

Scottish Law Commission

(SCOT LAW COM No 148)

TWENTY-NINTH ANNUAL REPORT 1993–94

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

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

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SCOTTISH LAW COMMISSION

Report for the year ended 15th June, 1994

To: The Right Honourable Lord Rodger of Earlsferry, QC
Her Majesty's Advocate

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

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

KENNETH F BARCLAY, *Secretary*
24 October 1994

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

Twenty-Ninth Annual Report

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Part I Introduction

1.1 During the year covered by this report we published our *Report on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods*,¹ and, jointly with the Law Commission, a report on *Sale of Goods Forming Part of a Bulk*.² We also completed work on our *Report on Confiscation and Forfeiture*.

1.2 Our work on confiscation and forfeiture was enlarged as result of our decision to propose revisions of the provisions of Part I of the Criminal Justice (Scotland) Act 1987 in order to make the relevant law on confiscation and forfeiture easier to understand and to apply. Work on this major project was further disrupted by the need to give prompt responses to papers on criminal justice issued by the Scottish Office. In spite of these delays we hope that the *Report on Confiscation and Forfeiture* will be published in sufficient time for its recommendations to be incorporated in a Criminal Justice Bill in the near future. We also made progress, and nearly completed our research on, hearsay arising from prior statements of an accused and of witnesses in criminal proceedings. One of the difficult questions to be covered by our forthcoming report concerns the extent, if any, which alleged statements of another person confessing responsibility for the offence charged should be admissible in evidence. This question has recently given rise to a difference of judicial opinion - *McLay v Lord Advocate* 1994 SLT 873. We intend to publish our report on this topic in the latter part of 1994. That report will mark the completion of a series of reports on the law of evidence which has been published over the past decade.

1.3 We have also completed work on our Discussion Paper on *Multi-Party Actions*. This topic has caused us considerable difficulty ever since it was made the subject of a reference to us. During the intervening period there has been a great deal of uncertainty about the nature and extent of state funding for private litigation. In our discussion paper we outline a number of procedural reforms designed to remove obstacles to multi-party proceedings, and we have set out several options for funding, some of which have been, or are about to be, adopted in other jurisdictions.

1.4 In our last annual report we intimated that we intended to make a further contribution to the debate about proof of undisputed facts in criminal proceedings. Subsequently, we availed ourselves of the opportunity to respond to some of the papers issued by the Scottish Office on improving the delivery of justice in Scotland. In our responses we directed prime attention to the paper on criminal evidence and criminal procedure. Some of the topics discussed in that paper had been the subject of recommendations by the Royal Commission on Criminal Justice in England and Wales. The main thrust of the papers was to examine the large number of criminal trials in Scotland which do not proceed, to explain the reasons for this phenomenon and to suggest procedural reforms which might improve the position. We drew attention in our reply to the difference in respective positions of Scottish and English judges and the consequent difficulties of adopting English procedures in Scottish courts. In particular we pointed out that because at present he is not, unlike an English judge, entitled to have a sight of the Crown's witness statements or to know whether the accused has any previous convictions, a Scottish judge is not equipped to discharge the role of trial manager rather than umpire. We went on to suggest that, without the benefit of reliable research material, it was not possible to predict with

1. Scot Law Com No 144.

2. Law Com No 215, Scot Law Com No 145.

any confidence the likely outcome of the changes proposed by the Scottish Office. We were especially concerned about sentence discounting, pointing out that the existing system was not capable of dealing with that additional burden effectively, and that in principle sentence discounting was objectionable, being contrary to Scottish traditions and inconsistent with international obligations guaranteeing an accused person's right to insist on his alleged guilt being proved before a properly constituted tribunal. While recognising the potential advantages of having an intermediate diet attended by both prosecutor and accused, thereby giving an opportunity to discuss agreement on evidence and to adjust a guilty plea, because of the Scottish judicial tradition we expressed reservations about a proposal that the trial judge should assume an active managerial function at the intermediate diet. We agreed that the excessive number of abortive trials with their consequent waste of police and court resources, and inconvenience to jurors and witnesses calls for effective remedy. But we drew attention to the danger of the judge's impartiality being impaired if he was seen to exert pressure upon an accused person to make concessions at an intermediate diet. We acknowledged that if other expedients fail to bring about worthwhile improvements, then a revised pre-trial procedure may have to be devised at which, among other things, the judge would require to determine what matters are to be held as proved for the purposes of the trial. Against that background, we welcome the change of mind by the Scottish Office regarding our proposals for a statement of facts which would be served on an accused person and would be regarded as proved unless a counter notice was served. We note that the Scottish Office sees merit in our proposals on the basis that, instead of being obligatory, they should be available as one of a number of possible procedures for agreeing evidence before trial, and that as a norm statements of facts should be issued in good time before an intermediate diet or preliminary hearing takes place. We believe that that revised procedure, if adopted, will be more likely than others to encourage an accused person to indicate that he does not intend to challenge evidence which, although not within his own knowledge, he does not dispute.

1.5 We have continued to co-operate with the Law Commission in several areas of activity. We are much indebted to the Commission for the work which they have done to take forward to the stage of recommendations the Department of Trade and Industry reference concerning fiduciary duties and regulatory bodies. To date we have found little Scottish content in the subject-matter of the reference, the main bulk of consultation having been centred in England. We have also benefited from the work undertaken by the Law Commission on structured settlements, which form a part of a series of papers prepared under the heading of damages in civil litigation. On 15 June 1993 representatives of this Commission, the Law Society of Scotland, the Faculty of Advocates and the College of Justice attended a seminar which was arranged by the Disability Management Research Group to discuss the findings of a follow-up survey of personal injury claimants who received awards of £150,000 or more in 1987 and 1988. This research, known as the Edinburgh Study, found no examples of fiscal improvidence or profligacy on the part of claimants who have received large damages in the form of a lump sum. We noted with satisfaction that the Law Commission's empirical research had confirmed the findings of the Edinburgh Study. We therefore consider that the recommendation of the Law Commission that there should be no judicial power to impose structured settlements and that reforms should be concentrated on measures aimed at rationalising and simplifying the existing voluntary system is likely to be welcomed in Scotland. Another field of co-operation has been opened up for the two Commissions by the Department of Trade and Industry which requested the Law Commission in consultation with ourselves to carry out a feasibility study on the needs of small private companies. Further, both Commissions have for some time been considering reform of the law concerning personal guardianship and the management of financial affairs of mentally disabled adults. We have profited during the year under review by holding several meetings on this topic with representatives of the Law Commission. We are confident that the benefit of these deliberations will be reflected in our respective reports. We also take this opportunity to express once again our appreciation of the excellent co-operation we have enjoyed from the staff of the Law Commission which is responsible for statute law revision.

1.6 Although the Commissions have disagreed upon the most satisfactory solution, we are grateful to the Law Commission for having proposed reforms in unjustified enrichment which have prompted us to review the entire subject. The quickening of interest in unjustified enrichment in Scotland has coincided with a radical reconsideration of the subject among academic lawyers in Holland, South Africa, Germany and England. At present the options for reform range from piecemeal statutory reforms assisted by development on the part of the courts to a comprehensive restatement of the law. Although the initial response to the option of a statutory formulation of the law of restitution has been favourable, as part of a detailed consultation we regard it as essential to sound out opinion from the judiciary, practitioners and academic lawyers before committing ourselves to a recommended option. For that reason we attach considerable significance to the one-day seminar to be held on 22 October 1994 at which papers will be given by academic lawyers on codification in Scots law and other legal systems.

1.7 In April 1994 we published a Discussion Paper on *Contract Law - Extrinsic Evidence, Supersession and the Actio Quanti Minoris*.¹ The topics covered in the paper have occasioned difficulty and uncertainty for some time. Two rules relating to extrinsic evidence which have been a source of trouble are, first, that where a contract appears to have been embodied in writing, extrinsic evidence is not admissible for the purpose of proving additional terms, and, second, that extrinsic evidence is not in general admissible for the purpose of interpreting the terms of a written contract. Under the title of supersession we examine the rule that has caused exceptional difficulty, especially during the past 15 years, that once a disposition implementing a sale has been accepted by the purchaser it becomes the sole measure of the contracting parties' rights, and wholly supersedes the prior missives. We also examine the proposition that, apart from sale of goods, in general the law of Scotland does not recognise the *actio quanti minoris*, with the result that a buyer of property in Scotland cannot claim damages for breach of contract by the seller and at the same time retain the property. The discussion paper reflects the intention intimated in our last annual report of carrying forward our work on the law of contract in general by means of projects of manageable size.

1.8 Although the record of implementation of outstanding reports remains disappointing, we note that amendments to the standing orders of the Scottish Grand Committee, thereby allowing detailed scrutiny of clauses by that Committee and reducing the amount of time required on the floor of the House of Commons, should assist the passage of Scottish measures through the House of Commons. We welcome recent expressions of willingness by political parties to co-operate on the possible use of this procedure. We suggest that priority among the outstanding reports should be given to those dealing with the requirements of writing, family law, including confidentiality in mediation and succession.

Part II Progress of Law Reform Projects

2.1 In this Part of our report we set out in detail the present position in each of our current law reform projects. The main subject headings are presented in alphabetical order. Projects which fall within our published Programmes¹ are denoted by the use of an asterisk.

Administrative Law

2.2 In our Twenty-Eighth Annual Report² we indicated that we intended to resume work on this topic with a view to having a first discussion paper ready before Spring 1994. Unfortunately, work on other projects has meant that it was not possible to meet this timescale. We hope now that the discussion paper will be ready by the end of 1994.

2.3 It is still our intention to begin with an examination of the rules of title and interest to sue for judicial review under the common law jurisdiction of the Court of Session. These rules in effect control access to the Court and are particularly important in administrative law disputes, where legal protection is frequently sought for novel interests of a public nature. The present law is somewhat unclear in its treatment of such interests. Our reference, however, extends to other matters, in particular remedies and damages in administrative law, and we envisage further discussion papers in due course dealing with such topics.³

2.4 Throughout the year we have continued to monitor the case-law and are preparing a computer database of judicial review decisions from 1985. We see this as a valuable library resource to support our continuing work in the field, and we hope to make it available eventually for consultation by others concerned with judicial review, for example the Government legal service in Scotland. We have also continued to monitor the progress of administrative law reform in other jurisdictions, notably in England and Wales where the Law Commission have published a consultation paper.⁴ It is our intention to keep in close touch with the Commission since there are common problems in the two jurisdictions which will require compatible solutions.

Criminal Law

General 2.5 Our work in the criminal law field derives from proposals for law reform projects under section 3(1)(a) of the Law Commissions Act 1965 and references under section 3(1)(e) of that Act.

Forfeiture and confiscation 2.6 The report to which we referred in our preceding Annual Report⁵ was completed in June 1994 and submitted to the Secretary of State for Scotland who made the reference to the Commission. It has now been published.⁶ It has two main divi-

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

2. Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, paras 2.2-2.4.

