeholders; they have emphasised the need for reform in an area that is of considerable importance to society and the economy, where the main current legislation is nearly a century old. The Scottish Government has not yet provided a substantive response to our report published in 2014. I would urge them to do so without further delay.

Second, I would draw attention to our unimplemented 2012 report on similar fact evidence and the *Moorov* doctrine. Here too reform is urgently needed because the law is unclear and gives rise to real difficulties in practice.

Third, I would mention our 2017 report on moveable transactions. Reform is essential to enable Scottish businesses to gain access to finance and to reduce the advantage held by businesses regulated by English law. I encourage the Scottish Government to move forward rapidly with its consideration of our recommendations.

During the year Professor Hector MacQueen completed his service as a Commissioner with publication of our report reviewing contract law. I am grateful to him for his substantial contribution to law reform. His successor is Kate Dowdalls QC, who will lead our project reviewing family law. I wish her every success in her new role.

My successor is Lady Paton. She brings extensive experience as an advocate and judge. I wish her well.

I conclude by expressing my sincere appreciation to all my colleagues at the Commission for their invaluable work on law reform, and for the unstinting support they have given me in the last five years.



**The Hon Lord Pentland**  
*Chairman*

## Publications 2018

PUBLICATION	DATE OF PUBLICATION
Tenth Programme of Law Reform (Scot Law Com No 250)	22 February 2018
Annual Report 2017 (Scot Law Com No 251)	28 February 2018
Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses (Scot Law Com No 252)	29 March 2018
Discussion Paper on Section 53 of the Title Conditions (Scotland) Act 2003 (DP No 164)	11 May 2018
Discussion Paper on Aspects of Leases: Termination (DP No 165)	23 May 2018
Joint Consultation Paper on Automated Vehicles (DP No 166)	8 November 2018

On 11 December 2018 we published a revised and updated version of the Trusts (Scotland) Bill annexed to our Report on Trust Law (Scot Law Com No 239). This fulfils an indication we had given at the time of publication in 2014 that we would continue to work on a suite of consequential amendments which would be required if our law reform recommendations were implemented.

## Implementation of our reports 2018

The Commission's statutory function is to provide independent advice to government on the reform of Scots law. Our recommendations for reform are contained in reports, which usually include a draft Bill which would give effect to our recommendations. Most of our reports are submitted to the Scottish Ministers, and reports are submitted to UK Ministers where the subject matter involves areas of law reserved to the UK Parliament.

Implementation of our recommendations is a matter for the Scottish Government and Scottish Parliament or, where appropriate, the UK Government and UK Parliament. In both cases the Commission usually provides assistance to government officials during the Parliamentary stages of the Bill, and provides evidence to the Parliamentary Committee scrutinising the Bill.

### Defamation

The Commission published our Report on Defamation on 14 December 2017.

The Scottish Government considered our Report during 2018 and published a consultation on reform of the law of defamation on 14 January 2019. The consultation is based on our 2017 Report.

### Act passed by the Scottish Parliament in 2018

#### Prescription

The Prescription (Scotland) Bill was introduced in Parliament on 8 February 2018 and received Royal Assent on 18 December 2018. The Act is not yet fully in force.

The Act implements the recommendations contained in our Report on Prescription which was published in July 2017. The amendments to the law are designed to increase clarity, certainty and fairness.

The main policy aim of the Act is to address issues within the law of negative prescription which can cause difficulty in practice. One such difficulty relates to the so-called discoverability test, that is to say the knowledge which a pursuer must have before the prescriptive period begins to run where damages are sought for loss or damage which was initially latent. The Act introduces a new test to deal with concerns about the limitations of the existing test, which has been criticised as being potentially unfair to pursuers.

The Act also has regard to the interests of defenders. It amends the starting date of the 20-year prescriptive period for obligations to pay damages in respect of loss, injury or damage caused by an act or omission. Under the current law the 20-year prescription starts to run on the date on which loss, injury or damage flowed from the relevant act, neglect or default. This means that it is quite possible for a long period of time to pass without the 20-year period even starting to run; this can be unfair to defenders. The Act provides that in such cases prescription will begin to run on the date of the act or omission giving rise to the claim, which will never be later than the existing starting date and in some cases will be significantly earlier.

