



SCOTTISH LAW COMMISSION

(SCOT. LAW COM. No. 9)

THIRD
ANNUAL REPORT
1967-68

*Laid before Parliament
by the Secretary of State for Scotland
and the Lord Advocate
under section 3(3)
of the Law Commissions Act 1965*



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

The Hon. Lord Kilbrandon, LL.D., *Chairman*

Professor A. E. Anton, M.A., LL.B.

Professor J. M. Halliday, M.A., LL.B.

Mr. A. M. Johnston, Q.C., B.A., LL.B.

Professor T. B. Smith, Q.C., D.C.L., LL.D.

The Secretary of the Commission is Mr. A. G. Brand, M.B.E., M.A., LL.B. Its offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh 8.

Scottish Law Commission

Report for the year ended 15th June 1968

TO: THE RIGHT HONOURABLE WILLIAM ROSS, M.B.E., M.P.,
Her Majesty's Secretary of State for Scotland, and

THE RIGHT HONOURABLE HENRY S. WILSON, QUEEN'S COUNSEL,
Her Majesty's Advocate.

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

C. J. D. SHAW,
Chairman.

19th June 1968.

THE COMMISSION

1. The Commission was set up on 16th June 1965, with a full-time Chairman, the Hon. Lord Kilbrandon, LL.D., and three part-time Commissioners, Mr. G. D. Fairbairn, s.s.c., Professor J. M. Halliday, M.A., LL.B., and Professor T. B. Smith, Q.C., M.A., D.C.L., LL.D., F.B.A. On 11th April 1966, Professor A. E. Anton, M.A., LL.B., was appointed as fourth part-time Commissioner. Mr. Fairbairn has ceased to be a Commissioner on completion of his term of office, and we wish to express our indebtedness to him for all that he has contributed to our work. We welcome the appointment of Mr. A. M. Johnston, Q.C., B.A., LL.B., as a full-time Commissioner.

STAFF

2. There has been no change this year in our legal staff, which consists of our Secretary, four other lawyers and a part-time Parliamentary Draftsman. Our non-legal staff was reduced during the year from nine to seven. We have again to record our regret that it has not been possible to provide us with a full-time Parliamentary Draftsman for the work of putting our proposals for reform into actual legislative terms, and thus bringing their effect into sharper focus than is possible at present. During the last few months, however, we have made arrangements for some of this work to be done by our part-time Draftsman, whose work had hitherto been confined to the preparation of consolidation Bills. When any proposal which will involve legislation is under consideration it is highly desirable that the Draftsman be brought in at an early stage. It then becomes possible to consider, and advise on, points which arise in the course of drafting, while it is also helpful to those concerned with our recommendations to see the legislative form in which they may be implemented. It will be appreciated, however, that the Draftsman will have less time for consolidation work and that the output of consolidation Bills, which we regard as important, will inevitably be reduced. Once again, therefore, we draw attention to the urgent need for recruitment of Draftsmen.

PREMISES

3. With the co-operation of the University of Edinburgh we have obtained additional accommodation in the Old College which will enable us to have all our staff within the one suite of offices. We again record our appreciation of the help we have received from the University, and in particular of the assistance which we continue to receive from the University Law Library.

MEETINGS

4. We have continued our practice of holding meetings at fortnightly intervals and have had special meetings on several occasions to discuss particular subjects.

PROPOSALS

5. During the period covered by this Report we have received proposals as follows—

Proposals Received

<i>Source</i>	<i>Number</i>
General Public	11
Legal Faculties and Societies	7
The Judiciary	3
Other lawyers	21
Other organisations	4
Government Departments	—
Members of the Commission and Staff	1
	—
	47
	—

These proposals have been dealt with as follows—

Examined under our First Programme	5
To be examined under our Second Programme	12
To be examined under future Programmes	6
Under consideration	4
Considered by the Commission and referred to Government Departments or other bodies	13
Considered to require no action on the part of the Commission	7
	—
	47
	—