3. See Twenty-Third Annual Report 1987-88, Scot Law Com No 114, para 2.4, which sets out the reference.

4. Consultation Paper No 126, Administrative Law: Judicial Review and Statutory Appeals.

5. See Twenty-Eighth Annual Report, 1992-93, Scot Law Com No 146, para 2.6.

6. (1994) Scot Law Com No 147.

sions: confiscation of the proceeds of crime (Part II to Part X); and the forfeiture of property used in crime (Part XI to Part XVII). It also deals with reciprocal arrangements for the international enforcement of orders arising in both confiscation and forfeiture proceedings (Part XVIII) and the forfeiture of property where the accused has died (Part XIX).

2.7 The report contains an innovation on which we would be interested to receive comments. Because we recommend a large number of changes to Part I of the Criminal Justice (Scotland) Act 1987, which are set out in Schedule 3 of the draft Bill attached to our report, Appendix B sets out the text of Part I of the 1987 Act as at the time of writing of the report but also shows the effect of the proposed amendments set out in Schedule 3.¹ If our report is implemented, it may be that it would be helpful to attach to the implementing legislation a schedule based on Appendix B which would show both the present text of the statute and the amendments made by the legislation. Appendix B differs from the type of schedule known as a Keeling schedule. A Keeling schedule, which is sometimes attached to a Bill which proposes to amend an enactment, sets out the text of the enactment, indicating by bold type the changes proposed. When a Bill is enacted, the passages in bold type are reset in ordinary type, and passages which have been repealed are indicated by a series of dots.² Appendix B, however, prints inserted or substituted provisions in bold type and repealed provisions in italic type. A schedule in the form of Appendix B might be helpful both for the legislators considering the draft legislation and the users of the legislation.

Diligence*

(Second Programme, Item 8)

2.8 We referred in previous annual reports³ to the temporary suspension of work on diligence projects due to the diversion of resources to more pressing work. In the past year, however, we have commenced work on a report following upon our Discussion Paper No 84 on *Diligence on the Dependence and Admiralty Arrestments* (1989), our Consultation Paper on *Arrestments of Ships Securing Claims Against Demise Charterers* (1990) and the provisional proposals in our Discussion Paper No 90 on *Extra-Territorial Effect of Arrestments and Related Matters* (1990) relating to the power of the court to protect arrestees from double jeopardy.⁴ We aim to issue a report by the end of 1995.

Evidence*

(First Programme, Item 1)

Hearsay and related matters in criminal proceedings

2.9 As we recorded in our Twenty-Seventh Annual Report,⁵ our *Report on Documentary Evidence and Proof of Undisputed Facts in Criminal Proceedings*⁶ was published in 1992. Many of our report's recommendations on documentary evidence were implemented by Schedule 3 to the Prisoners and Criminal Proceedings (Scotland) Act 1993⁷ which came into force on 1 October 1993.⁸ In that report we also recommended the introduction of a new procedure whereby facts which are not in dispute between the prosecution and the defence may be established at the trial without proof by means of the oral evidence of witnesses. We proposed that the prosecutor should be entitled to serve on the accused a statement of facts which would be

1. Report on Confiscation and Forfeiture, Scot Law Com No 147, paras 20.5 and 20.6.

2. For an example see the Copyright, Designs and Patents Act 1988, Schedule 4.

3. Twenty-Seventh Annual Report 1991-92, Scot Law Com No 139, para 2.9; Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, para 2.7.

4. Discussion Paper No 90, paras 3.47-3.60.

5. Twenty-Seventh Annual Report 1991-92, Scot Law Com No 139, para 2.14.

6. (1992) Scot Law Com No 137.

7. 1993 c 9.

8. SI 1993/2050.

regarded as proved unless the defence served a counter-notice. In June 1994 the Government published a White Paper, *Firm and Fair: Improving the Delivery of Justice in Scotland*, in which it is proposed that that procedure should be adopted, but that the statement of facts could refer to witness statements and documents which could be appended to the statement of facts.¹

2.10 Documentary evidence and proof of undisputed facts were two of the issues considered in our Discussion Paper No 77 on *Criminal Evidence: Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings*. As we mentioned in our Twenty-Eighth Annual Report,² the matters in this discussion paper on which we have still to report are the extent to which the rule against hearsay might be further modified and, in particular, the extent to which the prior statements of witnesses and accused persons should be admissible. Work on a further report on these matters was suspended temporarily because of the diversion of our resources to other projects, but has now been resumed. We hope to submit our report in the autumn of 1994.

Obligations*

(First Programme, Item 14)

Formation of contract

2.11 Our *Report on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods* was submitted on 14 June and published on 21 July 1993.³ The report recommends that the Scottish law on the formation of contracts should be set out in statutory provisions closely modelled on the rules on this subject in the United Nations Convention on Contracts for the International Sale of Goods which was adopted in April 1980 and which now regulates a great deal of international trade. With one important difference the rules would be very similar in substance to the existing Scottish law although they would be more accessible than the existing law and would resolve some doubts. The main difference is in relation to the so-called "postal rule" under which at present many contracts are held to be concluded when a letter of acceptance is posted rather than when it reaches the offeror. This rule has been heavily criticised and our consultees were unanimously of the view that it ought to be changed. The postal rule is out of line with the rule which applies to contracts concluded by other means and it is out of line with the rule applied in many other European countries and in recent international conventions. Our recommendation is that an acceptance of an offer should become effective when the acceptance reaches the offeror.

Rights in security over moveable property

2.12 It was announced earlier in 1994 that a Special Advisory Panel had been appointed to assist the Department of Trade and Industry in the preparation of a Bill to amend Scots law on this subject. We have an interest in this subject, as mentioned in preceding annual reports⁴ and will study the draft Bill when it is available.

Sale and supply of goods

2.13 In July 1993 a joint report on *Sale of Goods Forming Part of a Bulk* was published by this Commission and the Law Commission.⁵ The report deals with the problem caused by section 16 of the Sale of the Goods Act 1979 which prevents property in a quantity of unascertained goods forming part of a bulk from passing to the purchaser until the goods are ascertained, normally on delivery. The consequence of this rule is that purchasers who have paid for goods in exchange for documents specifying the quantities purchased have no property rights until delivery and may see both the goods and the price paid for them go to the creditors of the seller. Our recommendation is that the law should be changed to allow buyers in this position to acquire property in a proportionate part of the identified bulk. The recommendation, if implemented, would bring the law into line with reasonable commercial expectations. The existing rule can produce results which are so unjust and unacceptable that

1. Cm 2600, paras 2.33, 2.34.

2. Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, para 2.10.

3. Scot Law Com No 144.

4. Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, para 2.18.

5. Scot Law Com No 145; Law Com No 215.

contracting parties may be tempted to adopt the law of some other country as the law applicable to their trading contracts.

**Extrinsic evidence,
supersession, and the actio
quanti minoris**

2.14 In April 1994 we published a discussion paper¹ on *Contract Law: Extrinsic Evidence, Supersession, and the Actio Quanti Minoris* in which we invited views on proposals for reform of some rules of Scottish law which have proved particularly troublesome.

2.15 The first rules considered relate to the admissibility of extrinsic evidence to prove an additional term of a written contract or to help to interpret a written contract. The existing law starts from the position that extrinsic evidence is not admissible but recognises so many exceptions and qualifications that the law has become extremely difficult to state and apply. The rule excluding extrinsic evidence to prove an additional term of a written contract can also lead to the unjust result that a party is not allowed to prove, even by means of a written note or memorandum, an additional term to which both parties deliberately agreed. The present law means that there is in effect an irrebuttable presumption that a contract which appears to be embodied in writing is wholly contained within that writing and that there are no additional terms. Our proposal, on which we are inviting views, is that this should be replaced by a rebuttable presumption to the same effect, extrinsic evidence being admissible to rebut the presumption. In relation to the interpretation of contracts we suggest for consideration (a) that the substantive law on the process of interpretation should be tightened up by making it even more clear than it is at present that the subjective uncommunicated intentions of the parties are wholly irrelevant and (b) that the rules of evidence in this area should be relaxed so that in future no evidence relevant to the proper interpretation of a contract should be excluded for purely technical reasons. The main change of substance would be in relation to evidence of prior negotiations and subsequent conduct which would, under our proposals, be admissible where relevant, but not otherwise.

2.16 The second rule considered in the discussion paper is the rule that a conveyance supersedes a contract. In a series of cases beginning with *Winston v Patrick* 1980 SC 246 this rule has been applied in such a way as to cause provisions in contracts for the sale of houses to fall completely on the delivery of a disposition, even where the provisions have nothing to do with the conveyance of the subjects but relate to such matters as the state of the central heating system. The proposal on which we seek views is that the supersession rule should be kept within narrow bounds and that the conveyance should supersede the contract only insofar as it implements or gives effect to the contract. Provisions which have nothing to do with the actual conveyance of the subjects would remain in force unless the parties provided to the contrary.

2.17 The third rule discussed is the rule whereby a buyer of certain types of property cannot, while keeping the property, successfully claim damages for breach by the seller of a contractual term relating to the property which results in a diminution of its value. This rule (sometimes referred to as the rule denying an *actio quanti minoris*) was abolished in relation to the sale of corporeal moveables in 1893, but still applies in relation to other types of property. It is a rule which appears to have crept into the law as a result of a misapprehension and which, in our view, cannot be justified on policy grounds. We invite views on the proposal that it should be abolished.

Law of contract in general

2.18 The question of interest on payments contractually due, which we had intended to consider with a view to producing a discussion paper,² has been overtaken by events in that the Department of Trade and Industry issued a consultation paper on this subject which received a great deal of attention and the Government Competitiveness White Paper (May 1994) reported that there was no intention to legislate on the matter.

1. Discussion Paper No 97.

2. See our Twenty-Eighth Annual Report, para 2.17.

2.19 We are continuing, with the help of our Working Party on Contract Law, to review the whole of the law of contract, in the light particularly of the earlier work done by both Law Commissions in this area and recent overseas and international developments, with a view to identifying areas where it would be useful to produce discussion papers on proposals for reform. One such area which has been brought to our attention by the Faculty of Advocates, and on which we intend to produce a discussion paper, is that of contractual clauses which provide for penalties or sums equivalent to penalties to be paid by a contracting party on a breach of contract or on the exercise of certain options under the contract. There is concern that the existing law does not enable all such clauses, which may be severe in effect, to be dealt with in a satisfactory way. In examining particular areas of contract law with a view to reform we are bearing in mind that we are charged by statute with the responsibility of promoting the systematic development and codification of the law. Any piecemeal reforms recommended ought to be able to fit in ultimately to a complete statutory restatement of the whole of Scottish contract law.

Unjustified enrichment

Recovery of benefits conferred under error of law

2.20 As anticipated in our last Annual Report,¹ our Discussion Paper No 95 on *Recovery of Benefits Conferred Under Error of Law* in two volumes was published in September 1993. This made an extensive restatement of relevant aspects of the existing law and advanced provisional proposals to abolish the general rule under which benefits conferred under error of law are not recoverable. Such benefits included not only money payments but also benefits in kind eg property transferred and services rendered. The provisional proposals were widely welcomed by consultees. The discussion paper corresponds to Part 2 of the Law Commission's Consultation Paper No 120 on *Restitution of Payments Made Under a Mistake of Law* published in July 1991 but is wider in scope since the latter was confined to the recovery of money payments. We understand, however, that in their forthcoming report on this topic, the Law Commission intend to widen their recommendations to cover benefits in kind. As mentioned in our last Annual Report,² it is still technically possible for the Courts to abrogate the error of law rule. We understand that in a current case relating to local authority swap transactions,³ a reclaiming motion is to be heard by a Court of Five Judges in which this might be done.