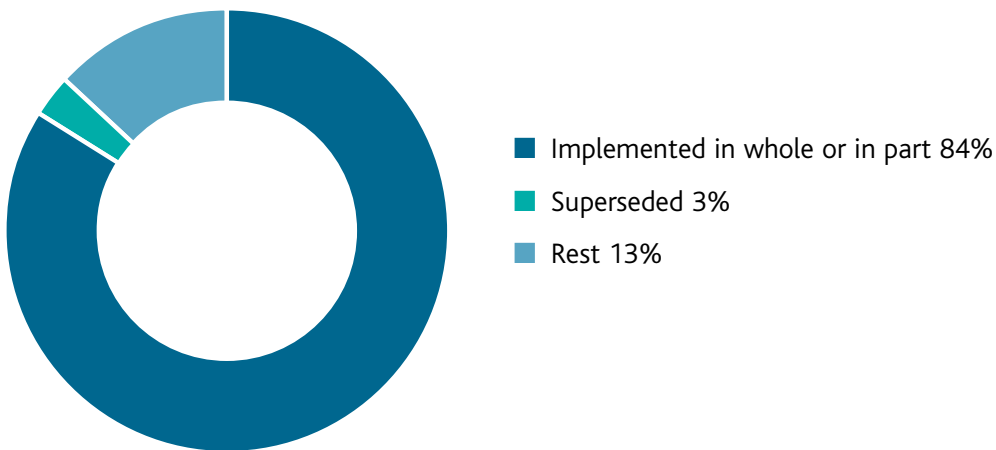
## Overall implementation figures

The overall position on implementation of Scottish Law Commission reports from 1965 to December 2018 is:

- Law reform reports published: 188
- Implemented in whole or in part: 158 (84%)
- Superseded: 5 (3%)

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

## Implementation rate of Commission reports



## Law reform projects

The Commission's law reform work stems from our programmes of law reform and from references from Scottish Ministers and from UK Ministers.

### Programmes of law reform

Our Tenth Programme outlined our law reform projects for the period of five years from 2018 to the end of 2022. It was published in February 2018, following extensive consultation with the legal profession and other interested parties including members of the public. The Programme was approved by Scottish Ministers and laid before the Scottish Parliament.

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

#### Item 1 – Law of contract in the light of the Draft Common Frame of Reference

##### *Project Team*

**Professor Hector MacQueen**, Commissioner  
**Lorraine Stirling**, Project Manager  
**Lucy Reville**, Legal Assistant  
(until August 2018)

This project was included in our Eighth Programme of Law Reform as a long-term project, which was then carried forward to our Ninth and then Tenth Programme of Law Reform.

The project concluded at the end of March 2018, with the publication of our final Report, Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses.

This Report marked the culmination of a general review of Scots contract law in light of the 2009 Draft Common Frame of Reference ("the DCFR") carried out by the Commission over a number of years. It also marked the end of Professor Hector MacQueen's tenure as a Scottish Law Commissioner.

The DCFR is a contemporary statement of contract law in clear English, based on comparative research from across the European Union, against which we reviewed the Scots law of contract to ensure it was clear, accessible and fit for the modern age.

Throughout the life of the project, the Commission published five Discussion Papers and three Reports. The Discussion Papers covered Interpretation of Contract (2011), Formation of Contract (2012), Third Party Rights in Contract (2014), Penalty Clauses (2016) and Remedies for Breach of Contract (2017). The Reports covered Formation of Contract: Execution in Counterpart (2013), Third Party Rights (2016) and Formation, Interpretation, Remedies for Breach and Penalty Clauses (2018).

Our recommended reform of execution in counterpart was legislated for in the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 and our recommended reform of third party rights led to the Contract (Third Party Rights) (Scotland) Act 2017 which came into force in early 2018.