6. As we anticipated last year, the number of proposals has decreased. We are grateful to those who have taken the trouble to put proposals to us, or to draw our attention to anomalies or defects in the law, and we would emphasise again that while, in the course of our examination of branches of the law, we ourselves come across matters which appear to call for reform, the most fruitful source of information about defects and anomalies in the law must be the individual who suffers from them or the practitioners who encounter them in the course of practice. We are constantly on the lookout for enactments, or parts of enactments, which are obsolete and could properly be removed from the statute book by repeal. Here again, we would welcome suggestions from individuals who may have come across such enactments, perhaps in the course of research on other questions.

FIRST PROGRAMME

7. Our work on the five branches of law listed in our First Programme has been proceeding as indicated in the following paragraphs.

EVIDENCE

8. We shall publish shortly for comment and criticism a Memorandum in connection with our proposed codification of the law of evidence.¹ This Memorandum, which explains our tentative views on the purpose, effect and methods of interpretation of such a code, also contains draft Chapters of the "Evidence Code". These Chapters contain probably about one-half of the total number of

¹Published on 5th July 1968.

Articles of which the Code will consist. We hope that this Memorandum will provoke discussion not only on the problems arising from the introduction of Codes of this kind into our legal system, but also on the substance of the draft Code. We considered whether we should delay our publication of the draft Articles until we could produce a complete Code, but we decided that to have the views of the legal profession at this early stage on the Chapters already prepared would be of great help to us in the further work to be done on this subject.

9. Provisions based on our proposals relating to corroboration have been included in the current Law Reform (Miscellaneous Provisions) (Scotland) Bill.

OBLIGATIONS

10. In the field of Obligations the main work has continued to be on contracts and other voluntary obligations. The Contract team set up by the Law Commission and ourselves met frequently in London during the year. Certain Sections of a Code have been drafted, but whether there is to be a unified Code for English law and Scots law has not been finally decided. Apart from the London meetings, two meetings were held in Edinburgh, one in November 1967 and the other, a weekend one, in January 1968. Some of these meetings were attended not only by the English members of the team and the Scottish Law Commissioners but also by the Scottish members of the Advisory Panel on Contract set up by the two Commissions last year. Parts of the Code were considered in draft and were subsequently revised in the light of the comments and criticisms made at the meetings. These revised parts of the Code have now been circulated to all members of the Advisory Panel, from whom comments are being received. Another meeting with the Advisory Panel is also planned; again we must express our gratitude to those distinguished lawyers who are assisting us in this way. Their names are listed in Appendix 1 to this Report.

11. The Joint Working Party set up by the Law Commission and ourselves to examine the subject of exemption clauses, especially in standard form contracts, has continued its work. During this year the Joint Working Party submitted to the two Commissions an Interim Report on proposed amendments to sections 12 to 15 of the Sale of Goods Act 1893, and on the question of restricting the possibilities of contracting out of the provisions of those sections. These are questions on which the advice of the two Commissions was sought by the President of the Board of Trade. Having considered this Interim Report the two Commissions have now prepared a Joint Working Paper setting out various tentative proposals and seeking views on a number of questions. This Working Paper has been circulated to a large number of individuals whose observations have been invited. The Joint Working Party has now turned its attention to exemption clauses in contracts for services with particular reference to those which purport to exclude or limit liability for negligence. The composition of the Joint Working Party is set out in Appendix 1 to this Report.

PRESCRIPTION AND LIMITATION OF ACTIONS

12. In our last Annual Report we indicated that we hoped to be issuing for comment and criticism a Memorandum embodying our preliminary recommendations. Owing to pressure of other work, we have not yet been able to achieve this, but the Memorandum is now being considered and we hope to publish it shortly.