Recovery of ultra vires public authority receipts and disbursements

2.21 We have continued work on the preparation of a discussion paper on the recovery of ultra vires public authority receipts and disbursements referred to in previous annual reports. Part 3 of the Law Commission's Consultation Paper No 120 provisionally proposed to introduce in English law an automatic right of recovery of payments made to a public authority pursuant to a demand which is *ultra vires* in the sense of "public law". In *Woolwich Equitable Building Society v IRC*,⁴ however, the House introduced this right in English law, and by implication Scots law, at least in the area of tax. The scope of the *Woolwich* principle (ie the type of charges to which it applies) is controversial. On one view it will be construed as introducing in the law of repayment of money the troublesome dichotomy between public and private law or a new dichotomy between sums levied in excess of statutory authority and other sums. As stated in previous annual reports⁵ while we welcome the extension of the grounds of recovery to encompass tax paid but not due, we have grave reservations about such a development. We doubt whether the principle ought to be confined to tax, or to charges under public law or under statute. For the seminar on October 23, 1993 referred to at paragraph 2.22 below, our team working on enrichment law prepared and circulated a detailed analysis of the existing law and some of the options

1. Twenty-Eighth Annual Report 1992-93, para 2.22.

2. *Idem*. The reclaiming motion in *Grant v Grant's Executors* 1994 SLT 163 (referred to in our last Annual Report, p 8, n 1, *sub nom Grant Royal Bank of Scotland plc* 1993 GWD 11-974) was settled.

3. *Morgan Guaranty Trust Co. of New York v Lothian Regional Council* 1994 SCLR 213 (OH).

4. [1993] 1 AC 70 (HL, affg CA).

5. Twenty-Seventh Annual Report 1991-92, Scot Law Com No 139, para 2.32 and Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, para 2.23.

for reform. We have not yet, however, carried out our original intention of publishing a discussion paper on this topic mainly because of the difficulty of finding a satisfactory solution which would also be acceptable to our colleagues in the Law Commission, who do not share our objections to the *Woolwich* principle. In the area of tax, cross-border uniformity is essential. In the result we have recently reached agreement with the Law Commission on more limited reforms which would harmonise the statutory rights of recovery of the main taxes with the *Woolwich* principle. That common law principle, however, would not be enshrined in statute as was originally envisaged by the Law Commission's Consultation Paper No 120. The Law Commission will submit a report to the Lord Chancellor on that topic in the next reporting year and we aim to publish a discussion paper as soon as possible seeking views from Scottish consultees on similar reforms. The foregoing approach to reform would not solve the problems posed by the scope of the *Woolwich* principle but the solution to those problems may depend on the issues mentioned in the next paragraph.

Further work on unjustified enrichment

2.22 As anticipated in our last Annual Report¹ a one-day seminar on unjustified enrichment, attended by 35 lawyers,² was held at the Parliament House, Edinburgh, on October 23, 1993 under the auspices of Strathclyde University Law School and this Commission.³ We believe that the seminar was successful in stimulating interest in this long neglected area of law and in the way in which it should develop. A main question here is whether the law of unjustified enrichment should be comprehensively codified by statute or left to be developed by the courts assisted by writers with piecemeal reforms being effected by *ad hoc* statutes to remove perceived injustices.

2.23 Some of the problems are structural and go to the root of the common law (eg the division of the law into repetition, restitution and recompense; and the extent of the reception of the *condictiones*).⁴ To assess the feasibility of codification, one of our Commissioners, Dr Eric M Clive, drafted and circulated a tentative first draft of a code and commentary to a few interested persons in December 1993. The response was generally favourable. In March 1994, commenting on our Discussion Paper No 95, the Faculty of Advocates remarked on the uncertain state of the law revealed by the paper, doubted the ability of the courts to rationalise it and concluded: "The modernisation of the law is a matter for Parliament. The Faculty would accordingly favour a statutory formulation of the law of restitution." Further, in April 1994, the Law Reform Committee of the Law Society of Scotland stated that the law required further work and reform and that the rules and commentary should be taken to the stage of consultation. To take the matter further, Edinburgh University Law Faculty and we are organising another one-day seminar to be held on October 22, 1994, at which papers will be given by distinguished academic lawyers⁵ on codification and other legal systems. Dr Eric Clive, of this Commission, will then give a paper on the question of statutory restatement of the Scottish law on unjustified enrichment. On this matter, through the good offices of Professor Zimmermann of the University of Regensburg, we have been fortunate to be able to co-operate with Professor Visser, a member of the South African Law Commission's Project Committee on the reform of unjustified enrichment. Professor Visser is currently working at Regensburg on the formulation of proposals for the statutory introduction of a general enrichment action in South African law, to which the Scots law bears a close resemblance.

1. Twenty-Eighth Annual Report 1992-93, para 2.25.

2. Including Scots judges and representatives of virtually all sectors of the legal profession together with legal academics from England, South Africa and Australia.

3. Four papers were given, two of which have been published in revised form: H L MacQueen "Unjustified Enrichment and Breach of Contract" 1994 JR 137, and K G C Reid "Unjustified Enrichment and Property Law" 1994 JR 167. The other papers were R Evan-Jones "A Scottish Response to Woolwich Equitable Building Society v IRC [1993] 1 A C 70" and N R Whitty "The Taxonomy of Unjustified Enrichment in Scots Law".

4. See eg N R Whitty "Some Trends and Issues in Scots Enrichment Law" 1994 JR 127.

5. Professor Reinhard Zimmermann, University of Regensburg; Professor Daniel Visser, University of Cape Town; Professor Peter Birks, University of Oxford; and Dr Eric Clive.

2.24 In the year under review, Mr N R Whitty, a member of our legal staff, published articles on Scots enrichment law.¹

Private International Law*

(Third Programme, Item 15)

Extra-territorial effect of arrestments

2.25 As mentioned in our Twenty-Seventh Annual Report² work on this project was suspended temporarily. As mentioned in paragraph 2.8 above we have now resumed work on this project.

Property Law*

(Fourth Programme, Item 16)

Abolition of the feudal system

2.26 We mentioned in our Twenty-Eighth Annual Report³ that the responses received from consultees to Discussion Paper No 93 on *Abolition of the Feudal System* had identified new issues which required to be considered and also issues where further consideration was necessary. We also mentioned that our projects on the law of the tenement, boundary walls and sheltered housing had also identified issues of relevance to this exercise.

2.27 Throughout the year we have been working on these issues. We have so far examined a number of them in detail. On certain ones we have been able to reach provisional conclusions. We have, for example, provisionally concluded that some of the issues arising out of the work on sheltered housing concern the law of contract and not the law of property and should be considered in that context. On other issues we have decided that it is necessary to seek further views. We are, for example, at present conducting a small consultation on the incidence of certain circumstances which might justify the introduction of a compensation scheme for former superiors who lose the right to enforce real burdens as a result of our recommendations. We are also consulting the Solicitor (Scotland) to the Crown Estate Commissioners on certain matters relating to the Crown.

2.28 We have still to consider certain issues but work on these matters is progressing and we expect to examine them in detail shortly. We hope thereafter to be able to start work on the preparation of our report and draft Bill. As we mentioned in our Twenty-Eighth Annual Report,⁴ there are a number of commitments which influence and will continue to influence the speed with which the project can be advanced. However, we are hopeful of being in a position to submit our report to you in the course of 1995.

Law of the tenement

2.29 We mentioned in our Twenty-Eighth Annual Report⁵ that we had undertaken a study of the approaches adopted in other jurisdictions to the management of buildings with a view to recommending a suitable scheme for the management of tenement property in Scotland. Our review of comparative legislation has influenced our policy concerning statutory provision on the law of the tenement.

2.30 We have had very helpful discussions with those responsible for keeping the Registers of Scotland in particular regarding the implications of our proposals for land registration. These discussions have resulted in us making a number of changes to our policy. We have also consulted representatives of the Conveyancing

1. See p 16, footnote 3 above p 17, footnote 1 above; "Indirect Enrichment in Scots Law" 1994 JR 200; article on the reform of Scots enrichment law (translated into German by R Zimmermann and H Wicke) due to appear in 1994 *Zeitschrift für Europäisches Privatrecht*.

2. Scot Law Com No 139, para 2.34.

3. Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, para 2.28.

4. Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, para 2.29.

5. Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, para 2.30.

Committee of the Law Society of Scotland whose comments have assisted us greatly in formulating our policy, particularly in relation to practical conveyancing matters. Following these further consultations, preparation of our report, which we would hope to be able to submit by the end of the year, is well in hand.

Residential long leases

2.31 Work on this project continues to be delayed by the need to give priority to other matters. It is our intention to resume work on the discussion paper when circumstances permit. The discussion paper will consider the possibility of tenants of residential property held on certain long leases being given the right to convert their interests into rights of absolute ownership on certain conditions, including payment of compensation. Within that context the subject of leasehold casualties will be considered.

Judicial factors, powers of attorney and guardianship of the incapable (Fourth Programme, Item 17)

2.32 Within this item we have given priority to the management of the personal welfare and financial affairs of adults who lack the mental capacity to look after themselves and in September 1991 we published a wide-ranging Discussion Paper, No 94 *Mentally Disabled Adults: Legal Arrangements for Managing their Welfare and Finances*. Among the many topics discussed in the paper were:

- (a) Personal guardianship of mentally disabled adults. Among other possibilities the replacement of tutors-dative and guardians appointed under the Mental Health (Scotland) Act 1984 by a new, more flexible, system of personal guardianship was proposed.
- (b) Medical treatment and non-therapeutic research involving mentally disabled patients and the removal of organs for transplantation from them.
- (c) Management of the financial affairs and property of mentally disabled adults. A new system of financial managers with powers tailored to the individual adult's situation was proposed to replace curators bonis. Other matters considered were trusts for administration, management by hospital authorities of in-patients' money, obtaining access to bank accounts and similar items without legal proceedings, and public management of the estates of mentally disabled adults.
- (d) Powers of attorney enabling an attorney to make decisions in both the personal welfare and financial fields after the granter's incapacity. Various safeguards were suggested to minimise abuse.
- (e) Which body should have jurisdiction to appoint people to deal with the personal welfare and financial affairs of mentally disabled people? Courts, new tribunals, or new mental health hearings along the lines of children's hearings were considered.
- (f) Capacity of mentally disabled people to make financial or personal welfare decisions, make a will or get married. The effect of the appointment of a guardian, curator or financial manager on such capacity was considered.

2.33 Nearly 100 responses to our discussion paper were received. We are grateful to all the organisations and individuals who submitted comments. Representatives of the Commission have taken part in many seminars organised by those with an interest in the mentally disabled and the legal issues involved. We gained many valuable comments from these seminars and are grateful to the organisers. During the preparation of our report we have also discussed various problems with those with practical experience of the issues in question. We have derived great benefit from these discussions and would like to take this opportunity of thanking all those individuals who so willingly shared their expertise with us.