In 2018, we drew together the outstanding strands of the project, publishing our final Report which includes recommendations for improvement and reform of the law of formation of contract and of aspects of the law of remedies for breach of contract, and a draft Bill which would put into effect these recommendations. Implementation of this Report will do much to remove current uncertainties with the law as well as simplifying and modernising it and making it more accessible than before to lawyers and non-lawyers alike.

## Item 2 – Heritable securities

### Project Team

**Dr Andrew Steven**, Commissioner  
**Andrew Crawley**, Project Manager  
**Paul Brogan**, Legal Assistant

The reform of the law of heritable securities, first mooted in our Eighth Programme of Law Reform, has been carried over to our Tenth Programme.

This major project is reviewing the law of security over heritable property (land, and associated rights).

The law was last systematically reformed by the Conveyancing and Feudal Reform (Scotland) Act 1970, and that remains the main legislation.

The 1970 Act created the standard security over land, sometimes described as a 'mortgage'. The Act was a great improvement, but is not without difficulty. The rules about enforcement are complex and hard to understand, and a section-by-section review of the Act also reveals numerous technical problems.

In addition, there has been considerable change since 1970. The law should develop where that is needed to help ensure the efficient operation of the economy and of property markets.

We have scoped the project, and intend to consult on two discussion papers. The first paper on pre-default issues is expected to be published in the summer of 2019.

We have had preliminary meetings with a wide range of interested persons, and have established good links with the academic and legal communities.

A research paper by Dr John MacLeod, Senior Lecturer in Law at the University of Edinburgh, on enforcement of heritable securities has been published on our website. His paper is one of the first fruits of the new arrangement between the Scottish Law Schools and the Commission, which enables law academics to collaborate with us.

We have established a working group of leading legal practitioners in this field, and have held two meetings of that group. We expect to have another meeting before the publication of the first discussion paper.

## Item 3 – Aspects of leases

### Project Team

**Caroline Drummond**, Commissioner  
**Charles Garland**, Project Manager  
**Alison Hetherington**, Legal Assistant

A project on leases has formed part of our Ninth and now Tenth Programmes of Law Reform. In order to focus efforts on specific areas of difficulty within the current law we have chosen to concentrate on commercial leases, as residential and agricultural leases are considered to be more fully provided for under the present law.

The aspect of commercial leases that has generated most interest for reform is termination. A number of different issues arose when we spoke to interested parties in preparing our Discussion Paper, which was published in May 2018. It contains questions on the following topics: tacit relocation; notices to quit; apportionment of rent; the Tenancy of Shops (Scotland) Act 1949; irritancy; and *confusio*.

During the consultation period we held twenty seminars, at the offices of solicitors, surveyors and representative organisations. The consultation ran until September 2018 and we were delighted to receive around 40 responses from a wide range of consultees. We are in the process of analysing the results and the intention is to publish a report with a draft Bill around the end of 2019/early 2020.

## Item 4 – Homicide

### Project Team

**The Hon Lord Pentland**, Commissioner  
**Graham McGlashan**, Project Manager  
**Maryia Lahatskaya**, Legal Assistant

This medium-term project to review the law of homicide was announced in our Tenth Programme of Law Reform in February 2018 and is expected to take five years to complete. The topic has been included in some of the Commission's previous programmes, but the need to give priority to other projects has meant that it has not been possible to take the matter forward until now.



Homicide team – Maryia Lahatskaya, Graham McGlashan, Lord Pentland and Dr Claire McDiarmid

In the case of *Petto v HMA*, Lord Justice Clerk Gill stated that a comprehensive re-examination of the mental element in homicide was long overdue and "pre-eminently an exercise to be carried out by the normal processes of law reform". We will examine this area and consider whether the law requires reform.

In 2018 we commenced work on the project, scoping the project by talking to criminal law academics and other stakeholders. We have constituted an advisory group of legal practitioners, academics and other interested parties to assist us throughout the life of the project.

Lord Pentland delivered the Lord Rodger lecture at Aberdeen University on 20 July 2018 on the topic of the mental element of homicide.