13. In paragraph 43 of our last Annual Report we mentioned that the Sub-Committee of the European Committee on Legal Co-operation of the Council of Europe had completed its study of time-limits. In October 1967 we were asked by the Foreign Office under section 3(1)(e) of the Law Commissions Act 1965 to provide information on the law of Scotland for the United Kingdom delegation to a Committee of Experts set up by the Council of Europe to consider the recommendations which had been made by the Sub-Committee. This Committee has held meetings in October 1967 and May 1968. A member of our legal staff continues to attend these meetings as a member of the United Kingdom delegation.

JUDICIAL PRECEDENT

14. We reported in our last Annual Report (paragraphs 15 and 16) on the steps we took to obtain clarification of the law and practice relating to House of Lords' decisions as precedents in appeals to that House. Since then our consideration of this subject has been, in collaboration with the Law Commission, concerned with the position of precedent in the interpretation of Codes. We shall, as stated above, shortly be inviting the views of the profession on this difficult question.

INTERPRETATION OF STATUTES

15. Jointly with the Law Commission we issued on 10th August 1967 a Working Paper on this subject and invited comments and criticism which we have received from a large number of sources. These sources include the judiciary, members and officials of Parliament, Government Departments and their legal advisers, members of national and international bodies concerned with law reform, and individual lawyers and bodies representative of the legal profession. We have also received many comments from Commonwealth and other countries abroad. We wish to express our thanks to all who have contributed observations on this Working Paper. Along with the Law Commission we are now considering these with a view to preparing a paper containing our recommendations.

LEGISLATION

16. During the year we have been consulted in connection with the preparation of two Bills—the Legitimation (Scotland) Bill, which received the Royal Assent on 8th May 1968, and the Law Reform (Miscellaneous Provisions) (Scotland) Bill. The former implements proposals made in our paper entitled “Reform of the Law Relating to Legitimation *per subsequens matrimonium*” published in April 1967 (Cmnd. 3223), while several of the clauses in the latter are intended to implement proposals we have made in relation to the following subjects—

- The rights of illegitimate children under conventional provisions;
- Corroboration;
- Restrictions on the creation of liferents;
- Prorogation of jurisdiction in moneylending agreements;
- Removal of a restriction on the acquisition of land by Trade Unions.

17. While we are glad to see our recommendations implemented by legislation, and recognise the usefulness of "Miscellaneous Provisions" Bills to deal with minor defects in the law, we consider that several of the matters in the current Bill are of sufficient importance to have been dealt with in separate Bills.

18. We wish to record that although we have had no responsibility for the form or wording of the clauses which were intended to implement our recommendations, we welcomed the opportunity given to us by your Departments to help with the preparation of instructions to the Parliamentary Draftsman and to express views on the drafting of these clauses. These arrangements can, however, only be regarded as an inadequate substitute for the provision of a full-time drafting service for the preparation of the clauses which ought to accompany our recommendations. In saying this we are not inferring that our difficulties are being ignored; we are well aware of the apparently insoluble problem of recruitment.

FIRST PROGRAMME OF CONSOLIDATION AND STATUTE LAW REVISION

19. The following is the present position with regard to the work on consolidation of statutes under our First Programme of Consolidation and Statute Law Revision.

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

- (1) *Housing (Financial Provisions) (Scotland)*—A Bill to consolidate the enactments relating to the financial aspects of housing law received the Royal Assent in May 1968.
- (2) *Legal Aid (Scotland)*—A Bill to consolidate the enactments relating to legal aid in Scotland received the Royal Assent in July 1967.
- (3) *Police (Scotland)*—A Bill to consolidate certain enactments relating to police received the Royal Assent in July 1967.
- (4) *Court of Session*—We understand that work on a Bill designed to consolidate and amend enactments relating to the Court of Session has continued during the year.
- (5) *Rents (Scotland)*—Work is continuing on a Bill to consolidate the Rent Acts in their application to Scotland.
- (6) *Roads and Bridges (Scotland)*—We understand that preliminary work within the Scottish Development Department is continuing to progress and has indeed reached a fairly advanced stage. We should have liked to be able at this point to allocate a Draftsman to the preparation of the Bill itself, but as no Draftsman is at present available for this task (which will require the whole-time attention of a Draftsman over a considerable period) we have been unable to do so.

