



Scottish Law Commission

2015:50 years promoting law reform

(SCOT LAW COM No 244)

annual report | 2015





Scottish Law Commission

2015:50 years 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 | 2015



Commissioners and Chief Executive
(back row), Professor Hector MacQueen, The Hon Lord Pentland, (Chairman), David Johnston QC
(front row, left to right) Malcolm McMillan (Chief Executive), Dr Andrew Steven, Mrs Caroline Drummond



Annual Report 2015

To: Michael Matheson MSP, Cabinet Secretary for Justice

We are pleased to submit to the Scottish Ministers our Annual Report for the year to 31 December 2015.

PAUL B CULLEN, *Chairman*

CAROLINE DRUMMOND

DAVID JOHNSTON

HECTOR L MACQUEEN

ANDREW J M STEVEN

Malcolm McMillan, Chief Executive

9 February 2016

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

2016

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Chairman's foreword



I am pleased to present our Annual Report for 2015, a year which marked not just the commencement of work on our Ninth Programme of Law Reform, but also the 50th anniversary of the creation of the Scottish Law Commission.

As the Report explains, a number of events took place to celebrate this milestone in Scottish legal history; these included our playing host to an international conference of law reformers in Edinburgh and visits to the Commission by the First Minister, the Cabinet Secretary for Justice and the Secretary of State for Scotland.

For half a century the Scottish Law Commission has been at the forefront of promoting, developing and delivering reforms of Scots law to ensure that our legal system keeps pace with changes in society. That is our mission.

2015 saw continued progress in the Scottish Parliament's handling of our recommendations for law reform. The procedure, involving a dedicated Parliamentary Committee, is proving to be highly effective and successful. One Bill considered by the Committee has already been enacted – the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015. It has been widely welcomed by the business and legal communities. Another Commission Bill – the Succession (Scotland) Bill, has recently been passed. A consolidation Bill on bankruptcy legislation is currently proceeding. The Commission and its staff have played a major role in supporting the passage of these pieces of legislation through the Scottish Parliament; increasingly this is a key aspect of our work. I pay tribute to the members of the Committee and its staff. I also thank the Scottish Ministers and the Scottish Government for their continued support. It is good to see so much interest in law reform.

At Westminster there were important achievements with the enactment of the Insurance Act 2015 and the Consumer Rights Act 2015; there are further details later in this Report. The Enterprise Bill is currently before the House of Commons; it contains important reforms of the law on late payment of insurance claims. Along with the Law Commission for England and Wales, we published our Twentieth joint Report on Statute Law Repeals.

We have just published our joint Interim Report with the Law Commissions of England and Wales and Northern Ireland on the reform of Electoral Law. The recommendations provide a new framework for an area of the law that is of vital significance to the functioning of a modern democracy.

We are soon to publish discussion papers on the law of prescription and the law of defamation and a report and draft legislation on third party rights in contract. We continue to make progress with our substantial long-term projects on compulsory purchase, review of the law of contract, and moveable transactions.

Throughout 2015 my fellow Commissioners and I gave lectures and presentations outside the Commission in order to promote our work and discuss our current projects.

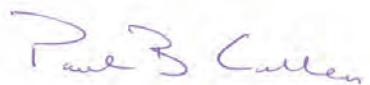
At the end of my second year as Chairman, I would make three points. Firstly, despite the pressures on public expenditure, the Commission continues to deal effectively with a wide and diverse programme of law reform projects in many complex and challenging areas; this is due in no small measure to the dedication and commitment of our team at Causewayside.

Secondly, I am heartened by the strong level of support for our work that exists in the wider community. I am especially grateful to all stakeholders who have contributed to our projects, as members of our advisory groups or more informally.

Thirdly, it is essential that we at the Commission continue to modernise our approach and the way we work. During 2015 we took major strides in the way we used social media and our website to communicate about our projects. In the coming year we will continue to examine critically the way we work in order to improve our efficiency and methodology and our relationships with government and the legislatures.

As the pace of change in our society continues to accelerate, there will be a greater than ever need to ensure that our law marches in step. Economic prosperity and the quality of life of the people of Scotland depend on it.

I conclude by thanking my fellow Commissioners, our Chief Executive and all our staff for their hard work and enthusiasm.



The Hon Lord Pentland
Chairman

Publications 2015

PUBLICATION	PUBLICATION DATE
Annual Report 2014 (Scot Law Com No 241)	5 February 2015
Ninth Programme of Law Reform (Scot Law Com No 242)	6 February 2015
Statute Law Repeals: Twentieth Report: Draft Statute Law (Repeals) Bill (Joint Report with the Law Commission for England and Wales) (Scot Law Com No 243)	3 June 2015

Other publications

On 27 March we and the Law Commission for England and Wales published the following joint paper for consultation:

[Reforming Insurance Contract Law: Issues Paper 10: Insurable interest: updated proposals.](#)

This joint paper is not included in our numbered series of printed discussion papers but is available in electronic form on our website.