We held a seminar on 5 October 2018 at the University of Strathclyde, in conjunction with colleagues there and at the University of Glasgow School of Law, to discuss the mental element in homicide. This event brought together members of our advisory group from academia, the legal professions and representatives from Police Scotland, the prosecution authority and Victim Support Scotland.



Dr Claire McDiarmid speaking at the Seminar on Homicide

In September we were also pleased to welcome Dr Claire McDiarmid of the University of Strathclyde to work with us at the Commission for a 4 month period to assist us in developing a discussion paper on the mental element of homicide. Work on drafting that discussion paper is under way and we hope to be in a position to publish that by the end of 2019/beginning of 2020.



## Item 5 – Aspects of family law

### Project Team

**Kate Dowdalls QC**, Commissioner  
**Lorraine Stirling**, Project Manager  
**Katie Hendry**, Legal Assistant

This medium-term project began in July 2018, with the appointment of Kate Dowdalls QC as lead Commissioner.

There was considerable support for review of a number of family law topics from those responding to the Commission's consultation on its Tenth Programme of Law Reform. Aspects of family law was therefore chosen for inclusion in the Programme.

Our family law team has been engaged in a scoping exercise to determine the extent and focus of the review. We have been in close consultation with the Scottish Government during this time, as the government is also currently in the process of carrying out its own reviews of certain aspects of the law in this area.

Two particular aspects of family law have been identified by us for possible inclusion in the project: the law relating to cohabitants (specifically the definition of 'cohabitant' and financial provision on cessation of cohabitation) and civil remedies for domestic abuse and violence (considering in particular whether the existing legislative framework is adequate and sufficient to provide victims of domestic abuse and violence with prompt and effective protection and remedies).

The team hopes to conclude this scoping exercise and its initial research and investigations (which has included some informal meetings with interested parties) early in 2019. We are likely to begin with review of the law of cohabitation and will be establishing an Advisory Group with which we hope to work closely throughout 2019. We hope to be working towards publication of our first discussion paper in early 2020.

A decision on whether to include a review of the law of remedies for domestic violence in our project will be taken later in 2019, once potential government reforms of the law in this area are further advanced and the scope of the government's work in relation to this topic is known.

## Item 6 – Surrogacy

### Project Team

**David Johnston QC**, Commissioner  
**Gillian Swanson**, Project Manager  
**Katie Hendry**, Legal Assistant

We are carrying out a joint project on surrogacy with the Law Commission for England and Wales. As the subject matter is reserved in terms of the Scotland Act 1998, the Department of Health and Social Care has asked us to undertake the project as a reference and to work alongside the Law Commission. For further details please see page 18 under the heading "Joint projects".

## Item 7 – Damages for personal injury

### Project Team

**David Johnston QC**, Commissioner  
**Gillian Swanson**, Project Manager  
**Katie Hendry**, Legal Assistant

A project on damages for personal injury is Item 7 of our Tenth Programme of Law Reform. Owing to competing priorities during 2018, this project has yet to begin.

The main scope of the project will be to review three issues dealt with in the Administration of Justice Act 1982, Part II, namely: (a) awards of damages in relation to services; (b) deduction from damages of specified benefits; and (c) awards of provisional damages.

Awards of damages for services are currently restricted to 'relatives'. We will consider whether the current definition of 'relative' remains appropriate and examine the wider question whether that general restriction should continue to apply.

The law in Scotland and in England differs on the items deductible from damages. This has generated uncertainty in relation, for example, to deductibility of private health insurance and residential care costs, the quantum of which may be very substantial. The project will therefore review the policy in relation to deductibility.

The project will also review how provisional damages operate in cases where the full extent of a person's injury emerges only after a substantial period of latency. This is important in order to make sure, on the one hand, that claims are brought without undue delay but, on the other, that pursuers are not under-compensated owing to the need to raise proceedings before the full circumstances of their injury can properly be appreciated.