(7) *New Towns (Scotland)*—A Bill to consolidate the enactments relating to new towns with corrections and improvements under the Consolidation of Enactments (Procedure) Act 1949 received the Royal Assent in March 1968.

(8) *Lands Clauses (Scotland)*—Work on consolidation of the Lands Clauses Acts in relation to Scotland has been held up while consideration is being given to the question whether, and to what extent, amendment of these Acts is required.

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

(1) The following consolidating Acts have been passed—

- (i) Advertisements (Hire-Purchase) Act 1967,
- (ii) Road Traffic Regulation Act 1967,
- (iii) Sea Fish (Conservation) Act 1967,
- (iv) Sea Fisheries (Shellfish) Act 1967,
- (v) Capital Allowances Act 1968,
- (vi) Provisional Collection of Taxes Act 1968,
- (vii) Courts-Martial (Appeals) Act 1968,
- (viii) Firearms Act 1968,
- (ix) Criminal Appeal Act 1968,
- (x) Export Guarantees Act 1968.

(2) The following consolidating Bills are in preparation and it is hoped that they will be ready for introduction next Session—

- (i) Monopolies and Mergers Bill,
- (ii) Customs Duties (Dumping and Subsidies) Bill,
- (iii) Sea Fish Industry (Grants and Subsidies) Bill.

(3) We understand that work has been commenced on the consolidation of the British Nationality Acts and the Friendly Societies Acts.

(4) We are informed that work on the consolidation of the statutes relating to income tax and corporation tax is proceeding and that it is hoped to have a Bill ready for introduction by the autumn of 1969. We hope that work on consolidation of estate duty legislation will shortly be resumed, but we are informed that work on the Stamp Acts, which is not so urgent, may be held up while the preparations for the consolidation of the other revenue statutes is proceeding. Consolidation of the Road Traffic Acts is awaiting the passage of the Transport Bill at present before Parliament.

(c) *Statute Law Revision*

The Law Commission have prepared a draft Bill which is concerned mainly with the repeal of pre-1706 English statutes. With our approval the Bill also contains repeals of certain provisions in post-1706 statutes which affect Scots as well as English law, and a few provisions repealing enactments which apply to Scotland only and which are now spent. We have mentioned in paragraph 6 of this Report that we would welcome any suggestions as to enactments that are thought to be suitable for repeal in a Statute Law Revision Bill.

ADVICE, ETC.

20. We have continued to give advice to Government Departments and others as required by section 3(1)(e) of the Law Commissions Act 1965.

21. In our Second Annual Report we mentioned the Report made to you in April 1967 by the Commission entitled "Divorce—The Grounds Considered". We note with some disappointment that while it has been found possible with Government assistance to introduce into Parliament a Private Member's Bill dealing with divorce under English law on the lines suggested by the Law Commission and a Church of England Group appointed by the Archbishop of Canterbury, there is apparently no prospect of legislation for Scotland. We wish to draw attention to the fact that at present the grounds of divorce in English and Scots law are in substance the same and that, although our approach to the problems differed in detail from that of the Law Commission and the Archbishop's Group, its practical effect, if followed out, would have been similar. It will be a matter for regret if, in consequence of facilities being given for English but not Scottish legislation, new matrimonial remedies are provided in one country and not the other. We must further express our regret that there has been no opportunity to have Scottish proposals considered in Parliament on their merits either with a view to the reform of our own law or as a step towards harmonisation of the two legal systems.

22. Last year we set up a Working Party whose names are listed in Appendix 1 to assist us in the preparation of advice requested by the President of the Board of Trade as to what amendments might be made to the Companies (Floating Charges) (Scotland) Act 1961. The whole Working Party has had a number of meetings and, in addition, several of its members have met separately to discuss particular aspects of the subject in detail. They have also had the benefit of consultation with Mr. L. C. B. Gower of the Law Commission. It is expected that the Working Party's views will be available to us within the next few months and that we shall shortly thereafter be able to invite interested parties to comment on our tentative proposals together, in this instance, with draft clauses for a Bill.