Implementation of our reports 2015

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 but some 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.

Law reform procedure in the Scottish Parliament

In 2013 a new procedure was introduced in the Scottish Parliament under which Commission Bills are considered by the Delegated Powers and Law Reform Committee of the Parliament. The development of the procedure reflects the Parliament's wish to find a way forward for implementing more Commission Bills that update the law to keep in step with changes in society, or to develop the common law.

We are pleased to report that the procedure is working well and will assist in the implementation of future Commission Bills.

During 2015 the Delegated Powers and Law Reform Committee considered the Commission's Legal Writings (Counterparts and Delivery) (Scotland) Bill, the Succession (Scotland) Bill and the Bankruptcy (Scotland) Bill.

Act passed by the Scottish Parliament in 2015

The Legal Writings (Counterparts and Delivery) (Scotland) Bill received Royal Assent on 1 April 2015. The Bill was the first Commission Bill to be considered by the Delegated Powers and Law Reform Committee.

Bills introduced in the Scottish Parliament in 2015

Succession (Scotland) Bill

The Succession (Scotland) Bill was introduced in the Scottish Parliament on 17 June 2015. The Bill seeks to make mainly technical changes to the law of succession in Scotland as recommended in our Report on Succession, published in 2009.

This is the second Bill to be considered by the Delegated Powers and Law Reform Committee.

Representatives from the Commission along with Scottish Government officials gave evidence to the Committee in September. The Committee's Stage 1 Report was published on 2 November 2015. All of the amendments in the name of the Minister were passed at Stage 2 on 8 December.

The substantive changes to the law of succession as recommended in our Report were the subject of a consultation paper issued by the Scottish Government in the second half of 2015.

Bankruptcy (Scotland) Bill

The Bankruptcy (Scotland) Bill was introduced in the Scottish Parliament on 30 November 2015. The Bill seeks to consolidate the Bankruptcy (Scotland) Act 1985 and subsequent legislation relating to bankruptcy in Scotland and follows from the Commission's Report in 2013. This is the first consolidation Bill produced by the Commission to be considered by the Delegated Powers and Law Reform Committee.

In November, the Commission's Parliamentary Counsel briefed the Committee on the drafting of the Bill and subsequently attended meetings of the Committee to give detailed evidence on the Bill.

Acts passed by the United Kingdom Parliament in 2015

Insurance Act 2015

The Insurance Bill received Royal Assent on 12 February 2015. In addition to reforming aspects of insurance law, the Act includes provisions relating to the Third Parties (Rights against Insurers) Act 2010 enabling it to be brought into force.

The 2015 Act implements the majority of the recommendations in our 2014 Report with the Law Commission for England and Wales on Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment.

Consumer Rights Act 2015

The Act implements our advice to the Department for Business, Innovation & Skills (issued in 2013 jointly with the Law Commission for England and Wales) on Unfair Terms in Consumer Contracts and our 2009 Report on Remedies for Faulty Goods.

Bill introduced in the UK Parliament in 2015

Enterprise Bill

In our joint Report with the Law Commission on Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment, published in 2014, we recommended legislation to deal with late payment of insurance claims.

The Enterprise Bill, introduced in the UK Parliament on 16 September 2015, contains provisions requiring insurers to pay valid claims within a reasonable time otherwise policyholders should be entitled to damages for foreseeable loss which they suffer.

The Bill has completed its House of Lords stages and is now being considered by the House of Commons.

A table providing information about implementation of our Reports can be found on the Publications page of our website: www.scotlawcom.gov.uk

Law reform projects

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

Programmes of law reform

Our Ninth Programme, outlining our proposed law reform projects for the three years from 2015 to the end of 2017, was published in February 2015. It was prepared following extensive consultation with the legal profession and other interested parties including members of the public. It was approved by Scottish Ministers and laid before the Scottish Parliament.

In response to a written parliamentary question on 6 February 2015, Michael Matheson MSP, Cabinet Secretary for Justice, said: "I welcome this programme, which represents a varied and relevant set of proposals, and look forward to receiving reports from the commission in due course."

The Programme incorporates some projects carried forward from our Eighth Programme. These are compulsory purchase law and procedure; moveable transactions; the review of contract law; and heritable securities.