A related issue (albeit one not arising directly from the 1982 Act) which the project will consider is whether arrangements need to be put in place to protect awards of damages made to children; there have been instances where parents or guardians have sought to exploit a child's misfortune for financial gain.

## References from Scottish Ministers

In addition to our work on topics included in our programmes of law reform, we also undertake work in response to references from Ministers. This work sometimes has to be undertaken in a short timescale to meet government needs, and in those cases we adjust the timetables for our programme topics as necessary.

### Reference on section 53 of the Title Conditions (Scotland) Act 2003

#### Project Team

**Dr Andrew Steven**, Commissioner  
**Andrew Crawley**, Project Manager  
**Paul Brogan**, Legal Assistant

We were asked by the Minister for Community Safety to undertake a review of section 53 of the Title Conditions (Scotland) Act 2003 in the context of Part 4 of the Act.

Section 53 of the 2003 Act allows the proprietors of “related properties” in a “common scheme” of real burdens to enforce the burdens against each other although the title deeds do not say expressly that they may do so.

It can be difficult to establish whether or not there is a common scheme, and if so, whether any two properties are related for that purpose. The law is said to lack clarity in that respect, so creating difficulties for (for example) proprietors who may need agreement from those with a right to object to a proposed development.

We published a Discussion Paper in May 2018, and held an extensive series of seminars with legal practitioners during the consultation period. There was then a good number of responses to the consultation.

We carried out a further short consultation on a draft Bill during early 2019, with a view to publishing our report later in the year.



*Chairman, Commissioners and Chief Executive*

## Joint projects

In addition to law reform projects under our programmes of law reform, we undertake joint projects with the Law Commission for England and Wales.

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

### Insurance contract law

#### Project Team

**David Johnston QC**, Commissioner  
**Gillian Swanson**, Project Manager

This joint project with the Law Commission for England and Wales has resulted in implementation of all of our recommendations to date, first by the Consumer Insurance (Disclosure and Representations) Act 2012, and secondly by the Insurance Act 2015 as amended by the Enterprise Act 2016, Part 5.

The Commissions are now addressing the matter of insurable interest. There is a view that the current law, particularly for life and life-related insurances such as health and accident cover, is antiquated and overly restrictive. In the course of 2018 therefore, we consulted on a working draft of a Bill that addressed the issues in the current law that appear to be hindering the development of socially useful products.

We had hoped to bring this project to a conclusion during the course of 2018. Due to competing priorities of the Law Commission for England and Wales however, timetabling has been rescheduled. Our aim is to complete the project in the latter half of 2019.

## Surrogacy

#### Project Team

**David Johnston QC**, Commissioner  
**Gillian Swanson**, Project Manager  
**Katie Hendry**, Legal Assistant

As mentioned in the earlier section on “Law reform projects”, a joint project on surrogacy is Item 6 of our Tenth Programme of Law Reform and is also the subject of a reference from the Department of Health and Social Care.

Surrogacy describes the situation where a surrogate bears a child on behalf of another person or persons who intend to become the child’s parent or parents for all purposes. The intended parent or parents can become the legal parent(s) of the child born to the surrogate by obtaining a parental order after the child has been born.

Surrogacy, which is becoming increasingly prevalent, raises important issues for both the children and adults involved in such arrangements but it appears that the law has fallen behind changing social attitudes. There are also significant problems with the law. For example, the intended parent(s) cannot make medical decisions about the child until they have a parental order; before it can grant a parental order the court must be satisfied that the surrogate has consented to the making of the order but that consent is ineffective if given less than six weeks after the child’s birth.

The project will consider the legal parentage of children born via surrogacy, the regulation of surrogacy more widely, the criteria for granting parental orders, and the international context of surrogacy.

Reform will deliver significant benefits including clarity, modernity and the protection of those who enter into surrogacy arrangements and, most importantly, of the children born as a result of such arrangements.

The Commissions aim to publish a joint consultation paper by spring 2019.