23. We were asked by the Ministry of Labour for advice on proposals for a review of the form and scope of the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963, and we were represented at a conference on this subject held by the International Law Society on 17th February 1968.

24. Our Chairman took part in discussions with the Law Commission and the Home Office on problems arising out of the decision in the cases of *Sweet v. Parsley* [1968] 2 W.L.R. 1360, [1968] 2 All E.R. 337 and *Warner v. Commissioner of Police for the Metropolis* [1968] 2 W.L.R. 1303, [1968] All E.R. 356.

25. During the year we have been consulted by Government Departments on several occasions about proposals for legislation on matters of law reform which did not originate with the Commission.

ANOMALIES AND DEFECTS

26. As part of our duty under section 3(1)(e) of the Law Commissions Act 1965 we advise on anomalies or defects in the law which appear to us to call for urgent attention and to be capable of being remedied by comparatively short

amending provisions or by administrative action. We have continued our consideration of a number of these which came to our notice in our first two years¹ and have also considered others suggested to us since then. We give the following examples—

- (a) Whether it should be possible for English probates and letters of administration to be sent for resealing by post from England direct to the Commissary Clerk in Edinburgh; and whether the need for resealing of English probates and letters of administration in Scotland and of Scottish confirmations in England should be abolished. We noted that the Grant Committee on the Sheriff Court recommended that English probates and letters of administration should be valid in Scotland without the necessity for resealing, and with reciprocal arrangements for Scottish confirmations.² After consultation with the Commissary Clerk, the Lord Advocate's Department, the Senior Probate Registrar, the Lord Chancellor's Office and the President of the Probate, Divorce and Admiralty Division, both Law Commissions considered that although abolition of resealing appeared to be desirable, the matter should be examined by a small working party of officials, and this, we understand, is being done.
- (b) Whether confirmation fees should be reduced. In our last Annual Report we mentioned that we were pressing for an early solution of this matter. We have continued to do so, and regret that we are unable to report any progress.
- (c) Whether an accused person should be able to recover expenses from the prosecution in cases where he has been acquitted or the charge against him has been dropped. On this matter we have consulted various legal bodies and other organisations by means of a questionnaire. We have received most helpful replies which showed little support for any substantial alteration of the present law. In the light of this, and bearing in mind that we have proposed a general review of criminal procedure in our Second Programme, we have not so far made any recommendations.
- (d) The transmissibility of a right of action for personal injury in the event of the death of the injured person, with related questions and with special reference to the right of the deceased's relatives to sue in respect of his or her death (*Darling v. Gray & Sons* (1892) 19 R. (H.L.) 31). After receiving a number of proposals the Commission prepared a memorandum (Memorandum No. 5) entitled "Damages for Injuries Causing Death" which was sent to various bodies including, as well as legal bodies, employers' associations, Trade Unions, etc. for comment and criticism. We are grateful to all those who have taken, and are taking, the trouble to send us replies, and we appreciate that the problems raised in the Commission's Memorandum are difficult and require much consideration from those from whom we have invited comment. We have proposed to examine this subject further under our Second Programme.
- (e) Notice of applications for planning permission. During the year we have received comments on our Memorandum (No. 4) on this subject. These comments disclosed a distinct cleavage of opinion on the merits of our

¹See paragraph 36 of our First Annual Report and paragraph 35 of our Second Annual Report.

²See the Grant Committee's Report (Cmnd. 3248) paragraph 664 and Recommendation 294.

tentative proposals, and demonstrated that they raised problems of an administrative and political nature. On consideration of all the comments on our proposals and criticisms of the present procedure, we came to the conclusion that there appeared to be a case for improving the procedure so that some notice of an application for planning permission may be given to parties who may be affected by the particular development or change of use proposed. At the same time we took the view that it would be inappropriate for us, as a body consisting of lawyers only, to recommend any particular solution to a problem, the legal content of which appeared to be outweighed by administrative and political considerations. We have accordingly brought to the attention of the appropriate Minister our Memorandum and the comments we have received.