Projects included in our Ninth Programme of Law Reform

Item 1 – Moveable transactions

Project Team

Dr Andrew Steven, Commissioner
Lesley Mure, Project Manager
Susan Sutherland, Solicitor
Louise Mackinnon, Legal Assistant

This sizeable project has been carried forward for completion under our Ninth Programme.

The project is concerned with three areas important to the Scottish economy:

- assignation (outright transfer) of incorporeal moveable property
- security over incorporeal moveable property and
- security over corporeal moveable property.

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

Scots law on these three areas is out of date and not sufficiently business-friendly. Reform in this area of commercial law is much needed to enhance the position of Scotland as a place to do business.



Dr Andrew Steven, Commissioner

Our Discussion Paper on Moveable Transactions proposed the introduction of a new type of security right that could cover both corporeal and incorporeal moveable property. A new online Register

of Moveable Transactions would be established in which the security right would be registered. The new register could also be used to register assignations, for example in securitisations and factoring.

During 2015 we continued work on our report and a substantial draft Bill which would give effect to our recommendations. This has involved careful consideration of comparable international systems and liaison with experts in other jurisdictions.

We had several meetings in 2015 with the advisory group who have been assisting us with refining our policy. We also had detailed discussions with Registers

of Scotland about the proposed new register and how the process of registration would operate.

Our report and draft Bill are now well advanced and we expect to complete the project in 2016.

Item 2 – Law of contract in the light of the Draft Common Frame of Reference

Project Team

Professor Hector MacQueen, Commissioner
Charles Garland, Project Manager
Alison Peacock, Legal Assistant

The project is a long-term one in our Ninth Programme of Law Reform, having been carried forward from our previous Programme.

To date we have published three Discussion Papers and one Report (Discussion Papers on Interpretation of Contract (2011), Formation of Contract (2012) and Third Party Rights in Contract (2014); and a Report on Formation of Contract: Execution in Counterpart (2013)). The draft legislation included in our Report was enacted by the Scottish Parliament as the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, which came into force on 1 July 2015. In addition, in 2011 we and the Law Commission for England and Wales published Joint Advice to the UK Government on a proposal by the European Commission for a Common European Sales Law.

One of our main tasks in 2015 was preparing for the commencement of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015. We assisted lawyers in the Scottish Government and elsewhere in that regard, and we wrote a number of articles for the legal

press about the Act. It appears to have been strongly welcomed, especially by practitioners.



Professor Hector MacQueen, Commissioner

Secondly, we worked towards completion of a report on third party rights in contract, to replace the current, unsatisfactory law of *jus quaesitum tertio*. In our Annual Report 2014 we said we aimed to publish this in the spring of 2015;

that proved impossible to achieve but we are confident that work is now nearly complete. We have already begun to seek views on an advanced draft Bill and we will continue to do so in early 2016 before publishing our report.

Item 3 – Compulsory purchase

Project Team

Caroline Drummond, Commissioner
Dr Andrew Steven, Commissioner
Lucy Galloway, Project Manager
Michalina Rebisz-Bahra, Legal Assistant

The Ninth Programme includes this long-term project, first introduced in the Eighth Programme, to examine the law and practice of compulsory purchase in Scotland. There is widespread agreement that change is needed to the underlying legislation which is antiquated, stemming from the middle of the 19th century.

A detailed Discussion Paper was published in December 2014, which set out the current law and asked questions about how it could be improved. The proposal is that there should be a new comprehensive statute setting out the law, so that everyone involved – public authorities, practitioners and landowners – can see clearly how the system works.

During the six-month consultation period we participated in various engagement events, including those organised by the Scottish Compulsory Purchase Association (SCPA) and some legal firms. The consultation period ended in June 2015, and we have consolidated the large number of responses received.



Caroline Drummond, Commissioner

parties who submitted responses while considering how best to proceed with the project, in light of responses received and current available resources.

We are very grateful to the SCPA for their continued help and organisation of further events. We are now engaging with the

Item 4 – Heritable securities

In our Eighth Programme we proposed reviewing the law of heritable securities as a long-term project. Work on other property law projects prevented work starting on this project during the course of that Programme. For that reason the project has been carried forward into our Ninth Programme. We plan to start work on this once our project on moveable transactions has been completed.

Item 5 – Defamation

Project Team

The Hon Lord Pentland, Chairman

Dr Heike Gading, Project Manager

Susan Robb, Solicitor

The impetus for the defamation law project can be traced back to the reforms in England and Wales in the Defamation Act 2013 and indirectly to the civil society campaign behind it; this was fuelled by concern about so-called libel tourism in the English courts. That was said to have a stifling effect on freedom of speech and on open debate. Whilst the concern about libel tourism may not apply to Scotland with the same force, the fact that the Defamation Act 2013 extends in large parts to England and Wales alone, led to calls that the Scottish Law Commission should examine the law of defamation in Scotland.