## Automated Vehicles

### Project Team

**Caroline Drummond**, Commissioner  
**Charles Garland**, Project Manager  
**Alison Hetherington**, Legal Assistant

This joint project will provide a wide-ranging review of the legal framework surrounding the safe and effective deployment of automated vehicles on British roads. The review has been requested by the UK Government's Centre for Connected and Autonomous Vehicles (CCAV) and will run from 2018 to 2021. It aims to make the UK a premier development location for connected and automated vehicles. The technology supporting automated (and connected) vehicles is developing rapidly, in Scotland and elsewhere in the UK as well as in many countries worldwide, and there is a clear need for the legal framework to be considered alongside the technological changes.

The first paper was published in November 2018. The paper examines the law in a range of different fields, including criminal offences and civil liability, how safety can be assured, both before and after automated driving systems are deployed, and how current road rules might need to be adapted to take account of artificial intelligence. The consultation closed on 18 February 2019. Evidence gathered during this consultation will influence what is considered during the remainder of the review period.

In 2019 we intend to publish a further joint consultation paper, this time on the regulation of automated vehicles in public transport and mobility as a service (MaaS).

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

## Progress on our law reform projects: summary

### Projects under our Ninth Programme

PROJECT	POSITION AT THE END OF 2018
<b>Law of contract in the light of the Draft Common Frame of Reference</b> (Tenth Programme, item 1)	The final Report in the Contract project covering Interpretation of Contract, Formation of Contract, Penalty Clauses and Remedies for Breach of Contract was published, along with a draft Bill, on 29 March 2018
<b>Heritable securities</b> (Tenth Programme, item 2)	The project has been scoped, and we are working towards the publication of a discussion paper on pre-default issues in the summer of 2019.
<b>Aspects of leases</b> (Tenth Programme, item 3)	The Discussion Paper was published in May and the consultation closed in September 2018. We are analysing the responses and expect to publish a report and draft Bill around the end of 2019/ early 2020.
<b>Homicide</b> (Tenth Programme, item 4)	The project has been scoped, and drafting of a discussion paper on the mental element of homicide is under way.
<b>Aspects of family law</b> (Tenth Programme, item 5)	Scoping exercise under way and some preliminary work undertaken. Scoping expected to be finalised early in 2019, with work on a discussion paper on cohabitation commencing thereafter.
<b>Surrogacy</b> (Tenth Programme, item 6)	See below under "Joint projects with the Law Commission for England and Wales".
<b>Damages for personal injury</b> (Tenth Programme, item 7)	Project not yet begun.

### Reference from Scottish Ministers

PROJECT	POSITION AT THE END OF 2018
<b>Reference on section 53 of the Title Conditions (Scotland) Act 2003</b>	We have consulted on the recommendations in our Discussion Paper, and are working towards the publication of a report and draft Bill in the first half of 2019.

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

PROJECT	POSITION AT THE END OF 2018
<b>Insurance contract law</b>	Consultation on a working draft of a Bill on insurable interest completed. Working towards publication of a report and draft Bill in the latter half of 2019.
<b>Automated vehicles</b>	The joint preliminary Consultation Paper was published in November 2018 for consultation until 18 February 2019. In 2019 there will be a further consultation, on the regulation of automated vehicles in public transport and mobility as a service. Final recommendations are due to be published by March 2021.
<b>Surrogacy</b>	Initial engagement with key stakeholders completed. Working towards publication of a joint consultation paper in spring 2019.

## Consolidation and statute law repeals

### Consolidation

#### Project Team

**The Hon Lord Pentland**, Chairman

Consolidation work involves preparing a draft Bill to bring together earlier enactments on an area of law with the aim of making the legislation easier to use. Consolidation is an important way of tidying up the statute book.

The Commission has not carried out any work this year on consolidation of legislation.

Any consolidation work requires an agreement with the Scottish Government that they will provide the necessary support and resources for a particular project. A government policy resource is required to provide policy direction and guidance on the area being consolidated; and a significant legislative drafting resource has to be provided to prepare any Bill.

### Statute law repeals

#### Project Team

**The Hon Lord Pentland**, Chairman

One of our functions is to recommend the repeal of obsolete legislation. We undertake this work jointly with the Law Commission for England and Wales.