2.34 We have had several meetings with representatives of the Law Commission for England and Wales which is engaged in a similar exercise. We intend to co-operate closely with them for the remaining stages of this project. The preparation of a report is well under way and we hope to submit it to you some time next year.

2.35 During the preparation of our report we considered the question of interim or emergency powers available for the protection of the mentally disabled. At present regional (and islands) councils, the Mental Welfare Commission for Scotland and the police have statutory powers which can be used to inspect premises where a mentally disordered person is, gain access to and examine the person, and remove him or her to a place of safety. These statutory powers have been subject to some criticism. It is vital that emergency protective powers are comprehensive and easy to operate since inability to intervene may lead to very serious consequences. But statutory provisions on emergency powers must strike a balance between intervention and respect for the liberties and wishes of the mentally disabled and others involved in their care. We therefore decided to consult further on this topic and have published a short discussion paper *Mentally Disordered and Vulnerable Adults: Public Authority Powers* (No 96, August 1993). Many comments on this discussion paper have been received from organisations and individuals concerned. Useful observations have also been obtained from seminars and meetings attended by social workers and others involved at which representatives of the Commission participated. We intend to start preparing a report once our report on mentally disabled adults mentioned in paragraph 2.34 above is submitted to you.

Other Matters

Multi-party actions 2.36 In our preceding Annual Report¹ we mentioned that our Working Party had completed a report and that we were preparing a draft discussion paper. The discussion paper was completed soon after the end of the year covered by this Annual Report and has now been published.² The discussion paper considers whether some form of class or group action procedure should be introduced in Scotland and, having discussed the features of similar procedures in other jurisdictions, invites comments on what should be the form of a Scottish procedure and how litigation using this procedure might be financed. The report of the Working Party will be published at the same time as the discussion paper.

Fiduciary duties and regulatory bodies 2.37 As we mentioned in our Twenty-Eighth Annual Report³ we received in April 1990 from the Department of Trade and Industry a reference under section 3(1)(e) of the Law Commissions Act 1965 in the following terms:

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

The Law Commission received a similar reference, and in consultation with us issued a Consultation Paper No 124 in June 1992. This document with summary has been widely circulated in England and Scotland to those having an interest in this area. Having obtained and analysed the comments we are assessing developments in the relevant law which have occurred since the consultation paper was prepared, before attempting to arrive at an agreed approach for adoption in a joint report.

Bankruptcy law 2.38 During the course of our annual meeting with the Faculty of Advocates they suggested to us that consideration be given to the issue of whether, in the law of bankruptcy, claims or awards representing solatium for personal injury or future wage loss should continue to vest for the benefit of creditors. The equity of this principle has been queried by some members of Faculty.

1. Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, paras 2.33 and 2.34.

2. Discussion Paper No 98, *Multi-Party Actions: Court Proceedings and Funding*, published November 1994.

3. Para 2.35.

2.39 To enable the Commission to consider the issue fully a background paper was completed. As a result of discussion focusing on the information contained in the background paper we decided to issue a consultation paper to seek views on whether there is a case for reform and, if so, on the direction which that reform should take.

2.40 A consultation paper was issued on 4 March 1994 to a restricted number of consultees.¹ Comments have been requested by the end of June 1994.

2.41 Following consideration of the responses to the consultation paper we will determine whether or not to make any recommendations for reform and, if so, what form these recommendations should take. We hope to complete work on this exercise during the year 1994-95.

Company law 2.42 The Law Commission have been asked by the Department of Trade and Industry to carry out, in consultation with the Scottish Law Commission, a feasibility study to see what is likely to be the best way forward in relation to certain options which have been under consideration with a view to reducing the legislative burdens on small owner-managed private companies. We have been happy to assist the Law Commission with information on the Scottish aspects of this project.

Statute Law

Consolidation 2.43 As in our previous annual reports we report under two heads: consolidation of legislation applying to Scotland only; and consolidation of legislation extending to other parts of the United Kingdom as well as to Scotland.

(a) *Scotland-only consolidations* 2.44 Further progress has been made on the consolidation of the Scottish Town and Country Planning legislation which will result in four statutes. It is hoped that these Bills with suitable Law Commission recommendations will be introduced early next year. Work is well advanced on the consolidation of the legislation relating to the National Health Service (Scotland) and it is hoped that the Bill will be introduced during the coming year. Work is again under way on a Criminal Procedure Bill which it is hoped will be introduced next year. A consolidation of the Land Clauses legislation is also well advanced.

(b) *United Kingdom and Great Britain consolidations* 2.45 During the course of our reporting year the following consolidation measures were enacted:

Health Service Commissioners Act 1993
Pension Schemes Act 1993.

The following consolidation measures were introduced and are presently before Parliament:

Drug Trafficking
Value Added Tax²
Vehicle Excise and Registration Bill.²

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

Employment Rights and Industrial Tribunals
Friendly Societies and Industrial Assurance
Merchant Shipping
Nurses, Midwives and Health Visitors
Protection of Animals.

1. This does not form part of our numbered series of consultative memoranda/discussion papers.

2. Received Royal Assent on 5 July 1994.

Statute law revision 2.47 The Statute Law (Repeals) Bill, annexed to the Fourteenth Report on Statute Law Revision submitted to you on 6 April 1993, was introduced into Parliament on 27 April 1993 and received Royal Assent on 5 November 1993.¹

2.48 Work has begun on preparing for submission to you a Fifteenth Report on Statute Law Revision, which report is expected to be a joint Report of both Commissions. A Statute Law (Repeals) Bill will as usual be annexed to that Report. It is hoped to submit the Report within the next 12 months.

2.49 The Fifteenth Report will deal extensively but not exclusively with local legislation. For example, it is hoped to recommend in that Report the repeal of a number of Glasgow Police Acts of the 19th and early 20th centuries which have been superseded by provisions in public general statutes.

Local legislation 2.50 In previous annual reports we have mentioned our support of the Law Commission in its preparation of a Chronological Table of Local and Personal Acts. The final draft text of this Table (which covers the period 1797-1973) was completed in March 1994 and steps are now being taken to arrange for its printing and publication. The Table should prove to be a very useful tool for local authorities, statutory undertakers and others promoting legislation by provisional order or local Act, as well as being a helpful research source for historians, archivists and others.

2.51 As a direct consequence of the availability of this Chronological Table, we hope to make significant progress in recommending for express repeal redundant but still extant Scottish local legislation. The problems created by the failure to translate the general repeal effected by section 225 of the Local Government (Scotland) Act 1973 c.65 into particular express repeals in Scottish local government legislation re-enacted since 1973 will in due course be compounded by the forthcoming reorganisation of local government in Scotland. The need to clear from the statute book already redundant local legislation will become all the more pressing given that there is in the Local Government etc (Scotland) Bill now proceeding through Parliament, a further general repeal of local government legislation intended to take effect on 31 December 1999.

Statute law database 2.52 In our Twenty-Eighth Annual Report² we noted the progress which had been made by the Lord Chancellor's Department towards establishing a computer database of United Kingdom legislation. The project has continued to make progress but despite what we wrote last year it is unlikely that the facility will be available during 1994. It is hoped, however, that a pilot scheme will be introduced later this year. Our access to the Faculty still depends on the final cost of the system to the users and we still await information from the Department about this.

1. Statute Law (Repeals) Act 1993 c 50.

2. Twenty-Eighth Annual Report 1992-93, Scot Law Com No 146, para 2.52.

Part III General

3.1 In Part II of this report we have described the progress of the law reform projects on which we are presently working. While these projects take up most of the time of Commissioners and staff, they do not give a full picture of our work and there are a number of other calls on our time which may not be reflected in the publication of our discussion papers and reports but which add appreciably to our total workload. In this part of the report we mention these matters briefly.

Advice to government departments, etc

3.2 As has been mentioned in previous reports, our views are sought by government departments on a number of matters. This falls within the functions of the Commission as provided in section 3(1)(e) of the Law Commissions Act 1965 (c 22). Sometimes this is done as part of a formal consultation exercise undertaken by a department. On other occasions our advice is sought informally and even confidentially. We also, where appropriate, respond to consultation exercises carried out by other bodies where we are of the view that to do so would help promote the cause of law reform. As mentioned in Part II we responded to some of the consultation papers on improving the delivery of justice in Scotland issued by the Scottish Office. We were also consulted by the Scottish Office in relation to tied houses for agricultural workers and succession. The Department of Trade and Industry has consulted us on a number of matters including a review of the Mines (Working Facilities and Support) Acts.

Proposals for Law Reform

3.3 During the year we received from members of the public and organisations proposals for the reform in particular areas of law. In most cases after some preliminary research we decided that no work needed to be done at this time. In others we agreed that some work would be carried out in the future.

Departmental Committees and other bodies

3.4 Our Commissioners and legal staff are from time to time appointed to serve on government departmental committees and as members of other bodies concerned with the development and reform of the law. Our Chairman is a member of the Advisory Committee on Statute Law which advises the Lord Chancellor in connection with his responsibilities in relation to the revision, modernisation and production of the Statute Book to ensure that it is in readily accessible form so that citizens may know by what laws they are bound. One of our legal staff, Dr Nichols, is chairman of a Good Practice Group on Neurosurgery for Mental Disorders set up under the Scottish Office Clinical Resource and Audit Group. This Good Practice Group is examining legal and practical issues relating to neurosurgery for mental disorder in Scotland with a view to making recommendations to the parent group. Dr Nichols also serves as a member on the Advisory Committee of the Legal Services Agency Mental Health Legal Representation Project (Lothian).

Conferences, seminars, etc

3.5 During the year Commissioners and legal staff of the Commission participated in a number of conferences and seminars. We consider such participation to be an important part of our work in enabling us to keep the law under review and to assist us in obtaining comments on our published discussion papers.

3.6 Among the conferences and seminars at which we were represented were:-
Criminal Justice Review Conference, Edinburgh, September 1993.
Society of Public Teachers of Law Annual Conference, London, September 1993.
Common Repairs: The Law in Practice, Glasgow, October 1993.
Innovations in Contract, Oxford, October 1993.
Children's Hearings, Lawyers and the Courts, Glasgow, November 1993.
Mental Health Services for Scotland: What's Needed?, Glasgow, November 1993.
Prolongation of Life, Edinburgh, November 1993.
Criminal Law Review Annual Conference: London, December 1993.
Mentally Disordered and Vulnerable Adults: Public Authority Powers, Stirling, February 1994.
Guardianship under the Mental Health (Scotland) Act, Glasgow, March 1994.
Family Law Review, Edinburgh and Glasgow, March 1994.
Law Society of Scotland Annual Conference, Gleneagles, March 1994.
David Hume Institute Conference, The Costs of Justice, Edinburgh, May 1994.
Shaping the Future Law of the Parent, Child and Family, Crieff, May 1994.
Abuse of the Elderly, Edinburgh and Dundee, May 1994.

Consultation

3.7 We continue to have close co-operation with the Law Commission for England and Wales as is mentioned in Part I. During the year under review we have continued to work together on various matters, including fiduciary duties and regulatory bodies,¹ unjustified enrichment: recovery of benefits conferred under error² and guardianship of the incapable.³ We are grateful to the Law Commission for continuing to keep us informed of the progress of its work on topics of interest to us and for affording us the opportunity of commenting from time to time on the possible implications for Scotland of certain of its projects.