Work on the project began in January 2015, following Scottish Ministers' approval of its inclusion in our current programme of law reform.

The project has proved to be a complex and challenging one. Scots defamation law is somewhat fragmented and not easily accessible. It is based mainly on the common law, which has been modified and supplemented by some statutory provisions. Conceptually, the origins of our common law differ from those of the law of England and Wales. There is a relative shortage of modern Scottish case law with the result that some areas of defamation law have suffered from limited opportunities for development. Added to that is the increasing influence of the European Court of Human Rights with its jurisprudence on the rights to freedom of speech and protection of private life.

As part of our pre-consultation meetings it has been suggested to us that in addition to the core aspects of defamation law we should also examine the law of verbal injury and defamation of the deceased as part of this project. We intend to do so.



Lord Pentland, Chairman

The disjointed nature of Scots defamation law and its unique origins may make it necessary to approach reform of

some areas of law from a different perspective than was done in England and Wales. We are aware that some of the provisions of the Defamation Act 2013 have been criticised and that the English courts have now had the opportunity to examine certain aspects of the 2013 Act. We will take account of these developments and influences in our project.

During 2015 we had meetings with individuals and organisations who have an interest and expertise in this area. We are grateful for the assistance they have provided to us.

We intend to publish a Discussion Paper early in 2016.

Item 6 – Proprietary aspects of leases

Our Ninth Programme includes a long-term project on the proprietary aspects of leases. When we consulted on the proposed contents of our Ninth Programme, consultees advised us that uncertainties in the current law lead to increased costs and act as a disincentive to investment particularly in the commercial leasing sector. We intend to start work on the project during the course of the Programme.

Item 7 – Aspects of the law of prescription

Project Team

David Johnston QC, Commissioner

Gillian Swanson, Project Manager

Susan Robb, Solicitor

Our project on aspects of the law of prescription is a medium-term project which will be completed by the end of 2017.

Negative prescription establishes a time-limit within which a person who is aggrieved must raise his or her claim in court. If the time-limit is missed, the ability to pursue the claim is lost.



David Johnston QC, Commissioner

Recently, the issue of prescription in relation to claims for latent damage has become topical. That follows the judgments of the UK Supreme Court in *David T Morrison & Co Ltd v ICL Plastics Ltd* [2014] UKSC 48. As a result of that case, the law on prescription in

relation to claims for latent damage is now different from what it had previously been thought to be. One of the Justices in that case expressed the view that the change in the law as previously understood is an issue worthy of consideration by the Scottish Law Commission.

Against that background, a project to re-examine this and certain other aspects of the law of prescription was included in the Commission's Ninth Programme.

We will publish our discussion paper early in 2016 for consultation. The main issue which will be covered by the paper is the law of prescription relating to latent damage. The other issues include the scope of the five-year prescription; the structure of the 20-year prescription; whether it should be possible to contract

out of the statutory prescriptive periods; unjustified enrichment and discoverability; and the burden of proof.

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

In September 2013 we were asked by the Cabinet Secretary for Justice 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.

As agreed with the Scottish Government, we have not yet started work on the reference but the intention is to commence work during the period covered by our Ninth Programme of Law Reform.

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 and the Northern Ireland Law Commission where the area of law is reserved to the United Kingdom Parliament in terms of the Scotland Act 1998.

Joint projects with the Law Commission for England and Wales

Insurance contract law

Project Team

Professor Hector MacQueen, Commissioner
Gillian Swanson, Project Manager

We are assisting the Law Commission with a major project on insurance contract law.

The project began by turning its attention to consumer insurance reform. Our recommendations in that regard, as set out in our joint Report on Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (2009), have been implemented by the Consumer Insurance (Disclosure and Representations) Act 2012.

Our work on other areas of insurance contract law culminated, in 2014, in our joint Report on Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment. With the exception of late payment, the recommendations in that Report have been implemented by the Insurance Act 2015 which will come into force in August 2016. The main provisions of the Act are described in the following paragraphs.

A duty of fair presentation in non-consumer insurance

Under a new "duty of fair presentation", business policyholders will still have a duty to volunteer information, but what is required of them is made clearer, and insurers will have to play a more active role in asking questions. A new scheme of proportionate remedies will replace the existing single remedy of avoidance, which allows insurers to refuse the whole of a claim.

Warranties

Insurers will be liable to pay any claim that arises after a breach of warranty has been remedied such as where a broken burglar alarm has been repaired.