The purpose of repealing obsolete legislation is to modernise and simplify the statute book, reduce its size and make it easier for people to use. This in turn helps to avoid unnecessary costs. It also helps to avoid people being misled by outdated legislation that appears to be current law.

The Commissions present their proposals to government as statute law repeals reports, published with a draft Bill. Since 1965, 19 such Bills have been enacted, repealing more than 3,000 Acts. The Commissions last published a report, their Twentieth Report and Draft Statute Law (Repeals) Bill on 3 June 2015. The Report proposes the repeal of more than 200 old laws that are cluttering up the statute book.

The Bill awaits implementation by the UK Governments. The Commission has not carried out any further statute law repeal work in the meantime.



*Our Parliamentary Counsel, Gregor Clark CB*

## Promoting law reform

As an outward-facing body, the Commission aims to promote law reform, within Scotland, the UK, and beyond.

As the independent law reform agency for Scotland, we liaise closely with Scottish Ministers: in particular the Cabinet Secretary for Justice; the Minister for Community Safety; the Minister for Parliamentary Business and Veterans; and with Scottish Government officials. We assist in the implementation of Commission recommendations in devolved areas. In relation to reserved areas of Scots law, we liaise with UK Ministers, the Office of the Secretary of State for Scotland and with the Advocate General for Scotland and his officials.



*Our current Legal Assistants, Katie Hendry, Alison Hetherington, Maryia Lahatskaya and Paul Brogan*

The Commission has strong links with the Scottish Parliament. Briefings on our recommendations are regularly provided by the Commission to Committees of the Parliament and their officials.



*The Chairman, Lord Pentland, with the Delegated Powers and Law Reform Committee of the Scottish Parliament*

The Commission continues to engage closely with the legal profession in Scotland, in particular the Law Society of Scotland and the Faculty of Advocates. We are very grateful to members of the profession who serve as members of our advisory groups on law reform projects, and to those who respond to our consultations. Contributions from the profession contribute significantly to the law reform process, by virtue of their practical experience of the law.



*The Chairman, Lord Pentland, with the Law Society of Scotland's Public Policy Committee*



The Commission has contacts with law reform bodies throughout the world, and a close relationship in particular with the Law Commission for England and Wales with whom we carry out joint law reform projects.



*The Chairman, Lord Pentland, with Sir Nicholas Green, Chairman of the Law Commission for England and Wales*

## Collaboration with the Universities

The Commission values our relationship and links with the Scottish Law Schools. A Memorandum of Understanding with the Law Schools was signed in 2016.

The first placement under the Memorandum was Dr John MacLeod (then of the School of Law at the University of Glasgow) who authored a research paper on enforcement of securities over land and buildings (mortgages), to assist the Commission's project on heritable securities. That paper, one of the first fruits of the Memorandum, was published on our website in 2018.

The Memorandum also facilitated the placement of Dr Claire McDiarmid of the School of Law at the University of Strathclyde. Dr McDiarmid joined us in September 2018 to work at the Commission for a 4 month period to assist in developing a discussion paper on the mental element of homicide.

A further example of our collaboration with the universities was the Homicide seminar held in October 2018, which was held in conjunction with both Glasgow and Strathclyde Universities and also involved academic contributors from Edinburgh, Dundee and Robert Gordon universities.

## The Lord Advocate and Solicitor General visit

We were pleased to welcome James Wolffe QC, Lord Advocate, and Alison Di Rollo QC, Solicitor General for Scotland, who visited the Commission on 23 March 2018.

The Law Officers met Commissioners and staff to discuss law reform and the work of the Commission.



*The Lord Advocate and Solicitor General with the Chairman and Commissioners*

## Lord President and Lord Justice Clerk visit

We also welcomed Scotland's two most senior judges on a visit to the Commission on 22 November 2018.

The Lord President, Lord Carloway, and Lord Justice Clerk, Lady Dorrian, viewed a display of the Commission's work over the years and met with Commissioners and staff to discuss law reform.