3.8 We have maintained our contacts with law reform organisations in various parts of the world and continue to exchange papers with them. We also have met with representatives of some of these organisations during their visits to this country.

Media

3.9 On publication of our reports and the issue of our discussion papers it is normal for the Commission to issue a news release and to hold a news conference. Such news conferences are normally well attended by members of the media, including representation from the daily and weekly newspapers and radio and television. During the year under review we have had good coverage of the news conferences we held and we are most grateful to the members of the media for attending and for reporting on the matters covered at the conferences. Commissioners and staff members have also given interviews to the press and have participated in radio and television programmes. We are also grateful to the coverage given to our work by the edi-

1. See para 2.35.

2. See paras 2.22-2.24.

3. See para 2.34.

tors of various legal journals. The publicity given continues to result in an increased demand from members of the public and individual members of the legal profession for copies of our discussion papers.

Part IV Miscellaneous

Commissioners

4.1 The Commission consists of a full-time Chairman, two full-time Commissioners, and two part-time Commissioners. The present Commissioners are:

The Honourable Lord Davidson, <i>Chairman</i>	(Full-time)
Dr E M Clive	(Full-time)
Professor P N Love, CBE	(Part-time)
Sheriff I D Macphail, QC	(Full-time)
Mr W A Nimmo Smith, QC	(Part-time)

Staff

4.2 Our legal staff consists of our Secretary and eight other qualified lawyers, and two part-time Parliamentary Draftsmen. In addition we have the services of Parliamentary Draftsmen in the Lord Advocate's Department in London. During the summer vacation of 1993 we employed five honours graduates in law to assist with our research work. Our complement of non-legal staff remains at eleven. We wish to thank them all for their assistance.

4.3 At the date of preparation of this report the principal members of staff were:

<i>Parliamentary draftsmen</i>	
Mr G S Douglas, QC	(Part-time)
Mr W C Galbraith, QC	(Part-time)

Secretary
Mr K F Barclay

Grade 5 Solicitors
Mr R Bland
Mr N R Whitty

Other members of legal staff
Mr J M Dods
Mrs D M Howieson
Dr D I Nichols
Mr J B St Clair
Mrs S Sutherland
Mrs G B Swanson

Librarian
Mr N G T Brotchie

Chief Clerk
Mr J Dodson

The Legal and other professions, etc

4.4 We continue to consult with the leading organisations of the legal and other professions in Scotland and with other bodies. In this regard, we have held informal

meetings with representatives of the Faculty of Advocates and the Law Society of Scotland and have found these meetings most useful. As in previous years, we wish to record our appreciation of the valuable assistance afforded by those whom we have invited to act as consultants or advisers and by others who have assisted us in various ways.

4.5 We are also most grateful for the help we continue to receive from the Librarian and staff of the Edinburgh University Library, Edinburgh University Law Library, the Centre of European Governmental Studies, the National Library of Scotland, the Advocates' Library, the Signet Library and the Institute of Advanced Legal Studies, London.

4.6 Membership of working parties appears in the Appendix I. The Working Party on Contract Law has met during the year under review and we are grateful to the non-Commission members for giving their time to assist us in our consideration of relevant matters. In Appendix II we list reports, consultative memoranda/discussion papers and other documents prepared by the Commission. These lists include certain consultative documents which were given restricted circulation. The extent to which our proposals have been incorporated by legislation is indicated in Appendix III.

Appendix I

Membership of Working Party

Working Party on Contract Law

Dr E M Clive (Chairman)
Professor R Black, QC
Mr M G Clarke, QC
Professor W W McBryde

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

Secretary: Mr J B St Clair, Scottish Law Commission

Appendix II

1 Scottish Law Commission—Reports, etc Published by Her Majesty's Stationery Office

	<i>Commission No</i>	
1965	1	First Programme of Law Reform
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1966	2	First Programme of Consolidation and Statute Law Revision
	3	First Annual Report 1965-66
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1967	4	Proposals for Reform of the Law of Evidence relating to Corroboration
	5	Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Cmnd 3223)
	6	Divorce - The Grounds Considered (Cmnd 3256)
	6A	*Report on the Consolidation of Certain Enactments relating to Shellfish Fisheries and Shellfish - Sea Fisheries (Shellfish) Bill (Cmnd 3267)
	7	Second Annual Report 1966-67
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1968	8	Second Programme of Law Reform
	9	Third Annual Report 1967-68
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1969	10	*Report on the Consolidation of the Trustee Savings Banks Acts 1954 to 1968 - Trustee Savings Banks Bill (Cmnd 4004)
	11	*Report on the Interpretation of Statutes
	12	*Report on Exemption Clauses in Contracts - First Report: Amendments to the Sale of Goods Act 1893
	13	Fourth Annual Report 1968-69
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1970	14	Report on the Companies (Floating Charges) (Scotland) Act 1961 (Cmnd 4336)
	15	Reform of the Law relating to Prescription and Limitation of Actions
	16	*Report on the Hague Convention on Recognition of Divorces and Legal Separations (Cmnd 4542)
	17	Fifth Annual Report 1969-70
	18	*Report on the Consolidation of Certain Enactments relating to Coinage (Cmnd 4544)
	19	*Report on the Consolidation of Certain Enactments relating to Excise Duties on Mechanically Propelled Vehicles, and to the Licensing and Registration of such Vehicles (Cmnd 4547)
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1971	20	*Report on the Consolidation of Enactments relating to the National Savings Bank (Cmnd 4574)
	21	*Report on the Taxation of Income and Gains derived from Land (Cmnd 4654)
	22	*Report on the Consolidation of Certain Enactments relating to Road Traffic - Road Traffic Bill (Cmnd 4731)
	23	Sixth Annual Report 1970-71
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1972	24	Report on the Consolidation of Certain Enactments relating to Town and Country Planning in Scotland - Town and Country Planning (Scotland) Bill (Cmnd 4949)
	25	Family Law - Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status
	26	*Statute Law Revision - Fourth Report: Draft Statute Law (Repeals) Bill (Cmnd 5108)

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

Commission

	<i>No</i>	
1973	27	Second Programme of Consolidation and Statute Law Revision
	28	Seventh Annual Report 1971-72
	29	Third Programme of Law Reform
	30	Report on Liability for Antenatal Injury (Cmnd 5371)
	31	Report on the Law relating to Damages for Injuries Causing Death
	32	*Statute Law Revision - Fifth Report: Draft Statute Law (Repeals) Bill (Cmnd 5493)
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1974	33	Eighth Annual Report 1972-73
	34	Report on Presumption of Death
	35	*Friendly Societies Bill - Report on the Consolidation of the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the Societies to which those Acts apply (Cmnd 5634)
	36	*Statute Law Revision - Sixth Report: Draft Statute Law (Repeals) Bill (Cmnd 5792)
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1975	37	Ninth Annual Report 1973-74
	38	*Supply Powers Bill - Report on the Consolidation of Enactments relating to Supply Powers (Cmnd 5850)
	39	*Exemption Clauses - Second Report
	40	*Statute Law Revision - Seventh Report: Draft Statute Law (Repeals) Bill (Cmnd 6303)
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1976	41	Tenth Annual Report 1974-75
	42	Family Law: Report on Liability for Adultery and Enticement of a Spouse
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1977	43	Eleventh Annual Report 1975-76
	44	*Statute Law Revision - Eighth Report: Draft Statute Law (Repeals) Bill (Cmnd 6719)
	45	*Report on Liabilities for Defective Products (Cmnd 6831)
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1978	46	Third Programme of Consolidation and Statute Law Revision
	47	Twelfth Annual Report 1976-77
	48	*Statute Law Revision - Ninth Report: Draft Statute Law (Repeals) Bill (Cmnd 7189)
	49	Electricity (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to Electricity in Scotland (Cmnd 7178)
	50	Adoption (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to Adoption in Scotland (Cmnd 7187)
	51	Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions
	52	Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Cmnd 7245)
	53	*Interpretation Bill - Report on Interpretation Act 1889 and Certain other Enactments relating to the Construction and Operation of Acts of Parliament and other Instruments (Cmnd 7235)
	54	*Customs and Excise Management Bill - Report on the Consolidation of the Enactments relating to the Collection and Management of the Revenues of Customs and Excise (Cmnd 7418)
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1979	55	Thirteenth Annual Report 1977-78
	56	Fourteenth Annual Report 1978-79
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1980	57	Report on Lost and Abandoned Property
	58	Education (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to Education in Scotland (Cmnd 7688)
	59	Report on Powers of Judicial Factors (Cmnd 7904)
	60	Report on Occupancy Rights in the Matrimonial Home and Domestic Violence
	61	Fifteenth Annual Report 1979-80
	62	*Judicial Pensions Bill - Report on the Consolidation of Certain Enactments relating to Pensions and other Benefits payable in respect of Service in Judicial Office (Cmnd 8097)
	63	*Statute Law Revision - Tenth Report: Draft Statute Law (Repeals) Bill (Cmnd 8089)
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1981	64	Report on Section 5 of the Damages (Scotland) Act 1976

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

Commission

No

	65	*Trustee Savings Banks Bill - Report on the Consolidation of the Trustee Savings Banks Acts 1969 to 1978 (Cmnd 8257)
	66	*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Cmnd 8318)
	67	Family Law - Report on Aliment and Financial Provision
	68	Report on Bankruptcy and Related Aspects of Insolvency and Liquidation
	69	Report on the Law of Incest in Scotland (Cmnd 8422)
	70	Sixteenth Annual Report 1980-81
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1982	71	Fourth Programme of Consolidation and Statute Law Revision
	72	Family Law - Report on Financial Provision after Foreign Divorce
	73	Seventeenth Annual Report 1981-82
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1983	74	Prescription and the Limitation of Actions - Report on Personal Injuries Actions and Private International Law Questions
	75	Report on Irritancies in Leases (Cmnd 8760)
	76	Family Law - Report on Outdated Rules in the Law of Husband and Wife
	77	*Medical Bill - Report on the consolidation of the Medical Acts 1956 to 1978 and certain related provisions (Cmnd 8839)
	78	Evidence - Report on Evidence in Cases of Rape and Other Sexual Offences
	79	Obligations - Report on Rectification of Contractual and Other Documents
	80	Report on the Mental Element in Crime (Cmnd 9047)
	81	Eighteenth Annual Report 1982-83
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1984	82	Family Law - Report on Illegitimacy
	83	*Amendment of the Companies Acts 1948-1983 - Report under section 116 of the Companies Act 1981 (Cmnd 9114)
	84	*Dentists Bill - Report on the Consolidation of the Dentists Acts 1957 to 1983 (Cmnd 9119)
	85	*Road Traffic Regulation Bill - Report on the Consolidation of the Road Traffic Regulation Act 1967 and certain related Enactments (Cmnd 9162)
	86	Family Law - Report on Matrimonial Property
	87	*Further Amendments of the Companies Acts 1948-1983 - Report under section 116 of the Companies Act 1981 (Cmnd 9272)
	88	*Private International Law - Report on Recognition of Foreign Nullity Decrees and Related Matters (Cmnd 9341)
	89	Nineteenth Annual Report 1983-84
	90	Report on Breach of Confidence
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1985	91	*Family Law - Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Cmnd 9419)
	92	Obligations - Report on Negligent Misrepresentation
	93	Report on Art and Part Guilt of Statutory Offences (Cmnd 9551)
	94	*Report on the Consolidation the Housing Acts - Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Cmnd 9515)
	95	Report on Diligence and Debtor Protection
	96	*Private International Law - Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Cmnd 9595)
	97	Obligations - Report on Civil Liability in relation to Animals
	98	Twentieth Annual Report 1984-85
	99	*Statute Law Revision - Twelfth Report: Draft Statute Law (Repeals) Bill (Cmnd 9648)
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1986	100	Evidence - Report on Corroboration, Hearsay and Related Matters in Civil Proceedings
	101	Twenty-First Annual Report 1985-86
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1987	102	Report on Child Abduction (Cm 64)
	103	Housing (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to Scotland (Cm 104)
	104	*Report on Sale and Supply of Goods (Cm 137)
	105	*Private International Law - Report on Choice of Law Rules in Marriage