Furthermore, they will no longer be able to escape liability on the basis of the policyholder's breach of a contract term that is shown to be completely irrelevant to the loss suffered. "Basis of the contract" clauses, which can turn any statement from a policyholder into a warranty, will be abolished.

Remedies for fraudulent claims

The 2015 Act provides insurers with clear, robust remedies when a policyholder makes a fraudulent claim. Where any part of a claim is fraudulent, they will be able to refuse the whole claim. They will also be able to refuse any claim arising after the fraud but must pay earlier, valid claims.

Damages for late payment

Our recommended provision relating to damages for late payment was omitted from the Bill which preceded the 2015 Act as the Government did not consider it suitable for the special procedure for uncontroversial Law Commission Bills being used for the Insurance Bill. We undertook to work with stakeholders to find a workable solution to be introduced at the next legislative opportunity. We were extremely pleased when the Government brought forward relevant provisions as part of the Enterprise Bill 2015. If the clauses are implemented, the Insurance Act 2015 will be amended to include these provisions which have been well supported by the majority of stakeholders throughout our project.

Third Parties (Rights against Insurers)

The Insurance Act 2015 also includes provisions relating to the Third Parties (Rights against Insurers) Act 2010 so that it can be brought into force. The 2010 Act, which also derived from recommendations made by both Law Commissions, simplifies the procedure by which third parties can claim against an insurer when the insured is, in broad terms, insolvent or has been dissolved.

Insurable Interest

In March 2015, we published a joint Issues Paper (Issues Paper 10) on the topic of insurable interest. We have consulted on this topic twice before: in an Issues Paper in 2008, and as part of our 2011 Consultation Paper on Insurance Contract Law: Post Contract Duties and other Issues. In light of the responses to the Consultation Paper, we took the view that reforming the law of insurable interest was not a priority. We were told that many of the problems with the current law were theoretical rather than practical. Furthermore, consultees' views on the issue varied. Although most agreed with the overall direction of our proposals, concerns were expressed over some of the details.

In 2014 we were approached by the Investment and Life Assurance Group (ILAG) on behalf of life insurers, asking us to return to this issue. ILAG told us that their members are under pressure to write policies which include cover for children and cohabitants, and to insure "key employees" for substantial amounts. Although these policies perform a useful social function, they may be considered void under the current law, strictly applied. Some court cases in England have even labelled them as "illegal". This may put insurers and policyholders in a difficult position.

In practice, it is unlikely that anyone would take issues like these to court, and we think that the courts would make every effort to find an insurable interest where both parties have willingly entered into the agreement. However, we also think that it is unsatisfactory to have law which is so out-dated that the only way in which the market can function is by ignoring it. It may even bring the law itself into disrepute. We have therefore returned to this subject to see if a package of reform measures could be introduced in a third Bill, again as an uncontroversial measure.

Issues Paper 10 contains updated proposals. In relation to indemnity insurance, we asked about the timing and consequences of concluding a valid insurance contract and whether statute should define insurable interest using a non-exhaustive list of examples. In relation to contingency insurance, such as life insurance, we asked whether there is a need for statutory reform and whether the concept of insurable interest should be expanded.

We received helpful and encouraging responses and aim to publish a report and draft Bill in the second half of 2016.



Our current legal assistants

Joint projects with the Law Commission for England and Wales and the Northern Ireland Law Commission

Electoral Law

Project Team

The Hon Lord Pentland, Chairman
Gillian Swanson, Project Manager
Alison Peacock, Legal Assistant

The project to review legislation in relation to electoral law is a joint project with the Law Commission for England and Wales and the Northern Ireland Law Commission. It follows a reference to this Commission from the UK Cabinet Office as regards reserved areas of Scots law, and from Scottish Ministers as regards devolved areas.

Electoral law in the UK has grown to be complex, voluminous and fragmented not least because of the steady increase in the numbers and types of election. Currently there is a vast amount of primary and secondary legislation governing elections and referendums. The twin aims of the project are therefore to ensure, first, that electoral laws are presented within a rational, modern legislative framework governing all elections and referendums which are included in the scope of this project and, secondly, that electoral laws are modern, simple and fit for purpose.

In our joint Consultation Paper on Electoral Law, which was published in December 2014, we sought views on provisional proposals. The paper examined particular aspects of electoral law such as registration of electors, absent voting, timetables and combination of polls, electoral offences and legal challenge. Following careful consideration of those views, we have just published an Interim Report. That Report outlines the responses to the provisional proposals which we make in the Consultation Paper and made recommendations for reform. Its publication concluded the second stage of the project and is being followed by a review exercise to enable the respective Governments to consider whether the project should move to a third phase which would include the preparation of draft legislation.