*The Lord President, Lord Carloway, and Lord Justice Clerk, Lady Dorrian, with our current Legal Assistants*

## Publications planned for 2019

In 2019 the Commission will continue to work on projects in our Tenth Programme of Law Reform that rolled over from the Ninth Programme. We will also commence work on new projects in the Tenth Programme, and expect to complete work on a project referred to us by Scottish Ministers. We also expect to continue work on joint projects referred to us by UK Ministers. The Commission aims to produce a number of publications during 2019.

In relation to the reference from Scottish Ministers relating to section 53 of the Title Conditions (Scotland) Act 2003, we expect to publish our report and draft Bill in the first half of 2019 after a short consultation on a draft bill.

On heritable securities we are working towards the publication of a discussion paper on pre-default issues in the summer of 2019.

We expect to publish a report and draft Bill on aspects of leases around the end of 2019/early 2020.

On the homicide project, we hope to be in a position to publish a discussion paper on the mental element of homicide by the end of 2019/early 2020.

We are working towards publication of a discussion paper on cohabitation by the beginning of 2020.

Our aim is to publish a discussion paper on damages for personal injury at the end of 2019.

Finally, as regards joint law reform work with the Law Commission for England and Wales, we are working towards the publication of a joint consultation paper on surrogacy in spring 2019. Publication of a second joint paper on automated vehicles is expected in June 2019. We also hope to publish a joint report and draft Bill on insurable interest in the latter half of the year.

# Commissioners and staff

(as at 31 December 2018)

## Commissioners

The Hon Lord Pentland, *Chairman*\*  
Kate Dowdalls QC  
Caroline Drummond  
David Johnston QC\*  
Dr Andrew Steven

## Chief Executive

Malcolm McMillan

## Parliamentary Counsel (Consultant)

Gregor Clark CB\*

## Project Managers (Solicitors)

Andrew Crawley  
Charles Garland\*  
Graham McGlashan  
Lorraine Stirling\*  
Gillian Swanson

## Legal Assistants

Paul Brogan  
Katie Hendry  
Alison Hetherington  
Maryia Lahatskaya

## Librarian

Emma McLarty\*

## Office Manager

Helen Stevenson\*

## Personal Secretaries

Wilma MacAskill\*  
Joan Melville MBE

## Administrative Staff

Iain Ritchie  
Gordon Speirs

\* Part-time staff

## The Commission's running costs 2018

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2018 were offset by payments received from Historic Environment Scotland for use of part of our office accommodation.

EXPENDITURE	YEAR TO 31 DECEMBER 2018
<b>Salaries – Commissioners</b> (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£556,558
<b>Salaries – Chief Executive and legal staff</b> (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£599,779
<b>Salaries – Administrative staff</b> (including national insurance contributions and superannuation payments)	£119,146
<b>Accommodation</b> (including maintenance, rates and utilities)	£93,043
<b>Printing and publishing</b> (including costs of books and library purchases, binding, maintenance of equipment, publishing costs of publications, photocopying and stationery)	£32,619
<b>Telephone and postage</b>	£3,139
<b>Travel and subsistence</b>	£4,516
<b>Miscellaneous</b> (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£62,642
<b>Total</b>	£1,471,442

# Scottish Law Commission [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

## How we undertake our law reform projects

- **Research** into the existing Scots law and review of comparative law.
- **Analysis of problems** with the current law.
- **Development of policies** for reform.
- **Consultation** on proposed reforms.
- **Consideration** of consultation responses.
- **Review of policy** in the light of consultation.
- **Publication of a report** to Ministers with recommendations for reform, including in most cases a draft Bill to implement the recommendations. Implementation of the recommendations in our reports requiring legislation is taken forward in the Scottish Parliament or, in reserved areas of law, in the UK Parliament at Westminster.
- **Role of advisory groups** to assist us with our projects we often set up advisory groups of people with expertise in the relevant areas of law. These small groups provide valuable assistance and guidance to our project teams.

For more information about the Commission please contact:

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