27. As a result of proposals received, we have considered a number of other matters of which the following are examples—

- (a) *Auction Sales*—In an article in the *Scots Law Times* (1967 p. 231) it was suggested that there was doubt as to the right of a seller to bid at a sale by public roup of his heritable property, and questions were raised about the application of section 58 of the Sale of Goods Act 1893 in relation to auction sales of moveables. We are examining this question and have sought the views of the Law Commission on the position under English law.
- (b) *Liability for repairs to joint and common property*—On this matter we had the benefit of the views of the Law Society of Scotland. Difficult questions are involved and we shall give the matter further consideration when a suitable opportunity arises.
- (c) *Married Women's Policies of Assurance*—We received a proposal that the Married Women's Policies of Assurance (Scotland) Act 1880 should be amended to bring it into line with the English Married Women's Property Act 1882 in so far as policies set up by a wife for the benefit of her husband are concerned. This matter is being examined.
- (d) *Censorship of communications between prisoners and their legal advisers*—This was a matter referred to us by the Glasgow Bar Association. After consultation with the Director of Prison Services, to whom we are grateful for his assistance, we came to the conclusion that we should make no recommendations on the matter, firstly because it was rather a matter of prison administration than of law, and secondly because the Director assured us that, his attention having been drawn to the matter, it would be given careful consideration when the Prisons (Scotland) Rules 1952 came under review later this year.
- (e) *Liquor Licensing*—A number of proposals in this connection have been received. The majority of these are concerned with the constitution and procedure of Licensing Courts and in our view these are social or administrative matters which are strictly not our concern. In view of the comparatively large proportion of proposals received on these matters, however, we have drawn them to the attention of the Scottish Home and Health Department. One proposal which does have a good deal of legal content arises out of the case of *Noble v. Heatly* 1967 S.L.T. 26. This we have under consideration and have received representations from a number of interested parties.

SECOND PROGRAMME

28. We have submitted to you a Second Programme of branches of the law which we consider should be examined with a view to reform.¹ We have already done a considerable amount of preliminary work on the branches of law selected for inclusion in the programme which are—

Insolvency, Bankruptcy and Liquidation,
Succession,
Diligence,
Reciprocal Enforcement of Judgments,
Damages arising from Personal Injuries and Death,
Presumption of Death,
Legal Capacity of Minors and Pupils,
Criminal Procedure, and
Family Law.

COMPUTERS

29. In conjunction with the Law Commission we have continued our interest in the possible uses of computers as an aid to lawyers, and our exchanges of information with other interested bodies. A member of our legal staff attended a series of lectures, discussions and demonstrations of computers and associated equipment which was held in September 1967 at the University of Southampton under the auspices of the British Computer Society. We regard the application of computers to legal work as a matter to which, at present, only a small amount of our time can be devoted; but it is our intention to try to keep in touch with advances in computer technology which may lead to more rapid progress.

CONSULTATION

THE LAW COMMISSION

30. Our close co-operation with the Law Commission has been maintained throughout the year. The practice of having at least one full joint meeting of both Commissions once a year has been followed, and the Commissions met in Edinburgh on 22nd and 23rd February 1968. We continuously consult each other on points of common interest in addition to the matters specifically mentioned elsewhere in this Report on which the two Commissions are working jointly. The Law Commission have been kind enough to read some of the papers which we have prepared and we have greatly profited by their advice. In turn, we have studied proposals for reform of English law as they have emanated from the Law Commission, and have sometimes commented upon these proposals. The Law Commission papers have often thrown reflected light upon deficiencies in our own system. In particular the preliminary papers on Family Law have caused us to suggest that this topic should appear in our Second Programme.