Further information about our law reform projects is available on the law reform projects page on our website: www.scotlawcom.gov.uk

Progress on our law reform projects: summary

Projects under our Ninth Programme

PROJECT	POSITION AT THE END OF 2015
Moveable transactions (Ninth Programme, item 1)	Working on our report and draft Bill, to be published in 2016
Law of contract in the light of the Draft Common Frame of Reference (Ninth Programme, item 2)	Working on our report and draft Bill on third party rights in contract, to be published in 2016
Compulsory purchase (Ninth Programme, item 3)	Considering how to proceed with the project following the responses to our Discussion Paper on Compulsory Purchase
Heritable securities (Ninth Programme, item 4)	Some preliminary work undertaken but project not yet formally started
Defamation (Ninth Programme, item 5)	Working on our discussion paper, to be published in 2016
Proprietary aspects of leases (Ninth Programme, item 6)	Project not yet started
Aspects of the law of prescription (Ninth Programme, item 7)	Working on our discussion paper, to be published in 2016

Joint projects with the Law Commission for England and Wales

PROJECT	POSITION AT THE END OF 2015
Insurance contract law	Working on a joint report and draft Bill on Insurable Interest, to be published in 2016

Joint projects with the Law Commission for England and Wales and the Northern Ireland Law Commission

PROJECT	POSITION AT THE END OF 2015
Electoral Law	Working on a joint Interim Report to be published in 2016

Consolidation and statute law repeals

Consolidation

Project Team

The Hon Lord Pentland, Chairman
Susan Sutherland, Project Manager

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.

Bankruptcy legislation in Scotland

Our Report on the consolidation of the legislation relating to bankruptcy in Scotland was published in May 2013.

The Report included a draft consolidation Bill and Tables of Destinations and Derivations relating to the provisions. It also included a draft Order which we envisaged would be made under section 104 of the Scotland Act 1998 so as to give effect to certain provisions of the Bill in other parts of the UK. The making of such an order is a matter for UK Ministers and for the UK Parliament.

The Bill annexed to our Report was subsequently updated so as to take account of very substantial changes to bankruptcy legislation made by the Bankruptcy and Debt Advice (Scotland) Act 2014.

The Bill was introduced in the Scottish Parliament by the Lord Advocate on 30 October 2015 and was considered by the Delegated Powers and Law Reform Committee. The Commission's Parliamentary Counsel gave evidence to the Committee at Stage 1 of the Bill.

Statute law repeals

Project Team

The Hon Lord Pentland, Chairman
Susan Sutherland, Project Manager

One of the Scottish Law Commission's 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. The Commissions published 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. An Act from 1979 allowing referendums for a Scottish Parliament and Welsh Assembly is among legislation being recommended for repeal.

The Bill awaits implementation in the UK Parliament.

2015: the Commission's 50th anniversary year

2015 was the Commission's 50th anniversary year. The opportunity was taken to recognise and celebrate 50 years of Commission-inspired law reform for Scotland. A number of high profile events took place to mark this special year. These events reflect the standing in which the Commission is held – internationally, within the UK, and in Scotland.

The Commission's international role

The Commission played a leading role during 2015 in the international world of law reform. The Commission hosted an international conference, attracting law reformers from across the Commonwealth and beyond: the biennial conference of the Commonwealth Association of Law Reform Agencies. As a founder member of the Association, the Commission is active in promoting law reform, and in sharing at an international level best practice in law reform. The Commission has, for example, a special relationship with our counterpart law reform body in Malawi, the Malawi Law Commission.

The conference was held in April, at the Royal Society of Edinburgh. The conference theme was: Law Reform in a Fast-changing World. The Lord Justice Clerk opened the conference with a keynote address.

The conference sessions covered a number of key topics for law reform bodies across the world: the independence of law reform agencies; modern ways of involving stakeholders and experts in law reform; new developments in Scotland, in New Zealand, and in the UK for the implementation of reports of law reform agencies; developments in cybercrime law; law reform in an electronic age; and a presentation on the role of the Commonwealth Secretariat with regard to law reform. There was also a special session on 50 years of law reform in the United Kingdom, during which our Chairman gave a presentation about the Commission's role and contribution over 50 years; and the then Chairman of the Law Commission for England and Wales, Sir David Lloyd Jones, gave a presentation about that Commission.

The Commission took the opportunity at the conference to showcase recent law reform achievements in Scotland, including the establishment of a new procedure in the Scottish Parliament for



Delegates attending the Commonwealth law reform conference



Event at Edinburgh Castle

implementing certain Commission Bills. This new procedure recognises the importance that the Parliament and the Scottish Government give to law reform.