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No

- 106 Report on Computer Crime (Cm 174)
107 *Private International Law - Report on the Law of Domicile (Cm 200)
108 Report on the Scottish Term and Quarter Days (Cm 208)
109 Twenty-Second Annual Report 1986-87
110 Report on the Legal Capacity and Responsibility of Minors and Pupils
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- 1988** 111 Court of Session Bill (Cm 315)
112 Report on Requirements of Writing
113 *Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill - Report on the Consolidation of Certain Enactments relating to Road Traffic (Cm 390)
114 Twenty-Third Annual Report 1987-88
115 Report on Civil Liability - Contribution
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- 1989** 116 Report on Reform of the Ground for Divorce
117 *Statute Law Revision - Thirteenth Report: Draft Statute Law (Repeals) Bill (Cm 671)
118 Report on Recovery of Possession of Heritable Property
119 *Extradition Bill - Report on the Consolidation of Legislation relating to Extradition (Cm 712)
120 Evidence: Blood Group Tests, DNA Tests and Related Matters
121 *Opticians Bill - Report on the Consolidation of Legislation relating to Opticians (Cm 738)
122 Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Cm 790)
123 Twenty-Fourth Annual Report 1988-89
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- 1990** 124 Report on Succession
125 Report on the Evidence of Children and Other Potentially Vulnerable Witnesses
126 Fourth Programme of Law Reform
127 Report on the Passing of Risk in Contracts for the Sale of Heritable Property
128 Twenty-Fifth Annual Report 1989-90
129 *Private International Law - Choice of Law in Tort and Delict
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- 1991** 130 *Rights of Suit in Respect of Carriage of Goods by Sea
131 Twenty-Sixth Annual Report 1990-91
132 *Social Security Contributions and Benefits Bill, Social Security Administration Bill, Social Security (Consequential Provisions) Bill - Report on the Consolidation of the Legislation relating to Social Security (Cm 1726)
-

- 1992** 133 Report on Statutory Fees for Arrestees
134 Report on The Effect of Death on Damages (Cm 1848)
135 Report on Family Law
136 Report on Evidence: Protection of Family Mediation
137 Evidence: Report on Documentary Evidence and Proof of Undisputed Facts in Criminal Proceedings
138 *Clean Air Bill - Report on the Consolidation of Certain Enactments relating to Clean Air (Cm 2085)
-

- 1993** 139 Twenty-Seventh Annual Report 1991-92
140 *Statute Law Revision: Fourteenth Report - Draft Statute Law (Repeals) Bill (Cm 2176)
141 Crofters (Scotland) Bill - Report on the Consolidation of Certain Enactments relating to Crofting (Cm 2187)
142 *Pension Schemes Bill - Report on the Consolidation of the Legislation relating to Pension Schemes (Cm 2184)
143 *Health Service Commissioners Bill - Report on the Consolidation of the Legislation relating to the Health Services Commissioners
144 Report on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods
145 *Sale of Goods Forming Part of a Bulk
146 Twenty-Eighth Annual Report 1992-93

2 Scottish Law Commission—Consultative memoranda/Discussion papers circulated for comment and criticism

		<i>No of Resulting Report</i>
1966	Memorandum No 1—Probates or Letters of Administration as Links in Title to Heritable Property under the Succession (Scotland) Act 1964	
	Memorandum No 2—Expenses in Criminal Cases	
1967	Memorandum No 3—Restrictions on the Creation of Liferents	
	Memorandum No 4—Applications for Planning Permission	
	Memorandum No 5—Damages for Injuries Causing Death	
	*Memorandum No 6—Interpretation of Statutes	11
1968	*Memorandum No 7—Provisional Proposals Relating to Sale of Goods	12
	Memorandum No 8—Draft Evidence Code - First Part	
1969	Memorandum No 9—Prescription and Limitation of Actions	15
	Memorandum No 10—Examination of the Companies (Floating Charges) (Scotland) Act 1961	14
	Memorandum No 11—Presumptions of Survivorship and Death	34
	Memorandum No 12—Judgments Extension Acts	
1970	Memorandum No 13—Jurisdiction in Divorce	25
1971	Memorandum No 14—Remedies in Administrative Law	
	*Memorandum No 15—The Exclusion of Liability for Negligence in the Sale of Goods and Exemption Clauses for the Supply of Services and other Contracts	39
	Memorandum No 16—Insolvency, Bankruptcy and Liquidation	68
1972	Memorandum No 17—Damages for Injuries Causing Death	31 and 64
1974	Memorandum No 18—Liability of a Paramour in Damages for Adultery and Enticement of a Spouse	42
	Memorandum No 19—Powers of Judicial Factors	59
1975	*Memorandum No 20—Liability for Defective Products	45
	Memorandum No 21—Damages for Personal Injuries - Deductions and Heads of Claim	51
1976	Memorandum No 22—Aliment and Financial Provision (2 Vols)	67
	*Memorandum No 23—Custody of Children—Jurisdiction and Enforcement within the United Kingdom	91
	Memorandum No 24—Corporeal Moveables—General Introduction and Summary of Provisional Proposals	
	Memorandum No 25—Corporeal Moveables—Passing of Risk and of Ownership	
	Memorandum No 26—Corporeal Moveables - Some Problems of Classification	
	Memorandum No 27—Corporeal Moveables - Protection of the Onerous <i>bona fide</i> Acquirer of Another's Property	
	Memorandum No 28—Corporeal Moveables - Mixing, Union and Creation	
	Memorandum No 29—Corporeal Moveables - Lost and Abandoned Property	57
	Memorandum No 30—Corporeal Moveables - Usucapion or Acquisitive Prescription	
	Memorandum No 31—Corporeal Moveables - Remedies	
	Memorandum No 32—Comments on White Paper ' <i>Our Changing Democracy: Devolution to Scotland and Wales</i> '	
	Appendix—Devolution, Scots Law and the Role of the Commission	
	Memorandum No 33—Law of Rights in Security - Company Law - Registration of Charges: Scotland	
1977	Memorandum No 34—Constitution and Proof of Voluntary Obligations—General Introduction and Summary of Provisional Proposals	
	Memorandum No 35—Constitution and Proof of Voluntary Obligations—Unilateral Promises	
	Memorandum No 36—Constitution and Proof of Voluntary Obligations—Formation of Contract	144
	Memorandum No 37—Constitution and Proof of Voluntary Obligations—Abortive Constitution	
	Memorandum No 38—Constitution and Proof of Voluntary Obligations—Stipulations in Favour of Third Parties	

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

		<i>No of Resulting Report</i>
1977 (Contd)	Memorandum No 39—Constitution and Proof of Voluntary Obligations—Formalities of Constitution and Restrictions on Proof	112
	Memorandum No 40—Confidential Information	90
1978	Memorandum No 41—Family Law: Occupancy Rights in the Matrimonial Home and Domestic Violence (2 Vols)	60
	Memorandum No 42—Defective Consent and Consequential Matters (2 Vols)	92
1979	Memorandum No 43—Defective Expression and its Correction	79
1980	Memorandum No 44—The Law of Incest in Scotland	69
	Memorandum No 45—Time-Limits in Actions for Personal Injuries	74
	Memorandum No 46—The Law of Evidence	78 and 100
	Memorandum No 47—First Memorandum on Diligence: General Issues and Introduction	95
	Memorandum No 48—Second Memorandum on Diligence: Poindings and Warrant Sales	95
	Memorandum No 49—Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings	95
	Memorandum No 50—Fourth Memorandum on Diligence: Debt Arrangement Schemes	95
	Memorandum No 51—Fifth Memorandum on Diligence: Administration of Diligence	95
	Memorandum No 52—Irritancies in Leases	75
1982	Memorandum No 53—Family Law: Illegitimacy	82
	Memorandum No 54—Some Obsolete and Discriminatory Rules in the Law of Husband and Wife	76
	Memorandum No 55—Civil Liability in relation to Animals	97
	*Memorandum No 56—Polygamous Marriages (Capacity to Contract a Polygamous Marriage and the Concept of the Potentially Polygamous Marriage)	96
1983	Memorandum No 57—Matrimonial Property	86
	*Memorandum No 58—Sale and Supply of Goods	104
1984	Memorandum No 59—Recovery of Possession of Heritable Property	118
	Memorandum No 60—Mobbing and Rioting	
	Memorandum No 61—Attempted Homicide	
	*Memorandum No 62—Private International Law: Choice of Law in Tort/Delict	129
1985	*Memorandum No 63—Private International Law: The Law of Domicile	107
	*Memorandum No 64—Private International Law: Choice of Law Rules in Marriage	105
	Memorandum No 65—Legal Capacity and Responsibility of Minors and Pupils	110
	Memorandum No 66—Constitution and Proof of Voluntary Obligations and the Authentication of Writings	112
	Memorandum No 67—Child Abduction	102
1986	Memorandum No 68—Computer Crime	106
	Memorandum No 69—Intestate Succession and Legal Rights	124
	Memorandum No 70—The Making and Revocation of Wills	124
	Memorandum No 71—Some Miscellaneous Topics in the Law of Succession	124
	Memorandum No 72—Floating Charges and Receivers	
	Memorandum No 73—Civil Liability - Contribution	115
1987	Memorandum No 74—Prescription and Limitation of Actions (Latent Damage)	122
1988	Discussion Paper No 75—The Evidence of Children and Other Potentially Vulnerable Witnesses	125
	Discussion Paper No 76—The Ground for Divorce—Should the Law be Changed?	116
	Discussion Paper No 77—Criminal Evidence—Affidavit Evidence, Hearsay and Related Matters in Criminal Proceedings	137
	Discussion Paper No 78—Adjudications for Debt and Related Matters (2 Vols)	
	Discussion Paper No 79—Equalisation of Diligences	
Discussion Paper No 80—Blood Group Tests, DNA Tests and Related Matters	120	
1989	Discussion Paper No 81—Passing of Risk in Contracts for the Sale of Land	127
	Discussion Paper No 82—Forfeiture and Confiscation	
	Discussion Paper No 83—Bulk Goods: Section 16 of the Sale of Goods Act 1979 and Section 1 of the Bills of Lading Act 1855	130