OTHER LAW REFORM ORGANISATIONS

31. We have kept up our contact with the other law reform organisations mentioned in paragraph 39 of our Second Annual Report and we have established good relations with several others. In particular we have found it useful

¹Published on 19th July 1968.

to pay close attention to the reports of various committees considering English law such as the Law Reform Committee, the Criminal Law Revision Committee, and certain *ad hoc* Committees reporting on legal matters. We have done so in an effort to ensure both that Scotland can participate in worthwhile reforms of the law and that other changes in United Kingdom law affecting Scotland should not proceed in the absence of study from a Scottish point of view.

THE LEGAL PROFESSION IN SCOTLAND

32. In our last two Annual Reports we referred to the arrangements we had made for informal consultation with the Faculty of Advocates and the Law Society of Scotland. These arrangements have continued and developed and have proved themselves valuable on urgent matters or matters on which formal consultation was thought to be unnecessary. In addition, however, we have now agreed with these two bodies on a procedure for early formal consultation on matters of importance. We record our thanks to those bodies and, in particular, to the individual members of them, who have done so much to help us with expert advice.

33. We are also grateful to other legal bodies in Scotland, as well as to individual lawyers, who have been generous with their help.

SEMINARS, COLLOQUIA, ETC.

34. We have arranged for the Commission to be represented at a number of seminars or colloquia for discussion of legal topics. One which, perhaps, deserves special mention is the Seminar on the law relating to "Privacy" at All Souls College, Oxford, attended by our Chairman in July 1967.

FOREIGN LEGAL SYSTEMS AND INTERNATIONAL LAW

35. We have carried out the duty imposed on us by section 3(1)(f) of the Law Commissions Act 1965 to "obtain such information as to the legal systems of other countries" as appears to us to be likely to facilitate the performance of our other functions,

36. In this field, too, we have continued to play our part in the representation of Scots law at international conferences on legal problems. We have referred to the Council of Europe study of time-limits in paragraph 13 of this Report, and two of our Commissioners, Professor Anton and Professor Halliday, have been members of the Working Party set up to advise on the two draft conventions on agency in contracts of an international character, which we mentioned in paragraph 44 of our Second Annual Report. The Working Party has submitted its report to the two Commissions.

37. Professor Anton has continued as a member of the Working Party set up by the Lord Chancellor to advise on the Draft Convention on the Recognition of Foreign Divorces and Legal Separations prepared by a Sub-Committee of The Hague Conference on Private International Law. We understand that the Convention is likely to be completed and signed in October 1968.

38. Professor Anton has also represented the United Kingdom at a series of meetings of a Sub-Committee of the European Committee on Legal Co-operation of the Council of Europe. This Sub-Committee was specifically concerned with reaching agreement at a European level on the definitions of "Residence", "Habitual Residence", and "Domicile". The absence of generally understood definitions of these terms has occasionally impeded or delayed agreement in international matters. The Sub-Committee has now completed this work and considers that its proposals, if acceptable to the Council of Europe and Member States, would mark a significant advance in this difficult field.

39. We are pleased to record that our Chairman has accepted an invitation to be the General Rapporteur at a Council of Europe Symposium on Human Rights and Mass Communications at Salzburg in September 1968.

SCRUTINY OF BILLS

40. We have continued the practice of scrutinising Parliamentary Bills applying to Scotland. As mentioned in our last Annual Report our resources are insufficient to enable us to scrutinise such Bills in great detail, but we have found in certain Bills provisions which appeared to give rise to inconsistencies, or the drafting of which, in their application to Scotland, seemed to require reconsideration, and we have drawn these to the attention of the Government Department or Parliamentary Draftsman concerned.

STATUTE LAW COMMITTEE

41. In paragraph 14 of our First Annual Report we referred to the possibility of "a completely new system of the arrangement of statutory enactments and a new method of publishing what Parliament has enacted". The Statute Law Committee has been considering these matters, and our Chairman who is a member of that Committee has taken an active part in their deliberations.