The opening day of the conference concluded with a special event at Edinburgh Castle hosted by the Lord Advocate, Frank Mulholland QC – the conference dinner and a celebration of the 50th anniversary of the Commission.

The Commission was also represented at the Commonwealth Law Conference in Glasgow in 2015: and at the Commonwealth Association of Legislative Counsel Conference in Edinburgh, at which a presentation was made on the new law reform procedure at Holyrood.

Also on the international front, the Commission took part in an annual conference of the law reform bodies of five jurisdictions: Scotland, England and Wales, Northern Ireland, Ireland and Jersey. The annual conference is a useful forum for exchanging ideas and best practice in law reform matters. It took place in London in 2015



Lord Advocate, Frank Mulholland QC

The Commission and the UK

Since devolution under the Scotland Act 1998, the Commission continues to work at a UK level. The Commission deals with reserved areas of Scots law. These areas are the responsibility of the UK Government and the UK Parliament.

One important development in recent years is that there is now a special procedure in the House of Lords for consideration of uncontroversial Law Commission Bills. The procedure is available for Scottish Law Commission Bills. A Scottish Law Commission Bill has successfully passed through this procedure: the Partnerships (Prosecution) (Scotland) Act 2013, implementing the Commission's Report in 2011 on the Criminal Liability of Partnerships. The procedure is used frequently for UK Bills recommended jointly by the Scottish Law Commission and the Law Commission for England and Wales.



The Secretary of State for Scotland, David Mundell MP

In the context of 2015 celebrations at a UK level, the Commission contributed to events held by the Law Commission for England and Wales, for their 50th anniversary year: the annual Scarman Lecture, held at Middle Temple, London, and delivered by Sir

Geoffrey Palmer, former Prime Minister and Attorney General for New Zealand, and former President of the New Zealand Law Commission.

Also at the UK level, the Commission made a significant contribution to a conference about 50 years of the Law Commissions in the UK. It was organised by the Dickson Poon School of Law at King's College, London and the Faculty of Law of the

University of Cambridge, and held at the UK Supreme Court in London in July. Presentations were made by the Chairman, by a number of Scottish Law Commissioners past and present; and by our Chief Executive. A book comprising the conference presentations will be published in the next year or so.

The value of the Commission's work to the UK Government was also recognised in 2015. In July the Chairman and Chief Executive met with the Advocate General for Scotland, Lord Keen of Elie QC and in November the Secretary of State for Scotland, David Mundell MP visited the Commission.

The Commission and Scotland

The Scottish legal system is a unique feature of Scotland. The Commission takes a forward-looking approach to developing the law, so as to reflect the needs of modern society and in so doing retaining the integrity of Scots law.



The First Minister, Nicola Sturgeon MSP with the Chairman, Lord Pentland

The First Minister's visit



The First Minister in the Commission's library

The value of the Commission's work to Scotland, and the strength of our relationships with Scottish Ministers, was recognised by two special visits to the Commission's office this year. In August we were honoured to receive a visit

by the First Minister, Nicola Sturgeon MSP.

The First Minister viewed a display of the Commission's work over the 50 years. She met



The First Minister met Commission staff and cut the 50th anniversary cake



The Cabinet Secretary for Justice, Michael Matheson MSP, with the Chairman, Lord Pentland

Commissioners and staff and spoke warmly of the Commission's invaluable contribution to keeping the laws of Scotland modern, updated and fit for purpose.

15 June was the date of our 50th anniversary, being the day on which the Law Commissions Act 1965 came into force. The Cabinet Secretary for Justice, Michael Matheson MSP visited the Commission's office on that day. He discussed with Commissioners the work of the Commission and the value of law reform to Scotland.

The Commission and the Scottish Parliament

An important development in recent years is that the links between the Commission and the Scottish Parliament have grown stronger. The Scottish Parliament has developed its approach to law reform and recognised law reform as an important part of its activities. A Scottish Law Commission Bill can be referred to the Delegated Powers and Law Reform Committee which can then take the lead in considering the Bill. This has enhanced the capacity of the Parliament to deal with Commission Bills, and so over time will increase the rate of implementation of Commission recommendations. The first Commission Bill under the process led to the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, which came into force on 1 July 2015. A second Bill



The President of the Law Society of Scotland, Christine McLintock, with the Chairman, Lord Pentland