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

		<i>No of Resulting Report</i>
1989	Discussion Paper No 84—Diligence on the Dependence and Admiralty Arrestments	
1990	Discussion Paper No 85—Family Law: Pre-Consolidation Reform	135
	Discussion Paper No 86—The Effects of Cohabitation in Private Law	135
	Discussion Paper No 87—Statutory Fees for Arrestees	133
	Discussion Paper No 88—Parental Responsibilities and Rights, Guardianship and the Administration of Children's Property	135
	Discussion Paper No 89—The Effect of Death on Damages	134
	Discussion Paper No 90—Extra-Territorial Effect of Arrestments and Related Matters	
	Discussion Paper No 91—Law of the Tenement	
1991	Discussion Paper No 92—Confidentiality in Family Mediation	136
	Discussion Paper No 93—Property Law—Abolition of the Feudal System	
	Discussion Paper No 94—Mentally Disabled Adults -Legal Arrangements for Managing their Welfare and Finances	
1993	Discussion Paper No 95—Recovery of Benefits Conferred under Error of Law (2 Vols)	
1994	Discussion Paper No 96—Mentally Disordered and Vulnerable Adults: Public Authority Powers	
	Discussion Paper No 97—Contract Law - Extrinsic Evidence, Supersession and the Actio Quanti Minoris	

3 Scottish Law Commission—Other published documents

1974	*Private International Law - Consultative Document on EEC Preliminary Draft Convention on the Law applicable to Contractual and Non-Contractual Obligations
1979	Research Paper on the Law of Evidence of Scotland by Sheriff I D Macphail
1984	Research Paper on Actions of Ejection and Removing by Mr A G M Duncan
1986	Report of Working Party on Security over Moveable Property
1988	Research Paper on Evidence from Children - Alternatives to In-court Testimony in Criminal Proceedings in the United States of America by Kathleen Murray
1991	Report on the Effect of the Execution of Diligence on the Operation of Prescription
1993	Responses to 1993 Review of Criminal Evidence and Criminal Procedure - Programming of Business in the Sheriff Courts.

4 Scottish Law Commission—Consultative documents not published and with restricted circulation

1969	Married Women's Policies of Assurance (Scotland) Act 1880—Working Paper
1973	Consultation Paper on Divorce for Incurable Insanity
1974	Insolvency, Bankruptcy and Liquidation in Scotland—Consultative Paper
1978	Consultation Document - Private International Law: Choice of Law Rules in the EEC Draft Insurance Services Directive
1979	Consultation Paper—Bankruptcy: <i>Gibson v Hunter Home Designs Ltd</i>
	Consultative Note on section 5(6) of the Damages (Scotland) Act 1976
1980	Consultation Paper - Prescription and Limitation in Private International Law
1981	Consultation Paper - Financial Provision after Foreign Divorce

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

- 1982** Consultation Paper—Exchange of Standard Term Forms in Contract Formation
 Consultation Paper—Breach of Confidence
- 1983** Consultation Paper—Custody of Children: Jurisdiction and Enforcement within the United Kingdom: Jurisdiction of the Sheriff Court
 Supplementary Consultation Paper - Conflicts of Jurisdiction affecting the Custody of Children
 Consultation Paper—Illegitimacy and the Guardianship Acts
 *Consultation Paper—Recognition of Foreign Nullity Decrees and Related Matters
- 1984** Consultation Paper—Art and Part Guilt of Statutory Offences
- 1986** Consultation Paper—The Scottish Term and Quarter Days: A Statutory Definition (Resulting Report—Scot Law Com No 108)
 Consultation Paper—Termination of Leases: Contracting Out of the Statutory Notice Provisions
- 1990** Arrestments of Ships Securing Claims against Demise Charterers
 Consultation Paper - The Effect of the Execution of Diligence on the Operation of Prescription
- 1991** *Supplementary Consultation Paper - Sale of Goods Forming Part of a Bulk—Insolvency Aspects
- 1992** Consultation Paper - Mutual Boundary Walls
 *Consultation Paper on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods (Resulting Report Scot Law Com No 144)
- 1994** Consultation Paper on the Law of Bankruptcy: Solatium for Personal Injury/Future Wage Loss.

5 Scottish Law Commission—Unpublished Documents

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

Appendix III

Statutory Provisions relating to the Scottish Law Commission's Proposals

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
<i>(a) Memoranda</i>		
Restrictions on the Creation of Liferents (Memorandum No 3)	5.5.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 18
Applications for Planning Permission (Memorandum No 4)	11.5.67	Town and Country Planning (Scotland) Act 1969 (c 30), section 79
<i>(b) Reports</i>		
Proposals for Reform of the Law of Evidence Relating to Corroboration (Scot Law Com No 4)	20.4.67	Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 9
Reform of the Law Relating to Legitimation <i>per subsequens matrimonium</i> (Scot Law Com No 5) (Cmnd 3223)	20.4.67	Legitimation (Scotland) Act 1968 (c 22), Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c 70), section 5
Divorce—The Grounds Considered (Scot Law Com No 6) (Cmnd 3256)	12.5.67	Divorce (Scotland) Act 1976 (c 39)
*Sea Fisheries (Shellfish) Bill (Scot Law Com No 6A) (Cmnd 3267)	11.5.67	Sea Fisheries (Shellfish) Act 1967 (c 83)
*Trustee Savings Banks Bill (Scot Law Com No 10)	17.4.69	Trustee Savings Banks Act 1969 (c 50)
*Interpretation of Statutes (Scot Law Com No 11)	11.6.69	None
*Exemption Clauses in Contracts—First Report: Amendment to the Sale of Goods Act 1893 (Scot Law Com No 12)	18.9.69	Supply of Goods (Implied Terms) Act 1973 (c 13)
The Companies (Floating Charges) (Scotland) Act 1961 (Scot Law Com No 14) (Cmnd 4336)	22.4.70	The Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c 67)
Reform of the Law Relating to Prescription and Limitation of Actions (Scot Law Com No 15)	27.11.70	Prescription and Limitation (Scotland) Act 1973 (c 52)
*Hague Convention on Recognition of Divorces and Legal Separations (Scot Law Com No 16) (Cmnd 4542)	1.12.70	Recognition of Divorce and Legal Separations Act 1971 (c 53)
*Coinage Bill (Scot Law Com No 18) (Cmnd 4544)	26.11.70	Coinage Act 1971 (c 24)
*Vehicles (Excise) Bill (Scot Law Com No 19) (Cmnd 4547)	2.12.70	Vehicles (Excise) Act 1971 (c 10)
*National Savings Bank Bill (Scot Law Com No 20) (Cmnd 4574)	13.1.71	National Savings Bank Act 1971 (c 29)
*Taxation of Income and Gains derived from Land (Scot Law Com No 21) (Cmnd 4654)	23.4.71	In part by section 82 of the Finance Act 1972 (c 41)
*The Road Traffic Bill (Scot Law Com No 22) (Cmnd 4731)	26.7.71	Road Traffic Act 1972 (c 20)

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Town and Country Planning (Scotland) Bill (Scot Law Com No 24) (Cmnd 4949)	20.4.72	Town and Country Planning (Scotland) Act 1972 (c 52)
Family Law - Report on Jurisdiction in Consistorial Causes affecting Matrimonial Status (Scot Law Com No 25)	29.9.72	Domicile and Matrimonial Proceedings Act 1973 (c 45)
*Statute Law Revision - Fourth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 26) (Cmnd 5108)	28.9.72	Statute Law (Repeals) Act 1973 (c 39)
Report on Liability for Antenatal Injury (Scot Law Com No 30) (Cmnd 5371)	30.8.73	None required
Report on the Law Relating to Damages for Injuries Causing Death (Scot Law Com No 31)	24.10.73	Damages (Scotland) Act 1976 (c 13)
*Statute Law Revision - Fifth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 32) (Cmnd 5493)	6.12.73	Statute Law (Repeals) Act 1974 (c 22)
Report on Presumption of Death (Scot Law Com No 34)	3.9.74	Presumption of Death (Scotland) Act 1977 (c 27)
*Friendly Societies Bill (Scot Law Com No 35) (Cmnd 5634)	27.6.74	Friendly Societies Act 1974 (c 46)
*Statute Law Revision—Sixth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 36) (Cmnd 5792)	5.12.74	Statute Law (Repeals) Act 1975 (c 10)
*Supply Powers Bill (Scot Law Com No 38) (Cmnd 5850)	6.1.75	Supply Powers Act 1975 (c 9)
*Exemption Clauses - Second Report (Scot Law Com No 39)	2.10.75	Unfair Contract Terms Act 1977 (c 50)
*Statute Law Revision—Seventh Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 40) (Cmnd 6303)	8.12.75	Statute Law (Repeals) Act 1976 (c 16)
Family law—Report on Liability for Adultery and Enticement of a Spouse (Scot Law Com No 42)	23.6.76	In part by section 10 of the Divorce (Scotland) Act 1976 (c 39)
*Statute Law Revision—Eighth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 44) (Cmnd 6719)	6.1.77	Statute Law (Repeals) Act 1977 (c 18)
*Liability for Defective Products (Scot Law Com No 45) (Cmnd 6831)	15.6.77	None
*Statute Law Revision—Ninth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 48) (Cmnd 7189)	11.5.78	Statute Law (Repeals) Act 1978 (c 45)
Electricity (Scotland) Bill (Scot Law Com No 49) (Cmnd 7178)	23.5.78	Electricity (Scotland) Act 1979 (c 11)
Adoption (Scotland) Bill (Scot Law Com No 50) (Cmnd 7187)	3.5.78	Adoption (Scotland) Act 1978 (c 28)
Damages for Personal Injuries: Report on (1) Admissibility of Claims for Services (2) Admissible Deductions (Scot Law Com No 51)	18.7.78	Administration of Justice Act 1982 (c 53), Part II
Report on the Married Women's Policies of Assurance (Scotland) Act 1880 (Scot Law Com No 52) (Cmnd 7245)	27.7.78	Married Women's Policies of Assurance (Scotland) (Amendment) Act 1980 (c 56)
*Interpretation Bill (Scot Law Com No 53) (Cmnd 7235)	8.6.78	Interpretation Act 1978 (c 30)
*Customs and Excise Management Bill (Scot Law Com No 54) (Cmnd 7418)	7.12.78	Customs and Excise Management Act 1979 (c 2)