LIST OF PAPERS

42. A list of papers prepared by the Commission and made public appears in Appendix 2 to this Report.

APPENDIX 1

MEMBERSHIP OF ADVISORY PANEL AND WORKING PARTIES

Para. 10 *Advisory Panel on Contract*

The Rt. Hon. Lord Devlin, the Rt. Hon. Lord Justice Diplock, the Hon. Mr. Justice Megaw, C.B.E., T.D., the Hon. Lord Robertson, the Hon. Mr. Justice Roskill, the Hon. Mr. Justice Donaldson, Mr. P. S. Atiyah, Mr. A. R. Barrowclough, Mr. G. J. Borrie, Mr. L. A. Duffield, Professor A. G. Guest, Mr. I. R. Guild, w.s., Mr. Mark Littman, Q.C., Mr. R. A. Lynex, Mr. R. A. MacCrimdle, Q.C., Mr. A. J. Mackenzie Stuart, Q.C., Dr. F. A. Mann, Professor F. J. Odgers, Dr. L. S. Sealy, Mr. Mark H. Sheldon, Mr. G. H. Treitel, Mr. P. E. Webster, Q.C., Professor K. W. Wedderburn, and Professor J. F. Wilson.

Para. 11 *Joint Working Party on Exemption by Contract from Common Law and Statutory Liabilities*

The Hon. Lord Kilbrandon and Mr. Andrew Martin, Q.C. (Joint Chairmen).
Members, other than representatives of the Law Commission and Scottish Law Commission—

Mr. J. A. Beaton, Mr. W. E. Bennett, Mr. G. J. Borrie, Mr. M. R. E. Kerr, Q.C., Mr. P. Maxwell, Q.C., Mr. S. W. T. Mitchelmore, Mr. G. R. H. Reid, Mr. R. G. Scriven, Mr. J. B. Sweetman, Mr. S. Terrell, Q.C., Mrs. L. E. Vickers, Miss G. M. E. White, *Mr. J. H. Walford.

Secretary: Mr. R. G. Greene, Law Commission.

*Mr. Walford replaced Mr. W. M. H. Williams as the representative of the Law Society.

Para. 22 *Working Party on Companies (Floating Charges) (Scotland) Act 1961*

Professor J. M. Halliday (Chairman), Mr. D. G. Antonio, Mr. W. A. Cook, Mr. A. G. M. Duncan, Mr. A. I. Mackenzie, Mr. G. R. H. Reid.

Secretary: Mr. R. Brodie, Scottish Law Commission.

Para. 36 *Joint Working Party on the two Draft Conventions on Agency in International Contracts*

Members of the Working Party other than representatives of the Law Commission and Scottish Law Commission—

Mr. R. A. MacCrimdle, Q.C., Mr. J. C. McFadyean, Mr. T. N. Risk.

Secretary: Mr. E. G. Caldwell, Law Commission.

APPENDIX 2

Scottish Law Commission papers published by H.M. Stationery Office

First Programme of Law Reform

First Programme of Consolidation and Statute Law Revision

First Annual Report 1965–66

Reform of the Law Relating to Legitimation *per subsequens matrimonium*
(Cmnd. 3223)

Proposal for Reform of the Law of Evidence relating to Corroboration

Divorce—The Grounds Considered (Cmnd. 3256)

Report by the Law Commission and the Scottish Law Commission on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish—Sea Fisheries (Shellfish) Bill (Cmnd. 3267)

Second Annual Report 1966–67

Scottish Law Commission Memoranda circulated for comment and criticism

Memorandum No. 1—Probate or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964

Memorandum No. 2—Expenses in Criminal Cases

Memorandum No. 3—Restrictions on the Creation of Liferents

Memorandum No. 4—Applications for Planning Permission

Memorandum No. 5—Damages for Injuries Causing Death

*Memorandum No. 6—Interpretation of Statutes

*Memorandum No. 7—Provisional Proposals Relating to Sale of Goods

*Produced jointly with the Law Commission