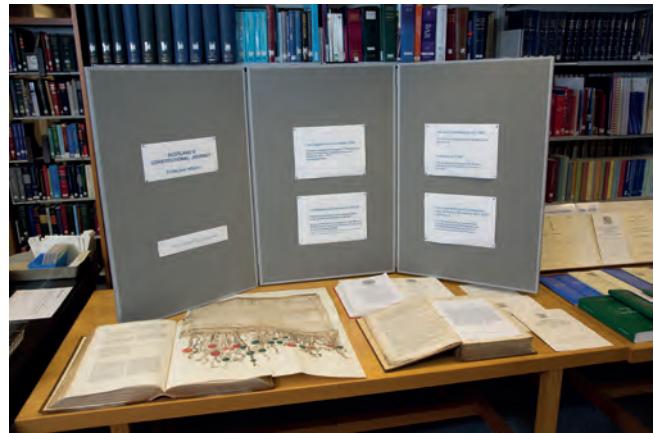
about technical aspects of succession law, based on Commission recommendations, was introduced in the Parliament in 2015 and has recently been passed.

The Commission was delighted when the Convener of the Committee, Nigel Don MSP, and members of the Committee, visited the Commission in May to mark the Commission's 50th anniversary.

The Commission and stakeholders

Within Scotland, the Commission's law reform role and our close engagement with the legal profession was recognised by the Law Society of Scotland at its conference in Edinburgh in October. The Society held a reception to mark the Commission's 50th year. The President of the Law Society, Christine McLintock, presented the Commission with a gift at the reception.

The Commission's 50th anniversary was recognised by the Scottish Public Law Group which organised a special event in November, at the Laigh Hall in Parliament House.



Display of Scotland's constitutional journey on law reform

This event was opened by the Dean of the Faculty of Advocates, James Wolffe QC, who described the Commission as "an example par excellence" of what can be achieved for our legal system by the legal community working together in the public interest. Presentations about the Commission and our work were given by the Chairman, by Commissioner David Johnston QC, and by a former Commissioner, Laura Dunlop QC.



Display of the Commission's reports over 50 years

Publications planned for 2016

The Commission's ongoing work on projects under our Ninth Programme of Law Reform, and on other projects referred to us, will result in various publications in the course of 2016.

We have just published a joint Interim Report, along with the Law Commission for England and Wales and the Northern Ireland Law Commission on Electoral Law.

A number of other publications are expected in the first half of the year. These include a discussion paper on prescription. This topic is a new project under the Ninth Programme. The ongoing review of contract law will continue, with the publication of a report on third party rights in contract. On the review of the law of defamation, another new project under the Ninth Programme, a discussion paper will be issued for consultation.

During 2016 the Commission expects to complete the moveable transactions project with the publication of a substantial report and draft Bill on moveable transactions.

In the second half of the year, the work on contract law will continue with the publication of a discussion paper on penalty clauses and remedies for breach of contract.

As regards further joint work with the Law Commission for England and Wales, a joint report on insurable Interest will be published in the second half of the year, thus completing the Commissions' joint review of insurance law.

Commissioners and staff

(as at 31 December 2015)

Commissioners

The Hon Lord Pentland, *Chairman*
Caroline Drummond
David Johnston QC
Professor Hector MacQueen
Dr Andrew Steven

Chief Executive

Malcolm McMillan

Parliamentary Counsel (Consultant)

Gregor Clark CB*

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Solicitor

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Librarian

Faye Cooke*

Office Manager

Susan Cutsforth*

Personal Secretaries

Wilma MacAskill*
Joan Melville

Administrative Staff

Iain Ritchie
Gordon Speirs

The Commission's running costs 2015

The Scottish Law Commission is funded by the Scottish Government. Our running costs for 2015 were offset by payments received from Skills for Justice and Historic Environment Scotland (prior to October 2015, known as the Royal Commission on the Ancient and Historic Monuments of Scotland) for use of part of our office accommodation.

EXPENDITURE	YEAR TO 31 DECEMBER 2015
Salaries – Commissioners (including national insurance contributions, superannuation payments and pensions to former Commissioners)	£599,008
Salaries – Chief Executive and legal staff (including national insurance contributions, superannuation payments and consultants' fees and expenses)	£629,131
Salaries – Administrative staff (including national insurance contributions and superannuation payments)	£111,247
Accommodation (including maintenance, rates and utilities)	£77,411
Printing and publishing (including costs of books and library purchases, binding, maintenance of equipment, printing costs of publications, photocopying and stationery)	£70,639
Telephone and postage	£3,183
Travel and subsistence	£7,237
Miscellaneous (including the provision and maintenance of the IT system, training of staff, office services and hospitality)	£70,212
Total	£1,568,068

Scottish Law Commission 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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