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on Lost and Abandoned Property (Scot Law Com No 57)	16.1.80	In part by the Civic Government (Scotland) Act 1982 (c 45), Part VI
Education (Scotland) Bill (Scot Law Com No 58) (Cmnd 7688)	2.4.80	Education (Scotland) Act 1980 (c 44)
Report on Powers of Judicial Factors (Scot Law Com No 59) (Cmnd 7904)	3.7.80	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c 55), section 8
Report on Occupancy Rights in the Matrimonial Home and Domestic Violence (Scot Law Com No 60)	17.7.80	Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c 59)
*Judicial Pensions Bill (Scot Law Com No 62) (Cmnd 8097)	27.11.80	Judicial Pensions Act 1981 (c 20)
*Statute Law Revision - Tenth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 63) (Cmnd 8089)	10.12.80	Statute Law (Repeals) Act 1981 (c 19)
Report on Section 5 of the Damages (Scotland) Act 1976 (Scot Law Com No 64)	29.4.81	Administration of Justice Act 1982, (c 53), Part II
*Trustee Savings Banks Bill (Scot Law Com No 65) (Cmnd 8257)	11.6.81	Trustee Savings Banks Act 1981 (c 65)
*Report on the Council of Europe Conventions on Foreign Money Liabilities (1967) and on the Place of Payment of Money Liabilities (1972) (Scot Law Com No 66) (Cmnd 8318)	28.7.81	None required
Family Law—Report on Aliment and Financial Provision (Scot Law Com No 67)	5.11.81	Family Law (Scotland) Act 1985 (c 37)
Report on Bankruptcy and Related Aspects of Insolvency and Liquidation (Scot Law Com No 68)	26.2.82	Bankruptcy (Scotland) Act 1985 (c 66)
Report on the Law of Incest in Scotland (Scot Law Com No 69) (Cmnd 8422)	23.12.81	Incest and Related Offences (Scotland) Act 1986 (c 36)
Report on Financial Provision after Foreign Divorce (Scot Law Com No 72)	28.10.82	Matrimonial and Family Proceedings Act 1984 (c 42), Part IV
Prescription and Limitation of Actions—Report on Personal Injuries Actions and Private International Law Questions (Scot Law Com No 74)	10.2.83	Prescription and Limitation (Scotland) Act 1984 (c 45)
Report on Irritancies in Leases (Scot Law Com No 75) (Cmnd 8760)	17.2.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73)
Family Law—Report on Outdated Rules in the Law of Husband and Wife (Scot Law Com No 76)	12.5.83	Law Reform (Husband and Wife) (Scotland) Act 1984 (c 15)
*Medical Bill (Scot Law Com No 77) (Cmnd 8839)	24.3.83	Medical Act 1983 (c 54)
Report on Evidence in Cases of Rape and Other Sexual Offences (Scot Law Com No 78)	21.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73)
Report on Rectification of Contractual and Other Documents (Scot Law Com No 79)	28.7.83	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73)
The Mental Element in Crime (Scot Law Com No 80)	23.11.83	None required
Family Law - Report on Illegitimacy (Scot Law Com No 82)	26.1.84	Law Reform (Parent and Child) (Scotland) Act 1986 (c 9)
*Amendment of the Companies Acts 1948-1983 (Scot Law Com No 83) (Cmnd 9114)	21.12.83	Companies Acts (Pre-Consolidation Amendments) Order 1983 (S.I. 1983/134) Companies Act 1985 (c 6)

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Dentists Bill (Scot Law Com No 84) (Cmnd 9119)	18.1.84	Dentists Act 1984 (c 24)
*Road Traffic Regulation Bill (Scot Law Com No 85) (Cmnd 9162)	21.2.84	Road Traffic Regulation Act 1984 (c 27)
Family Law—Report on Matrimonial Property (Scot Law Com No 86)	21.6.84	Family Law (Scotland) Act 1985 (c 37)
*Further Amendments of the Companies Acts 1948-1983 (Scot Law Com No 87) (Cmnd 9272)	25.6.84	Companies Acts (Pre-Consolidation Amendments) (No 2) Order 1984 (S.I. 1984/1169) Companies Act 1985 (c 6)
*Private International Law—Report on Recognition of Foreign Nullity Decrees and Related Matters (Scot Law Com No 88) (Cmnd 9341)	19.9.84	Family Law Act 1986 (c 55)
Report on Breach of Confidence (Scot Law Com No 90)	20.12.84	None required
*Family Law—Report on Custody of Children: Jurisdiction and Enforcement within the United Kingdom (Scot Law Com No 91) (Cmnd 9419)	15.1.85	Family Law Act 1986 (c 55)
Obligations—Report on Negligent Misrepresentation (Scot Law Com No 92)	24.1.85	Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c 73)
Report on Art and Part Guilt of Statutory Offences (Scot Law Com No 93) (Cmnd 9551)	18.7.85	Criminal Justice (Scotland) Act 1987 (c 41)
*Report on the Consolidation of the Housing Acts—Housing Bill, Housing Associations Bill, Landlord and Tenant Bill (Scot Law Com No 94) (Cmnd 9515)	10.5.85	Housing Associations Act 1985 (c 69)
Report on Diligence and Debtor Protection (Scot Law Com No 95)	14.11.85	In part by Debtors (Scotland) Act 1987 (c 18)
*Private International Law—Polygamous Marriages: Report on Capacity to Contract a Polygamous Marriage and Related Issues (Scot Law Com No 96)	8.8.85	None
Obligations—Report on Civil Liability in relation to Animals (Scot Law Com No 97)	8.11.85	Animals (Scotland) Act 1987 (c 9)
*Statute Law Revision—Twelfth Report: Draft Statute Law (Repeals) Bill (Scot Law Com No 99) (Cmnd 9648)	14.11.85	Statute Law (Repeals) Act 1986 (c 12)
Evidence—Report on Corroboration, Hearsay and Related Matters in Civil Proceedings (Scot Law Com No 100)	22.5.86	Civil Evidence (Scotland) Act 1988 (c 32)
Report on Child Abduction (Scot Law Com No 102) (Cm 64)	12.2.87	None
Housing (Scotland) Bill (Scot Law Com No 103) (Cm 104)	17.3.87	Housing (Scotland) Act 1987 (c 26)
*Report on Sale and Supply of Goods (Scot Law Com No 104) (Cm 137)	28.5.87	Sale and Supply of Goods Bill before Parliament
*Private International Law - Report on Choice of Law Rules in Marriage (Scot Law Com No 105)	2.7.87	Foreign Marriage Amendment Act 1988 (c 44)
Report on Computer Crime (Scot Law Com No 106) (Cm 174)	23.7.87	In part by Computer Misuse Act 1990 (c 18)
*Private International Law—Report on the Law of Domicile (Scot Law Com No 107) (Cm 200)	3.9.87	None

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
Report on the Scottish Term and Quarter Days (Scot Law Com No 108) (Cm 208)	29.10.87	Term and Quarter Days (Scotland) Act 1990 (c 22)
Report on the Legal Capacity and Responsibility of Minors and Pupils (Scot Law Com No 110)	17.12.87	Age of Legal Capacity (Scotland) Act 1991 (c 50)
Court of Session Bill—Report on the Consolidation of Certain Enactments and the Repeal of Other Enactments relating to the Court of Session (Scot Law Com No 111) (Cm 315)	9.3.88	Court of Session Act 1988 (c 36)
Report on Requirements of Writing (Scot Law Com No 112)	13.7.88	None
*Road Traffic Bill, Road Traffic Offenders Bill, Road Traffic (Consequential Provisions) Bill - Report on the Consolidation of Certain Enactments relating to Road Traffic (Scot Law Com No 113) (Cm 390)	6.6.88	Road Traffic Act 1988 (c 52), Road Traffic Offenders Act 1988 (c 53), Road Traffic (Consequential Provisions) Act 1988 (c 54)
Report on Civil Liability Contribution (Scot Law Com No 115)	15.12.88	None
Report on Reform of the Ground for Divorce (Scot Law Com No 116)	28.4.89	None
*Statute Law Revision—Thirteenth Report—Draft Statute Law (Repeals) Bill (Scot Law Com No 117) (Cm 671)	4.5.89	Statute Law Repeals Act 1989 (c 43)
Report on Recovery of Possession of Heritable Property (Scot Law Com No 118) (Cm 724)	25.8.89	None
*Extradition Bill—Report on the Consolidation of Legislation Relating to Extradition (Scot Law Com No 119) (Cm 712)	27.6.89	Extradition Act 1989 (c 33)
Evidence: Blood Group Tests, DNA Tests and Related Matters (Scot Law Com No 120)	19.10.89	Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40) and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c 9)
*Opticians Bill - Report on the Consolidation of Legislation Relating to Opticians (Scot Law Com No 121) (Cm 738)	11.7.89	Opticians Act 1989 (c 44)
Report on Prescription and Limitation of Actions (Latent Damage and Other Related Issues) (Scot Law Com No 122) (Cm 790)	12.10.89	None
Report on Succession (Scot Law Com No 124)	25.1.90	None
Report on the Evidence of Children and Other Potentially Vulnerable Witnesses (Scot Law Com No 125)	15.2.90	Partial implementation in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40) and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c 9)
Report on the Passing of Risk in Contracts for the Sale of Heritable Property (Scot Law Com No 127)	18.10.90	None
*Private International Law—Choice of Law in Tort and Delict (Scot Law Com No 129)	12.12.90	None
Report on the Effect of the Execution of Diligence on the Operation of Prescription (see Appendix II, 3 (not published by HMSO))	20.3.91	None
*Rights of Suit in Respect of Carriage of Goods by Sea (Scot Law Com No 130)	20.3.91	Carriage of Goods by Sea Act 1992 (c 50)

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

<i>Titles of relevant Memoranda and Reports</i>	<i>Date of Publication</i>	<i>Statutory Provision</i>
*Social Security Contributions and Benefits Bill, Social Security Administration Bill, Social Security (Consequential Provisions) Bill—Report on the Consolidation of the Legislation relating to Social Security (Scot Law Com No 132) (Cm 1726)	5.11.91	Social Security Contributions and Benefits Act 1992 (c 4), Social Security Administration Act 1992 (c 5), Social Security (Consequential Provisions) Act 1992 (c 6)
Report on Statutory Fees for Arrestees (Scot Law Com No 133)	23.1.92	None
Report on The Effect of Death on Damages (Scot Law Com No 134) (Cm 1848)	5.3.92	Damages (Scotland) Act 1993 (c 5)
Report on Family Law (Scot Law Com No 135)	7.5.92	None
Report on Evidence: Protection of Family Mediation (Scot Law Com No 136)	4.11.92	None
Report on Documentary Evidence and Proof of Undisputed Facts in Criminal Proceedings (Scot Law Com No 137)	21.10.92	Partial implementation in Prisoners and Criminal Proceedings (Scotland) Act 1993 (c 9)
*Clean Air Bill—Report on the Consolidation of Certain Enactments relating to Clean Air (Scot Law Com No 138)	10.11.92	Clean Air Act 1993 (c 11)
*Statute Law Revision: Fourteenth Report (Scot Law Com No 140)	27.4.93	Statute Law Repeals Act 1993 (c 50)
Crofters (Scotland) Bil—Report on the Consolidation of Certain Enactments relating to Crofting (Scot Law Com No 141)	24.5.93	Crofters (Scotland) Act 1993
*Pension Schemes Bill—Report on the Consolidation of the legislation relating to Pension Schemes (Scot Law Com No 142)	11.5.93	Pension Schemes Act 1993
*Health Service Commissioners Bill—Report on the Consolidation of the legislation relating to the Health Service Commissioners (Scot Law Com No 143)	15.6.93	Health Service Commissioners Act 1993
Report on Formation of Contract: Scottish Law and the United Nations Convention on Contracts for the International Sale of Goods (Scot Law Com No 144)	22.7.93	None
*Sale of Goods Forming Part of a Bulk (Scot Law Com No 145)	21.7.93	None.